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INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3877, 3878, 3879, 3880, 3881/Del/2016
(Assessment Year: 2005-06 to 2009-10)

DCIT, Central Circle-4, New Delhi	Vs.	Dharampal Satyapal Ltd, 1711, SP Mukerjee Marg Delhi PAN: AAACD0132H
(Appellant)		(Respondent)

ITA No. 3310, 3717, 3718, 3719, 3737/Del/2016
(Assessment Year: 2005-06 to 2009-10)

Dharampal Satyapal Ltd, 1711, SP Mukerjee Marg Delhi PAN: AAACD0132H	Vs.	DCIT, Central Circle-4, New Delhi
(Appellant)		(Respondent)

Revenue by :	MS. Rachna Singh, CIT DR
Assessee by:	Shri R. S. Singhvi, CA Shri Satayajeet Goel, Adv
Date of Hearing	20/02/2018
Date of pronouncement	17/05/2018

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the bunch of 10 appeals pertaining to the same assessee for different Assessment Years, out of which the revenue files five appeals and five appeals by the assessee against the common order passed by the CIT (A)-44, New Delhi dated 29.02.2016 for AYs 2005-06 to 2011-12. Though the ld CIT(A) has decided the issues for Assessment Year 2005-06 to 2011-12, however, appeals for Assessment Year 2010-11 and 2011-12 are not heard with the appeals of Assessment Year 2005-06 to 2009-10 as those appeals involved certain grounds related to transfer pricing issues. Therefore, the present bunch of appeal is consisting of appeals for Assessment Year 2005-06 to 2009-10. They are

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heard together involving the common issues and are disposed of by this common order.

2. The parties before us argued that in the appeal of the assessee the validity of issue of notice u/s 153A and consequential assessment is challenged contesting that additions/ disallowances made are not based on any incriminating material seized during the course of search, therefore, this issue covering ground No. 1 of the appeal of the assessee may be decided first. The main reason for argument of both the parties was that, if the arguments of the assessee that the addition and adjustment made to the total income are to be based only on incriminating material found during the course of search fails, then only the other issues in the appeal of the revenue as well as of the assessee will survive. Hence it needs to be first decided that

a. whether for the addition to be made in concluded assessments, revenue necessarily needs incriminating material. The claim of the assessee is in affirmative and revenue denies such proposition.
b. Whether the addition made by the ld AO are based on any incriminating material or not. Assessee contends that no such material exists for the relevant assessment years. The claim of the revenue is that there is incriminating material based on which additions are made by the ld AO.

We agreed to the request of both the parties. Accordingly, we proceed to decide the ground No. 1 of the appeal of the assessee.

Brief Facts

3. Firstly, we state the facts for Assessment Year 2005-06. The assessee is a company engaged in the business of manufacturing and trading in Pan Masala, Gutkha, Jarda, perfumery compounds, herbs, mouth fresheners, snack foods, water, composite canes and processing of silver etc. The assessee filed its return of income on 31.10.2005 showing total income of Rs. 151516608/-. The assessee claimed deduction u/s 80IC of the

Act. Further, assessee being a company it was also subjected to tax over and above normal computation of tax, on the book profit tax u/s 115JB of the Act. The appellant was assessed to book profit at Rs. 733688144/-. Subsequently, assessment u/s 143(3) of the Act was made on 30.03.2007 after making certain disallowances. The assessee challenged the disallowances before the ld First appellate authority that passed an order upholding certain disallowances and directing the ld Assessing Officer for re-computation.

4. Meanwhile search and seizure operations u/s 132 of the Act was carried out on the assessee on 21.01.2011. subsequent, to that notice u/s 153A of the Act was issued on 09.01.2012. The assessee filed its return of income on 22.02.2012 submitting that original return filed may be treated as return filed in response to the notice. The ld Assessing Officer stating that there is a complexity in the books of account of the assessee passed order u/s 142(2A) of the Act appointing the special auditor who filed an audit report on 15.01.2013. Subsequently, after granting an opportunity of hearing to the assessee order u/s 153A of the Act was passed on 26.05.2014 at Rs. 630340134/- under the normal computation provisions and book profit was determined u/s 115JB of the Act at Rs. 735895087/-. In the assessment order the ld Assessing Officer made several additions and therefore, assessee challenged the same before the ld CIT (A). The ld CIT (A) passed a combined order for several years i.e. Assessment Years 2005-06 to 2011-12 on 29.02.2016 allowing the appeal of the assessee partly. Therefore, both the parties are in appeal before us.

Issue in Appeal

5. The assessee vide ground No. 1 has challenged that there is no incriminating material found during the course of search and therefore, on the date of search i.e. 21.10.2011 the assessment year 2005-06 to 2009-10 were not pending and therefore, the addition made to the total income of the assessee are not valid.

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Decision of Ld CIT (A) on the issue

6. The assessee before the ld CIT (A) agitated the above ground that there is no incriminating evidence found during the course of search and therefore, no addition can be made. The ld CIT(A) vide para no. 4 has dealt with this issue as under:-

"*1. Ground No. 1 and 2 for all the AYs are general in nature and does not require specific adjudication as such. However, ld AR has taken grounds for various AYs upto the AY 2010-11 that no addition can be made u/s 153A where there is no link between any material/ documents found as a result of search u/s 132 of Income Tax Act and the addition ld AR has mentioned these arguments under various grounds. I have considered this argument. Firstly, this will not apply for AY 2011-12 being search AY and AY 2010-11 where there was time available for issuing notice u/s 143(2) and the notice u/s 143(2) could not be issued due to occurrence of search and jurisdiction of assessment was merged with section 143A.*

Secondly for all AYs there are additions on account of bogus purchase of sandalwood oil on the basis of seized document and various evidences gathered during search and post search inquiry. Therefore, the Assessing Officer has the jurisdiction to assess the total income irrespective of the seized material as there was one addition on account of evidence gathered during the search. This view is supported by the decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (2012) 24 taxmann.com 98 Delhi, where Hon'ble High Court has given the jurisdiction to to the Assessing Officer to assess total income for given the jurisdiction to the Assessing Officer to assess total income for all AYs except in the case where there was no incriminating material for any of the year covered u/s 151A. In the present case, definitively there is incriminating material which would be discussed in subsequent paragraph when I will deal with bogus purchase of sandalwood oil. Therefore, the instant case is not covered by para 23 of the order of the Hon'ble High Court of Delhi in the case of Anil Kumar Bhatia cited supra where the Hon'ble High Court (Delhi) has not given his decision when there is no evidence for even our AY found during the search and seizure operation. Accordingly, these jurisdictional grounds are dismissed. I would not discuss the jurisdictional argument on various substantive grounds of avoid repetition."

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[underline supplied by us]

7. Therefore aggrieved by the order of the ld CIT (A) the assessee has filed appeal and where in the first ground assessee has challenged the additions made u/s 153A of the act. We fully agree with the view of the Ld CIT (A) that for AY 2010-11 and 2011-12 , on the date of search, the ld AO could have issued notice u/s 143(2) of the act as the time was available then, therefore those assessment years are not concluded. Admittedly, for those two years, additions could have been made subject to provision of law irrespective of any incriminating evidences found during the course of search. However, the issues need to be addressed differently in case of other years, which are in appeal before us i.e. AY 2005-06 to 2009-10. All those years are concluded assessments and any upwards, revision to income already assessed should be based on incriminating material found during the course of search. The ld CIT (A) has held that the Assessing Officer has the jurisdiction to assess the total income irrespective of the seized material, as there was one addition on account of evidence gathered during the search. He relied up on the decision of Honourable Delhi high court in case of Anil Kumar Bhatia (Supra). Therefore, the assessee now agitates this issue.

Arguments of the Assessee

8. The ld Authorised Representative vehemently submitted that

a. There are no incriminating evidences found during the course of search with respect to these assessment years.

b. The decision relied up on Ld CIT (A) in case Anilkumar Bhatia Does Not applies in case of the assessee but the decision of Hon Delhi High court in case of CIT V Kabul Chawla applies to the facts of the case.

c. Hon Supreme court has held that incriminating evidences should be linked to the specific year and therefore to disturb the already assessed income, there has to be specific incriminating material

related to each of the assessment year in which the additions have been made.

d. In AY 2004-05, in assessee's own case coordinate bench has held while dealing with provision of the section 147 of the act that there is no tangible or incriminating material available for reopening the concluded assessment in case of that year. That decision of Coordinate bench has been upheld by the hon High court. According to him, the facts of the case in all those years are similar.

