



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3057 OF 2019

Sejal Jewellery & Anr. ... Petitioners

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3297 OF 2019

Shineshilpi Jewellers Pvt. Ltd. ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 50 OF 2020

Shilpin Khyalilal Tater ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3206 OF 2019

Khyalilal Mohanlal Tater ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 490 OF 2022

Symphony Pvt. Co. ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 442 OF 2022
WITH
WRIT PETITION NO. 468 OF 2022
WITH
WRIT PETITION NO. 544 OF 2022

Symphony ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3449 OF 2019

Rekha Rajneesh Mehta ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3448 OF 2019

Neelam Promod Mehta ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3518 OF 2019

Ashokkumar Bhanwarlal Tated ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH
WRIT PETITION NO. 3450 OF 2019

Pramod Surendra Kumar Mehta ... Petitioner

Versus

Union of India & Ors. ... Respondents

WITH

WRIT PETITION NO. 3488 OF 2019

Unitouch creations LLP

... Petitioner

Versus

Union of India & Ors.

...Respondents

Mr. Naresh Jain, Ms. Aarti Debnath, Mr. Mahaveer Jain, Ms. Neha Anchlia,
Shobhit Mishra for the petitioners.

Mr. Suresh Kumar for the respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
Date : 18 FEBRUARY 2025

PC:

1. These petitions under Article 226 of the Constitution of India raise common issues of law and fact, hence they are being disposed of by this common judgment.
2. The question which falls for consideration is whether in the facts and circumstances of the case, respondent no. 3 was correct in law in issuing a notice to the petitioner under Section 148 of the Income-tax Act, 1961 (for short "**I.T. Act**") on the basis of a search action under section 132 of the I.T. Act, which is relevant to the entire group of these petitioners. The assessment years in question in all these cases are A.Y. 2012-13.
3. The learned counsel for the parties have argued Writ Petition No. 3057 of 2019 (Sejal Jewellery & Anr. vs. Union of India & Ors.) as the lead petition,

hence we refer to the facts of this case.

4. Petitioner no. 1 is a partnership firm (for convenience referred as 'petitioner') *inter alia* engaged in the business of manufacturing and trading in gold and diamond jewellery. For the assessment year in question, petitioner filed its return of income on 28 September, 2012 declaring a total income of Rs.25,52,692/-. After about six years, on 4 October, 2018, a search action was taken against the petitioner under Section 132 of the I.T. Act at the premises of the petitioner. The case of the petitioner is that no incriminating material was found in relation to any bogus loan/accommodation entry in such search. However, for the Revenue, it was otherwise, as discussed hereafter.

5. Consequent to the search action, respondent no. 3 has issued the impugned notice to the petitioner dated 29 March, 2019 under section 148 of the I.T. Act *inter alia* stating that there are reasons to believe, that income chargeable to tax for the assessment year 2012-13 had escaped assessment, within the meaning of Section 147 of the I.T. Act. Hence, it was proposed to assess/reassess the income of the petitioner for the assessment year. The petitioner was called upon to file a return in the prescribed form within 30 days.

6. The petitioner responded to the impugned notice by its letter dated 16 April, 2019 when it requested the Assessing Officer to furnish to the petitioner the reasons which have led to the Assessing Officer to reopen the assessment under section 147 of the I.T. Act. By communication dated 11 September, 2019, the petitioner was furnished reasons for reopening the assessment. Paragraph 2.1 and 2.2 of the said reasons clearly indicate that they are based on the search and seizure action, as taken under Section 132 of the I.T. Act. The relevant extracts of paragraphs 2.1 and 2.2 of the reasons read thus:

“2.1: It is reported that a Search & Survey action u/s.132 of the Income tax-act, 1961 was carried out on 04.10.2018 on the business premises of M/s Shilpi Jewellers Pvt. Ltd. as well as at the residential premises of the key persons of the Group/concerns. During the course of search action, certain incriminating evidences in the form of various loose papers and data back up of various electronic devices, have been found and seized.

