HC-KAR

NC: 2025:KHC:46512
WP No. 6530 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 6530 OF 2021 (T-RES)

BETWEEN:

MR. YASH
AGED ABOUT 35 YEARS
NO.806/1, 100 FT. ROAD
HOSAKERAHALLI EXTENSION
BANASHANKARI 3RD STAGE
BANGALORE-560085.

...PETITIONER

(BY SRI.A.MAHESH CHOWDHARY & SMT.KRISHIKA VAISHNAV., ADVOCATES)

AND

DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(1)
CR BUILDING, QUEENS ROAD
BANGALORE-560001.

...RESPONDENT

(BY SRI. RAVI RAJ Y V., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE UNDER SECTION 153C OF INCOME TAX ACT, 1961 BEARING NO. DATED 12.12.2019 FOR THE A.Y.2013-2014 FOR THE A.Y.2013-2014 AS BEING VOID, ILLEGAL, BEYOND AUTHORITY AND HENCE UNCONSTITUTIONAL AND A COPY OF THE IMPUGNED NOTICE UNDER SECTION 153C IS ENCLOSED AS ANNEXURE A FOR KIND PERUSAL OF THIS HONBLE COURT AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks quashing of the impugned Notices issued by the respondent to the petitioner for the assessment years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 under Section 153C of the Income Act, 1961 (for short 'the I.T.Act') and for other reliefs.

2. Heard learned counsel for the petitioner and learned counsel for the respondent – Revenue and perused the material on record.

3. A perusal of the material on record will indicate that, the respondent obtained a warrant of authorization under Section 132 of the I.T. Act and Rule 112 of the I.T.Rules in relation to one Sri Vijay Kumar Thimmegowda and M/s. Hombale Construction and Estates Pvt. Ltd., and in respect of residential premises of the petitioner at No.806/1, 3rd Main Road, 7th Block, Kalidasa Nagar, Dattatreya Nagar, Hosakerehalli, Bangalore, as well as the petitioner's room at Room No. 1520, Taj West End, No.23, Race

Course, Bengaluru. In pursuance of the same, the respondent conducted a search in the aforesaid premises of the petitioner during the period from 03.01.2019 to 05.01.2019 and recorded the statement of the petitioner, pursuant to which, the respondent prepared a satisfaction note recording reasons for initiating action against the petitioner under Section 153C of the I.T. Act, in pursuance of which, the respondent issued the impugned notices under Section 153C of the I.T. Act to the petitioner. Subsequently, on 25.09.2020, 20.10.2020, 26.10.2020, and 24.11.2020, the respondent issued Section 143(2) notices for the aforesaid assessment years. Subsequently, the petitioner on 24.11.2020, 02.12.2020 and 14.12.2020 filed his replies to the aforesaid notices issued by the respondent. Thereafter, the respondent passed the assessment orders dated 08.09.2021, 08.09.2021, 09.09.2021, 08.09.2021, 08.09.2021 and 08.09.2021 for the assessment years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 respectively under Section 153C of the I.T Act. Aggrieved by the aforesaid impugned notices and orders, the petitioner is before this Court by way of the present petition.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits the issue in controversy is directly and squarely covered by a judgment of this court in the case of ***C.R. Ram Mohan Raju vs. The Deputy Commissioner of Income Tax in W.P. No.:33057 of 2024 dated 27.10.2025.***

5. Per contra, learned counsel for the respondent – revenue would reiterate the various contentions urged in the statement of objections and submit that the search warrant was issued to search Vijay Kumar Thimmegowda and M/s. Hombale Construction and Estates Pvt. Ltd., who was the searched person and merely because search was conducted in the premises of the petitioner, he cannot be construed or treated as a searched person but had to be considered as a non-searched person / such other person as contemplated under Section 153C of the I.T. Act. and as such, there is no merit in the petition and the same is liable to be dismissed.

6. I have given my anxious consideration to the rival submissions and perused the material on record. The counsel for the petitioner is right in contending that the issue in controversy is

directly and squarely covered by a judgment of this court in the case of ***C.R. Ram Mohan Raju' s case supra which reads as under:***

> *"7. Before adverting to the rival submissions, it would be apposite to extract the satisfaction note prepared by the 1st respondent for initiating action against the petitioner under Section 153C of the I.T.Act, which is as under:-*
>
> ***"Reasons for initiating action u/s. 153C of Income Tax Act, 1961 in the case of Shri CR Rammohan Raju***
>
> *Search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out in the case of Shri K Narayan Raju on 14.09.2017. The residence of Shri C R Rammohan Raju at No 24, Lakshmi Niwas, 4th Cross Road, KR Layout, J Nagar, 6th phase, Bangalore was also searched in this regard and various documents as per Panchanama dated 16.09.2017 were seized and statement u/s 132(4) of IT Act of Shri C R Rammohan Raju was recorded on 14.09.2017. In the statement, he was confronted with the documents seized during the course of the search. Further an amount of Rs.77,00,000/- was found and seized from locker belonging to Shri CR Rammohan Raju, as he was not able to explain the same.*
>
> *2. During the course of assessment proceedings u/s. 153A in the case of Shri K Narayan Raju, upon examining the seized documents, the undersigned in the capacity of Assessing Officer of Shri K Narayan Raju, is satisfied in terms of section 153C of the Income-tax Act, 1961 that the said documents, fully described in the Annexure 'A' relate to and pertain to Shri CR Rammohan Raju. Hence, the documents seized as*

per Annexure 'A' is forwarded herewith to the Assessing officer of Shri C R Rammohan Raju.

Sd/-.
(PRAVEEN SINHA)
Assistant Commissioner of Income Tax
Central Circle 1(2), Bengaluru

"RECORDING OF SATISFACTION U/S. 153C AS ASSESSING OFFICER OF THE SEARCHED PERSON
Shri K Narayan Raju

1.	***Name of the group searched***	*M/s Kalyani Group*
2.	***Name and PAN Of the person referred to in section 153A***	*Shri K Narayana Raju (PAN ABUPN2507)*
3.	***Date of initiation of search in the case of the person referred to in section 153A***	*14.09.2017*
4.	***Name, address and PAN No. of the person in whose case action u/s.153C is proposed***	*Shri C R Rammohan Raju, No 24, Lakshmi Niwas, 4th Cross Road, K R Layout, J P Nagar, 6th phase, Bangalore (PAN ACZPR87130)*
5.	***Specific details of the seized material on the basis of which action u/s. 1530 is proposed:***	
	(i) Nature of the seized material(money/bullion/jewellery/other valuable article or thing/books of account/documents)	*Documents as per Annexure A*
	(ii) Description of the seized document	*As per Annexure A*
	(iii) Address of premises/place from where such material was seized	*No 24, Lakshmi Niwas, 4th Cross Road, KR Layout, JP Nagar, 6th phase, Bangalore*
	(iv) Date of seizure of such material	*16.09.2017*
	(v) Particulars of the relevant Panchnama	*Panchnama dated 16.09.2017*
	(v) Annexure/S.No. Page number etc (particulars to be specified)	*As per Annexure A*
6.	***Relationship of the person referred in S.No. 4 with the person referred to in S.Nc.2***	*Business Transactions*
7.	***Satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S.No. 5***	*I have examined the documents given in Annexure A and I am satisfied that the said documents pertain to and*

	belongs to the person referred to in S.No. 4	*the information contained therein relates to Shri C R Rammohan Raju and it has a bearing on the determination of total income of Shri C R Rammohan Raju.*
8.	***Assessment Years involved***	*2012-13 to 2017-18*

Sd/-
(PRAVEEN SINHA)
Assistant Commissioner of Income Tax
Central Circle 1(2), Bengaluru

ANNEXURE A

Bundle No.	***Page No.***	***Description of the Documents***	***A.Y. involved***
132/CRR/A/2	*1 to 23*	*Details of receipts from various business like liasoning, Chit business and cash deposits in various bank accounts.*	*2012-13 to 2017-18*
132/CRR/A/5	*1 to 13*	*Diary entries regarding rental receipts*	*2015-16 to 2017-18*
132/CRR/A/6	*1 to 7*	*Unexplained investment details in farm house*	*2015-16 to 2017-18*
132/CRR/A/9	*1 to 98*	*Documents regarding land deals and cash payments made*	*2017-18*
132/CRR/A/11	*1 to 131*	*Cash payment of Rs.45 lakh for purchase of land*	*2018-19*
132/CRR/A/12	*105 to 130*	*Sale deed dated 12.09.2014 showing difference of Rs.87,50,000/- in sale consideration and guidance value*	*2015-16*

8. It is an undisputed fact that in pursuance of the said satisfaction note, 1st respondent issued the impugned notices to the petitioner under Section 153C r/w 153A of the I.T.Act, which are assailed in the present petition. In this context, it is relevant to state that the satisfaction note indicates that it is M/s.Kalyani Group which has been searched and the same contains the name of K.Narayana Raju and the search was conducted in the residential premises of the petitioner who is none other than the Chairman and Managing Director of the said Kalyani Group;

though, the search warrant and search panchanama shows the name of K.Narayana Raju as the person in whose name the warrant was issued, the name of the petitioner, Rammohan Raju is shown as the owner of the residential premises which was searched as per the search warrant and panchanama. It is therefore clear that the petitioner whose residential premises was searched and was the Chairman and Managing Director of M/s.Kalyani Group was also the searched person and it cannot be said that the petitioner was a non-searched / such other person within the meaning and scope and ambit of Section 153C of the I.T.Act so as to warrant invocation of the said provisions by the 1st respondent for the purpose of initiating the impugned proceedings by issuing the impugned notice to the petitioner.