9. The ld Authorised Representative further submitted a detailed synopsis of his argument which is as under:-

"1. The original assessment u/s 143(3) was completed vide order dated 30/03/2007 at an income of Rs.84,61,29,420/-.

2. Search and seizure operation in terms of provision of sec. 132 of the Act was carried out at the premises of the appellant company and other group companies/ individuals on 21/10/2011.

3. Consequent to search, the assessing officer issued notice u/s 153 A of the Act on 09/01/2012. In response to the notice, assessee offered its original ROI on 22/02/2012 which was filed u/s 139(1), to be treated as Return of income u/s 153A, declaring income of Rs.15,15,16,608/-.

4. That AO made no reference to any incriminating material but recomputed income on the basis of same material which was in existence at the time of original assessment.

5. After search, there being no incriminating material, the AO made reference for special audit u/s 142(2A) of the Income Tax Act, 1961 which even though was highly illegal and arbitrary particularly with reference to proceedings u/s 153A and in disregard to fact that original assessment on the basis of same material was completed u/s 143(3) of the Act.

6. The appellant preferred an appeal before the CIT(A) against the action of AO for assuming jurisdiction u/s 153 A, in the absence of any incriminating material found during search for the relevant assessment year.

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7. *The CIT(A) upheld the action of the Ld.AO vide finding recorded as follows:*

FINDINGS OF CIT(A) Page 72 Para 41

"Ground no 1 and 2 for all the AYs are general in nature and does not require specific adjudication as such. However, Ld. AR has taken the grounds for various AYs upto the AY 2010-11 that no addition can be made u/s 153A where there is no link between any material/documents found as a result of search u/s 132 of Income Tax Act and the addition. Ld.AR has mentioned these arguments under various grounds. I have considered this argument. Firstly, this will not apply for AY 2011-12 being search AY and AY 2010-11 where there was time available for issuing notice u/s 143(2) and the notice could not be issued due to occurrence of search and jurisdiction of assessment was merged with section 143A.

Secondly, for all AYs there are additions on account of bogus purchase of sandalwood oil on the basis of seized document and various evidences gathered during search and post search inquiry. Therefore, the assessing officer has the jurisdiction to assess the total income irrespective of the seized material as there was one addition on account of evidence gathered during the search. This view is supported by the decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia(2012) 24 taxman.com 98 Delhi, where Hon'ble High Court has given the jurisdiction to assessing Officer to assess total income for all AYs except in the case where there was no incriminating material for any of the year covered u/s 153A. In the present case, definitively there is incriminating material which would be discussed in subsequent paragraph when I will deal with bogus purchase of sandalwood oil. Therefore, the instant case is not covered by para 23 of the order of Hon'ble H.C. of Delhi in the case of Anil Kumar Bhatia cited supra, where the Hon'ble H.C.(Delhi) has not given his decision when there is no evidence for even our AY found during the search and seizure operation. Accordingly, these jurisdictional grounds are dismissed. I would not discuss the jurisdictional argument on various substantive grounds to avoid repetition."

8. *In this regard, we may submit that it is an established position that in respect of completed assessments, whether u/s 143(1) or u/s 143(3), jurisdiction u/s 153A can be assumed for making addition/disallowance only if some incriminating material is unearthed during the course of search in respect of such years. Any addition/ disallowance made de-hors any incriminating material found during the course of search is outside the scope of*

assessment u/s 153A of the Act and as such is without any legal basis. Accordingly, the proceedings which have been completed and are not pending, there can be no case of abatement in terms of proviso to section 153A and as such the AO has no jurisdiction to review such completed assessments. Accordingly, the issues decided in completed assessment cannot be reconsidered and readjudicated u/s 153A unless there exist some fresh material found during the course of search in relation to such points.

9(i) The Hon'ble Mumbai ITAT in the case of All Cargo Global Logistics Ltd. v. Deputy' Commissioner of Income-tax[2012] 23 taxmann.com 103 (Mum.) (SB) [confirmed by High Court reported in 374 ITR 645] has categorically held that the assessment u/s 153A has to be strictly restricted only to the incriminating material found during search. The Court has further proceeded to define the words 'incriminating material'. The relevant extract of the said judgment is produced hereunder for your reference:

> *(a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately;*
>
> *(b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means -(i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search.*

(ii) Legal position to this effect is also supported from decision of Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi) & Pr. CIT V. Meeta Gutgutia [2017] 395 ITR 526 (Delhi)

10. In the present case, it may be noted that regular assessment u/s 143(3) was completed after exhaustive verification and examination thereby making several adjustments to the returned income. Accordingly, the AO could assume jurisdiction u/s 153A only on the basis of incriminating material found during the course of search thereby suggesting undisclosed income in the hands of the appellant.

11. *It may be highlighted that the additions in relation to proceedings u/s 153A were made on the basis of scrutiny of books of accounts maintained in the regular course of business with the aid of special auditor's report obtained after search proceedings, without having nexus to any incriminating material found during the search. It may be noted, that in the present case the special audit report cannot be a basis for any addition as the scope of section 153A in case of completed assessments is confined to incriminating material.*

12. *That in the absence of any material to be considered as incriminating in terms of the definition provided by the Hon'ble Mumbai ITAT, the said additions and disallowances made by the Assessing Officer merely depict change of opinion and reappraisal of facts examined during original proceedings.*

13. *Further, it is not open to the department to disregard issues which have attained finality vide the original assessment and as such the Ld. CIT(A) in the present case has erred in upholding the validity of jurisdiction u/s 153A of the I.T. Act,1961 and consequential assessment even though the same is not based on any incriminating material seized during the course of search. It is relevant to submit that CIT(A) has only made general observation regarding alleged incriminating material and no specific reference was made to any such material.*

14. *It may be further submitted that on similar facts Hon'ble Delhi ITAT in assessee's own case quashed the reassessment proceedings u/s 147 for AY 2004-05 vide its order dated 8/01/2016. The Hon'ble ITAT has dealt with the matter in detail, considering the pith and substance of the reasons recorded for reopening in the light of search proceedings. It was observed that the reasons were recorded on the basis of findings of search proceedings conducted by the Investigation Wing. However, the assessing officer had not made reference to any adverse material unearthed during the course of search to support the belief of escapement of income in the proceedings u/s 147 for AY 2004-05 and for other assessment years u/s 153 A of the Act. In view of the above facts it was held that the AO erroneously assumed jurisdiction u/s 147 in the absence of any incriminating material or trace of any tangible material. The ITAT further proceeded to hold that in even in case of proceedings u/s 153 A addition has to*

strictly restricted to incriminating material seized during the course of search.

15. *In this connection, we are pleased to extract finding and conclusion of ITAT, confirmed by Hon'ble High Court, in the context of seized material as a result of search:*

Page 98 Para 72

72. Viewed from another angle, It has to be kept in mind that from the reason recorded to re-open, it is manifest that the search conducted on the assessee on 21.01.2011 was the event from which the AO says he has "reason to belief' escapement of income. Keeping this factual background in mind, we cannot take our eyes of the mechanism which gets triggered after a search u/s 132 of the Act, wherein the provision of section 153A of the Act kicks in. Now the settled position of law in case of search is that no addition can be made without any incriminating evidence unearthed during the search as held by the Hon'ble jurisdictional High Court in CIT V Kabul Chawla - 61 Taxmann.com 412 (Delhi). If that is so, whether the AO can reopen an assessment without any incriminating material, which would suggest escapement of income of the Year which he proposes to re-open. Here when we again peruse the reasons recorded we do not find any whisper of any tangible material or trace of any incriminating material which could arm the AO invoke section 147/148 of the Act.

