



2024:DHC:8917-DB



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 20.11.2024

+ **ITA 401/2022**

**PR. COMMISSIONER OF INCOME  
TAX -7, DELHI**

.....Appellant

versus

**NAVEEN KUMAR GUPTA**

..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr. Puneet Rai, Mr. Ashvini Kumar & Mr.  
Rishabh Nangia, Advs.

For the Respondent : Mr. Kapil Sood & Mr. Sandeep Goel, Advs.

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**HON'BLE MS JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**VIBHU BAKHRU, J**

**INTRODUCTION**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter **the Act**] impugning an order dated 09.12.2021 [hereafter **the impugned order**] passed by the Income Tax Appellate Tribunal [hereafter **the ITAT**] in ITA No.592/DEL/2020 captioned *Shri Naveen Kumar Gupta v. The I.T.O.*



2. The learned ITAT had allowed the appeal preferred by the respondent [hereafter **the Assessee**] against an order dated 26.11.2019 passed by the Commissioner of Income Tax (Appeals) [hereafter **CIT(A)**], whereby the Assessee's appeal against the assessment order dated 26.12.2018 passed under Section 147 read with Section 143(3) of the Act in respect of assessment year [**AY**] 2011-12 was dismissed.

3. The assessment of the Assessee's income chargeable to tax for the previous year relevant to the AY 2011-12 was reopened by issuance of a notice under Section 148 of the Act on the basis of information and evidence unearthed during the course of the search conducted on Shri Anand Kumar Jain and Shri Naresh Kumar Jain group on 17.12.2015. And, the Assessee's income was reassessed under Section 147 of the Act.

4. The learned ITAT held that the Assessing Officer [hereafter **AO**] was required to frame the assessment/reassessment under Section 153C of the Act and was precluded from proceeding under Section 147 of the Act. Accordingly, the learned ITAT set aside the assessment order for the aforesaid singular reason.

#### **QUESTION OF LAW**

5. This Court by an order dated 20.03.2024 admitted the present appeal in respect of the following question of law:

“Whether in the facts and circumstances of the case, the ITAT was correct in holding that provisions of section 153C have



overriding effect on the provisions of section 147 of the Income Tax Act, 1961?”

## FACTUAL CONTEXT

6. Before proceeding further, it would be necessary to briefly summarize the relevant facts for addressing the question of law as framed.

7. At the material time – that is, the period relevant to AY 2011-12 – the Assessee, was engaged in the business of trading of shares, securities, commodities, Future and Options (F&O), foreign exchange, etc.

8. The Assessee filed his return of income for the AY 2011-12 on 30.09.2011 declaring a loss of ₹2,50,39,010/-.

9. On 17.12.2015, a search was conducted under Section 132 of the Act in respect of Anand Kumar Jain and Naresh Kumar Jain [hereafter **Jain Brothers**] and a large volume of documents were seized. According to the Revenue, upon examination of the seized documents and other documents obtained thereafter, including the bank statements of certain companies, alleged to be the shell companies, it was revealed that the Assessee was the major beneficiary of accommodation entry operations carried on by Jain Brothers.

10. The Assessee had allegedly made a statement before the ACIT, Central Circle-26, New Delhi to the effect that he had received the entries of ₹11,39,99,000/-. In addition, the AO had also received information from the investigation wing [DDIT (Inv.), Unit-2(2),



Mumbai] that the Assessee had purchased 1994 units of a penny scrip named SVC Resources Ltd., during the financial year 2010-11.

11. The AO, based on the information and material available, issued a notice dated 28.03.2018 under Section 148 of the Act, for reassessment of income for the AY 2011-12 after prior approval from the competent authority. Thereafter, notices under Section 143(2) and under Section 142(1) of the Act were also issued to the Assessee for reassessing the income for the AY 2011-12.

12. The reassessment proceedings culminated in the assessment order dated 26.12.2018, whereby the AO determined the Assessee's total income at ₹11,93,64,350/-. The AO added an amount of ₹11,30,00,000/- on the basis of a ledger submitted by the Assessee indicating receipt of entries from shell companies operated by Jain Brothers; an amount of ₹66,33,250/-, which was disclosed to be the commission paid for the alleged entries; and, an amount of ₹31,100/- paid to the Assessee for investment in penny stock – SVC Resources Ltd. These additions were made under Section 68 of the Act.

13. Before proceeding further, it is relevant to note the reasons, as recorded by the AO in the assessment order dated 26.12.2018, for initiating the reassessment proceedings. The same are set out below:

- “1. In this case an information has been received from O/o ACIT, CC-26, new Delhi that during search and seizure operation on Anand Kumar Jain and Naresh Kumar Jain group of cases on 17.12.2015 (Jain Brothers entry operators). A large volume of documents were seized. On examination of the documents seized during the



course of search and the bank statement of the shell companies obtained thereafter highlighted the name of Sh. Naveen Kumar Gupta as a major beneficiary of the Jain Brothers.

The report states that Sh. Naveen Gupta was an accomplice of Jin Brothers in this illegal business for many years. The assessee has named all the companies created by Jain brothers as bogus companies which were managed only for the entry business. The report explains at length the entire procedure of giving / receiving an entry in lieu of cash from the various beneficiaries including the assessee. It is stated in the report that during 01.04.2009 to 31.03.2016, Sh. Naveen Kumar Gupta has taken entries from Jain brothers and their shell companies amounting to Rs.87.43 crores during 01.04.2009 to 31.03.2016 for each transactions, Sh. Naveen Kumar Gupta used to pay commission ranging from 2.5% to 4%. The copy of transactions statement submitted by Sh. Naveen Kumar Gupta with Asst. CIT, Central Circle-26, New Delhi during his statement before them stated the he had received the entries of Rs.11,39,00,000/- during FY 2010-11. On perusal of statements of the assessee as submitted by him before ACIT, CC-26, the above receipts were verifiable.

2. In this case an information has been received from DDIT(Inv.) (Unit-2(2), Mumbai that the assessee has purchased units of a penny scrip-SVC resource Ltd. during FY 2010-11. As per the reports of DDIT (Inv.) the assessee has purchased 1994 units of SVC resource on 21.01.2011 @15.6. The total traded value was Rs.31,100/-.”

14. The assessment order also indicates that the Investigation Wing, Mumbai had conducted enquiries in respect of the penny scrip, SVC Resources Ltd., and transactions relating to the said stock which were allegedly for providing bogus accommodation entries of long-term capital gains / short term capital gains. It was reported that the *modus*



*operandi* was to provide entries by manipulating the stock market. The entry operator would gain control in respect of a penny stock. He would then issue shares of the said penny stock to beneficiaries, and thereafter rig the price to artificially increase the same. He would then assist the beneficiaries to sell the same at the escalated price. Thus, resulting in capital gains in the hands of the beneficiaries. The beneficiaries would pay cash to the entry provider including commission, for providing the entry.