9. Under identical circumstances, in the case of ***Sunil Kumar's case supra,*** *the co-ordinate Bench of this Court held as under:*

> ***12.*** *Having heard the submission made by learned Counsel appearing for the parties, I have carefully examined the writ papers. In the light of the submissions advanced by both sides, the following points arise for determination in these petitions:*
>
> *(1) Whether the petitioners have made out the case for interference under Article 226 of the Constitution of India?*
>
> *(2) Whether the impugned notice under section 153C and Order of Assessment Notice under section 156 of the Act requires to be set aside?*
>
> *(3) What Order?*
>
> ***13.*** *Perusal of the writ papers would indicate that the respondent-Revenue made a search at the premises of one Sri Rajendran at New Delhi and recovered certain diaries/loose sheets, which is purportedly consisting of certain entries relating to the affairs/transactions of the petitioner. Based on*

the statement of the said Sri Rajendran (Petitioner in Writ petition No. 9946 of 2022) recorded during the investigation, respondent-Revenue initiated action against the petitioner-Sunil Kumar. In this regard, the respondent-Revenue, by exercising power under section 127 of the Act, transferred the case to the respondent No. 1. Section 127 of the Act provides for power to transfer cases. Relevant provision is Section 127(1) of the Act and same is extracted below:

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

(Underlining Supplied)

14. *The language employed under section 127 of the Act connotes providing reasonable opportunity to the assessee and passing Assessment Order based on reasons. Perusal of the writ papers and the arguments of learned Counsel appearing for the respondent-Revenue do not satisfy the ingredients of "fair play" as embodied under section 127(1) of the Act [See Punjab National Bank Ltd. v. All India Punjab National Bank Employees Federation 1960 (1) SCR 806]. I have also carefully noticed the observation made in impugned Order of Assessment and the impugned notices. Concluding part at paragraph 7.7 of Assessment Order dated 31st December, 2019 (Annexure-D1) passed under section 153C and Section 143(3) read with 153D of the Act, reads as under:*

"To summarise, the diaries and loose sheets that has been seized from the premise of Mr. Rajendran contain entries with lower denomination rupee notes. The entries also contain details of

names of persons with their mobile phone numbers. That the transactions have been carried out on the directions of Mr. Sunil Kumar Sharma is backed by the fact that Mr. Sunil Kumar Sharma has sent text messages to Mr. Rajendran which has been perused and analysed. Therefore, it is once again reiterated that the entries in the diaries seized from the premise of Mr. Rajendran contain details of hawala transactions from the directions of Mr. Sunil Kumar Sharma.

Therefore, quantification of unexplained to be taxed under section 69A of the Act as per discussions above is Rs. 40 lakh for AY-2015-16."

(Emphasis Supplied)

15. *It is also relevant to deduce the celebrated decision of the Hon'ble Apex Court in the case of Tata Cellular v. Union of India [1994] 6 SCC 651. Though the matter pertaining to the action of the Administrative Authority, however, the ratio laid down by the Hon'ble Apex Court in the said judgment is aptly applicable to the facts of the case on hand. At paragraphs 74 to 81 of the judgment, it is observed thus:*

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In Chief Constable of the North Wales Police v. Evans23 Lord Brightman said:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided

by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and 22 1986 AC 240, 251: (1986) 1 All ER 199 23 (1982) 3 All ER 141, 154 discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (P. 1160)."

In R. v. Panel on Takeovers and Mergers, ex P Datafin plc24, Sir John Donaldson, M.R. commented:

"An application for judicial review is not an appeal." In Lonrho plc v. Secretary of State for Trade and Industry25, Lord Keith said: "Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin, Re26, Lord Fraser observed that:

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In R. v. Panel on Take-overs and Mergers, ex p in Guinness plc27, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1.Whether a decision-making authority exceeded its powers?

2.Committed an error of law,

3.Committed a breach of the rules of natural justice,

4.Reached a decision which no reasonable tribunal would have reached or,

5.Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.
(ii)Irrationality, namely, Wednesday un-reasonableness.
(iii)Procedural impropriety.
The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. Secretary Of State for the Home Department, ex Brind28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should,"consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesday unreasonableness? Is it a magical formula? In R. v. Askew29, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the

due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

79. To quote again, Michael Supperstone and James Goudie; in their work Judicial Review (1992 Edn.) it is observed at pp. 119 to 121 as under:

"The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In Kruse v. Johnson3O a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the leading judgment of Lord Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell 28 (1991) 1 AC 696 29 (1768) 4 Burr 2186 : 98 ER 139 30 (1898) 2 QB 91: (1895-9) All ER Rep 105 emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or

not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in Short v. Poole Corpn. 32, as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.33 (Chapter 4, p. 73, supra). He summarised the principles as follows:

"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four comers of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.' This summary by Lord Greene has been applied in countless subsequent cases.

"The modem statement of the principle is found in a passage in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service 'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. 31) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no

sensible person who had applied his mind to the question to be decided could have arrived at.'"

80. At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849850, may be quoted:

"4. Wednesbury principle. - A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. 3 1, per Lord Greene, M.R.)"

81. Two other facets of irrationality may be mentioned. (1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of State for Environment 34, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v. Bernet London Borough Council, ex p Johnson the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

***16.** In view of the aforementioned aspects, I have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of*

diaries/loose sheets by the respondent-Revenue. In the case of VC Shukla case (supra), wherein at paragraphs 16 to 18 of the judgment, it is observed thus:

'16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Sections 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under :-

"34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram v. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:—

"In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book…I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91).'

(Underlining by me)

***17.** The Hon'ble Supreme Court in the case of Common Cause case (supra), at paragraphs 278 to 282 of the judgement, has observed thus:*
"278. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla case has dealt with the matter though at the

stage of discharge when investigation had been completed by same is relevant for the purpose of decision of this case also. This court has considered the entries in Jain Hawala Diaries, note books and file containing loose sheets of papers not in the form of "books of accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in V.C. Shukla as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in V.C. Shukla that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-27, paras 14 and 20)

'14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under section 34 with the following words:

"70. ….an account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arised to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in he course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown

in abreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

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20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance 'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

281. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus: (SCC p.433, para 37)

"37. In Beni v. Bisan Dayal [A. I. R 1925 Nagpur 445] it was observed tat entries in book s of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by

what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate an din absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha [A. I. R. 1953 Pepsu 113] the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been prove, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business re relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that the were in accordance with facts.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court."

(Underlining by me)

***18.** It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, I am of the view that the action taken by the respondent- Revenue against the petitioner based on the material contained in the diaries/loose sheets are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries*

are contrary to law, which require to be set aside in these writ petitions, as the same are void and illegal. In this connection, it is relevant to deduce the law declared by the Hon'ble Apex Court in the case of ICICI Bank Ltd. v. Municipal Corporation of Greater Bombay AIR 2005 SC 3315 wherein it is held that, "The ratio and effect of the judgment is required to be ascertained with reference to the question of law as decided by the Court. The ratio of the judgment or the principle upon which the question before the Court is decided is alone binding as a precedent. The decision of the Supreme Court upon a question of law is considered to be a binding precedent and this must be ascertained and determined by analysing all the material facts and issues involved in the case." That apart, no opportunity was provided to the petitioner as required under section 127 of the Act inter alia the petitioner being "searched person" and not "Other person" as required under section 153C of the Act and in this regard, I find force in the submission made by the learned Senior Counsel appearing for the petitioners and accordingly, though the learned Additional Solicitor General for the respondent-Revenue urged about the existence of alternative remedy, I do not find acceptable ground to disallow these petitions as it is trite law that this court is having jurisdiction to entertain writ petition, if the impugned orders are passed in derogation of principles of natural justice and the action taken by the respondent-Revenue is contrary to the law declared by the Hon'ble Apex Court. In the case of L.K. Verma (supra) at paragraph 20 of the judgment, it is held as follows:

"20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate

as a bar. [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 1 SCC 1, Sanjana M. Wig (Ms.) v. Hindustan Petroleum Corpn. Ltd., (2005) 8 SCC 242, State of H.P. and Others v. Gujarat Ambuja Cement Ltd. and Another."

19. *It is well settled principle in law that administrative or judicial orders must be supported by reasons. It is the duty of the respondent-Revenue being an instrumentality of state under Article 12 of the Constitution of India to give reasons for its conclusion. Recording of reason is the hallmark of a valid Order, while exercising administrative action or judicial review to disclose reasons and recording reasons, has always been insisted upon as one of the fundamentals of sound administration of justice delivery system, to make known that there have been proper and due application of mind by the authorities, which is an essential requisite of principles of natural justice. Reasons introduces clarity in Order and absence of such reasons would render the decision making process null and void. Reasons substitute subjectivity by objectivity and therefore, the recording of reasons is the principle of natural justice and it ensures transparency and fairness in decision making [See Secretary & Curator Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732]. At this juncture, it is useful to refer to the judgment of Hon'ble Apex Court in the case of Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422, wherein at paragraph 31 and 32, it is held as follows:*

'31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch. D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh and again in Deep Chand v. State of Rajasthan 1962 (1) SCR 662 = AIR 1961 SC 1527. These cases were considered by a Three-Judge Bench of this Court in State of Uttar Pradesh v. Singhara Singh & Ors. and the rule laid down in Nazir Ahmad's case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.'

20. *It is also relevant to follow the reiteration of the said principle in the case of OPTO Circuit India Ltd. v. Axis Bank [2021] 127 taxmann.com 290/AIR 2021 SC 753, wherein at paragraph 15 of the judgment, the Hon'ble Apex Court held as follows:*

'15. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha v. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder:

"It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner".

Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law. We have found fault with the Authorised Officer and declared the action bad only

in so far as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party."

21. *In the case of The Collector (District Magistrate) Allahabad v. Rajaram Jaiswal AIR 1985 SC 1622, Hon'ble Supreme Court has held that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. It is useful to refer to paragraph 26 of the said judgment, which reads thus:*

'26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides In such a situation there is no question of any personal ill- will or motive. In Municipal Council of Sydney v. Compbell (1) it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them. In State of Punjab v. Gurdial Singh and Ors. acquisition of land for constructing a grain market was challenged on the ground of legal malafides Upholding the challenge this Court speaking through Krishna Iyer, J. explained the concept of legal malafides in his hitherto inimitable language, diction and style and observed as under:

"Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends

beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat-that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people. all springs, and all must exist." After analysing the factual matrix, it was concluded that the land was not needed for a Mandi which was the ostensible purpose for which the land was sought to be acquired but in truth and reality, the Mandi need was hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine. The notification was declared invalid on the ground that it suffers from legal mala fides. The case before us is much stronger, far more disturbing and unparalelled in influencing official decision by sheer weight of personal clout. The District Magistrate was chagrined to swallow the bitter pill that he was forced to acquire land even though he was personally convinced there was no need but a pretence- Therefore, disagreeing with the High Court, we are of the opinion that the power to acquire land was exercised for an extraneous and irrelevent purpose and it was colourable exercise of power, namely, to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which it vowed to destroy. Therefore, the impugned notification has to be declared illegal and invalid for this additional ground."

22. *In the case of Sri Budhia Swain v. Gopinath Deb AIR 1999 SC 2089,Hon'ble*

Supreme Court, at paragraphs 8 and 9 of the judgment,held as follows:

'8. In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni v. Sri Kali Nath AIR 1962 SC 199, it was held:—

" The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.'"

23. *I have also considered the arguments advanced by the learned Additional Solicitor General with regard to the dismissal of the Appeal by the Appellate Authority dated 03rd May, 2022 in Appeal No: CIT(A)-11/BNG/10701 of 2019-20 (Annexure-A) in Writ Petition No. 9945 of 2022. On careful consideration of the grounds urged in the said writ petition and having regard to the conclusion arrived at that the impugned notices are without jurisdiction, I am of the view that the impugned notices are liable to be set aside which are arising out of wrong interpretation of Section 153C of the Act, and the entire case be remanded to the competent authority/respondent-Revenue for fresh consideration and to pass appropriate orders in accordance with law, after affording reasonable opportunity to the petitioners in these writ petitions. It is made clear that as I have already concluded that the initiation of proceedings by the respondent-Revenue based on the diaries/loose sheets against the petitioners herein is without jurisdiction and contrary to the law declared by the Hon'ble Apex Court and same cannot be touched upon while conducting de novo enquiry afresh.*

24. *As regards the last limb of the argument advanced by the learned Additional Solicitor General that writ petitions are not maintainable on the ground of alternative remedy and delay and laches is concerned, taking into consideration the fact that the impugned notices and the orders passed by the respondent-Revenue are contrary to the law declared by the Hon'ble Apex Court referred to above, in that view of the matter, it is trite law that the acceptance of writ petitions, despite having alternative remedy, is a rule of practice and not of jurisdiction and in this regard, the Division Bench of this Court in the case of U.M. Ramesh Rao v. Union Bank of India [2021] 124 taxmann.com 59/2021 (3) AKR 345 at paragraphs 40 and 41 of the judgment has observed thus:*

"40. The following judgments of the Hon'ble Supreme Court on the aspect of maintainability of a writ petition under Article 226 of the Constitution in the face of an alternative remedy are referred to as under:

(a) In Veerappa Pillai v. Raman and Raman Ltd.., [AIR 1952 SC 192], it was observed that where a particular statute provides a self-contained machinery for determination of questions arising under the Act, the remedy that is provided under the Act should be followed except in cases of acts, which are wholly without jurisdiction or in excess of jurisdiction, or in violation of principles of natural justice or refusal to exercise jurisdiction vested in them or there is an error on the face of the record and such act, omission, error or excess has resulted in manifest injustice.

(b) Further, alternative remedy is no bar where a party comes to the Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void, vide Bengal Immunity Co. v. State of Bihar [AIR 1955 SC 661].

(c) Similarly, when a fundamental right is infringed, the bar for entertaining the writ petition and granting relief on the ground of alternative remedy would not apply, vide State of Bombay v. United Motors Ltd. [AIR 1953 SC 252] and Himmat Lal v. State of M.P. [AIR 1954 SC 403].

(d) The rule of alternate remedy being a bar to entertain a writ petition is a rule of practice and not of jurisdiction. In appropriate cases, High Court may entertain a petition even if the aggrieved party has not exhausted the remedies available under a statute before the departmental authorities, vide State of West Bengal v. North Adjai Cool Company [1971 (1) SCC 309].

(e) Further, alternative remedy must be effective. An appeal in all cases cannot be said to have provided in all situations, where an appeal would be ineffective and writ petition in such a case is maintainable, vide Ram and Shyam Company v. State of Harayana [AIR 1985 SC 1147].

(f) Where an authority has acted without jurisdiction, High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of alternative remedy vide Dr. Smt. Kuntesh Gupta v. Management H.K. Mahavidyaya [AIR 1987 SC 2186]. Thus, an alternative remedy is not an absolute bar to the maintainability of a writ petition.

41. On the issue of maintainability of the writ petition, learned counsel for the appellants relied upon the following decisions:

(a) In Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, [(1998) 8 SCC 1], (Whirlpool Corporation), at paragraph 15, it was observed that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions, one of which is, if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But, the availability of an alternative remedy has been consistently held not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the said decision, reliance was also placed on Rashid Ahmad v. Municipal Board, Kairana, [AIR 1950 SC 163], (Rashid Ahmad), to observe that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 of the Constitution could still be entertained in exceptional circumstances.

Reference was also made to State of U.P. v. Mohd. Nooh, , [AIR 1958 SC 86], (Mohd. Nooh), wherein it was observed that the rule requiring the exhaustion of statutory remedies before the writ will be granted, is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

Ultimately, in paragraph 20 of Whirlpool Corporation, the Hon'ble Supreme Court observed

as under: "Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

In the said case (Whirlpool Corporation), it was also observed that the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction.

In the said case, the Registrar of Trade Marks issued to the appellant therein a notice under section 56(4) of the Trade and Merchandise Marks Act, 1958 to show cause against the proposed cancellation of appellants' Certificate of renewal. It was held that the issuance of such a notice by the Registrar was without authority and it was quashed by the High Court.

(b) In State of H.P. and others v. Gujarat Ambuja Cement Limited and Another, [(2005) 6SCC 499], (Gujarat Ambuja Cement Limited), a detailed discussion on the plea regarding alternative remedy was made. It was held that the principle of alternative remedy is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of the fact that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate, efficacious, alternative remedy. If somebody approaches the High Court without availing the alternative remedy, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. The Court, in extraordinary circumstances, may exercise the

power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere.

However, there are well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is, when the proceedings are taken before the forum under a provision of law which is ultra vires,it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. Also, that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained.

But, normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. But, if the High Court had entertained a petition despite availability of an alternative remedy, it would not be justifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

In the said case, the question was liability to pay purchase tax on the royalty paid by the respondents, i.e., the holder of mining lease, where there was a price for removal of minerals and thus,

attracted liability to pay purchase tax. The Hon'ble Supreme Court in the said decision rejected the plea that the High Court should not have entertained the writ petition. Thereafter, the question relating to liability to pay purchase tax on royalty paid was taken up for consideration by discussing on the meaning of the words "royalty", "dead rent", "mining lease". It was observed that royalty paid by the holder of a mining lease under section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 was not the price for removal of minerals and hence, did not attract liability to pay purchase tax.

(c) In Embassy Property Developments Private Limited v. State of Karnataka, [2019 SCC Online SC 1542], (Embassy Property), one of the preliminary questions that arose was whether the High Court ought to interfere under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal (NCLT) in a proceeding under the Insolvency and Bankruptcy Code, 2016

(IBC), ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal (NCLAT) and if so, under what circumstances.

In the said case, there is an exposition on the well recognised exceptions to the self-imposed restraint of the High Courts, namely, in cases where a statutory alternative remedy of appeal is available, or there is lack of jurisdiction on the part of the statutory/quasi-judicial authority against whose order judicial review is sought. It was observed that an "error of jurisdiction" was always distinguished from "in excess of jurisdiction", till the judgment of the House of Lords in Anisminic Ltd. v. Foreign Compensation Commission [(1969) 2 WLR 163] (Anisminic). In Anisminic, the real question was not, whether, an authority made a wrong decision but whether they enquired into and decided a matter on which they had no right to consider. It was observed by the Hon'ble Supreme Court that just four days before the House of Lords delivered the judgment in Anisminic, an identical view was taken by a three judge Bench of the Hon'ble Supreme Court in West Bengal & Others v. Sachindra Nath Chatterjee & Another, [(1969) 3 SCR 92], (Sachindra Nath

Chatterjee) wherein the view taken by the Full Bench of Calcutta High Court in Hirday Nath Roy v. Ramachandra Barna 2 Sarma, [ILR LXVIII Calcutta 138], (Hirday Nath Roy) was approved. It was held therein that "before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for." This would mean that the jurisdiction must include (i) the power to hear and decide the questions at issue and (ii) the power to grant the relief asked for. Ultimately, in paragraph 24, it was observed as follows: "Therefore, insofar as the question of exercise of the power conferred by Article 226 of the Constitution, despite the availability of a statutory alternative remedy, is concerned, Anisminic cannot be relied upon." The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction should certainly be taken into account by High Courts, when Article 226 of the Constitution is sought to be invoked bypassing a statutory, alternative remedy provided by a special statute.