16. *The Hon'ble ITAT further observed vide Page 49 Para 25 that in the case of search, escapement of income should be on the basis of seized documents and not on the basis of further enquiry of investigation. The Hon'ble ITAT vide finding recorded at Page 81 Para 50 also observed that escapement of income should be on the basis of facts and evidence and not on the basis of inference.*

17. *After appreciating the finding and conclusion of ITAT, the Hon'ble Jurisdictional High Court vide its order dated 21/08/2017concurred with the decision of ITAT and thereby held that in the present case material seized in the course of search did not constitute tangible/incriminating material. The relevant extract of the said judgment is produced hereunder:*

Pr. CIT v. Dharampal Satyapal Ltd (Delhi H.C.) (1TA 544/2016)

(21.08.2017)

> 4. *Indeed today by a separate order in the appeals filed by the Revenue against the order of the ITAT in the cases of the sister concern, this Court has concurred with the decision of the ITAT in holding that the material seized in the course of search did not constitute incriminating material even for FY 2010-11, i.e.. the year of search. In that view' of the matter the very fundamental basis for reopening is rendered non-existent.*
>
> 5. *In view of the above finding, this Court does not consider it necessary to consider the further question whether there was a justification for reopening the assessment qua the Assessee for the AY in question.*

Accordingly, on the parity of reasoning and principle laid down, there is no legal basis for assuming jurisdiction u/s 153 A of the I.T. Act, 1961.

18. *It may be further noted that the present case is squarely covered by the decision of Hon'ble Delhi High Court in case of M/s. Dharampal Premchand Ltd., assessee's sister concern wherein also search u/s 132 was conducted and similar additions were made alleging violation of section 80IA(8). The findings of the Hon'ble High Court are produced hereunder for reference:*

Pr. CIT Vs. Dharampal Premchand Ltd (Delhi H.C.) (ITA No. 512/2016) (21.08.2017)

The question of law framed by Hon'ble High Court in appeal of the revenue_ against order of ITAT in relation to proceedings u/s 153A for AY 2005-06, 06-07 and 2007-08 is extracted here under :

> *"Whether the ITAT fell into error in holding that the additions made in the course of proceedings under Section 153A/143(3) of the Income Tax Act, 1961 were not warranted having regard to the judgment of this Court in CIT v. Kabul Chawla 380 ITR 573?"*

The finding of Hon'ble High Court is as under :

[Page 6-8]

12. Indeed, the Court finds that de hors the"question whether the material seized, which admittedly pertains to FY 2010-11, can constitute sufficient material to reopen the assessments for the

other AYs in question, it is seen that, even for FY 2010-11, the ITAT, after undertaking a detailed analysis, found that what was seized was not incriminating material. The categorical factual findings by the ITAT, which have not been shown by the Revenue to be perverse, are inter alia that the material seized does not show inflation of the profit of the eligible undertakings; or that the eligible undertakings are not carrying out manufacturing activities or that the material transferred to the eligible undertakings is less than the market value and that "none of the material relates to the purchases from sister concerns. "All of this is de hors the fact that the material pertains only to FY 2010-11.

13. If, even for FY 2010-11, what was seized did not constitute incriminating material, then the essential jurisdictional fact for justifying the assumption of jurisdiction under Section 153 A of the Act did not exist. Learned counsel for the Assessee is therefore right in submitting that, in view of the above factual findings of the ITAT, the further question as to whether the said material was sufficient to reopen the assessments for the other AYs, with which these appeals are concerned, does not really arise.

14. Nevertheless, the Court is of the view that the decision of this Court in Commissioner of Income Tax v. Kabul Chawla (supra), which has been reiterated in Principal Commissioner of Income Tax v. Meeta Gutgutia Prop. M/s Ferns "N" Petals (supra), is still good law as far as this Court is concerned. As explained in Principal Commissioner of Income Tax v. Meeta Gutgutia Prop. M/s Ferns 'n ' Petals (supra), the decision of this Court in Smt. Dayawanti Gupta v. CIT (supra) is not contrary to the ratio of the decision of this Court in Commissioner of Income Tax v. Kabul Chawla (supra). This Court has, in Principal Commissioner of Income Tax v. Meeta Gutgutia Prop. M/s Ferns 'n ' Petals (supra), explained the factual background and circumstances under which the decision in Smt. Dayawanti Gupta v. CIT (supra) was rendered and how in the peculiar facts of that case that it was held that the material seized for one particular AY could lead to an inference regarding the modus operandi of the Assessee for the other AYs. Further, as pointed out in Principal Commissioner of Income Tax v. Meeta Gutgutia Prop. M/s Ferns 'n' Petals (supra), the facts in Smt. Dayawanti Gupta v. CIT (supra) were that the Assessees themselves made statements under Section 133A- admitting to not maintaining proper books of accounts and admitting that the documents seized during the course of search could pertain even to the other AYs. These distinguishing features do not exist in the present case and were not also present in Principal Commissioner of Income Tax v. Meeta Gutgutia Prop. M/s Ferns 'n ' Petals

(supra). In the present case too there was no incriminating material seized qua each of the AYs the assessments for which were sought to be reopened. Consequently, the Court perceives no conflict in these decisions that warrants reference of the issue to a larger Bench.

15. For the above reasons, the question framed is answered in the negative i.e. against the Revenue and in favour of the Assessee

19. *The facts relating to proceedings u/s 153A in the case of M/s. Dharampal Premchand Ltd. and M/s. Dharampal Satyapal Ltd. are same.*

20. *In fact, the issue of jurisdiction u/s 153A in the absence of incriminating material has been considered by the various courts and reference may be made to following case laws:*

(a) CIT v. Kabul Chawla [20161 380 ITR 573 (Delhi)

SEARCH AND SEIZURE — BLOCK ASSESSMENT — UNDISCLOSED INCOME — GENERAL PRINCIPLES — ASSESSMENTS COMPLETED ON DATE OF SEARCH — NO INCRIMINATING MATERIALS FOUND DURING SEARCH — BLOCK ASSESSMENT NOT VALID — INCOME-TAX ACT, 1961, ss. 132, 153A

The legal position that emerges on a perusal of section 153A and section 132 of the Income-tax Act, 1961, is as under : (i) Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person in respect of whom search was conducted requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place, (ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing 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

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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) In so far 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 findings of the search and any other material existing or brought on the record of the Assessing Officer, (vii) Completed assessment 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.

Held accordingly, that the matter related to the assessment years 2002-03, 2005-06 and 2006-07. On the date of the search the assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.

b. *Pr. CIT V. Meeta Gutgutia [20171 395 ITR 526 (Delhi)*

56. Section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to Section 132 which deals with 'search and seizure'. Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to re-open at least six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under Section 132 incriminating material justifying the re-opening of the assessments for six previous years is found that the invocation of Section 153 A qua each of the AYs would be justified
..

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

(c) Pr.CIT V. Lata Jain f20161 384 ITR 543 (Delhi)

7. It has been noticed by the ITAT in the impugned order that for the AYs in question no incriminating material qua the Assessee was found. 8. In that view of the matter, and in light of the decision of this Court in CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi), the Court is of the view that the impugned order of the ITAT suffers from no legal infirmity and no substantial question of law arises for determination.

d. Pr. CIT v. Smt. Anita Rani r2017I 392 ITR 501 (Delhi)

SEARCH AND SEIZURE - ASSESSMENT IN SEARCH CASES - NOTICE UNDER SECTION 153A - VALUATION OF PROPERTY - SALE CONSIDERATION - DISCLOSED BY ASSESSEE IN RETURN - ABSENCE OF SEIZURE OF ANY NEW MATERIAL DURING SEARCH – FRESH EXAMINATION UNJUSTIFIED- INCOME TAX ACT, 1961.

e. CIT v. Pinaki Misra [2017] 392 ITR 347 (Delhi)

SEARCH AND SEIZER - BLOCK ASSESSMENT - UNDISCLOSED INCOME
TO BE DETERMINED ON BASIS OF MATERIAL FOUND DURING COURSE OF SEARCH - NO INCRIMINATING MATERIAL FOUND DURING SEARCH - ADDITIONS MADE ON BASIS OF EVIDENCE GATHERED FROM EXTRANEOUS SOURCE AND ON BASIS OF STATEMENT OR DOCUMENT RECEIVED SUBSEQUENT TO SEARCH - NOT FORMING PART OF UNDISCLOSED INCOME FOR BLOCK PERIOD - ASSESSING OFFICER HAS NO JURISDICTION TO MAKE ADDITIONS UNDER SECTION 158BC.

f. CIT v.Shri. Deepak Kumar Agarwal 12017] 86 taxmann.com 3 (Bombay)