During the course of search action, it is noticed that M/s Shilpi Jewellers Pvt Ltd and its associate concerns as well as the key individuals of the Group, have accepted huge unsecured loans from various shell/paper companies/entities during the year ended on 31.03.2012. Discrete enquiries made and the profiling of the Loan creditor companies in ITD application reveal that the Loan creditor companies/entities, who have advanced huge loans to M/s Shilpi Jewellers Pvt. Ltd and its associate concerns as well as the key individuals of application his group, do not have any creditworthiness to extend such huge loans. The issue of loss receipts by this assessee, from shell/paper companies/entities has been taken up for investigation during the course of search proceedings at the premises of the group and relevant questions have been posed to the concerned persons at various premises in the statements recorded u/s. 132(4) of the Act.

2.2 This assessee i.e. M/s. Sejal Jewellery (PAN: AAPFS3483A), one of the group concerns this aforesaid group, has shown loan receipts of Rs.

25,00,000/- during the year ended on 31.03.2012 from a company viz. M/s. Green Valley Gems Pvt. Ltd. which is reported to be a shell paper company engaged in providing accommodation entries to the beneficiary parties. The analysis and reasons for suspecting the above Loan creditor company/entity as accommodation entry providers are as under:

“The company viz. M/s. Green Valley Gems Pvt. Ltd is based in Surat. The office of DIT(Inv.), Mumbai has conducted enquiries at Surat so as to verify the existence of this entity and to examine the genuineness of the transactions, but he could not found any existence of the company at the address'

On analysis of return for A. Y. 2016 17 it is noticed that the company has declared an amount Rs. 1,26,100/- as taxable Income for the year under consideration. It is further seen that the company has claimed TDS of Rs.23,05,962/- and an amount of Rs.22,67,000/- has been claimed as refund. This is one of the key Ingredient to Identify the transaction as suspicious for the reason that although no Income has been offered to tax but the entire TDS claimed has been traversed back in the books the company as a refund. Similar is the situation in preceding year and subsequent years wherein the same kind of method has been followed by the company.

Further, it is seen from the balance sheet for A.Y. 2016-17 that the liabilities of the company stood at Rs 29,39,60,435/- and the 'loans and advances' advanced by the company were shown at Rs.25,93,62,839/-. It is clear that the company has not made any attempts to discharge its liabilities but It has chosen to advance its funds to various persons for no reasons whatsoever. It is a common business prudence that every company initially wants to discharge all its debts or liabilities and the surplus funds would be utilized for advance as well as Investments in the name of the company. But in the case of shell companies the scenario is entirely different than the actual business prudence. This same method is followed by this company In preceding and subsequent years also.

During the course of search proceedings, the Issue was taken up for Investigation and the statements at the key persons of the group were recorded, wherein it was specifically asked about the genuineness of the loans accepted by the assessee from M/s. Green Valley Gems Pvt. Ltd., in response to which, the assessee have admitted that the loans were arranged through (mediators, but none of the witnesses could provide the present whereabouts of those mediators, through whom, they were able to gather such huge loans without having any business association amongst them. It is noteworthy to mention here that none of the key persons of the group could even provide at least the contact numbers of friends/brokers,

through whom, they were able to procure such huge loans. Thus the genuineness of the aforesaid loan receipt transactions was not substantiated and the same remains to be assessed to tax. has escaped assessment and the same needs to be assessed & taxed for A.Y 2012-13.”

7. The petitioner objected to the aforesaid reasons by its letter dated 27 September, 2019 submitted to the Assessing Officer. The primary objection raised by the petitioner was to the effect that the assessment could have been made only under Section 153C and not under Section 147. The petitioner also dealt with each of the reasons on merits, to contend that no case was made out for reopening of the assessment on such materials. The relevant extract of the petitioner’s letter reads thus:

“In view of above, it is evident that Section 153C overrides all other sections, including Section 147, 148, 149 & 151 of the Act. The assessment procedure for search proceedings is specifically provided in Section 153C of the Act. Also the time limit for completion and the approval to be obtained is provided in Section 153B & 153D of the Act. As such, the reopening notice under section 148 of the Act is bad in law and not sustainable in law.”