In the said case, the question was, as to, whether, the NCLT lacked the jurisdiction to issue a direction in relation to a matter covered by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Statutory Rules issued thereunder; or, there was mere wrongful exercise of a recognised jurisdiction, for instance, asking a wrong question or applying a wrong test or granting a wrong relief. On a detailed discussion, it was held that the NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since, NCLT chose to exercise jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice. In the instant case, the State of Karnataka had invoked the jurisdiction of the High Court under Article 226 of the Constitution without taking recourse to the appellate remedy under NCLAT. It was held that the judicial review was permissible and the High Court was justified in entertaining the writ petition assailing the order of

the NCLT, directing execution of a supplemental lease deed for the extension of the mining lease.

(d) Learned Senior counsel appearing for the respondent in Writ Appeal No. 538 of 2020 placed reliance on Authorised Officer, State Bank of Travancore and another v. Mathew K.C. [(2018) 3 SCC 85], (Mathew K.C.) wherein it was observed that SARFAESI Act is a complete Code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions. The remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under section 18 was adequately provided under the Act. Therefore, the High Court ought not to have entertained the writ petition in view of the adequate alternative statutory remedies available. In that case, an interim order granted by the High Court in exercise of jurisdiction under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the SARFAESI Act, on certain deposit to be made was questioned. It was observed that the writ petition ought not have been entertained and interim order granted for the mere asking without assigning special reasons, that too, without even granting opportunity to the other side to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. In the said case, it was also observed that the discretionary jurisdiction under Article 226 of the Constitution is not absolute but had to be exercised judiciously in the given facts of a case and in accordance with law.

The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in Commissioner of Income-tax and Others v. Chhabil Dass Agarwal, [(2014) 1 SCC603], (Chhabil Dass Agarwal). In the latter decision, it has been held that the exceptions to the rule of non-interference when efficacious, alternative remedy is available are as under which are illustrative and non-exhaustive:

(i)where remedy available under statute is not effective but only mere formality with no substantial relief;

(ii)where statutory authority not acted in accordance with provisions of enactment in question, or;

(iii)where statutory authority acted in defiance of fundamental principles of judicial procedure, or;

(iv)where statutory authority resorted to invoke provisions which are repealed, or;

(v)where statutory authority passed an order in total violation of principles of natural justice.

(e) In United Bank of India v. Satyawati Tondon and others, [(2010) 8 SCC 110], (Satyawati Tondon) it was observed that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective, alternative remedy by filing an application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

(f) Of course in ICICI Bank Limited v Umakanta Mohapatra and others, [(2019) 13 SCC 497], (Umakanta Mohapatra), it was held, the writ petition was not maintainable and therefore, allowed the appeals.

(g) In Authorised Officer, State Bank of India v. Allwyn Alloys Private Limited and others, [(2018) 8 SCC 120], the Hon'ble Supreme Court opined that Section 34 of the SARFAESI Act clearly bars filing of a civil suit. No civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under the Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."

25. *Following the aforementioned judgment rendered by the Division Bench of this Court, I am of the opinion that since the impugned notices are issued under section 153C of the Act, are contrary to the judgment of the Hon'ble Apex Court, the writ*

petitions filed under Article 226 of the Constitution of India, in the instant case, are maintainable.

26. *In the backdrop of the finding recorded above, it is useful to cite the law declared by the Hon'ble Apex Court in the case of Brigadier Nalin Kumar Bhatia v. Union of India [2020] 4 SCC 78, wherein at paragraph 22 of the said judgment, it is observed thus:*

"22. There is no presumption that a decision taken by persons occupying high posts is valid. All power vested in the authorities has to be discharged in accordance with the principles laid down by the Constitution and the other Statutes or Rules/Regulations governing the field. The judicial scrutiny of a decision does not depend on the rank or position held by the decision maker. The Court is concerned with the legality and validity of the decision and the rank of the decision maker does not make any difference."

27. *Taking into the account the law enunciated by the Hon'ble Apex Court referred to above, the points for determination is answered in favour of petitioner. In the result, I pass the following:*

ORDER

(1) Writ Petitions No. 9937, 9938 and 9939 of 2022 are allowed and impugned Notices dated 21st August, 2019 and further proceedings thereof are quashed by remanding the matter to the respondent-Revenue to reconsider the issue afresh in terms of the discussion made above;

(2) Writ petition No. 9945 of 2022 is allowed and Order dated 03rd May, 2022 passed in Appeal No. CIT (A)-11/BNG-10701/2019-20 is quashed. The Respondent No. 1 shall reconsider the Appeal filed by the petitioner referred to above and to dispose of the same in accordance with law after providing an opportunity of hearing to both the sides, considering the observation made above;

(3) Writ Petition No. 9946 of 2022 is allowed and proceedings initiated under section 153C of the Act culminating in issuance of Notice dated 22nd August, 2019 are quashed and further proceedings thereof are quashed by remanding the matter to the respondent-Revenue to reconsider the issue afresh in terms of the discussion made above.

10. The aforesaid judgment of the co-ordinate Bench of this Court was confirmed by the Division Bench of this Court in ***Deputy Commissioner of Income Tax vs. Sunil Kumar Sharma*** *and has held as under:-*

> ***21.*** *Both the Appellant-Revenue and Respondent-Assessee entered appearance and submitted their arguments extensively. On hearing the learned counsel for both the parties, this Court finds it relevant to examine the following questions that arises for consideration in these writ appeals, which are as under:*
>
> *(1) Whether 'Loose Sheets' and 'Diary' have any evidentiary value?*
>
> *(2) Whether Centralization is in violation of Section 127 of the Income-tax Act, 1961, is valid?*
>
> ***(3) Whether the Notice under section 153C of the Income-tax Act, 1961 is valid herein?***
>
> ***30.*** *As regards the further question as to*
> *(3) Whether the Notice under section 153C of the Income-tax Act, 1961 is valid herein:*
> *In this regard, it is relevant to refer to Section 153C of the IT Act, which reads thus:*
> *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,—*
>
> *(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 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 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."

Thus, it transpires that the essential conditions to invoke Section 153C of the Income-tax Act, 1961 are:

(i) There must exist primary person on whom search must be conducted.

(ii) There must be discovery of documents found in the custody of the 'searched person' relating to the 'other person'

(iii) Such documents found must be incriminating material to invoke proceedings against the 'other person'

As the title enunciates, "Assessment of income of any other person", no search is sine qua non for issuance of proceedings under section 153C of the Income-tax Act, 1961. The searched person in the instant case is the petitioner, as the search was conducted in his premises, which is evident from the Panchanama. The distinction between 'searched person' and 'other person' is misinterpreted in the case advanced by the Appellant-Revenue, as the premises of the Respondent was searched and documents pertaining to him were seized, thereby making him the searched person.

The stipulated conditions have not been satisfied in the instant case.

***31.** It is relevant to refer to a judgment in the case of Super Malls (P.) Ltd. (supra), wherein the Apex court has dealt with the proposition in detail, which reads thus:*

"5. We have heard the learned Counsel for the respective parties at length. 5.1. As observed

hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings Under section 153C of the Act have been satisfied or not? 6. This Court had an occasion to consider the scheme of section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice Under section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd. (supra). As held, before issuing notice Under section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment Under Section 158BD of the Act and the other provisions of Chapter XIV-B shall apply. 6.1. It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in

the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap (supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings Under Section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person."

32. *Be that as it may, it is relevant to once again refer to the facts in these appeals relating to challenging the impugned order passed by the learned Single Judge W.P.No.9937/2022 and connected matters dated 12-8-2022. The question of law in the petitions pertained to the challenge made to the impugned notices issued by the Income-tax Authority under section 153C of the IT Act and further action thereof. In writ petitions No. 9937, 9938, 9939 and 9945 of 2022, Petitioner had questioned the Notice dated 21st August, 2019; Order of Assessment dated 31st December, 2019; and also sought for quashing the Notice of Demand dated 31st December, 2019 issued by respondent No. 1. In writ petition No. 9945 of 2022, the petitioner had also challenged the order dated 03rd May, 2022 passed in Appeal No. CIT(A)-*

11/BNG/10701/2019-20, dismissing the appeal. In Writ Petition No. 9946 of 2022, the petitioner had challenged the Notice issued under section 153C of the Income-tax Act, 1961, for Assessment Years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 all dated 22nd August, 2019 vide Annexure-A to A5; and also had sought for quashing the Assessment orders dated 30th December, 2019 for Assessment Years 2015-16, 2016-17, 2017-18 and 2018-19 vide Annexure-B to B3 and further prayed for quashing demand notices dated 30th December, 2019 vide Annexure-C to C3 for the aforementioned Assessment Years.