### SUBMISSIONS

15. Mr. Sood, the learned counsel appearing for the Assessee referred to the decisions of various High Courts including the decision of the Rajasthan High Court in *Shyam Sunder Khandelwal v. Assistant Commissioner of Income Tax (and connected petitions)*<sup>1</sup>; the decision of the Karnataka High Court in *The Pr. Commissioner of Income Tax & Anr. v. M/s VSL Mining Company Pvt. Ltd.*<sup>2</sup>; and the decision of the Patna High Court in *Amit Kumar alias Amit Saraf v. Union of India & Others*<sup>3</sup>. He contended that Section 153C of the Act contains a special provision relating to assessment of a person pursuant to material found during the search operations conducted under Section 132 on any other person or as a result of requisition made under Section 132A of the Act. And, since the provisions of Section 153C of the Act are special provisions, the same would override the other provisions relating to assessment/reassessment under the Act including Section 147 of the

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<sup>1</sup> [2024] 471 ITR 45

<sup>2</sup> Judgment dated 20.09.2024 in ITA No.32/2020

<sup>3</sup> (2024) 462 ITR 205



Act. He contended that since Section 153C of the Act sets out a specified procedure for conducting the assessment, the same cannot be side stepped.

16. Mr Rai, learned counsel appearing on behalf of the Revenue countered the said submission. He contended that the assessments were reopened not only on the basis of the material / information collected pursuant to search conducted in respect of Jain Brothers but also on the basis of the information received from the Investigation Wing. He also contended that since the material collected during the search did not belong to the Assessee, the proceedings under Section 153C of the Act could not have been initiated.

17. Mr Rai relied heavily on the decision of the Supreme Court in *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.*<sup>4</sup> and on the strength of the said decision contended that the issue whether assessments could be opened under Section 147 of the Act in cases, which are covered under Section 153A of the Act is no longer *res integra*. The Supreme Court in the said case had held that even in cases where completed assessment could not be reopened under Section 153A of the Act recourse was available under the provisions of Section 147/148 of the Act, subject to fulfilment of the conditions mentioned in the said Section.

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<sup>4</sup> [2023] 149 taxmann.com 399 (SC)



18. He also relied on the decision of the Gujarat High Court in *Amar Jewellers Ltd. v. Assistant Commissioner of Income Tax*<sup>5</sup> in support of his contentions that the *non obstante* clause under Section 153C of the Act did not override the provisions of Section 147 of the Act.

19. The present appeal was taken up for hearing along with ITA No.218/2024 and W.P.(C) No.17326/2022, which also involved the question whether reassessment under Section 147 of the Act would be impermissible in cases where the same was based on information obtained during the search and seizure operations conducted in respect of another person other than the assessee.

#### **ANALYSIS & CONCLUSION**

20. The principal issue to be addressed is the interplay between the provisions of Section 153C of the Act and Section 147 of the Act. It is the Assessee's case that recourse to Section 147 of the Act would be unavailable in cases where the AO is empowered to proceed under Section 153C of the Act.

21. At the outset, it is necessary to advert to the provisions of Section 153C of the Act, as applicable on the date of the search. The same is set out below:

#### **“Assessment of income of any other person.**

153C (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

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<sup>5</sup> [2022] 137 taxmann.com 249 (Gujarat)



- (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.

**Provided** that in case of such other person, the reference to the date of initiation of the search 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 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 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 or have 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 under section 132 or requisition is made under section 132A 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 section 142 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 section 143 has 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 section 153A.”

22. As is apparent from the plain language of Section 153C of the Act, as was in force at the material time, an assessment under Section 153C of the Act could be initiated only in cases where the AO of the person who was searched under Section 132 of the Act or in whose case a requisition was made under Section 132A of the Act, was satisfied that money, bullion, jewellery or other valuable articles belong to a person other than the one searched or that the books of account and documents seized or requisitioned pertained to or contain any information relating to such other person.

23. If the aforesaid condition was satisfied, the AO of the searched person was required to record the satisfaction to the aforesaid effect. Recordal of such satisfaction is the second jurisdictional condition for invoking the provision of Section 153C of the Act. The AO of the



searched person was thereafter required to transmit the assets or documents belonging to the person other than the searched person to the AO of such other person. If the same was done, the third jurisdictional pre-requisite would stand satisfied. The AO of such other person was then required to examine the said material received by the AO of the searched person and if it was found that the same had a bearing on the determination of the income of such other person, the AO could proceed to issue a notice under Section 153C of the Act.

24. It is relevant to note that Section 153C of the Act was amended by virtue of the Finance Act, 2015 with effect from 01.06.2015. Prior to the said amendment, Sub-section (1) of Section 153 of the Act read as under:

**“153-C. Assessment of income of any other person.—(1)** Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in Section 153-A, 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 other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A,

Provided that in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A 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 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 except in cases where any assessment or reassessment has abated.”

25. The language of Section 153C (1) of the Act, as in force prior to 01.06.2015, indicates that the process for triggering the machinery provisions of Section 153C of the Act would arise only if the AO was satisfied that money, bullion, jewellery or other valuable articles or things or books of account or documents seized or requisitioned “belongs or belong to” to a person other than the one referred to in Section 153A of the Act. Thus, even though the documents seized during search proceedings contained information pertaining to a person other than the one searched, the same could not trigger the provision of Section 153C of the Act. The said issue was subject matter of debate in various Courts. However, in *Pepsico India Holding (P) Ltd. v. Assistant Commissioner of Income Tax & Anr.*<sup>6</sup>, this Court took a view that the words “belongs” or “belong to” could not be construed to mean as “pertains” or “pertain to”.

26. The provisions of Section 153C of the Act were amended by the Finance Act, 2015 to address the said issue. It is also material to note

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<sup>6</sup> 2014 SCC OnLine Del 4155



that in *Income Tax Officer v. Vikram Sujitkumar Bhatia*<sup>7</sup>, the Supreme Court considered the question whether the amendment to Section 153C of the Act as enacted by virtue of the Finance Act, 2015 would also be applicable to searches conducted under Section 132 of the Act prior to 01.06.2015, that is the date on which the amended Section 153C of the Act came into force. The Supreme Court accepted that Section 153C of the Act is a machinery provision and the substituted provision would also apply in respect of searches conducted prior to 01.06.2015.

27. As noted above, the first jurisdictional condition to be satisfied for invoking Section 153C of the Act is the satisfaction of the AO of the searched person that the valuable articles, books of accounts or documents belong to a third party (a person other than the searched person) or contains information pertaining to the such other person. Once the AO of a searched person reaches to the said conclusion, he has to record his satisfaction and transmit the material to the AO exercising jurisdiction in respect of the third party.

28. At the stage of recording a satisfaction that the valuable articles or documents, which were found or requisitioned, belong to a third party, it is not necessary for the AO to form any opinion that the valuable articles, books of account or documents would reflect any undisclosed income of such a person. The AO has to merely forward the said material to the AO of the other person exercising jurisdiction

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<sup>7</sup> 2023 SCC Online SC 370



in respect of the other person. The question whether the said material has any bearing on the income of such other person is required to be determined by the Jurisdictional Assessment Officer of that person (person other than the one searched). We may refer to the following passage of the decision this Court in *SSP Aviation Limited v. Deputy Commissioner of Income Tax*<sup>8</sup> in this regard:

“... At the time when the Assessing Officer having jurisdiction over the searched person reaches the satisfaction that the document belongs to a person other than the searched person, it is not necessary for him to also reach a firm conclusion/opinion that the document shows undisclosed income belonging to such other person. That is a matter for enquiry, which is to be conducted in the manner prescribed by section 153C.”