8. On such backdrop, the Assessing Officer passed an order dated 11 October, 2019 disposing of the objections to reopen the proceedings, as per the requirement of the provisions of Section 147 of the I.T. Act. The Assessing Officer observed that in the petitioner’s case, search & seizure action was held on 4 October, 2018 which was relevant to the Financial year 2018-19 (AY 2019-20), hence applicable only for AY 2019-20 and not for any previous year.

He also recorded that no assessment or reassessment has been made for AY 2012-13 in the petitioner's case and therefore, the petitioner's contention that the assessment could have been made only under Section 153A and not under Section 147 of the I.T. Act did not have any merit. It was further observed that there was no requirement under Section 151(1) so as to give the petitioner, an opportunity of being heard, before giving sanction. We need not delve on the other reasons which are set out in rejecting the petitioner's objections, suffice it to observe that the question of law as noted by us, is limited, which goes to the very jurisdiction of the Assessing Officer to take recourse to an action under Section 147 of the I.T. Act.

9. There is a reply affidavit filed on behalf of the respondent justifying the impugned action. Relevant being paragraph 8 of the reply wherein following contention is raised referring to the search action:

"8. With reference to para 6 of the petition, I say and submit that assessee is group concern of M/s. Shilpi Jewellers Pvt. Ltd. and have the financial transactions with Shilpi Jewellers Pvt. Ltd. M/s. Shilpi Jewellers Pvt. Ltd. was found to claim loans from 28 bogus parties. Statement of directors of Shilpi Jewellers Pvt. Ltd. has been recorded on oath u/s. 132(4) on 04.10.2018, during the course of search proceedings. In the said statement, he failed to identify the mediators through whom said loan was arranged. Assessee also claimed loans of Rs.25,00,000/- from Green Valley Gems Pvt. Ltd., one of the party from whom M/s. Shilpi Jewellers Pvt. Ltd. has claimed unsecured loans. Thus, it cannot be called as no incriminating material was found."

(emphasis supplied)

10. It is on the above conspectus, we have heard learned counsel for the parties. Mr. Jain, learned counsel for the petitioners would submit that the respondents are not correct in taking recourse to the provisions of Section 147 of the I.T. Act, as there is no manner of doubt, as seen from the reasons for reopening as furnished to the petitioner, that the very foundation of the notice issued under Section 148 of the I.T. Act was the search action under Section 132 taken at the premises of the petitioner(s) on 4 October, 2018. It is his submission that once the entire basis of reopening was on the search action, what is material to be seen, is not what the petitioner would contend and what the petitioner would set up as a defence, but what is borne out by the record of the department, which would be determinative of the very jurisdiction of the Assessing officer, to take recourse to the provisions of Section 148. It is his submission that once the foundation of the impugned notice itself was based on a search action and the alleged material, then necessarily, the only option available to the respondents was to take recourse to the provisions of Section 153A of the I.T. Act, which provides for assessment in case of a search or requisition, and not to take recourse to the provisions of Sections 147 and 148 of the I.T. Act. It is next submitted that in any case Section 153A would have an overriding effect on the provisions of Section 147 and Section 148, as sub-section (1) of Section 153A

clearly implies. It is, therefore, his submission that the impugned action of issuance of a notice under Section 148 of the I.T. Act and to proceed under Section 147 by rejecting the objections as filed by the petitioners was without jurisdiction. In support of his contention, Mr. Jain has placed reliance on the decision of the Supreme Court in **Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell Pvt. Ltd.**¹; decision of Division Bench of Rajasthan High Court in **Shyam Sunder Khandelwal s/o. Late Damodar Lal Khandelwal vs. Assistant Commissioner of Income Tax**², decision of Karnataka High Court in **Sri Dinakara Suvarna vs. Deputy Commissioner of Income-tax**³.