33. *The Revenue had conducted search action under section 132 of the Income-tax Act, 1961 on 02nd August, 2017 at the premises of the respondent/Sunil Kumar Sharma and similar search also took place at the premises of one Sri K. Rajendran at New Delhi. During the search at the premises of Sri K. Rajendran/respondent in W.A.No.834/2022, certain diaries and entries relating to the affairs of Sunil Kumar Sharma were recovered and statements of both of them came to be recorded. The main grievance of the petitioners in the writ petitions was that impugned notices under section 153C of the IT Act ought to be issued on "other person" and the petitioners being "searched person", the impugned notice under section 153C of the Act is not maintainable. Hence, petitioners had filed those writ petitions challenging the action of the Revenue as non-est and contrary to law.*

34. *In the aforesaid writ petitions, the respondent/Revenue entered appearance and filed objection, and contended that proceedings have been initiated against the petitioners under section 153C of the Act, based on the material found and seized by the Enforcement Directorate. Further, the writ petition was not maintainable as the impugned order passed in the writ petition is appealable before the Commissioner of Income Tax-Appeals, which is an efficacious remedy for the petitioners. Hence, the Revenue sought to dismiss the writ petitions as premature. It was further contended that the officer authorised under section 132 of the IT Act, is empowered to enter and search any building, place,*

vessel, vehicle or Aircraft where he has reason to suspect such books of account, other documents, money, etc. Further that Section 132 of the Act, empowers seizure or books of account/document not only relatable to searched person, however, in relation to other person also. The Assessing Officer, after compliance of the pre-conditions of recording statement after satisfaction, issued notice under section 153C of the Act, and therefore, sought for dismissal of Writ Petitions. It was further clarified that Section 132(1) of the Act, provides for "person specific and not premises specific" and therefore, the determinative factor is the person against whom the warrant of search is issued under section 132 of the Act. It was further contended by the Revenue that Section 34 of the Evidence Act, 1872 is applicable to the proceedings under Income-tax Act, as the Income-tax Act, is itself a Code and accordingly, sought for dismissal of writ petitions.

35. *Contrary to his submissions, Sri Kiran S. Javali, learned Senior Counsel invited the attention of the court to the impugned Order of Assessment and notice passed under section 153C of the Act for the Assessment Year 2015-2016 and argued that the conclusion arrived at by the respondent-Revenue initiating action against the petitioners based on the diaries and loose sheets, is contrary to law. He further contended that the petitioner, being a "searched person", issuance of the notice under section 153C of the Act is not maintainable. In this regard, learned Senior Counsel placed reliance on the judgment of this court in Writ Petition No. 36004 of 2018 connected with Writ Petition No. 36005 of 2018 disposed of on 24th January, 2019. Emphasizing on these aspects, Sri Kiran S Javali, argued that the Revenue failed to appreciate the law on the issue that, to invoke Section 153C of the Act, it is necessary to make out a case that material found in the case of "searched person" belongs to "other person" and as the search has been conducted on the residence of the petitioner at Bengaluru and material has been seized as per panchanama making him as the "searched person" and not "other person". Hence it was submitted that the impugned notice issued under section 153C of the Act is bad in law. It was further argued that the respondent No. 1 failed to examine whether the*

papers or loose note sheets found during the course of search in the premises of Sri Rajendran are documents having evidentiary value to prove the fact of transaction. In this regard, he referred to Section 34 of Indian Evidence Act, 1872 to contend that the search action did not lead to discovery of unaccounted money, bullion, jewellery or valuable article and no books of account revealed undisclosed transactions of the assessee and the entire impugned proceedings revolved around scribbling of loose sheets seized from premises of another person (Sri Rajendran) and therefore, learned Senior Counsel argued that the action taken by respondent No. 1 is contrary to the law declared by the Apex Court in the case of V.C. Shukla (supra) and in the case of Common Cause (supra) and accordingly, sought for quashing of impugned notices.

43. *Keeping in view the contentions taken by the Revenue and the assessee and also considering the arguments advanced by the counsel for both parties vehemently, the learned Single Judge opined that the impugned notices are liable to be set aside as sought for, which are arising out of wrong interpretation of Section 153C of the Act, and the entire case was remanded to the competent authority/respondent-Revenue for fresh consideration and to pass appropriate orders in accordance with law, after affording reasonable opportunity to the petitioners in the writ petitions. The learned Single Judge having gone through the entire material available on record had observed that the initiation of proceedings by the respondent-Revenue based on the diaries/loose sheets against the petitioners in the writ petitions is without jurisdiction and contrary to the law declared by the Hon'ble Apex Court and same cannot be touched upon while conducting de novo enquiry afresh.*

49. *It is further relevant to refer to a Co-ordinate Bench decision of this Court rendered in the case of Pr. CIT v. Smt. G. Lakshmi Aruna [2023] 150 taxmann.com 107 31-3-2023, in which judgment, this Court has extensively addressed the scope of sections 153C read with section 153A of the Income-tax Act, 1961. The headnote of the said judgment reads thus:*

"Section 153C, read with section 153A, of the Income-tax Act, 1961 - Search and seizure - Assessment of any other person (Satisfaction note) - Assessment year 2011-12 - Whether assessment year relevant to financial year in which satisfaction note is recorded under section 153C, will be taken as year of search for purposes of clauses (a) and (b) of section 153A(1) by making reference to first proviso to section 153C(1) - Held, yes - Whether period of 6 years stipulated in section 153C has to be construed with reference to date of handing over of documents to Assessing Officer of assessee and not year of search - Held, yes - Whether recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits records to other Assessing Officer who has jurisdiction over such other person under section 153C - Held, yes - On 25-10-2010, a search under section 132 was carried in case of one 'R' and various documents belonging to assessee were found and seized - Consequently, Assessing Officer of searched person issued notice under section 153C against assessee for assessment years 2005-2006 to 2010-2011 and a notice under section 143(3) for assessment year 2011-12 - Assessments were concluded and income of assessee was assessed - Tribunal set aside assessment order and held that there was no satisfaction recorded by Assessing Officer of searched person, which is mandatorily required for issuing a notice under section 153C - Whether since satisfaction note was not recorded by Assessing Officer of searched person, Tribunal had rightly quashed assessment on account of lack of jurisdiction - Held, yes (paras 45 and 49) (in favour of assessee)"

50. *In the instant case, the first issue raised by the Revenue is as regards the addition of income made by the Assessing Officer based on loose sheets found in the house of a third party. However, we find that the Revenue has not established the said loose sheets to be considered as evidence in law by producing corroborative evidence supported by judgments and findings. Further, since the statement made by Shri K. Rajendran under section 132 of the IT Act is later retracted by him by filing an affidavit, the statement given by him does not hold any evidentiary value.*

51. *The notice issued under section 153C of the IT Act in respect of the Assessment year 2018-19 is not applicable, which is also supported by various judgments of the High Court. Further, the notice as regards the Assessment years 2015-16, 2016-17 and 2017-18 are also not applicable, as the total addition of income were made on the basis of loose sheets. Further, the panchanama or mahazar of all the loose sheets said to have been seized from the house of Shri Rajendran, are now unavailable and the learned counsel for the Revenue has no answer for the same. On these premise, the assessment order made for the Assessment years 2015-16, 2016-17, 2017-18 and 2018-19 requires to be quashed.*

52. *Insofar as the contention as regards cash of Rs. 6.68 having been found in Premises No. B5/201, Safdarjang Enclave, New Delhi during search, as per Section 292C of the IT Act, the presumption in law is that the cash seized belongs to the owner of the house from where it was seized. However, as regards the said cash which was found, the respondent/assessee had filed his Income-tax Return including the said cash as advance tax, and the same was also accepted by the Income-tax Department. Even the cross-examination of all the parties involved also proves that clearly the cash found belonged to Shri Sunil Kumar Sharma.*

53. *Further, satisfaction note is required to be recorded under section 153C of the IT Act for each Assessment Year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different Assessment Years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the appellant/Revenue.*

56. *In the light of the above said Apex court Decisions and the Panchanama provided herein, it is deemed appropriate to conclude that the notice provided under section 153C is bad in law.*

We are therefore clearly of the opinion that the learned Single Judge is right in allowing the Writ petitions. Accordingly, we proceed to pass the following:

ORDER

> *The appeals preferred by the appellant/Revenue are hereby rejected. Consequently, the order passed by the learned Single Judge in W.P.Nos.9937/2022 C/w. W.P.Nos.9938/2022, 9939/2022, 9945/2022 and 9946/2022 is hereby confirmed.*
>
> *Before parting with this judgment, this Court places on record its deep appreciation for the able research and assistance rendered by its Research Assistant-cum-Law Clerk, Mr.Pranav.K.B."*

11. The said judgment of the Division Bench was confirmed by the Apex Court in ***Deputy Commissioner of Income Tax vs. Sunil Kumar Sharma*** *in* ***SLP (Civil) Diary NO(S). 23406 of 2024 dated 21.10.2024.***

12. Further, the review petition filed by the revenue was also dismissed by the Apex Court in ***Review Petition (Civil) Diary No(S). 60856 of 2024 dated 08.04.2025.***

13. So also, in ***IBC Knowledge Parks' case supra,*** *the Division Bench of this Court held as under:-*

> ***"B.V. Nagarathna, J.*** *- These appeals, filed by the Revenue as well as the assessee, assail order dated 25/4/2014, passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal" for the sake of convenience), in ITA. Nos.903-905/Bang/2013 and C.O.Nos.103-105/Bang/2013 dated 25/4/2014. By the said order, the Tribunal has confirmed the order of the Commissioner of Income Tax (Appeals) (hereinafter referred to as "the Appellate Commissioner") and dismissed the appeals.*
>
> ***2.*** *ITA.Nos.410-412/2014 are filed by the assessee, while ITA.Nos.403/2009 C/w. ITA.Nos.402/2009, 394/2014 & 271/2015, 399/2014, 400/2014 & 351/2015, 402/2014 & 352/2015 are filed by the Revenue.*

3. *By order dated 3/8/2015, the appeals filed by the assessee were admitted on the following substantial questions of law:*

(a) Whether the Tribunal was right in holding that the initiation of proceedings and the consequent order passed under Section 153C of the Act were valid, on a mere coincidence that the appellant was also carrying on its business in the searched premises along with the searched persons?