29. It is only when the AO of a third party (person other than the searched person) receives the material (assets, books of account or documents) from the AO of the searched person that he can proceed further under Section 153C of the Act. In the first instance, he is required to examine whether the material transmitted by the AO of a searched person has any bearing on the income of such person.

30. In the case of *Commissioner of Income Tax v. Kabul Chawla*<sup>9</sup> – a judgment rendered in the context of Section 153A of the Act – this Court held that completed assessment could be opened only on the basis of incriminating material unearthed during the course of search or on requisition of the same. Absent any incriminating material, the AO

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<sup>8</sup> [2012] 346 ITR 177

<sup>9</sup> (2016) 380 ITR 573



would have no jurisdiction in respect of the concluded assessments. It is relevant to refer to the conclusions as summarized in the said judgment. The same are extracted below:

“37. On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

(i) Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officer as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer has the power to assess and reassess the “total income” of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six assessment years “in which both the disclosed and the undisclosed income would be brought to tax”.

(iv) Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has



to be made under this section only on the basis of seized material."

(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word "assess" in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to the completed assessment proceedings.

(vi) Insofar as the pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

31. The Hon'ble Gujarat High Court took a similar view in *Principal Commissioner of Income Tax v. Saumya Construction (P.) Ltd.*<sup>10</sup>. It is relevant to refer to the following extracts of the said decisions:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year

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<sup>10</sup> (2016) 387 ITR 529 (Gujarat)



falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.

**16.** Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the



language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the Legislature is clear, viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT (supra)*, the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.”

32. The decision in the case of *Commissioner of Income Tax v. Kabul Chawla*<sup>9</sup> and *Principal Commissioner of Income Tax v. Saumya Construction (P.) Ltd.*<sup>10</sup> were rendered in the context of Section 153A of the Act. It is relevant to note that although it was held that assessment/reassessment can be made only on the basis of incriminating material unearthed during the search or requisitioned yet



it was accepted that in cases where search was conducted under Section 132 of the Act or requisition was made under Section 132A of the Act, it was necessary for the AO to issue a notice under Section 153A of the Act calling upon the assessee to furnish the return of income for the six assessment years preceding the assessment year relevant to the previous year in which the search was conducted or the requisition was made, as the case may be. In cases where the assessment / reassessment had abated by virtue of Section 153A of the Act, the AO was required to complete the said assessment. However, in a case of unabated or concluded assessments, the AO could reassess the same on the basis of incriminating material found during the search or requisitioned. However, if no incriminating material is found, the AO was required to reiterate and close the assessments.

33. In *Commissioner of Income Tax v. RRJ Securities Ltd.*<sup>11</sup> this Court had examined the steps that are required for initiation and completion of proceedings under Section 153C of the Act. We consider it apposite to set out the following extract from the said decision:

13. The first and foremost step for initiation of proceedings under Section 153C of the Act is for the Assessing Officer of the searched person to be satisfied that the assets or documents seized belong to the assessee (being a person other than the searched person). The Assessing Officer of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The Assessing Officer of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to

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<sup>11</sup> (2016) 380 ITR 612 (Del)



the searched person but to another person. Thereafter, the Assessing Officer has to transfer the seized assets/documents to the Assessing Officer having jurisdiction of the assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the Assessing Officer of a person other than the one searched, has received the assets or the documents, he is to issue a notice to assess/reassess the income of such person, that is, the assessee other than the person searched in accordance with provisions of section 153A of the Act.

34. In *Saksham Commodities Ltd. v. Income-tax Officer & Anr.*<sup>12</sup> this Court had explained that after receipt of the material from the AO of the searched person, the AO of the other person is required to examine the same. It is only when he is satisfied that the books of account, documents, assets seized or requisitioned have a bearing on the income of the other person, that a notice under Section 153C of the Act is required to be issued. The relevant extract of the said decision is set out below:

“40. It is thus apparent that it is only when the transmitted documents and material reaches the desk of the jurisdictional Assessing Officer that it becomes empowered to initiate action under Section 153C of the Act. This is evident from a plain textual reading of that provision and which speaks of the commencement point being the handing over of documents or assets seized or requisitioned to the Assessing Officer of the “other person” and it in turn proceeding to issue notice to assess or reassess the income of the non-searched entity in accordance with section 153A. However, the initiation of action under section 153C is significantly premised upon the Assessing Officer being satisfied that the books of account or documents and assets seized or requisitioned having “a bearing on the determination of the total income of such other person”. This is manifest from the provision employing the expression

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<sup>12</sup> (2024) 464 ITR 1



“if, that Assessing Officer is satisfied.....”. It would therefore necessarily follow that the issuance of a notice under Section 153C is clearly not intended to be an inevitable consequence to the receipt of material by the jurisdictional Assessing Officer. That the Assessing Officer before commencement of action under section 153C is also obliged to be satisfied that the material so received would “have a bearing on the determination of the total income of such other person” is an aspect of significance and constitutes a fundamental point of distinction between section 153A and section 153C. This distinguishing element of the two provisions would become further apparent from the discussion which ensues.”

35. In *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.*<sup>4</sup>, the Supreme Court had examined the question that whether the jurisdiction of the AO to make an assessment under Section 153A of the Act was confined to incriminating material found during the course of the search under Section 132 of the Act or requisitioned under Section 132A of the Act. The Supreme Court referred to the legal position as summarized by this Court in *Commissioner of Income Tax v. Kabul Chawla*<sup>9</sup> and the decision in *Principal Commissioner of Income Tax v. Saumya Construction (P.) Ltd.*<sup>10</sup> and expressly upheld the same. It is relevant to refer to the following extracts from the said decision:

“11. As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, the AO gets the jurisdiction to assess or reassess the “total income” in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153-A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall



abate. As per sub-section (2) of Section 153-A, 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 Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the “total income” for the entire six years' period/block assessment period. The intention does not seem to be to reopen the completed/unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153-A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under Section 153-A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under Sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

**12.** If the submission on behalf of the Revenue that in case of search even where no incriminating material is found



during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153-A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

**13.** For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in *Kabul Chawla (Supra)* and the Gujarat High Court in the case of *Saumya Construction (Supra)* and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

**14.** In view of the above and for the reasons stated above, it is concluded as under:

- (i) That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;
- (ii) All pending assessments/reassessments shall stand abated;



- (iii) In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- (iv) 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.”

[emphasis added]

36. The decision in the case of *Commissioner of Income Tax v. Kabul Chawla*<sup>9</sup> and *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.*<sup>4</sup> was rendered in the context of Section 153A of the Act. However, the same would be equally applicable to proceedings initiated under Section 153C(1) of the Act, which stipulates that the AO would issue a notice to “assess / reassess the income of the other person in accordance with the provisions of Section 153A of the Act”.