Section 153A, read with sections 132 and 143, of the Income-tax Act, 1961 - Search 'and seizure -Assessment in case of (Scope of) -Whether assessment under section 153A can be made only on basis of incriminating material found in search under section 132 - Held, yes - Whether only income related to incriminating documents found during search under section 132 can be considered in assessment under section 153 A - Held, yes - Assessing Officer as a result of search conducted under section 132 on assessee framed assessment of assessee under section 143(3) read 'with section 153A and made additions under sections 68 and 14A to his income - Tribunal held that additions were made beyond scope of section 153 A, as no incriminating material in support of additions made under section 68 and under section 14A was brought on record by revenue - Whether in peculiar facts

and circumstances of case, no substantial question of law arose from order of Tribunal

- *Held, yes [Paras 32 and 34] [In favour of assessee]*

g. PCIT v. Kurele Paper Mills P. Ltd. (2016) 380 ITR 571 (Delhi)(HC)

H. 153A:Assessment-Search-No incriminating evidence related to share capital issued found during course of search-Deletion of addition was held to be justified. [S.68]

Held, dismissing the appeal, that the order of the Commissioner (Appeals) revealed that there was a factual finding that no incriminating evidence related to share capital issued was found during the course of search as was manifest from the order of the Assessing Officer. Consequently, it was held that the Assessing Officer was not justified in invoking section 68 for the purposes of making additions on account of share capital. There was nothing to show that the factual determination was oerverse. (AY. 2002-2003).

Editorial : The Supreme Court has dismissed the special leave petition filed by the Department against this judgment [2016] 380 ITR 64(St.)

CIT v. All Cargo Global Logistics Ltd [2015] 374 Itr 645 (Bom)

SEARCH AND SEIZURE — ASSESSMENT IN SEARCH CASES — ASSESSMENT IN PURSUANCE OF NOTICE IN RELATION TO SIX YEARS — SCOPE OF ENQUIRY — FINALISED ASSESSMENT/REASSESSMENT SHALL NOT ABATE — ONLY UNDISCLOSED INCOME AND UNDISCLOSED ASSETS DETECTED DURING SEARCH COULD BE BROUGHT TO TAX IN RESPECT OF THOSE YEARS — INCOME-TAX ACT, 1961, s. 153A

i. CIT v. Gurinder Singh Bawa [2017] 79 taxniaim.com 398 (Bombay)

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of - Proceedings under section 153A were without jurisdiction where no assessments were pending at that time and no incriminating evidence was found during search [Assessment year 2005-06] [In favour of assessee]

Where no assessments were pending at time of the initiation of proceedings under section 153 A and no incriminating material was

found during course of the search, entire proceedings under section 153A were without jurisdiction.

21. As regarding AY 2010-11, even if it is presumed that assessment has abated, the AO cannot initiate proceedings u/s 153A and as such assessment order passed u/s 153A is illegal and without jurisdiction. In any case, as observed by Hon'ble High Court, there is no incriminating material even for FY 2010-11 (AY 2011-12) and as such there is thus no jurisdiction for any additions even on merits.

22. In the light of facts and circumstances clarified above the action of the lower authorities is illegal and bad in law."

10. The ld Authorised Representative further drew our attention to the decision of the coordinate bench in case of Assessee for Assessment Year 2004-05 dated 08.01.2016. He submitted that in para No. 24 of that order the coordinate bench has mentioned that none of the material shows that there is any inflation of the profit in eligible undertaking, they earning more than ordinary profits or suggests higher appropriation of profit. He further stated that on combined reading of para no. 24 it is clear that coordinate bench has held that material found during the course of search was neither tangible nor incriminating to show that there is any escapement of income in the hands of the assessee. He submitted that as it has been held that no incriminating material is found during the course of search which is the finding of the fact recorded by the coordinate bench itself proves that the addition made are not based on any incriminating material. He further stated that even that finding of the ITAT binds this bench. He further referred to the decision of the Hon'ble High Court, which has confirmed the finding of the coordinate bench. He further referred to para No. 25 of the order of the coordinate bench. He further referred to the decision of the Hon'ble High Court in case of Dharampal Satyapal ltd (assessee) dated 21.08.2017 wherein, the above finding of the coordinate bench was

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confirmed. He therefore, stated that the addition is not based on any incriminating material. He further relied upon the decision of the Hon'ble Delhi High Court in CIT Vs. Dharampal Premchand Ltd in ITA No. 512/2016 dated 21.08.2017 in the case of the sister concern, wherein, also it was held that addition cannot be made without any incriminating material. In the end, he vehemently relied upon the order of the ld Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla 308 ITR 573 and further subsequent decisions of Hon'ble Delhi High Court and Mumbai High Court. Therefore, his contention was that there is no incriminating material found during the course of search. He further supported his arguments by citing the decision of the Hon'ble Supreme Court in case of CIT Vs. Sinhgad Technical Educational Society 397 ITR 344 that incriminating material must pertain to the Assessment Year in question. He further referred to the details copies of the seized material to show that all these seized material are part of the regular books of accounts of the assessee.

11. He also refereed to all the seized materials and submitted explanation for them. He stated that they are the average cost of material purchased, suppliers list, stock register, excise returns, quantitative details etc. he stated that all these documents does not have any element of escapement cont of income as they are statutory records as well as part of the regular books of account. He further submitted that addition is not made on these documents at all.

12. He further stated that the statement recorded by the search party of various person also do not show that there is any incriminating material. The statements recorded pertain to the various supervisor and other persons, which shows the regular business activity of the assessee. Even otherwise, he submitted that those statements do not have any thing incriminating material or revelations there in. Even otherwise, he submitted that mere statement could not be said to be an incriminating material.

13. He further stated that none of the documents pertains to the years involved in the impugned assessment years involved in the appeal. He further referred to all the seized documents and took us to the assessment order to show that various addition made do not have any reference to the impugned assessment years involved. He once against reiterated the principles laid down by the Hon Supreme court in case of Sinhgad Technical Education society (supra).

14. In view of this, he submitted that the total assessment made and additions involved therein are not based on any incriminating material found during the course of search. Hence, these additions are not sustainable.

Arguments of the ld CIT DR

15. The ld CIT DR has also submitted a written synopsis on ground No. 1 of the appeal of the assessee as under:-

"Assessee's Ground of Appeal 1

The assessee concern in its Appeal has alleged that the CIT(A) has erred in upholding the validity of issue of notice under section 153A and consequential assessment even though the same is not based on any incriminating material seized during the course of the search.

This claim of the assessee is factually incorrect. Salient Facts of the Case

- *Search and seizure operation u/s 132 was conducted in the case of the assessee concern and other group concerns/individuals on 21.01.2011.*
- *In the course of the search operations, production units of the DS Group situated in the North-Eastern States, namely Guwahati and Agartala were also covered u/ 132/133A.*
- *On the strength of these production centers DS Group are claiming deduction u/s 80IC of the Income Tax act. Pursuant to search, certain facts have emerged which suggest that the claim*

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of deduction under Chapter VIA made by DS companies is grossly inflated. (Ref Para 4/Page2/A))

- *On the basis of information received from the Investigation Wing it is clear that the assessee company has claimed excessive deduction/s 80IB/IC of the Act, by attributing entire value addition to the Guwahati unit, being eligible unit and thereby contravening the provisions of Section 80IA (8) of the Income Tax Act and transferring the goods and services held for the purpose of the eligible units to any other business carried on by the assessee. (Ref Para 6/Page 2/AO)*
- *The detailed flow chart of manufacture/processing impended at Page 4 to 8 of the AO order gives credence to this.*
- *Search revealed that bogus purchase of sandalwood oil. Incriminating material was seized in the form of documents, which proved beyond doubt that assessee concern was inflating purchases. This was also reinforced by the statements recorded during the course of the search.*
- *Tabulation of Incriminating material seized & used for making addition by AO*

Sr No	Reference to seized Material	Reference in AO order
1.	Annexure A-l/page 52	Para 98/Page 43/AO. Scanned copy on Page 61/AO
2.	Annexure A-ll/Page 61-71	Para 107/Page 48/AO Para 143/page 71/AO
3.	Annexure A-16/Page 7 to 12	Para 107/Page 48/AO
4.	Annexure A-16/Page 2 to 6	Para 107/Page 49/AO
5.	Annexure 14/Page 72	Para 107/Page 49/AO Page 72/AO
Sr No	Annexure A-ll/page 87-90	Para 107/Page 49/AO Page 72/AO

7.	*Annexure A-ll/page 87 to 90*	*Para 107/Page 49/AO*
8.	*Annexure A-ll/page 83-86*	*Para 107/Page 49/AO*
9.	*Annexure A-15/page 79-89*	*Para 107/Page 49/AO*
10.	*Stock Inventory drawn on 21.01.2011 during search at DSL/Perfumery Division*	*Page 49 & 50/AO*
11.	*Annexure A-l/Page 54-56*	*Page 64-66/AO (scanned copy of original documents)*

- *> Statements recorded during course of search u/s 132(4) or 131 during survey.*
- *Corroborating evidence that proves inflation of purchases & transfer of goods to units in Guwahati & Agartala for claim of excess deduction u/s 80IA/IC.*

  - *Search conducted at M/s Surya Vinayak Inds Ltd.*
  - *Excise Records of DSL, Perfumery division.*
  - *RG 23A part I containing stock account of inputs for use in relation to manufacture of final products*

AO Finding: (Page 92/AO)

Considering the foregoing factual matrix, it is abundantly clear that the said transactions have been affected with a coloring device only to provide bogus purchase entries to Dharampal Satyapal Ltd in the form of bogus bills of sandalwood oil/sandalwood oil) C) and sandalwood oil (SU)..