11. On the other hand, Mr. Suresh Kumar, learned counsel for the revenue would pray for dismissal of this petition on the ground that the petitioner's case of being a jurisdictional error on the part of the Assessing Officer in issuing the impugned notice under Section 148 of the I.T. Act and rejecting the objections as raised by the petitioners is not well founded. His submission is premised on the fact that the petitioner in paragraph 6 of the Writ Petition has taken a position that during the search action, on 4 October, 2018, no incriminating material pertaining to any bogus loan/accommodation entry was found by the search team. According to Mr. Suresh Kumar if such contention

¹ 2023 LiveLaw (SC) 346

² Civil Writ Petition No. 18363 of 2019 dated 19.03.2024

³ (2022) 143 taxmann.com 362 (Karnataka)

of the petitioner is to be considered then such contention of the petitioner is not on the jurisdiction of the Assessing Officer in issuing notice under Section 148 of the I.T.Act, as also not on the reasons furnished to the petitioner on which the objections are rejected. Mr. Suresh Kumar has taken us through the provisions of Section 153A and 147 of the I.T. Act to submit that the present case cannot be categorized, to be a case, purely on the basis of search action and which, according to him, is clear from the fact that the reasons as furnished to the petitioner have also taken into consideration the materials, which necessarily would imply, that the Assessing Officer was correct in proceeding under Section 147 as neither Section 153C nor Section 153A would be relevant to the facts of the present case. Mr. Suresh Kumar has supported his submissions relying on the decisions of the Supreme Court in **Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd.**⁴ (supra) and in **Phool Chand Bajrang Lal vs. Income-tax Officer**⁵.

Analysis

12. We have heard learned counsel for the parties and with their assistance, we have perused the record. At the outset, we may observe that the

⁴ (2023) 149 taxmann.com 399 (SC)

⁵ (1993) 69 Taxman 627 (SC)

jurisdiction of the Assessing Officer to issue the impugned notice would be required to be considered on the basis of the departmental record and on such basis, the relevant provisions of law which would govern the facts and circumstances of the case in the hands of the Assessing Officer. In the present case, the impugned notice under Section 148 of the I.T, Act was issued to the petitioner on 29 March, 2019. The petitioner received a copy of 'reasons to believe' furnished by respondent no. 3 on 11 September, 2019, which were objected by the petitioner. On such objection, an order was passed by the Assessing officer rejecting the objections as raised by the petitioners, so as to proceed to reassess the income of the petitioner under Section 147 of the Act.

13. As clearly seen from the record, to which, we have made a reference in the aforesaid paragraphs, it appears to be quite clear that there was a search and seizure action on 4 October, 2018 on the business premises of one 'Shilpi Jewellers Pvt. Ltd.', which has been the basis for the reopening of the petitioner's assessment, as also recorded in the reasons for reopening, which *inter alia* state that there were certain incriminating evidences, in the form of various loose papers and data back-ups of various electronic devices, as found and seized. The search action was against Shilpi Jewellers Pvt. Ltd., its associate concerns, as well as the key individuals of the Group. The

department asserts that the materials elicited during the search action revealed, that all these persons had accepted large unsecured loans from various shell/paper companies/entities during the year ended on 31 March 2012. On further enquiries being made, the profiling of the loan creditor companies in ITD application, indicated that the loan creditor companies/entities who advanced huge loans to Shilpi Jewellers Pvt. Ltd. and its associate concerns, as well as the key individuals of this group, did not have any creditworthiness for extending such huge loans. It was, particularly, recorded that the petitioner/ assessee was part of said group, which had shown loan receipts during the year ended on 31 March, 2012 from a company, viz. M/s. Green Valley Gems Pvt. Ltd., which was reported to be a shell/paper company, engaged in providing accommodation entries to the beneficiary parties. The reasons for reopening of the assessment were set out in detail, referring to such material and further enquiry which was undertaken in that regard, including materials being gathered in regard to M/s.Green Valley Gems Pvt. Ltd. from whom the petitioners had alleged to have taken accommodation entries. It is on the basis of such information, which was certainly not the information borne out or gathered from the return of income, which was filed and/or any material thereunder, the Assessing Officer reached to a conclusion to reopen the assessment, on the ground that the assessee had not explained such loan receipt

transactions. Such opinion was formed by the Assessing Officer on the basis that M/s. Green Valley Gems Pvt. Ltd. was a shell/paper company. It is on such premise that the Assessing Officer was of the view that income had escaped assessment within the purview of Clause (c) of Explanation 2 of Section 147 of the I.T. Act and such escapement had occurred due to the assessee's failure to disclose true, proper and complete facts in the return of income, filed for the subject assessment year. Accordingly, notice under Section 148 was issued.