37. It is apparent from the above discussion that provisions of Section 153A and 153C of the Act are applicable only if the conditions as specified are fully satisfied. Absent any of the conditions, recourse to



making an assessment/reassessment under these provisions is not available.

38. The question whether reassessment under Section 147 of the Act can be initiated in cases of material seized or information emanating from a search conducted under Section 132 of the Act or any assets or documents requisitioned under Section 132A of the Act, where the conditions for initiating the assessment under Sections 153A and 153C of the Act are not satisfied, is no longer *res integra*.

39. In ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.***<sup>4</sup> the Supreme Court had authoritatively held that even in cases where assessment under Section 153A of the Act cannot be initiated on account of the conditions for initiation of assessment / reassessment under the said Section not being satisfied, it is open for the Revenue to make the assessment / reassessment under Section 147 of the Act. This is of course subject to all conditions for such initiation being fully satisfied.

40. The remaining aspect to be examined is whether in cases where incriminating assets, documents or material are found during the search conducted under Section 132 of the Act or requisitioned under Section 132A of the Act, proceedings under Section 147 of the Act for reassessment can be initiated for assessment/ reassessment of income notwithstanding that proceedings under Section 153C of the Act could have been initiated. The learned ITAT has held that the said recourse is



not open and it is necessary for the AO to follow the procedure as stipulated under Section 153C of the Act.

41. As noted above, the jurisdiction of the AO to reassess the income under Section 153C of the Act is predicated on (a) the AO of the searched person being satisfied that the assets and material found during the search proceedings or requisitioned are incriminating insofar as the assessee (other than the searched person) is concerned; (b) recording its satisfaction to the aforesaid effect; (c) transmitting the same to the AO of the other person (person other than the searched person); (d) the AO of the non-searched person being satisfied that the material information received has a bearing on the determination of the total income; and, (e) the AO of such non searched person issuing a notice to commence assessment / reassessment proceedings. Indisputably, if any of the aforesaid conditions are not satisfied, the income of such other person cannot be assessed or reassessed under Section 153C of the Act. According to the Assessee (and as accepted by ITAT), in such circumstances, the AO would also be precluded from initiating the proceedings under Section 147 of the Act. This is the central issue that is required to be addressed.

42. The Assessee's contention is founded essentially on two grounds. First, that Section 153C of the Act commences with a *non obstante* provision. And second, that the scheme under Sections 153A and 153C of the Act is a special scheme for assessment in cases where the same is premised on a search conducted under Section 132 or under Section 132A of the Act. Therefore, the special scheme would override the other



provisions for assessment / reassessment of tax including Sections 143(3) and 147 of the Act.

43. It would thus be relevant to examine the import of the *non obstante* provision of Section 153C of the Act. Section 153C of the Act commences with the words “notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153 of the Act”. There is no cavil that the import of the said words is that it would not be necessary to follow the procedure or the rigours of the aforesaid provisions of Section 153C of the Act as applicable. However, according to the Assessee, the import of the said clause extends further to exclude the applicability of the said provisions altogether. The Assessee contends that the provisions of Section 147 of the Act are completely inapplicable or overridden by the provisions of Section 153C of the Act in cases where the assessment / reassessment can be premised on information or material found during the search under Section 132 of the Act or the requisition made under Section 132A of the Act.

44. For the purposes of addressing the aforesaid question, it would be necessary to briefly examine the Scheme of relevant provisions. Sections 153A, 153B and 153C of the Act were inserted by Finance Act, 2005 with effect from 01.06.2003. The said provisions replaced the “Post Search Block Assessment Scheme” which was in force prior to introduction of the aforesaid sections.



45. The notes and clauses to the Finance Bill, 2003 indicates the reasons for replacing the provisions for assessment in search cases which were in force at the material time. The relevant notes and clauses are set out below:

**“Assessment in search cases-Abolition of the special procedure in Chapter XIV-B and introduction of new provisions**

The existing provisions of the Chapter XIV-B provide for a single assessment of undisclosed income of a block period, which means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted and also includes the period up to the date of the commencement of such search, and lay down the manner in which such income is to be computed. The main objectives for the introduction of the Chapter XIV-B were avoidance of disputes, early finalisation of search assessments and reduction in multiplicity of proceedings. The idea was to have a cost-effective, efficient and meaningful search assessment procedure.

However, the experience on implementation of the special procedure for search assessments (block assessment) contained in Chapter XIV-B, has shown that the new scheme has failed in its objective of early resolution of search assessments. The new procedure postulates two parallel streams of assessment, i.e., one of regular assessment and the other for block assessment during the same period, i.e., during the block period. Controversies have sprung up questioning the treatment of a particular income as ‘undisclosed’ and whether it is relatable to the material found during the course of search etc. Even where the facts are clear, litigation on procedural matters continue to persist. The new procedure has thus spawned a fresh stream of litigation.

It is proposed to provide that the provisions of this Chapter shall not apply where a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A after 31<sup>st</sup> May, 2003 by inserting a new section 158BI in the Income-tax Act.



It is also proposed to insert three new sections 153A, 153B and 153C in the Income-tax Act to provide for assessment in case of search or making requisition,

The proposed new section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after 31<sup>st</sup> May, 2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A. The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. In the 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.

The proposed new section 153B provides for the time limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. This section also provides the time limit for completion of assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed. It also provides that in computing the period of limitation for completion of such assessment or



reassessment, the period during which the assessment proceeding is stayed by an order or injunction of any court, or the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee of being reheard under the proviso to section 129, or in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, shall be excluded. If, after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case maybe, is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation shall be deemed to be extended accordingly.

The proposed new section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs 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 such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

An appeal against the order of assessment or reassessment under section 153A shall lie with the Commissioner of Income-tax (Appeals).

Consequential amendments are also proposed in Section 132, 132B, 140A, 234A, 234B, 246A and 276CC to give reference to Section 153A in these sections.”



46. We also consider it apposite to refer to the Circular issued by Central Board of Direct Taxes (CBDT) explaining the assessment / reassessment in terms of Sections 153A, 153B and 153C of the Act. The relevant extract of the said Circular is set out below:

“65. The special procedure for assessment of search cases under /Chapter XIV-B be abolished:

65.1 The existing provisions of the Chapter XIV-B provide for a single assessment of undisclosed income of a block period, which means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted and also includes the period up to the date of the commencement of such search, and lay down the manner in which such income is to be computed.

65.2 The Finance Act, 2003, has provided that the provisions of this Chapter shall not apply where a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A after May 31, 2003, by inserting a new section 158BI in the Income-tax Act.

65.3 Further three new sections 153A, 153B and 153C have been inserted in the Income-tax Act to provide for assessment in case of search or making requisition.

65.4 The new section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after May 31, 2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.

65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under



section 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the 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.

65.6 The new section 153B provides for the time limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

65.7 This section also provides that assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A shall be completed within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed.

65.8 It also provides that in computing the period of limitation for completion of such assessment or reassessment, the period during which the assessment proceeding is stayed by an order or injunction of any court ; or the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee of being re-heard under the proviso to section 129, or in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the



period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, shall be excluded. If, after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation shall be deemed to be extended accordingly.