CIT (A) Finding (Ref para 4/page 72-73)

Ld AR has taken the grounds for various AYs upto the AY 2010-11 that no addition can be made u/s 153A where there is no link between any material/documents found as a result of search u/s 132 of Income Tax Act and the addition. Ld Ar has mentioned these arguments under various grounds. I have considered this argument. Firstly, this will not apply for AY 2011-12 being search year and AY 2010-11 where there

was time available for issuing notice u/s 143 (2) and the notice u/s 143(2) could not be issued due to occurrence of search and jurisdiction of assessment was merged with section 153A.

Secondly, for all AYs there are additions on account of bogus purchase of sandalwood oil on the basis of seized documents and various evidences gathered during search and post-search inquiry. Therefore, the AO has the justification to assess the total income irrespective of the seized material, as there was one addition on account of evidence gathered during the search. This view is supported by the decision of the Hon'ble Delhi High Court in the case of Anil Kr Bhatia (2012) 24 taxman.com 98 where Delhi High Court has given the jurisdiction to the AO to assess total income for all AYs Accordingly, these jurisdictional grounds are dismissed. I would not discuss the jurisdictional argument on various substantive grounds to avoid repetition.

[B] On Law

Several High court judgments have held that statement u/s 132(4) or u/s 131 is good evidence. It has been categorically held by the Jurisdictional High Court that addition made on the basis of statements recorded during course of search cannot be deleted without proving statements to be incorrect. In fact, Supreme Court has also dismissed SLP challenging the judgment of the High Court where the High court has held that statement made under section 133A could be relied upon for purpose of assessment.

1. Kishore Kumar Vs CIT (62 taxmann.com 215, 234 Taxman 771)

(Copy Enclosed)

where Hon'bie Supreme Court; dismissed SLP against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents. B Kishore Kumar Vs CIT (52 taxmann.com 449) Madras High Court confirmed (Copy Enclosed)

2 Bhagirath Aqqarwal Vs CIT 31 taxmann.com 274. 215 Taxman 229. .... 351 ITR 143) Copy Enclosed)

where Hon'ble Delhi High Court held that an addition in assessee's income relying on statements recorded during search operations cannot be deleted without proving statements to be incorrect.

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3 Smt Davawanti Vs CIT (2016) 175 taxmann.com 308 (Delhi) 2017 245 Taxman 293 (Delhi)/2017 390 ITR 496 290 CTR 361 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

4 M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIoL-238- SC-IT) (Copy Enclosed!

where Hon'ble Supreme Court dismissed SLP challenging the judgment, whereby the High Court had held that statement made u/s 133A could be relied upon for purposes of assessment, in absence of any contrary evidence or explanation as to why such statement made was not credible.

M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-188- HC-MUM-IT) Bombay High Court confirmed (Copy Enclosed)

5. Green view Restaurant Vs ACIT (2003) 133 Taxman 432 (Gauhati 2003 263 ITR 169 (Gauhati)/ 20003 185 CTR 651 Gauhati (Copy Enclosed)

> *"From facts, it was clear that there was a delay on the part of the appellant and its partner in retracting the statements recorded. The*™ attention of the Court had also not been drawn to any material on record to establish that any attempt was made on behalf of the appellant to prove the allegation of inducement, threat or coercion through the witnesses. Having examined the impugned orders rendered by the Tribunal with the reasoning in support of its finding against the complaint of threat, inducement or coercion, no good and sufficient reason was found to differ from it. In the facts and circumstances of the case, having regard to the materials on record, the appellant had failed to establish that the statements of its partner had been recorded in the course of the search by using coercion, threat or inducement. Hence, the contentions advanced by the appellant in that regard were dismissed and the conclusion of the Tribunal on that count was affirmed." [Para 9]*

6. Raj Hans Towers TP.) Ltd. Vs CIT (56 taxmann.com 67, 230 Taxman 567, 373 ITR 9) (Copy Enclosed)

where Hon'ble Delhi High Court held that where assessee had not offered any satisfactory explanation regarding surrendered amount being not bona fide and it was also not borne out in any contentions raised before lower authorities, additions so made after adjusting expenditure were justified (SURVEY CASE)

7. PCIT Vs Avinash Kumar Setia 2017 81 taxmann.com 476 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that Where assessee surrendered certain income by way of declaration and withdraw same after two years without any satisfactory explanation, it could not be treated as bona fide and, hence, addition would sustain (SURVEY CASE).

- *Supreme Court had held, in P.R. Metiani v. Commissioner of Income-tax(2006) 287 ITR 209 (SC) that:*

  18. Section 132 is a Code in itself. It provides for the conditions upon which and the circumstances in which the warrants of authorization can be issued. Sub-section (2) authorizes the authorized officer to requisition the services of any police officer or of any officer of the Central Government or of both to assist him for all or any of the purposes for which the search is conducted. Under sub-section (4) the authorized officer can during the course of search or seizure examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such persons during such examination may thereafter be used in evidence in any proceeding under the Act."

- *The finding of CIT(A) in the case of Dayawanti v CIT is also pertinent:*

  23. This court is of opinion that the ITAT's findings do not reveal any fundamental error; calling for correction. The inferences drawn in respect of undeclared income were premised on the materials found as well as the statements recorded by the assessees. These additions therefore were not baseless. Given that the assessing authorities in such cases have to draw inferences, because of the nature of the materials - since they could be scanty (as one habitually concealing income or indulging in clandestine operations can hardly be expected to maintain meticulous books or records for long and in all probability be anxious to do away with

such evidence at the shortest possibility) the element of guess work is to have some reasonable nexus with the statements recorded and documents seized. In this case, the differences of opinion between the CIT (A) on the one hand and the AO and ITAT on the other cannot be the sole basis for disagreeing with what is essentially a factual surmise that is logical and plausible. These findings ITA 357/2015 & connected matters Page 26 do not call for interference. The second question of law is answered again in favour of the revenue and against the assessee.

- *It would also be relevant to mention that the case of Kabul Chawla or Meeta Gutgutia is not applicable to the facts of the case for AYs 2005-06 to A.Y 2010-11 on account of the following:*

  - ✓ *Incriminating documents were found during course of search & were the basis of addition made by the AO.*

- ✓ *Search at all the premises of the Assessee concern revealed that the assessee was manufacturing chewing tobacco, Zarda under brand names like 'Rainiqandha' at the Noida factory premises. However, in order to claim deduction u/s 8QIB/IC the assessee concern sent the final product for packing to Guwahati and Aqartala factory premises. This is reported in the report of the Investigation Wing and is discussed at length in the order of the AO.*
- ✓ *Statements were recorded during the course of search at the premises of the assessee concern and search/survey operations at the premises of the associate concerns. These in corroboration with the seized material proved beyond an iota of doubt that purchases of sandalwood were being inflated, thus affecting the profits generated.*
- ✓ *As a result of the blatant attempt to reduce profits by inflation of purchases and redirecting finished goods to Guwahati & Agartala to claim benefit of 80IB/80IC, certain complexity was found as a result of which reference u/s 142(2A) was made to the Special Auditor. The Special Auditor pointed out several inconsistencies/falsities in the Accounts which were taken cognizance of while finalizing the assessment order.*
- ✓ *The assessee is placing reliance on the order of the Delhi High Court in the following cases and on the following issues:*

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- *PCIT Vs. Dharampal Premchand in ITA 512/2016 This is an associate concern and the facts of this case cannot be applied to the facts of the case in M/s Dharampal Satyapal Ltd as every case is distinct and separate & the facts of one case cannot be applied to the facts of the instant case before the Tribunal*
- *PCIT Vs Dharampal Satvaoal in ITA 544/2016 is on the issue of cancellation of assessment under section 147/148 and has no bearing to the facts of the instant case before the Tribunal.*

✓ *Supreme Court in Commissioner of Income Tax. v. Durga Prasad More (1971) 82 ITR 540 (SCI and Mumati Daval v. Commissioner of Income Tax (1995) 214 ITR 801 (SC).*
✓ *judgment of the Supreme Court in CIT v. H.M. Esufali H.M. Abdulali [1973] 90 ITR 271 is relevant here.*

Without prejudice to the arguments taken above it is submitted as under:

[A] The provisions of section 153A are clear and do not mandate requirement of incriminating documents for purpose of finalizing assessment or reassessment under section 153A.