(b) Whether the Tribunal was correct in holding that the assessment under Section 153C was valid despite there being no satisfaction recorded that the documents found during the search on 17.06.2008 were incriminating in nature and prima facie represented undisclosed income?

(c) Whether the Tribunal was justified in rejecting the contention of the appellant that proceedings under Section 153C ought to be initiated only for assessment years in respect of which the documents were found during the search?

(d) Whether the Tribunal was correct in upholding the validity of the order under Section 153C of the Act for the assessment year 2005-06 despite there being no pending assessment as on the date of search and the documents not revealing any undisclosed income?

4. *The appeals filed by the Revenue raise the following substantial questions of law and were admitted on 28/5/2010 and 3/8/2015:*

'(i) Whether the Appellate Authorities were correct in holding that separate depreciation is allowable in respect of 'Electrical installations, elevators, DG set' installed in building which has been let-out and the assessee is receiving rental income on the buildings?

(ii) Whether the Appellate Authorities were correct in holding that a sum of Rs.72 lakhs interest on borrowed capital is an allowable business expenditure, when the assessee's buiness had not commenced and there was no declaration of income from business and the assessee had only received rental income under the head 'House property'?

(iii) Whether the Appellate Authorities were correct in holding that a sum of Rs.1.91 crores cannot be disallowed as held by the Assessing Officer

despite the same not been reflected in the Balance Sheet and no particulars having been furnished recorded a perverse finding, not supported by materials?

(iv) Whether the Tribunal was correct in holding that the claim of Rs.1,29,08,375/- shown as construction management fee is allowable to the extent of 25% even though no evidence has been adduced in support of the claim when this expense related to the property constructed by the assessee was let-out and rental income was received under the head 'Income from House Property' and the question of earning expenses did not arise and the same could be capitalized?

Whether the Tribunal was correct in allowing depreciation on elevators, DG sets, Transformers and fixtures without appreciating that the assessee is not in the business of leasing out any of these assets and these fixtures are affixed with the building and were part of the leased are part of the leased building which do not have any independent existence and that no independent receipt/fees/ maintenance charges were received against these facilities/services and therefore, they are receipts are taxable as "income from house property?'"

39. *On a perusal of the material on record, it is noted that during the course of search in the premises of M/s.India Builders Corporation on 17/06/2008, certain documents of the assessee company were found and seized by the concerned officer. Subsequently, proceedings under Section 153C of the Act were initiated by the Assessing Officer of the assessee. Assessee's contention that the proceedings were not initiated in accordance with law, was not accepted by the appellate Commissioner, who dismissed the appeals. Before the Tribunal, it was contended that the assessee also carried out its functions from the very premises which was searched. Therefore, assesse's documents were bound to be found in the said premises. Therefore, it was contended that Section 153C could not be invoked.*

40. *It was next contended before the Tribunal that the documents found did not lead to disclosure of undisclosed income of the assessee nor were they incriminating in nature. That the fundamental purpose of the search is to unearth undisclosed*

income. Therefore, unless the documents seized prima facie showed undisclosed income, Section 153C of the Act could not be invoked. That before any satisfaction under Section 153C of the Act was recorded, the Assessing Officer must make enquiries and find out prima facie that the documents represented undisclosed income. It was also contended that the assessment under Section 153A read with Section 153C could be made only in respect of those assessment years relating to the documents detected.

41. *The Tribunal while considering the aforesaid contentions held that the assessee shared common business premises with the person searched. But the fact that it ipso facto could not face proceedings under Section 153C of the Act, unless there was undisclosed income on the part of the assessee detected in the search operation, was not correct. Also, it was not necessary that satisfaction should be recorded regarding the seized articles found in the course of search which lead to undisclosed income at the stage of detection during the course of search. The Tribunal also held that once the condition for invoking Section 153A was satisfied, the Assessing Officer could proceed in accordance with Section 153C of the Act and pass an order of assessment for six assessment years immediately preceding the assessment year relevant to previous year in which search was conducted or requisition was made.*

42. *As far as the assessment year 2004-05 was concerned, the Tribunal noted that as on the date the search was conducted i.e., on 17/06/2008, no assessment proceeding for that year was pending and the additions made for the assessment year under Section 153A r/w Section 153C are identical to the ones made in the assessment order dated 27/12/2006 for the said year. As no undisclosed income was detected, the assessment made under Section 153A r/w Section 153C of the Act was quashed by the Tribunal.*

43. *As far as assessment year 2005-06 was concerned, though order under Section 143(3) was not passed, an intimation under Section 143(1) was issued on 28/03/2007 which fact is noted in the order 31/12/2010 passed under Section 153A*

r/w 153C of the Act. The Tribunal held that for the purpose of Section 153A r/w 153C of the Act, an intimation under Section 143(1) is also an order of assessment, and therefore, the argument of the assessee was not accepted. In the circumstances, cross-objection of the assessee was partly allowed for the assessment year 2004-05 and for the assessment years 2005-06 and 2006-07 were dismissed by the Tribunal.

44. *Before considering the rival contentions, it is necessary to advert to the scheme of the Act regarding special procedure for assessment in cases of search. Sub-section (1) of Section 132 of the Act states that where the Chief Commissioner or any other officer mentioned therein having information in his possession, has reason to believe that inter alia, any person is in possession of any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as "valuable assets" for the sake of convenience) and such valuable assets represents either wholly or partly income or property, which has not been, or would not be, disclosed for the purposes of the Act, then, the authorized officer can enter and search any building, place, vessel, vehicle or aircraft, where he has reason to suspect that such books of account, other documents, or valuable assets are kept or search any person, break open the lock of any door etc., seize any books of account, other documents, or other valuable assets found as a result of such search and do all other things necessary as prescribed under Section 132 of the Act.*

45. *Sections 153A, 153B and 153C were inserted by the Finance Act, 2003, with effect from 1/6/2003. They have replaced the post-search block assessment scheme in respect of any search or requisition made after 31/5/2003. Sub-section (1) of Section 153A inter alia deals with assessment in case of search or requisition. It begins with a non-obstante clause and states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any valuable assets are requisitioned under Section*

132A, 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 each assessment year falling within six assessment years referred to in clause (b) of Section 153(1) in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139. The Assessing Officer can 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. However, assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment 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. The explanation states, save as otherwise provided in Sections 153A, 153B and 153C, all other provisions of the Act shall apply to the assessment made under Section 153A. Section 153B speaks about time-limit for completion of assessment under Section 153A.

46. *153C is relevant for the purposes of this case. Sub-section (1) of Section 153C begins with a non-obstante clause and it states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that any valuable assets, seized or requisitioned, belongs to, or 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 valuable 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 valuable*

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.

Sub-section (2) of Section 153C states that where books of account or documents or valuable 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 valuable assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue notice and assess or reassess total income of such other person of such assessment year in the manner provided in Section 153A.

47. *Chapter XIV-B consists of Section 158B to 158BH, inserted with effect from 01/07/1995, deals with special procedure for assessment in search cases. The Finance Act, 1995 inserted Chapter XIV-B in the Act, incorporating a new scheme of block assessment in cases relating to search conducted under Section 132 of the Act or requisitions made under Section 132A after 30/06/1995. Section 158B(b) defines 'undisclosed income' to include any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or*

transaction represents wholly or partly income or property, which has not been or would not have been disclosed for the purposes of this Act or any expense, deduction or allowance claimed under this Act which is found to be false. Section 158BA deals with assessment of undisclosed income as a result of search, while Section 158BB deals with computation of undisclosed income of the block period. Block period is defined in Section 158B(a) to mean the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted under Section 132 or any requisition was made under Section 132A and also includes the period up to the date of commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made. The proviso is not relevant for the purpose of this case.

48. *Section 158BD is relevant for the present case and it states that where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were requisitioned under Section 132A, then the books of account, other documents or valuable assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under Section 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly. Section 158BE prescribes time-limit for completion of block assessment. Section 158BH states that except as otherwise provided in Chapter XIV-B all other provisions of the Act shall apply to the assessment made under the said chapter. Section 153C provides for the role of the Assessing Officer having jurisdiction over the person searched/requisitioned as regards third party liability. The said section covers assessments which have become necessary, because of books of account, documents or valuable assets of third parties indicating their undisclosed income found during the search or requisition under Section 132/132A leading to a prima facie tax liability. A*

special procedure is contemplated in such cases. Such books of account, documents or valuable assets are required to be handed over by the Assessing Officer having jurisdiction over the persons searched requisitioned to the Assessing Officer of a third party on his satisfaction that they belong to a third party before handing over.