65.9 The new section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs 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 such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

65.10 An appeal against the order of assessment or reassessment under section 153A shall lie with the Commissioner of Income-tax (Appeals).

65.11 Consequential amendments have also been made in sections 132, 132B, 140A, 234A, 234B, 246A and 276CC to give reference to section 153A in these sections.

65.12 These amendments will take effect from June 1, 2003."

47. Under the erstwhile scheme of block assessment in search cases, as was in force prior to the enactment of Sections 153A, 153B and 153C of the Act, the AO was required to make an assessment of the undisclosed income for the block period. Thus, there were two parallel assessments, one in respect of disclosed income and the other in respect of undisclosed income. The implementation of the said scheme, instead of simplifying the procedure in search cases, further complicated the



same. One of the issues that became the focal point in several cases was whether income is required to be assessed as undisclosed income for the block period or whether it was to be considered as covered under the regular assessment.

48. Sections 153A and 153C of the Act were enacted to simplify that procedure. The principal object of such enactment was to simplify the assessment and to provide for a single assessment in respect of each assessment year in cases relating to search under Section 132 of the Act or requisition made under Section 132A of the Act. In *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.*<sup>4</sup>, the Supreme Court had taken a note of the legislative intent in replacing the scheme of assessment / reassessment in search cases in the following words:

**“30.** That prior to insertion of Section 153-A in the statute, the relevant provision for block assessment was under Section 158-BA of the 1961 Act. The erstwhile scheme of block assessment under Section 158-BA envisaged assessment of “undisclosed income” for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime i.e. : (i) block assessment under Section 158-BA to assess the “undisclosed income”, and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the “undisclosed income” was chargeable to tax at a special rate of 60% under Section 113 whereas income other than “undisclosed income” was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, Section 153-A came to be inserted and brought on the statute. Under Section 153-A regime, the intention of the legislation was to do away with the scheme of two parallel



assessments and tax the “undisclosed” income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153-A and in case of search, there shall be block assessment for six years. Search assessments/Block assessments under Section 153-A are triggered by conducting of a valid search under Section 132 of the 1961 Act. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of Sections 153-A/153-C is detection of undisclosed income by undertaking extraordinary power of search and seizure i.e. the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153-A/153-C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.”

49. In *Amar Jewellers Ltd. v. Assistant Commissioner of Income Tax*<sup>5</sup>, the Gujarat High Court had examined the contentions as advanced before this Court and considered the import of the *non obstante* clause under Section 153C of the Act. In its decision, the Gujarat High Court had observed as under:

“46. A *non obstante* clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions or Act mentioned in the *non obstante* clause, the provision following it will have its full operation or the provisions embraced in the *non obstante* clause will not be an impediment for the operation of the enactment or the provision in which the *non obstante* clause occurs. (see: Principles of Statutory Interpretation, 9<sup>th</sup> Edition by Justice G. P. Singh Chapter V, Synopsis IV at pages 318 and 319).

47. Normally the use of the phrase by the Legislature in a statutory provision like notwithstanding anything to the contrary contained in this Act is equivalent to saying that the Act shall be no impediment to the measure [See: Law Lexicon words



"notwithstanding anything in this Act to the contrary"]. Use of such expression is another way of saying that the provision in which the *non obstante* clause occurs usually would prevail over the other provisions in the Act. Thus, the *non obstante* clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the *non obstante* clause is attached. (See :Bipathumma v. Mariam Bibi (1966) 1 MYSLJ 162, at page 165).

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

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

**50.** Section 153A is a self-contained code for each assessments. The section states that on initiation of search, the



Assessing Officer can issue a notice calling for the returns of income for six assessment years preceding the previous year in which the search has taken place. The *non obstante* clause obviates the need to comply with the requirement of the regular provisions.

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**55.** Thus, having regard to the aforesaid discussion, we have reached to the conclusion that the argument of Mr. Hemani as regards the *non obstante* clause contained in section 153A and its effect is without any merit. It is difficult for us to take the view that the *non obstante* clause in section 153A excludes the very applicability of sections 147 and 148 respectively of the Act. We are in agreement with the submission of Mr. Bhatt, the learned senior counsel appearing for the Revenue that the *non obstante* clause in section 153A should be understood as merely dispensing with the procedural aspect of section 147 of the Act.”

50. The aforesaid decision was rendered in the contest of Section 153A of the Act. Although, the rationale as set out in the said decision resonate with us, we are unable to concur that issuance of notice under Section 153A of the Act is optional. Once a search has been conducted under Section 132 of the Act or assets, documents or other material is requisitioned under Section 132A of the Act, the AO is required to issue a notice under Section 153A of the Act. This is necessary because in terms of proviso to Section 153A of the Act, the pending proceedings for assessment or reassessment for any of the assessment years falling within the period of six assessment years prior to the date of initiation of the search under Section 132 of the Act or acquisition under Section 132A of the Act, would abate. The said assessments would necessarily be required to be completed under Section 153A of the Act. However, commencement of proceedings under Section 153C of the Act is subject



to additional conditions and it was not necessary that a notice under Section 153C of the Act be issued. Section 153B of the Act also stipulates the time limit for completion of assessment in cases under Section 153A of the Act. In terms of Section 153B(1) of the Act, assessment in respect of each of the six years, as referred to in Section 153A(b) of the Act, are required to be completed within the period of two years from the end of the financial year in which the last of the authorization for search under Section 132 of the Act or acquisition under Section 132A of the Act were executed. The assessment in respect of the year relevant to the previous year in which the search was conducted under Section 132 of the Act or requisition made under Section 132A of the Act is also required to be completed within the aforesaid period.

51. It is necessary to note that there is a clear distinction between the provisions of Sections 153A and 153C of the Act. The AO under Section 153 of the Act has the discretion to assume jurisdiction. If the jurisdictional conditions are satisfied, it is not necessary for the AO to assume jurisdiction in such cases. In *Agni Vishnu Ventures Pvt. Ltd. v. Deputy Commissioner of Income Tax*<sup>13</sup>, the Madras High Court had highlighted the difference between the provisions of Sections 153A and 153C of the Act. It is relevant to refer to the following passages from the said decision:

“63. Assessments made either under section 153A or 153C can be sustained only if those assessments are based upon incriminating materials found in the course of search indicating

<sup>13</sup> Judgement dated 28.06.2023 in W.P. No. 24407/2021



concealed assets/taxable income that have escaped assessment. The scheme of assessment under sections 153A and 153C is available to the Department in addition to all other methods of assessment, revision and reassessment and each scheme has its distinct set of conditions and stipulations, that must be strictly adhered to.

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76. The ingredients of section 153A are:

- (i) Initiation of search or requisition under the applicable statutory provisions,
- (ii) Such search/requisition being after May 31, 2003 but before May 31, 2021.