153A unambiguously states that

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

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income………

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

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

From a bare reading of the provisions of 153 A it is clear that the basic pre-requisite to issue notice under section 153A is that a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A. In the instant case there is no dispute that search was initiated under section 132 of the Income Tax Act. So, the A.O is empowered by the Income Tax Act and its provisions under section 153A to assess the 'total income' of the assessee which includes

undisclosed income.

[B] Principles of Interpretation of a Taxation Statute mandate that it is not permissible to construe any provision of a statute, much less a taxing provision, by reading into it more words than its contains.

With regard to interpretation of Section 153A/153C, the Revenue also submits that a taxing statute is to be strictly construed and there is no equity in a taxing statute.

The Income Tax Act is a self-contained code, and provides machinery for imposing and collecting tax, obtaining reliefs and appeals against improper orders etc. While tax law is a part of the general law, it has got its own distinct features. There are some special provisions which are attracted while interpreting tax laws.

The need of interpretation arises only when the words used in the statute are on their own term, ambivalent and do not manifest the intention of legislature. [Keshavji Ravji & Co. v/s. CIT - [(1990) 183 ITR 1 (SC)].

Similarly rule of interpretation would come into play only if there is doubt with regard to the express language used. [Pandian Chemicals Ltd. v/s. CIT - [(2003) 262 ITR 278 (SC)].

Literal rule : Language of Statute should be read as it is :

The first and the most elementary rule of construction is that it is to be meaning if they have acquired one, or otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. Krishi Utpadan Mandi Samiti v. UOI (2004) 267 ITR 460 (All.) .

Pure, simple and grammatical sense of language used by Legislature is best way of understanding as to what Legislature intended. Coal Mines Officers' Association of India v. UOI (2004) 266 ITR 429 (Cal.).

If the language of the statute is clear and unambiguous, words must be understood in their plain meaning. The wordings of the Act must be construed according to its literal and grammatical meaning, whatever the result may be.

While interpreting tax statute, the function of the court of law is not to give words in the statute a strained and unnatural meaning to cover and extent its applicability to the areas not intended to be covered under the said statute. Vidarbha Irrigation Dev. Corpn. v/s ACIT [(2005) 278 ITR 521 (Bom)].

It is not permissible to construe any provision of a statute, much less a taxing provision, by reading into it more words than its contains CIT v/s. Vadilal Lallubhai [(1972) 86 ITR 2 (SC)]

Literal construction means that there is no room for any intendment. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

ICAI vs. Price Waterhouse, (1997) 90 Com p. Case 113, 140, 141 (SC)

State of West Bengal vs. Scene Seven P. Ltd. AIR 2000 SC 3089, 3094 Harbajan Singh vs. Press Council of India (2002) 3 SCC 722, 727.

District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496.

Strict construction:

A tax is imposed for public purpose for raising general revenue of the state. A taxing statute is to be strictly construed. Lord Hasbury and Lord Simonds stated: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."

It is settled law that a taxation statute in particular has to be strictly construed and there is no equity in a taxing provision Lakshmi Bai v/s. CIT - [(1994) 206 ITR 688, 691 (SC)].

> *"The subject is not to be taxed without clear words' for that purpose "*
>
> *CIT vs. Provident Inv. Co. Ltd. (1954) 32 ITR 190 (SC)*
>
> *J.K. Steel Ltd. vs. UOI AIR 1970 SC 1173*
>
> *CIT vs. Indo Oceanic Shipping Co. Ltd. (2001) 247 ITR 247 (Bom)*
>
> *Hansraj & Sons vs. State of J & K (2002) 6 SCC 227, 237-39*

In A.V. Fernandez: v/s. State if Kerala, [AIR 1957 SC 657] His Lordship Bhagwati 3. has stated the principle of taxing laws as follows :

> *"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of law. If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."*

[C] The following judgments of various High Courts, including jurisdictional High Court clearly hold that assessment u/s 153A need not necessarily be based on incriminating material

- *Highlights of the case of Anil Kumar Bhatia 24 Taxmann.com 98 dated 07.08.2012 of Hon'ble Delhi High Court (Page No. 1 to 4 of Paper Book no. 1)*

- *Discussion of amendment in the Act with effect from 01.06.2003 and introduction of new section 153A and circular No. 7/2003 of CBDT in Para 17 of the order.*

- *Jurisdiction of Assessing Officer u/s 153A and procedure thereon*

"A perusal of Section 153A shows that it starts with a non obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.200' 3. These potions the applicability of which has been excluded, relate to returns, assessment and reassessment provisions. Prior to, the introduction of these three Sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as 'block assessment' because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as 'block period'. Though a single assessment order was to be passed, the undisclosed income was to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA (2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was r made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A*

and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place." (Para 18)

- *Assessing Officer is bound to issue notices to the Assessee to furnish returns for 6 Assessment years. Assessing Officer is empowered to assess or re-assess the total income including undisclosed income of the Assessee*

"Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the Assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which 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. This means that there can 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."(Para 19)'

- *Assessing Officer is empowered to reopen the proceedings u/s 143(l)(a) or u/s 143(3) to re-assess the total income, taking note of the undisclosed income, if any. The assessing officer is entrusted with the duty of bringing to tax the total income of an Assessee whose case is covered by Section 153A, by even making re-assessments*

"A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(l)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section

153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an Assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be."(Para 20)

- *The Assessing Officer has to determine not merely the undisclosed income of the Assessee, but also the 'Total Income' of the Assessee in whose case a search or requisition has been initiated*

"Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the Assessee, but also the 'total income' of the Assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the Assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the Assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the Assessee which would include both the income declared in the returns, if any, furnished by the Assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending

completion when the search is" initiated or requisition is made, they will abate making way for the ' Assessing Officer to determine the total income of the Assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the Assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made."(Para 21)

"In the light of our discussion', \ve'fihd it difficult to uphold the view of the Tribunal expressed in Para 9.6 of its order that since the returns of income filed by the Assessee for all the six years under consideration before the search took place were processed under Section 143(l)(a) of the Act, the provisions of Section 153A cannot be invoked. The Assessing Officer has the power under Section 153A to make assessment for all the six years and compute the total income of the Assessee, including the undisclosed income, notwithstanding that the Assessee filed returns before the date of search which stood processed under Section 143(1) (a)."(Para 22)

- *Highlights of the case of Fiiatex India Ltd., ITA No. 269/2014 and CM No. 10077/2014 dated 14.07.2014 of Hon'bie Delhi High Court*

The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Fiiatex India Ltd. (269/2014 and CM No. 10077/2014) by Hon'ble Delhi High Court vide order dated 14-07-2014,

The Question of law referred before Hon'bie Delhi High Court in this case is as under:

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"Whether the Tribunal erred on facts and in law in not holding that recomputation of book profit, de-hors any material found during the course of search, in the order passed under section 153A of the Act was without jurisdiction, being outside the scope of proceedings under that Section"

The Hon'ble Delhi High Court has decided in Para 2 that "The contention raised by the appellant-Assessee is that the addition, which is the subject matter of questions No.(ii) and (Hi), was/is not justified in the assessment order under Section 153A, as no incriminating material was found concerning the addition under Section 115 JB of the Act. The said argument has no substance and has to be rejected. Under Section 153A of the Act, the additions need not be restricted or limited to the incriminating material, which was found during the course of search. There cannot be multiple assessments, once Section 153A of the Act is applicable. Section 153A (1) postulates one assessment; computing the total income of six assessment year. Immediately proceeding the assessment year relevant to the previous year in which search was conducted or requisition was made. Total income is assessed or reassessed n the order under Section 153A of the Act and the Section applies notwithstanding Sections 139, 147, 148, 149, 151 and 153 of the Act."