49. *On a conjoint reading of the aforesaid provisions, it becomes clear that a search can take place only when a concerned officer has information and reason to believe that any person is in possession of any valuable assets, which has not been or would not be disclosed under the Act. In such a case, a search can take place. Following the search, if any books of account, other documents, any valuable assets is or are found in the possession or control of any person in the course of a search, then the books of account or other documents or valuable assets could be seized. Under Section 153A, the satisfaction regarding an inference of liability must be recorded. The Assessing Officer has to issue notice to the assessee i.e., the person searched for the purpose of assessment or reassessment of the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. Section 153C as already noted, deals with assessment of income of any other person, when the Assessing Officer is satisfied that the books of account or documents or valuable 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 under sub-section(1) of Section 153A of the Act. In such a case, the Assessing Officer has to issue notice to assess or reassess income of other person under Section 153A of the Act. Thus, the fact that search has been conducted would not justify issuance of notice under Section 153A. If it is only during a valid search when certain incriminating materials are detected, notice could be issued.*

50. *Chapter XIV-B which deals with special procedure for assessment of search cases deals with undisclosed income as a result of search, the*

computation thereof and such other provisions. Undisclosed income is defined in Clause (b) of Section 153B. Undisclosed income includes money, bullion or other valuable assets. It is only when the concerned officer has information about the same and has reason to believe that the said valuable assets has not been or would not be disclosed would give jurisdiction to the officer authorized to conduct a search operation. Therefore, the object and purpose of a search is to detect undisclosed income. As defined under Clause (b) of Section 158B of the Act, it is only when the undisclosed income is detected in a search operation that there would be assessment or reassessment, under the provisions of Chapter XIV-B of the Act, of the person who is presumed to be in possession of the undisclosed income. If during the course of search, any valuable assets belongs to or any books of account or document seized or requisitioned pertains to or any information contained therein relates to a person other than the persons searched, then the Assessing Officer, on recording satisfaction, can also assess and reassess the income of any other person. Thus, what emerges is that the sine qua non for the purpose of assessment or reassessment pursuant to a search operation is detection of undisclosed income. In fact, the initiation of search proceeding is also based on possession of information and reason to believe that a person is in possession of certain valuable assets, which has not been or would not be disclosed under the Act. The same is nothing but 'undisclosed income' as defined in Clause (b) of Section 158B(b) of the Act. This becomes even more clear on a comparison of section 132(1)(c) with Section 158B(b) of the Act. It is for the above reason that Sections 153A and 153C begin with a non-obstante clause in order to make these provisions exclusive of Sections 139, 147, 148, 149, 151 and 153 of the Act. If a search operation does not lead to detection of undisclosed income as defined in Chapter XIV-B of the Act, then no purpose would be served in reopening the assessment already completed. Also, if there is no detection of any undisclosed income, then there would be no need for pending assessment to abate. Thus, when particulars of income declared

in the return is already available with the Assessing Officer, such income cannot form part of undisclosed income even if such return is filed beyond the time-limit, but before search, as long as they relate to any year covered in the block. Thus, a block assessment is justified only on the basis of evidence found during search and the materials or information relatable thereto.

Section 153C is in pari materia with Section 158BD conferring jurisdiction over third parties to a search providing certain conditions before the Assessing Officer having jurisdiction over a third party can assume jurisdiction. Materials such as books of account, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under Section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, Section 153C would have no application. Thus, the detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of Section 153C of the Act.

51. *Before considering the decisions cited at the Bar, it is necessary to refer to a decision of the Hon'ble Supreme Court in Manish Maheshwari v. Asst. CIT [2007] 289 ITR 341/158 Taxman 258. In that case, search was conducted on one of the directors of the assessee-company M/s. Indore Construction (Pvt.) Ltd. When the search was conducted in the premises of the director Sri. Manish Maheshwari and his wife*

several incriminating documents relating to the company were seized. While dealing with Section 158BD of the Act, the Hon'ble Supreme Court has observed as under:

"Condition precedent for invoking a block assessment is that a search has been conducted under Section 132, or documents or assets have been requisitioned under Section 132A. The said provision would apply in the case of any person in respect of whom search has been carried out under Section 132A or documents or assets have been requisitioned under Section 132A. Section 158BD, however, provides for taking recourse to a block assessment in terms of Section 158BC in respect of any other person, the conditions precedents wherefor are : (i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under Section 158BC against such other person.

The conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132A of the Act."

In that case, it was held that the Assessing Officer had not recorded his satisfaction, which is mandatory; nor had he transferred the case to the Assessing Officer having jurisdiction over the matter. Therefore, the judgment of the High Court was set aside and the appeals were allowed.

***52.** The decisions relied upon by the learned Senior Counsel appearing for the assessee are as under:*

(a) In CIT v. Calcutta Knitwears [2014] 362 ITR 673/223 Taxman 115 (Mag.)/43 taxmann.com 446 (SC), the Hon'ble Supreme Court considered the question, as to at what stage of the proceedings under Chapter XIV-B, the Assessing Authority was required to record his satisfaction for issuing notice under Section 158BD of the Act. In that case, the facts were that a search operation under Section 132 of the Act was carried out in two premises of the Bhatia Group, namely M/s. Swastik Trading Co., and M/s. Kavita International Co., on 5/2/2003 and certain incriminating documents pertaining to the assessee-firm i.e., Calcutta Knitwear were traced in the said search. After completion of the investigation by the investigating agency and handing over of the documents to the assessee to the Assessing Authority, the latter had completed the block assessments in the case of Bhatia group. Since certain other documents did not pertain to the person searched under Section 132 of the Act, the Assessing Authority therein thought it fit to transmit those documents, which according to him pertained to undisclosed income on account of investment element and profit element of the assessee-firm and required to be assessed under Section 158BC read with Section 158BD of the Act to another Assessing Authority in whose jurisdiction the assessments could be completed. In doing so, the Assessing Authority recorded his satisfaction note dated 15/7/2005. The jurisdictional Assessing Authority for the assessee had issued show-cause notice under Section 158BD for the block period of six years dated 10/2/2006 to the assessee. The assessee had replied that no action could be initiated against the assessee and requested the Assessing Authority to drop the proceedings. The stand of the assessee was rejected by the Assessing Authority, who concluded the assessment proceedings under Section 158BD of the Act. It was also held that notice could be issued even after completion of the proceedings of the searched person under Section 158BC of the Act.

Aggrieved by the order of the Assessing Officer, the assessee therein had filed an appeal before the Appellate Authority, who had partly allowed the appeal. The Revenue had carried the matter further by filing an appeal before the Tribunal and

the assessee therein filed cross-objection. The Tribunal rejected Revenue's appeal, which filed an appeal before the High Court, which also rejected the Revenue's appeal and confirmed the order of the Tribunal. The Revenue, then approached the Hon'ble Supreme Court. While dealing with various provisions of Chapter XIV-B of the Act pertaining to assessment in the case of search operation, the Hon'ble Supreme Court held that Section 158BD of the Act deals with undisclosed income of any other person. On the question of recording satisfaction that there is an undisclosed income, which had been traced where a person was searched under Section 132 of the Act or books of account, other documents or valuable assets are requisitioned under Section 132A of the Act, the Hon'ble Supreme Court opined as under:

"We would certainly say that before initiating proceedings under section 158BD of the Act , the Assessing Officer who has initiated proceedings for completion of the assessments under section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of account were requisitioned under Section 132A of the Act. This is in contrast to the provisions of section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD, the existence of cogent and demonstrative material is germane to the Assessing Officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the Assessing Officer either at the time of initiating proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the Assessing Officer cannot prepare the satisfaction note to the effect that there exists income-tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of account were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The

Legislation has not imposed any embargo on the Assessing Officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

Further Section 158BE(2)(b) only provides for the period of limitation for completion of block assessment under Section 158BD in case of the person other than the searched person as two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search carried on after January 1, 1997. The said section does neither provide for nor impose any restrictions or conditions on the period of limitation for preparation of the satisfaction note under Section 158BD and consequent issuance of notice to the other person.

In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person."

In that case, the Hon'ble Supreme Court remanded the matters to the concerned High Court for consideration of the individual cases in light of observations made above on the scope and interpretation of Section 158BD of the Act.

(b) *In CIT v. Lancy Constructions [2016] 237 Taxman 728/66 taxmann.com 264 (Kar.), it was held that there were no incriminating documents during the course of search on the basis of which additions could have been made by the Assessing Officer. That the accounts which were submitted by the assessee at the time of regular assessment were duly verified during the course of such assessment and accepted by the Assessing Officer. In the absence of any incriminating documents having*

been found, the same accounts of the assessee were reassessed by making further investigations, which was impermissible, as the same would amount to reopening of a concluded assessment, without there being any additional material found at the time of search. Otherwise, it would give the Revenue a second opportunity to reopen a concluded assessment, which is impermissible in law. Merely because a search is conducted in the premises of the assessee, would not entitle the Revenue to initiate the process of reassessment, for which, there is a separate procedure prescribed in the statute. It is only when the conditions prescribed for reassessment are fulfilled that a concluded assessment can be reopened. The very same accounts which were submitted by the assessee, on the basis of which assessment had been concluded, cannot be re-appreciated by the Assessing Officer merely because a search had been conducted in the premises of the assessee.

(c) In Jai Steel (India) v. Asstt. CIT [2013] 36 taxmann.com 523/219 Taxman 223 (Raj.), it was held that no doubt the Assessing Officer is free to disturb income, expenditure or deduction de hors any incriminating material, while making an assessment under Section 153A of the Act. But in the context of a search, Section 153A to 153C cannot be interpreted to be a "further innings" for the Assessing Officer and/or the assessee beyond the provisions of Sections 139 (return of income); 139(5) (revised return of income); 147 (income escaping assessment) and 263 (revision of orders) of the Act.

It was also held that it was not open for the assessee to seek deduction or claim expenditure, which had not been claimed in the original assessment, which assessment already stood completed, only because a assessment under Section 153A of the Act in pursuance of search or requisition was required to be made.