77. The ingredients of section 153C are:

- (i) Satisfaction of the Assessing Officer who is Assessing Officer of the section 153A noticee that money/bullion/jewellery/other valuable article or thing/books of account or documents (incriminating materials) seized/requisitioned belongs to/pertain to or any information contained, relates to, a third party.
  - (ii) Recording of satisfaction as above.
  - (iii) Handing over of the incriminating material to the Assessing Officer having jurisdiction over the third party.
  - (iv) Recording of satisfaction by the Assessing Officer of the third party that the incriminating material has a bearing on the determination of total income of the third party.
  - (v) Upon condition of recording of the satisfaction of both officers as above, notices be issued to assess/reassess the income of the third party in accordance with the procedure stipulated under section 153A.
- (iii) A mandate upon the Assessing Officer who “shall” issue notice to the person searched.



(iv) The notice shall require him to furnish within such period as specified, a return of income.

(v) Such returns are to be filed in respect of each assessment year falling within six assessment years referred to in that provision duly verified and containing the required particulars.

(vi) Upon receipt of the returns, reassess total income of six assessment years immediately preceding the assessment year relating to the previous year that search was conducted/requisition made.

78. In my considered view, there is a vital distinction between the object, intention as well as the express language of sections 153A and 153C. Section 153A addresses the searched entity and the procedure set out is evidently a notch higher for this reason. There is no discretion or condition precedent under section 153A to the issuance of notice save the conduct of a search under section 132 or making of a requisition under section 132A. Upon the occurrence of one of the aforesaid events, it is incumbent upon the officer to issue notice under section 153A to the searched entity in line with the procedure stipulated.

79. Section 153C however requires the satisfaction of two conditions prior to issuance of notice:

(i) Recording of satisfaction by the Assessing Officer of the searched entities that some of the incriminating materials relate to a third party.

(ii) Recording of satisfaction by the Assessing Officer of the third party that the incriminating materials have a bearing on the determination of the total income of that third party.

80. Notice under section 153C would have to be issued only upon the concurrent satisfaction of both conditions as aforesaid. To this extent, there is, in my considered opinion, a clear and marked distinction between the provisions of sections 153A and 153C. The contention of the Revenue that a mandate is cast upon the Assessing Officer of the third party to issue notice under section 153C for all the years comprising the block, mechanically and automatically, is thus rejected.



81. To clarify, it is only where the satisfaction note recorded by the receiving Assessing Officer, i.e., the Assessing Officer of the third party reflects a clear finding that the incriminating material received has a bearing on determination of total income of the third party for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, that such notice would have to be issued for all the years.

82. It thus flows from the provision that the receiving Assessing Officer must apply his mind to the materials received and ascertain precisely the specific year to which the incriminating material relates. It is only when this determination/ascertainment is complete that the flood gates of an assessment would open qua those particular years. The issuance of a notice cannot be an automated function unconnected to this exercise of analysis and ascertainment by an Assessing Officer.

83. The construction of sections 153A and 153C is consciously different and is seen to apply different yardsticks to an entity searched and a third party, such yardstick being more exacting in the case of the former. The process of assessment is demanding and an assessee, once in receipt of a notice, is bound by the stringent procedure under the Act, till finalisation of the process.

84. In other words, a Damocles sword appears over the head of an assessee with the issuance of every notice which is laid to rest only upon conclusion of the proceedings; The sword cannot be invoked lightly and except if the statutory condition is satisfied. That is to state, an officer has to analyse and compartmentalise the incriminating material year-wise, to arrive at a categoric determination as to the year to which the incriminating material relates and issue notices only for those years.

85. Needless to state these are some situations/issue when the spread of information and the nature of the issue itself might need more, and in- depth probing before such year-wise determination is possible. In such cases, the officer would be well within his right to state the nature of the issue and detail the difficulties that present themselves in precise bifurcation at that stage. This would reflect application of mind and, in my



considered view, would serve as sufficient compliance with the statutory condition.”

52. In the case of *Saksham Commodities Ltd. v. Income-tax Officer & Anr.*<sup>12</sup>, this Court had explained the distinction between Sections 153A and 153C of the Act. The relevant extracts of the said decision are as under:

“37. Having noticed the rival contentions which were addressed, we firstly take note of the evident distinction that exists between section 153A and section 153C. They are clearly couched in language which is dissimilar. When we turn our gaze upon section 153A, it becomes apparent that where a search is initiated or documents and books requisitioned, the Assessing Officer is mandated to issue notice calling upon the searched person to submit a return of income in respect of each assessment year falling within the six assessment years’ and for the “*relevant assessment year*”. Upon submission of that return of income, the Assessing Officer stands empowered statutorily to assess or reassess the total income of six assessment years’ immediately preceding the assessment year corresponding to the year of search and for the “*relevant assessment year*”. The expression “*relevant assessment year*” has been duly defined by Explanation 1 placed in Section 153A and is explained to include those years which fall beyond the six assessment years’ spoken of earlier but not later than ten assessment years’ from the end of the assessment year relevant to the Financial Year in which the search was conducted.

38. As was held in *SSP Aviation Ltd v. Deputy Commissioner of Income Tax*, the Assessing Officer of the searched person while proceeding to transmit the material gathered in the course of the search to the Assessing Officer of the “other person” is not obliged to form any opinion with respect to escapement of income or for that matter the material likely to have an impact on the total income of the non-searched entity. At the stage of transmission of material, the Assessing Officer of the searched person is only required to be satisfied that the material or



documents unearthed pertain to a person or entity other than the one searched.

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39. The principle that the Assessing Officer of the searched person is only required to be satisfied that the documents or materials pertain to the “other person” at the stage of transmission of material or documents to the jurisdictional Assessing Officer of the non-searched entity was reiterated in *RRJ Securities*.

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40. It is thus apparent that it is only when the transmitted documents and material reaches the desk of the jurisdictional Assessing Officer that it becomes empowered to initiate action under Section 153C of the Act. This is evident from a plain textual reading of that provision and which speaks of the commencement point being the handing over of documents or assets seized or requisitioned to the Assessing Officer of the “other person” and it in turn proceeding to issue notice to assess or reassess the income of the non-searched entity in accordance with Section 153A. However, the initiation of action under Section 153C is significantly premised upon the Assessing Officer being satisfied that the books of account or documents and assets seized or requisitioned having “a bearing on the determination of the total income of such other person”. This is manifest from the provision employing the expression “if, that Assessing Officer is satisfied.....”. It would therefore necessarily follow that the issuance of a notice under Section 153C is clearly not intended to be an inevitable consequence to the receipt of material by the jurisdictional Assessing Officer. That the Assessing Officer before commencement of action under Section 153C is also obliged to be satisfied that the material so received would “have a bearing on the determination of the total income of such other person” is an aspect of significance and constitutes a fundamental point of distinction between Section 153A and Section 153C. This distinguishing element of the two provisions would become further apparent from the discussion which ensues.



41. Firstly, and from a historical perspective of the legislation itself, we find that one of the significant amendments which came to be introduced in Section 153C was ushered in 2014. The Finance (No. 2) Bill, 2014, while seeking to explain the objective of the amendments which were proposed to be incorporated declared as follows:

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42. It would also be apposite to notice the Notes on Clause 53 of the Finance Bill, 2014, which sought to amend Section 153C and which is reproduced hereinbelow:

“Clause 53 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in sub-section (1) of the aforesaid section provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

It is proposed to amend the said sub-section so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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, such 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 October, 2014.”