Further Hon'ble Delhi High Court has clarified the decision of Chetan Dass, Laxman Dass decided earlier by observing in Para 3 that "Learned counsel for the appellant assessee has relied on the decision of this Court in CIT \/s. Chetan Dass laxman dass, (2012) 254 CTR (Del) 392. The said decision notices insertion of Section 153A by Finance Act, 2003, its purpose and object, had the earlier proceedings for block assessment under Chapter XIVB, the difficulties and the legal issues which had arisen on the difference between regular assessment and block assessment. It is in this context that in the case of Chetan Dass Laxman Dass (supra), the Division Bench, [to which one of us (Sanjiv Khanna, J) was a party], has observed that Section 153A (1) (b) provides for assessment or re-assessment of the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. It was emphasized that there is no condition in this Section that the additions should be strictly made on the basis of evidence found during the course of the search or other post search material or information available with the Assessing Officer, related to the evidence found. Subsequent observation to the effect that the assessment under Section 153A should not be arbitrary or made without any relevance or nexus with the seized material, is basically clarificatory that the assessment under section 153A

> *emanates and starts on the foundation of the search, which is the jurisdiction precondition."*

After that Hon'ble Delhi High Court has discussed the case of Anil Kumar Bhatia decided by Hon'ble Delhi High Court earlier and quoted from Para 18 & 22 of this order (mentioned supra) and finely decided in Para 4 of this order that after examination of section 153A the submission/contention of the appellant has no merit.

- *Highlights of the case of Raj Kumar Arora, ITA No. 56/2011 dated 11.07.2014 of Hon'ble Allahabad High Court*

The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Raj Kumar Arora, ITA No. 56/2011 by Hon'ble Allahabad High Court vide order dated 11-07-2014.

The Question of law referred before Hon'ble Allahabad High Court in this case is as under:

> *"Whether ITAT has erred in law in dismissing the appeal of the department and holding that no addition can be made for gift in assessment completed under section 153A unless some incriminating material was found during the course of search, thus ignoring the provisions of law as contained in section 153A which required the Assessing Officer to Assessee or reassess the total income as defined n section 2(45) of the income Tax Act, 1961.*
>
> *Whether the order of the ITAT is perverse in as much as it has ignored the provisions of law as contained in proviso (c) of sub-sec(l) 153A which required the Assessing Officer to Assessee or reassess the total income."*

Hon'ble Allahabad High Court has decided at the end in favour of revenue which is reproduced as under:-

> *"Consequently, we are of the opinion that in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed, which were subsisting when the search was made, the Assessing Officer would be competent to reopen the assessment proceeding already made and determine the total income of the Assessee. The assessing officer, white exercising the power under section 153A of the Act, would make assessment and compute the total income of the Assessee including the undisclosed income, notwithstanding the Assessee had filed the return before the date of search which stood processed under section 143(l)(a) of the Act. In the light of the aforesaid, the reasons given by the Tribunal that no material*

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was found during the search cannot be sustained since we have held that the Assessing Officer has the power to reassess the returns of the Assessee not only for the undisclosed income, which was found during the search operation but also with regard to the material that was available at the time of the original assessment. We find that the Tribunal dismissed the appeal while relying upon the decision of a Coordinate Bench of the Tribunal in the case of Anil Kumar Bhatia Vs. ACIT (2010) 1 ITR (Trib.) 484 (Delhi). We find that the said decision of the Coordinate Bench of the Tribunal was set aside by the Delhi High Court in Commissioner of Income Tax 1/s. Anil Kumar Bhatia (2012) 24 taxmann.com 98(Delhi). We find that the Tribunal only dismissed the appeal on this legal issue and had not considered the matter on merits.

For the reasons stated aforesaid, the Tribunal has committed an error in dismissing the appeal of the Revenue. We, accordingly, set aside the order of the Tribunal and remit the matter back to the Tribunal to reconsider the appeal of the Department afresh on merit. The question of law is answered accordingly."

- *Highlights of the case of Canara Housing Development Company, ITA No. 38/2014 dated 25.07.2014 of Hon'bie Karnataka High Court*

The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Canara Housing Development Company, ITA No. 38/2014 by Hon'ble Karnataka High Court vide order dated 25-07-2014. In this case the Hon'ble Court has also observed that the decision of Hon'ble special bench in the case of All Cargo Global Logistic Ltd. dated 06/07/2012 is not correct.

The Question of law referred before Hon'ble Karnataka High Court in this case is as under:

"When once the proceedings under Section 153A of the Act is initiated, whether the Commissioner of Income Tax can invoke the power under Section 263 of the Act to review the order of assessment passed by the Assessing Authority?"

At the end the Hon'ble Court has decided in Para 11 that "the Tribunal has of proceeded on the assumption by virtue of the judgment of the special bench of the Mumbai, the scope of enquiry under Section 153A is to be confirmed only to the undisclosed income unearthed during search and if there is any other income which is not the subject: matter of search, the same cannot be taken into consideration. Therefore, the revisionai authority can exercise the power under Section 263. In the entire scheme of 153A of the Act, there is no prohibition for the assessing authority

to take note of such income. On the contrary, it is expressly provided under section 153A of the Act the Assessing Officer shall assessee or reassess the "total Income" of six assessment years which means they said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the commissioner has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and that assessing authority shall take note of the sad income also in determining the total income of the Assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings."

- *Recently same view is also expressed by Hon'ble Delhi Bench in the case of Apoorva Extrusion Pvt. Ltd., ITA No. 3308/Del/2010 for the A.Y. 2002-03, vide order dated 09.10.2014. The relevant portion is mentioned as below:*

"5. In order to answer whether the quashing of the initiation of assessment for the year under consideration on the given count is valid or not, we need to consider the mandate of the relevant part of sub-section (1) of section 153C, which reads as under:

" Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person in accordance with the provisions of section 153A….”

6. A bare perusal of the above provision indicates that where the AO is satisfied that any " books of account or document " apart from money, bullion or jewellery etc., seized from the person searched belong to a person other than the person searched u/s 153A, then such books of account or documents etc. shall be handed over to the AO having jurisdiction over such other person and the AO of such other person shall proceed to " assess or reassess income of such other person in accordance with the provisions of section 153A. thus, the effect of sub-section (1) of section 153C is that where all the necessary ingredients of this

sub-section are satisfied, the matter of making assessment or re-assessment goes back to section 153A. Since the assessment or reassessment of such other person has to be done in accordance with the provisions of section 153A, let us examine the prescription of the relevant parts of section 153A(1), which is as under :- "Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139; (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:"

7. On circumspection of the clause (a) of the above provision, it is amply clear that the AO shall issue notice to such person requiring him to furnish the assessment years as referred to in clause fbj and, the latter clause, provides that the Assessing Officer shall 'assesss or reassess the total income of six assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made/ When we read section 153C in conjunction with section 153A of the Act, the position which follows is that if the books of account or document etc.. belonging to the other person are found during the course of the person searched, then the assessment or re-assessment of such other person is required t o be made of 'six assessment years immediately preceding assessment years relevant to previous year7 in which such search is conducted or requisition is made. Section 153C is a jurisdictional provision, which on the fulfilment of the stipulated conditions, enables the making of assessment or reassessment of such other person in accordance with the provisions of section 153A. There is naturally no separate provision under the Act nor there do any for making the , assessment of such other person for the reason of the bodily lifting of the provisions of section 153A in section 153C of the Act for this purpose. Since section 153A specially provides for assessment or re-assessment of six- assessment years

preceding the year of search, and in view of section 153C adopting the provisions of section 153A, there can be no question of restricting the jurisdiction of the AO to any lesser number of years for which the incriminating material is found. When we read section 153C in a holistic manner, it becomes evident that the triggering point for assuming jurisdiction on the person other than the person searched u/s 153C is the finding of any money, bullion, jewellery or books of account or document from the person searched. Once any money, bullion, jewellery or books of account or document seized or requisitioned from the person searched are found to be belonging to the other person, then, the assessment or reassessment of such other person is to be necessarily completed in terms of section 153A, which in no uncertain terms refers to six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Further, the use of the word 'shall' in section 153A immediately before clause fa) has left nothing to doubt that the assessment is required to be made for all the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. As the legislature has not made the making of such assessment or reassessment for all the six assessment years subject to any condition of finding of any incriminating material or otherwise, we are unable to accept such contention of the Ld. AR which, if accepted, would lead to legislating a proposition which is obviously not tenable.