14. Thus, on the perusal of such reasons, it is quite clear that the provisions of Section 153A providing for "Assessment in case of search or requisition" and the provisions of Section 153C, which provide for "Assessment of income of any other person", which ordain that recourse be taken to the provisions of Section 153A stand attracted for an assessment to be undertaken.

15. As the controversy revolves around the applicability of Section 153A and more particularly, as to whether Section 153A read with Section 153C vis-a-vis the provisions of Section 147 of the I.T. Act, it will be appropriate to extract the said provisions, which reads thus:

"147. Income escaping assessment.—If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss

or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]
- (c) where an assessment has been made, but—

- (i) income chargeable to tax has been underassessed; or
- (ii) such income has been assessed at too low a rate; or
- (iii) such income has been made the subject of excessive relief under this Act ; or
- (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

153A. Assessment in case of search or requisition.

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in

the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

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

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

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

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

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

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

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

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

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

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

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

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

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

- i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

153C. 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,—

- (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 six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years 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 rules³⁰ 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 and for the relevant assessment year or years as referred to in sub-section (1) of section 153A 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.

(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.

16. On a plain reading of Section 153A, it is clear that it begins with a '*non-obstante*' clause, when it provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st May, 2003 but on or before 31 March, 2021, the Assessing Officer shall have jurisdiction to issue notice to such person to furnish the return of income as specified in the notice or assess or reassess the total income as provided by the provision. Section 153C also begins with a *non-obstante*

clause, when it provides that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, to provide that, in a situation which may fall under Section 153C insofar as assessment of income of any other person is concerned, the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other persons in accordance with the provisions of Section 153A, if he is satisfied that the books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such person for a period as specified in the said provision and after compliance of other provisions as mandated. On the other hand, Section 147 provides for “Income escaping assessment”, can be invoked when any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year. In such situation, the Assessing Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year and for which a prior notice under Section 148 would be required to be issued. Section 147 does not contemplate an eventuality which Section 153A or Section 153C contemplates, the basis of which is *inter alia* a search action under Section 132 being resorted to as noted hereinabove. Thus, both these provisions are quite compartmentalized although the deeming effect

of both the provisions, may be the same. However, the situations in which such provisions operate are required to be invoked are completely different. This is clear from the bare reading of the provisions, hence would not warrant any elaborate discussion.

17. The purport and effect of these provisions had fell for consideration of the Supreme Court in **Abhisar Buildwell P. Ltd.** (supra), wherein the scope of assessment under Section 153A of the I.T. Act was considered. In this case, the Revenue's contention was to the effect that the Assessing Officer was competent to consider all the materials which were available on record, including the materials found during search so as to make an assessment of the total income. Some of the High Courts had accepted such propositions. However, the assessee had contended that there were also decisions of the High Courts to the effect that if assessment proceedings were not pending on the date of initiation of the search, the Assessing Officer needs to consider only the incriminating material found during the search, and was precluded from considering any other material derived from any other source. It is in such context, the Supreme Court considering the purport of the provisions of Section 153A of the I.T. Act, vis a vis its applicability qua the provisions of Section 147, and the applicability of Section 132, 132A and notably the

decision of the Delhi High Court in **Commissioner of Income Tax, Central-III vs. Kabul Chawla**⁶ *inter alia* held that the provisions of Section 153A(1) need to be mandatorily resorted once a search takes place. The Supreme Court held as under:

“7.1 In the case of *Kabul Chawla (supra)*, the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under

Summary of the legal position

38. 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 AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO 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 AYs “in which both the disclosed and the undisclosed income would be brought to tax”.
- iv. Although Section 153 A 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 AO 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

⁶ (2015) 61 taxmann.com 412 (Delhi)

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 completed assessment proceedings.

vi. Insofar as 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 AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.”