43. It was consequent to the passing of the aforesaid Act that Section 153C came to incorporate provisions relating to the Assessing Officer being satisfied that the books of accounts, documents or assets seized or requisitioned must “have a bearing on the determination of the total income of such other person” for the six preceding assessment years’ or the “relevant assessment year” as referred to in Explanation 1 to Section 153A. Prior to the promulgation of these amendments, the Assessing Officer of the non-searched party was not obliged to form an opinion that the material received by it was likely to impact the estimation of income of that person. Significantly, although this prerequisite came to be incorporated in Section 153C, no such corresponding precondition was included in Section 153A. This, although the legislative history of the search assessment provisions placed in the Act would indicate that they were amended from time to time in order to constitute a complete and homogeneous code. This becomes apparent from the legislative mandate of those two provisions being applicable to searches undertaken in a particular time period, the principles of abatement being replicated and the search assessment power being available to be invoked for the “relevant assessment year”, and which extended the power to be exercised over a ten year block, being simultaneously introduced in those provisions. The Legislature clearly intended both these provisions to form part of a cohesive scheme and to be complementary to each other. However, the aspects of satisfaction and of the material likely to implicate or influence were not added in Section 153A. The fact that any additions that may be ultimately made upon a



culmination of assessment under Section 153A being indelibly founded on the material gathered in the course of the search is a separate issue all together.

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48. In terms of the Second Proviso to Section 153A, all assessment or reassessment proceedings relating to the six assessment years' or the "relevant assessment year" pending on the date of search are statutorily envisaged to abate. Abatement is envisioned to be an inevitable consequence of the initiation of action under Section 153A. Neither issuance of notice nor abatement are predicated upon a formation of opinion by the Assessing Officer of the searched person that the material is likely to impact the total income of that assessee. However, the spectre of abatement insofar as the "other person" is concerned would arise only after the jurisdictional Assessing Officer has formed the requisite satisfaction of the material having "a bearing on the determination of the total income of such other person" and having formed the opinion that proceedings under Section 153C are liable to be initiated. It would be pertinent to bear in mind that *Kabul Chawla* was a decision rendered in the context of Section 153A. It was in the aforesaid backdrop that the Court significantly observed that once a search takes place under Section 132 of the Act, notice under Section 153A(1) would mandatorily issue. The abatement of assessment and reassessment pending on that date would, in the case of a Section 153A assessment, be a preordained consequence. However, and in light of what has been observed hereinabove, it is apparent that Section 153C constructs a subtle and yet significant distinction insofar as the question of commencement of proceedings or assumption of jurisdiction is concerned."

53. The provision of Section 153C of the Act enables the Assessing Officer to assess or re-assess the income of the assessee where any incriminating assets, material, books of account or documents are found (which either belongs to the assessee a person other than the searched person or contains information pertaining to the assessee), in a search conducted under Section 132 of the Act or requisition made under



Section 132A of the Act in respect of another person. However, as stated above, the AO must be satisfied that the assets or material found or information contained in documents and books of account has a bearing on the income of the assessee for the six assessment years immediately preceding the AY relevant to the previous year in which the search was conducted or the requisition under Section 132A of the Act was made<sup>14</sup>. By its very nature, Section 153C of the Act is an enabling provision, which enables the Assessing Officer to assume jurisdiction to assess/reassess the income of the Assessee, in cases where the jurisdictional conditions as set out in Section 153C are satisfied. The *non obstante* provision as contained in Section 153C(1) of the Act must necessarily be construed in the aforesaid context.

54. In *Dayalbagh Educational Institute v. State of U.P.*<sup>15</sup> the Court held as under:

“10. ....The non-obstante clause is appended to a provision to give overriding effect over any existing law which is inconsistent with the new enactment, where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. It can be invoked only in case of irreconcilable conflict where both cannot be read harmoniously. But, where the provisions of two or more Acts can co-exist and can be enforced or applied without abrogating or eroding the provisions of other Act, the non-obstante clause will have no effect. Therefore, where the provision of this Act cannot be read harmoniously with the provisions of any other law in force at the commencement of this Act, in that situation the

<sup>14</sup> This is in terms of second proviso, which was inserted by Finance Act, 2012 with effect from 01.07.2012.

<sup>15</sup> 2001 SCC OnLine All 342



provisions of this Act shall have overriding effect, otherwise not.”

55. In *Parayankandiyal Eravath Kanapraavan Kalliani Amma (Smt) v. K. Devi*<sup>16</sup>, the Court held as under:

“77. “Non obstante clause is sometimes appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment.” (See: *Union of India v. G.M. Kokil* [1984 Supp SCC 196 : 1984 SCC (L&S) 631 : AIR 1984 SC 1022] ; *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447] SCC at p. 477, *R.S. Raghunath v. State of Karnataka* [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507] ; *G.P. Singh's Principles of Statutory Interpretation.*)”

56. In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*<sup>17</sup>, the Supreme Court held as under:

“67. A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of

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<sup>16</sup> (1996) 4 SCC 76

<sup>17</sup> (1986) 4 SCC 447



the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum* [(1964) 4 SCR 280 : AIR 1964 SC 207] .

68. It is well settled that the expression ‘notwithstanding’ is in contradistinction to the phrase ‘subject to’, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal.”

57. The aforesaid authorities clearly indicate that the purpose of a *non obstante* clause is to provide primacy to certain provisions of the enactment in case of conflict with the statutory provisions as mentioned in the clause. The *non obstante* clause indicates the provisions/enactments, which are overridden and the main enactment that overrides those provisions. Thus, if a *non obstante* clause sets out an enabling provision or one that confers jurisdiction, as the main enactment, which is to override other provisions, it stands to reason that the overriding effect of that enactment will become operative only when the enabling provisions are used or the jurisdiction is assumed. In relation to an enabling provision, the *non obstante* clause can be construed to only mean that recourse to those provisions is available



inspite of other provisions that are overridden. The *non obstante* provision, in such circumstances, cannot be construed to mean that recourse to a provision, which by nature is an enabling provision, is necessary and by implication, the other provisions in respect of which, the main enactment is accorded primacy are inoperative and nugatory. Re-assessments under Section 153C of the Act and under Section 147/148 of the Act provide a machinery provision for reassessments in given circumstances.

58. In a case where pursuant to search conducted under Section 132 of the Act or requisition made under Section 132A of the Act in respect of another person (searched person), assets, documents or books of account, which either belong to the assessee or contain information pertaining to the said assessee, are found. And, the same are handed over to the AO of the assessee; he would subject to satisfaction of the other jurisdictional conditions stipulated under Section 153C of the Act, having the jurisdiction to make a reassessment/assessment of the income of the assessee under Section 153C of the Act. However, the same does not mean that he is bound to exercise the said jurisdiction. In the event, the AO does not assume it's jurisdiction to proceed with making an assessment/ reassessment under Section 153C of the Act, recourse to Section 147/148 is not ousted. The *non obstante* provision kicks-in only on the AO assuming the jurisdiction under Section 153C of the Act, that is, if the AO exercises its jurisdiction to initiate the machinery provisions of Section 153C of the Act to make an assessment/reassessment of the assessee's income for the stipulated



period. The *non obstante* provisions do not come into play, if the AO does not take recourse to provision of Section 153C of the Act.