(d) In CIT v. Kabul Chawla [2016] 380 ITR 573/[2015] 234 Taxman 300/61 taxmann.com 412 (Delhi), the Delhi High Court has held that (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 in respect of whom search was conducted requiring him to file returns for six assessment years immediately proceeding the

previous year relevant to the assessment year in which the search takes place. (ii) Assessment 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 Officers 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 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 the seized material. (v) In the 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 153A 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 assessment year on the basis of the finding of the search and any other material existing or brought on 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.

The Delhi High Court further held that in the cases before it on the date of the search the assessment already stood concluded since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. The questions were accordingly answered in favour of the assessee.

53. *Learned counsel for the Revenue has relied upon the following citations in support of his contentions:*

(a) *In Kamleshbhai Dharamshibhai Patel v. CIT [2013] 31 taxmann.com 50/214 Taxman 558 (Guj.), on considering Section 153C of the Act, it was observed that the said section begins with a non-obstante clause. Requirements for assuming jurisdiction under Section 153C (1) are, that the Assessing Officer is satisfied that any valuable assets or books of account or document seized or requisitioned belongs to a person other than the person referred in section 153A of the Act. In such a case, he shall handover to the Assessing Officer having jurisdiction of such other person, the books of account or document or documents or valuable assets seized or requisitioned. That the valuable assets or books of account seized or documents seized or requisitioned should belong to a person other than a person referred in Section 153A of the Act.*

(b) *In Filatex India Ltd. v. CIT [2015] 49 Taxman 465/[2014] 49 taxmann.com 465 (Delhi), the court rejected the argument that during assessment under Section 153A additions had to be restricted or limited to incriminating material only, found during course of search.*

(c) *In Savesh Kumar Agarwal v. Union of India [2013] 35 taxmann.com 85/216 Taxman 109 (Mag.)/353 ITR 26 (All.), the question considered was whether on receipt of satisfaction note, the Assessing Officer had not found anything adverse against the assessee and seized goods having been released in favour of the assessee, notice could be issued under Section 153C of the Act to file returns for six years. The stand of the Revenue therein was that the Assessing Officer could still proceed under*

Section 153A of the Act in order to find out the source of income. In that case the writ petition filed under Article 226 of the Constitution of India challenging the notice was dismissed on the premises that the power under Section 153C exists in the Assessing Officer, if he is satisfied with regard to the need for examination of the source of income.

(d) In Dr. K.M. Mehaboob v. Dy. CIT [2012] 26 taxmann.com 54 (Ker.), it was held that unlike under Section 158BD, for transferring a file under Section 153C, there is no need to examine whether the books of account or other evidence or materials seized in the course of search of an assessee represents or proves undisclosed income of another assessee. On the other hand, for transferring the file to the Assessing Officer of such other assessee, all that is required to be considered is whether the materials or books of account or evidence recovered relates to another assessee, which may or may not lead to an assessment in the case of the other assessee after transfer of the file to his Assessing Officer. This is only an internal arrangement to be made between two Departmental Officers and in this regard the only fact that needs to be verified is whether the assessee whose books of account or materials are recovered in the course of search of any other assessee, is a regular assessee before another Officer, and if so, to transfer the file to such other Officer for his consideration and for passing orders, whether assessment or penalty or such other order permissible under the Act by that Officer.

(e) In Canara Housing Developnment Co. v. Dy. CIT [2014] 49 taxmann.com 98 (Kar.), a Division Bench of this court in the said case noted that in the course of search, incriminating material leading to undisclosed income being seized, held that the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. Once the assessment is reopened, the Assessing Authority can take note of the income disclosed in the earlier return, any undisclosed income found

during search or any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the total income of each year and then pass assessment order.

(f) *Similarly, in Gopal Lal Badruka v. Dy. CIT [2012] 346 ITR 106/27 taxmann.com 167 (AP), the search revealed incriminating material and undisclosed income.*

(g) *In SSP Aviation Ltd. v. Dy. CIT [2012] 20 taxmann.com 214/207 Taxman 260 (Delhi), the observations of the court were in light of the fact that incriminating material had been found.*

(h) *In CIT v. Anil Kumar Bhatia [2012] 211 Taxman 453/24 taxmann.com 98 (Delhi), the court did not express any opinion as to whether Section 153 A can be invoked in a case where no incriminating material was found during the search as it was in fact dealing with a case where incriminating material had been found.*

54. *On a consideration of the relevant sections as well as judicial precedent referred to above, what emerges is that, Section 158BD of the Act deals with undisclosed income of a third party. However, insofar as the incriminating material of the searched person or other person detected during the course of search is concerned, the same can be considered during the course of assessment. Further, such incriminating material must relate to undisclosed income which would empower the Assessing Officer to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good as in case of any other person. As observed by us, detection or the existence of incriminating material is a must for disturbing the assessment already made and concluded. But, at the same time, such can be at three stages: one, at the stage when the reassessment is initiated, the second, at the stage during the course of reassessment and third, at a stage where the reassessment is altered by a different assessment in respect of searched person or in respect of third party. In this regard, reference may be made to the decision of Apex Court in case*

of M/s. Calcutta Knitwear (supra) and based on the said decision, the CBDT has also issued circular dated 31.12.2015 vide No.24/2015.The relevant extract of the circular for ready reference can be extracted as under:

'The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014(available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
(b) in the course of the assessment proceedings under section 158BC of the Act; or
(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

2. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

3. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

4. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.'

As per the aforesaid circular, at the time of or along with initiation of the proceedings, against the searched person or third party under Section 153C or in the course of assessment proceedings under Section 153C of the Act or immediately after the assessment proceedings are completed under Section 153C of the Act, recording of satisfaction is required.

***55.** If the observations made by the Tribunal are considered in this regard, it is noted by the Tribunal that it is not necessary that satisfaction should be recorded that documents or valuable assets found in the course of search showed undisclosed income. In view of the aforesaid discussion, we do not think that such can be the correct position of law.*

***56.** Further, in the judgments referred to by the learned counsel for the Revenue, where incriminating material leading to undisclosed income of another assessee was detected in a search operation, in those cases, reopening of the concluded assessment have taken place. There has been no single decision cited by the learned counsel for the Revenue where the assumption of jurisdiction of the Assessing Officer is in the absence of any incriminating material or undisclosed income having been detected during the course of search leading to reopening of a concluded assessment. In the instant case, though documents belonging to the assessee were seized at the time of search operation, there was no incriminating material found leading to undisclosed income. Therefore, assessment of income of the assessee was unwarranted. Consequently, no satisfaction was recorded in the case of the assessee.*

> *We answer substantial question of law No.2 by holding that the Tribunal was not correct in holding that the assessment under Section 153C was valid despite there being no satisfaction recorded to the effect that the documents found during the search on 17/06/2008 were incriminating in nature and prima facie represented undisclosed income.*
>
> ***57.*** *In the instant case, one of the conditions precedent for invoking a block assessment pursuant to a search in respect of a third party under Section 158BD of the Act, i.e., recording satisfaction that undisclosed income belongs to the third party, which was detected pursuant to a search under Section 133 of the Act, has not been complied with in the instant case. Therefore, the reassessment as such made under Section 158BD in respect of the assessee is not in accordance with law. We accordingly answer substantial question No.2 in favour of assessee. In view of our answer to the aforesaid question, we do not find it necessary to answer substantial question of law Nos.1, 3 and 4 in these appeals. The said questions are kept open to be raised at an appropriate time if the occasion arises.*
>
> ***58.*** *In the result, the appeals filed by the Revenue are dismissed. The appeals filed by the assessee are allowed to the aforesaid extent.*
>
> ***59.*** *Parties to bear their respective costs."*

14. As stated supra, in the instant case, the petitioner was the Chairman and Managing Director of M/s.Kalyani Group which was searched and in the light of the undisputed fact that the premises of the petitioner was searched and documents seized from him, by recording his statement, the sole / unmistakable conclusion / inference that can be arrived at from the material on record is that the petitioner was a searched person and not a non-searched person / such other person as contemplated under Section 153C of the I.T.Act and consequently, Section 153C would neither be

applicable nor invocable as against the petitioner, who was a searched person to whom this provision would not apply and the impugned notice being illegal, arbitrary and without jurisdiction or authority of law and all further proceedings pursuant thereto deserve to be quashed.

15. Insofar as the various judgments relied upon by both sides are concerned, having regard to the facts and circumstances narrated hereinbefore, coupled with the fact that the said decisions rendered in the facts of the said cases would not be applicable to the facts of the instant case and as such, the same are not elaborately dealt with for the purpose of the present order.

16. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned Notices at Annexures-A1 to A8 issued by the 1st respondent to the petitioner for the assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 under Section 153C of the Income Act, 1961 and all further proceedings pursuant thereto, are hereby quashed."

7. In the light of the principles enunciated in the aforesaid judgment, in the instant case, the petitioner was searched and in the light of the undisputed fact that the premises of the petitioner was searched and documents seized from him and a panchanama was drawn, the sole / unmistakable conclusion / inference that can

be arrived at from the material on record is that the petitioner was a searched person and not a non-searched person / such other person as contemplated under Section 153C of the I.T. Act and consequently, Section 153C would neither be applicable nor invocable as against the petitioner, who was a searched person to whom this provision would not apply and the impugned notices as well as orders being illegal, arbitrary and without jurisdiction or authority of law and all further proceedings pursuant thereto deserve to be quashed.

8. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned Notices at Annexures-A, A1, A2, A3, A4, A5 issued by the respondent to the petitioner for the assessment years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19, under Section 153C of the Income Act, 1961 and all further proceedings pursuant thereto including the assessment orders, penalty orders and demand notices are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SRL