18. The Supreme Court held that it was in complete agreement with the view taken by the Delhi High Court in **Kabul Chawla** (supra) and of the Gujarat High Court in **Principal Commissioner of Income Tax-4 vs. Saumya Construction**⁷ taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

19. Insofar as the present proceedings are concerned, the following observations made by the Supreme Court in the context of Section 147 and 148 of the I.T. Act need to be noted:

“11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, 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 153A, the assessment or re-assessment, if any,

⁷ (2016) 387 ITR 529 (Guj.)

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 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, 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 re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A 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 147/148 of the Act, subject to fulfillment 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 153A 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 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A 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 153A, 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, second proviso to section 153A and sub- section (2) of Section 153A would be redundant and/or re- writing the said provisions, which is not permissible under the law.”

20. It is thus clear that in the event any incriminating material is found during the search, the Revenue necessarily would be required to take recourse to the provisions of Section 153A and in the event no incriminating material found during the search, then the power of the Revenue to have the reassessment under Sections 147/148 of the I.T. Act stands saved, failing which, the Revenue would be left without remedy. It is on such observations the conclusions as rendered by the Supreme Court and which are relevant to the case in hand, are required to be noted, which reads thus:

“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 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- 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 132A of the Act, 1961. 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.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

21. The Rajasthan High Court in **Shyam Sunder Khandelwal s/o. Late Damodar Lal Khandelwal vs. Assistant Commissioner of Income Tax, Central Circle-2, Jaipur**⁸ (supra) also had taken a similar view when the issue which had arisen before the Court was in regard to the notice issued under Section 148 of the I. T. Act, the basis of issuance of such notice was the material seized during search. The contention of the assessee was to the effect that in the said circumstances, the proceedings ought to have been initiated under Section 153C of the I.T. Act. The Division Bench referring to the decision of Supreme Court in **Abhisar Buildwell P. Ltd.** (supra) as also the decision of Karnataka High Court in **Sri Dinakara Suvarna** (supra) allowed the petitions observing that the department had not set up a case, that for initiating proceedings under

⁸ Civil Writ Petition No. 18363/2019 dated 19.03.2024

Section 148, it had material other than the material seized during the search of a related party. The relevant observations of the Division Bench are required to be noted, which reads thus:

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

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

25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.

26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148. 27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.

28. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational

period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148.”

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

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

23. Insofar as Mr. Suresh Kumar's contention supporting the proceedings under Section 147 and 148 of I.T. Act are concerned, for the aforesaid reasons, such contention would in fact go contrary to the intention of the legislature as depicted by the provisions of Section 153A and 153C of the I.T. Act. There would not be any difficulty in accepting the proposition as canvassed by Mr. Suresh Kumar, referring to the decision of the Supreme Court in **Phool Chand Bajrang** Lal (supra), however, the facts in the present case are distinct. There cannot be any doubt on the position in law when the Revenue intends to proceed purely on materials relevant for an action under Section 148 read with Section 147. We have already observed that the provisions of Sections 147, 148 vis-a-vis Section 153A and Section 153 are quite compartmentalized. To avoid any overlapping of these provisions, the legislature in its wisdom has thought it appropriate to provide for an independent effect, to be given under Section 153A read with Section 153C by incorporating the "*non-obstante*" clause, in these provisions, which carves out an exception to any normal/regular action being resorted under Section 147.

24. In this view of the matter, we are of the clear opinion that the impugned notice under Section 147 of the I.T. Act and all actions consequent thereto are required to be held to be without jurisdiction and bad in law. The petition is

accordingly allowed in terms of prayer clauses (a) and (b).

25. Learned counsel for the parties are *ad idem* that the aforesaid observations would cover the other companion matters, which also stand allowed in terms of our aforesaid reasoning and the operative order passed in Writ Petition No. 3057 of 2019. The said petitions hence stand allowed in terms of prayer clauses (a) and (b) of each of these petitions.

26. Rule is made absolute in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)