59. The *non obstante* clause as used in Section 153C of the Act cannot be read to completely exclude the provisions of Sections 143 or 147 of the Act in cases where the assessee's income is sought to be assessed *inter alia* on the basis of the information found during search proceedings. However, it will not be open for the AO to take recourse to Section 147 of the Act, where the AO has taken steps under Section 153C of the Act. Thus, if the conditions for exercise of jurisdiction under Section 153C of the Act are satisfied and the AO issues a notice as required under Section 153C of the Act, any reassessment under Section 147 of the Act would obviously, be impermissible. This is because the Act does not contemplate parallel assessment proceedings. Where the AO is satisfied that the assets, material and documents forwarded by the AO of the searched person under Section 153C of the Act has a bearing on determination of the income of the assessee for any of the years, the AO shall proceed to issue a notice under Section 153C of the Act. By virtue of *non obstante* clause, the AO is not required to follow the procedural rigours of Section 148 of the Act. Subject to obtaining the approval under Section 153D of the Act, if necessary, the AO is not required to seek any approval from the specified authority, as required under Section 148/151 of the Act for issuing a notice under Section 153C of the Act and can proceed to assess / reassess income for the concerned assessment years.



60. However, if the AO does not take recourse to Section 153C of the Act but proceeds under Section 147 of the Act he would necessarily have to follow the due procedure as specified for initiating such proceedings.

61. The assumption that provisions of Section 153C of the Act precludes any proceeding under Section 147 of the Act by virtue of the *non obstante* clause, is unpersuasive. The scheme of Sections 153C of the Act indicates that the said provision was enacted to simplify the procedure, while maintaining the necessary safeguards, for assessment / reassessment in cases where assets belonging to the assessee or books of account or documents, which contain information pertaining to the assessee are found pursuant to a search conducted under Section 132 of the Act or requisition made under Section 132A of the Act, in respect of a person other than the assessee. This is subject to the same having a bearing on the determination of income of the assessee. The AO is neither required to record reasons for his belief that the income of the assessee for the concerned assessment year has escaped assessment nor does he require to seek further approvals as required under Section 148 of the Act. However, he must be satisfied that the assets seized or requisitioned or the documents, books of account or other material transmitted by the AO of the searched person belongs to or contains information, which has a bearing on the determination of the income of the assessee. The reassessment must be predicated on material held to be incriminating and the income assessed / reassessed must be relatable to the material found as held by this Court in *Commissioner of Income*



*Tax v. Kabul Chawla*<sup>9</sup> and affirmed by the Supreme Court in *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P) Ltd.*<sup>4</sup>.

62. In *Shyam Sunder Khandelwal v. Assistant Commissioner of Income Tax (and connected petitions)*<sup>1</sup>, the Rajasthan High Court had interpreted the *non obstante* clause of Sections 153A and 153C to have an overriding effect on the legal provisions for assessment / reassessment including under Sections 139,147,148, 149 and 153 of the Act. We are unable to concur that the said provisions are overridden merely on account of assets, books of account, documents and material being seized or requisitioned which either belong to or contain information regarding a person other than the one searched. If the AO does not exercise the jurisdiction under Section 153C of the Act, recourse to the normal provisions of assessment or reassessment are not foreclosed. The provisions of Section 153C of the Act are enacted for the purpose of simplifying the procedure in search cases. The import of such provisions cannot be to oust the recourse to the normal provisions, which in any event are available for assessment / reassessment of an income of an assessee.

63. The decision of the Patna High Court in *Amit Kumar alias Amit Saraf v. Union of India*<sup>3</sup> relied upon by the learned counsel for the Assessee, was rendered in the context of Section 153A of the Act where the AO has to necessarily issue a notice and undertake the assessment / reassessment proceedings in cases where a search is conducted under Section 132 of the Act or requisition is made under Section 132A of the



Act. In the said case, the time period thus available for completion of the assessment as specified under Section 153B of the Act had expired. Thus, this is a case where by virtue of Section 153A of the Act, the AO has assumed jurisdiction but had not completed the assessment within the prescribed period.

64. We are, respectfully, unable to concur with the decision of the Karnataka High Court in *The Pr. Commissioner of Income Tax & Anr. v. M/s VSL Mining Company Pvt. Ltd.*<sup>2</sup>. In the said case, the Court concluded that “once material pursuant to a search is relied on, the AO is required to follow the procedure as contemplated under Sections 153A, 153B and 153C of the Act and recourse of regular proceedings are barred.

65. In the facts of the present case, the Revenue disputes that a satisfaction note by the AO of the searched person (Jain Brothers) was forwarded to the AO of the Assessee along with the requisite documents. Thus, in the facts of the present case, the jurisdictional conditions to initiate further steps under Section 153C of the Act were not satisfied. However, the AO had received certain information from the AO. A report was also received from the Investigation Wing, Mumbai regarding the Assessee purchasing units of a penny stock during the financial year 2010-11. Based on the aforesaid information, including the information received from the Investigation Wing, Mumbai, the AO issued a notice dated 23.08.2018 under Section 148 of the Act. Admittedly, there is nothing on record to indicate that the AO of the searched person had recorded a satisfaction note and transmitted



the relevant material containing information regarding the Assessee to the AO. There is also no material that the AO had on receipt of the said information issued a notice under Section 153C of the Act. Thus, in fact the AO did not assume jurisdiction under Section 153C of the Act. Absent assumption of any jurisdiction, the question of Sections 147, 148 and 149 of the Act being overridden by virtue of the *non obstante* clause of Section 153C of the Act, does not arise. The said clause would be operative only if the AO had in fact assumed jurisdiction under Section 153C of the Act. In that eventuality, recourse to the provisions as named in the opening sentence of Sections 139, 147, 149, 151 and 153 of the Act would be ousted.

66. In the present case, the re-assessment proceedings are initiated under Section 147 of the Act not only on the basis of the material containing information that was found during the search conducted in respect of Jain Brothers, but is also founded on the basis of other information as obtained by the Investigation Wing, namely, that the Assessee had purchased units of a penny scrip named SVC Resource Ltd. This being the case, the decision of the Assessing Officer to re-assessee the income of the Assessee under Section 147 of the Act cannot be faulted.

67. The question of law as framed in the present case is answered in the aforementioned terms. The impugned order passed by the learned ITAT cannot be sustained. Since, the learned ITAT had not examined the other grounds on which the Assessee had filed its appeal, we set aside the impugned order and the Assessee's appeal (ITA



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No.592/DEL/2020) in respect of the AY 2011-12 is restored before the learned ITAT.

68. The appeal is allowed in the aforesaid terms.

**VIBHU BAKHRU, J**

**SWARANA KANTA SHARMA, J**

**NOVEMBER 20, 2024**

‘gsr’