8. We can reject the contention of the Assessee from another angle as well. It is relevant to note that the expression "books of account or documents' employed in section 153C (1) is accompanied by the works "money, bullion, jewellery or other valuable articles or things'. It is axiomatic that 'money-or jewellery' etc. belonging to the other person found from the premises of the person searched cannot per se be related to a particular assessment year. If we test the contention of the Ld. AR on the touchstone of 'money or jewellery' etc., belonging to the Assessee found from the person searched, then it will be very difficult at the stage of initiation of assessment or reassessment of the other person to relate it to a particular year, there by jeopardizing the whole scheme of assessment pursuant to search or requisition. To a specific query it was candidly accepted bv the Ld. AR that in items of section 153A, the initiation of assessment or reassessment for all the six assessment years in the case of person searched is not dependent on the findings of any incriminating material. It is beyond our comprehension that when such a course of action is permissible u/s 153A in the case of

person searched, then how can there be any bar on the initiating or making of assessment or reassessment for some of the years of other person, more so. when section153Cfl) has been expressly made to accord with the provisions of section 153A. We. therefore, jettison the-contention urged on behalf of the Assessee as sans merit.

- *Recently same view is also expressed by Hon'ble ITAT Banglore Bench in the case of Nandini Delux vs ACIT, 54 Taxmann.com 162 vide order dated 05.12.2014. The relevant portion of Para 6.3.9 of the order is mentioned as below:*

> *"Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Co. (supra), we hold that once the assessment is reopened, the Assessing Officer gan take note of the income disclosed in the earlier return, any undisclosed income found during the course of search and also any other income which is not disclosed in the earlier return of income OR which is not unearthed in the course of j search under section 132 of the Act, in order to find out and determine what is the 'total income' of each year and then pass the order of assessment. The grounds of appeal raised by the Assessee at S. Nos. 2 to 5 are accordingly dismissed for all four assessment years 2005-06 to 2008-09."*

- *Same view is also expressed by Hon'ble High Court of Andhra Pradesh in the case of Gopal Lai Bhadruka vs. DCIT 346 ITR 106 dated 15.12.2011, where Hon'ble High court has held as under (page no.17 to 21 of Paper Book no. 3):*

> *"The question of law agitated before the Tribunal was whether, for the purpose of computing income under section 153A/153C, the Assessing Officer was required to confine himself only to the material found during the course of search operations. The Tribunal held against the Assessees.*
>
> *Held that by virtue of section 158B-I the various provisions of Chapter XIV-B are made inapplicable to proceedings under section 153A/153C. The effect of this is that while the provisions of Chapter XIV-B limit the inquiry by the Assessing Officer to those materials found during the search and seizure operation, no such limitation is found insofar as section 153A/153C is concerned. Therefore, it follows that for the purposes of section 153A/153C the Assessing Officer can taken into consideration material other than what was available during the search and seizure operation for making an assessment of the undisclosed income of the Assessee."*

- *Recently Hon'ble ITAT Hyderabad Bench in the case of Smt. M. Vijaya & Ors. Vs. DCIT dated 06.06.2014 has followed this order and held that even if there is no incriminating material to indicate any undisclosed income or income escaped assessment during the original assessment completed u/s 143(3), the AO is bound to make assessment u/s 153A for all these assessment years.*

Reliance is also placed on the following recent orders that strengthen the case of Revenue:

1. E.N. Gopakumar Vs CIT (2016) 75 taxmann.com 215 (Kerala))(Copy Enclosed)

where Hon'ble Kerala High Court held that assessment proceedings generated by issuance of a notice under section 153A(l)(a) can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 on basis of which notice was issued under section 153A(l)(a).

The above order has been passed after considering cases of

(i) CIT v. Kabul Chaw la 120161 380 ITR 573/ f20151 234 Taxman 300/61 taxmann.com 412 (Delhi) (para 4),

(ii) CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd. [2015] 374 ITR 645/232 Taxman 270/58 taxmann.com 78 (Bom.) (para 4),

(iii) Principal CIT v. Kurele Paper Mills (P.) Ltd. [2016] 380 ITR 571 (Delhi) (para 4),

(iv) CIT v. Lancy Constructions [2016] 383 ITR 168/2.37 Taxman 728/66 taxmann.com 264 (Kar.) (para 4),

(v) CIT v. ST. Francies Clay Decor Tiles [2016] 240 Taxman 168/70 taxmann.com 234 (Ker.) (para 5) and

(vi) CIT v. Promy Kuriakose [2016] 386 ITR 597 (Ker.) (para 5).

2. CIT Vs Kesarwani Zarda Bhandar Sahson Alld. TITA No. 270 of 20141 (Allahabad)

where Hon'ble Allahabad High Court held that Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment

3. CIT Vs St. Francis Clay Decor Tiles f385 ITR 624) (Copy Enclosed)

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where Hon'ble Delhi Kerala Court held that notice issued under section 153A -return must be filed even if no incriminating documents discovered during search

4. *Smt Davawanti Vs CIT (2016) 75 taxmann.com 308*

(Delhi)/r20171 245 Taxman 293 (Delhi)/r20171 390 ITR 496 Delhi)/r20161 290 CTR 361 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that Where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified."

16. The ld CIT DR submitted a chart showing various seized papers where in 11 set of papers were mentioned and submitted that it is the tabulation of incriminating material seized and used for making addition by ld AO. She has mentioned the reference of those papers in the assessment order too.

17. She further stated that the order of the coordinate bench and Hon High court on which the assessee is placing huge reliance was with respect to the provisions of section 147 of the Income Tax Act and not u/s 153A of the Act. She submitted that in that particular order the coordinate bench was concerned with the reopening of the assessment. She further submitted that there is a vast difference between the provisions of section 147 and 153A of the Act.

18. She further referred to the page No. 52 (page No. 55 of paper Book-II) to show that particular paper dated 30.11.2010 clearly shows that there is an overbilling of sandalwood oil compounds from Surya Vinayak Industries. She further referred to that page and showed that there is a detail of cash payment received by the assessee by overbilling the price. Therefore, she submitted that assessee purchases sandalwood oil from two companies and booking higher amount then payable to them for

sandalwood oil. She further submitted that these apply for all the years involved in these appeals, as assessee is purchasing material from these parties for a long time. She submitted that it is not necessary that revenue should have found material for each year when it is established that the assessee is booking the purchases price and receiving cash back from suppliers. She stated that though the paper relates to AY 2011-12 but the practice of overbilling is continuing for several years.

19. She further stated that the surrounding circumstances of the case show that the seized material is incriminating in nature. She referred to the statements recorded of seven employees of the assessee and other parties. She further stated that simultaneous searches were also conducted at M/s. Surya Vinayak Industries Ltd and that is the corroborative material, which proves inflation of purchases and transfer of goods to units in Guwahati and Agartala for claim of excess deduction u/s 80IA. She further referred to the excise records of the perfumery division to show that assessee has purchased sandalwood oil from Surya Vinayak Industries and it is bogus. She referred to the page No. 91 of the assessment order wherein, the summons were issued to the owner of M/s. Surya Vinayak Industries Ltd and despite that; they did not turn up for examination. She also referred to page No. 292 to 301 of the order of the ld CIT (A) where complete statements of the quantity purchased of sandalwood oil from Surya Vinayak Industries and Allied perfumer Ltd for each of the year has been tabulated. Therefore, she submitted that from the seized material it is apparent that the bogus purchase of sandalwood oil has been made from Surya Vinayak Industries and Allied perfumers Pvt. Ltd. Therefore, she submitted that there is enough incriminating material found during the course of search. She further relied upon the several decision mentioned in her written submission. She further stated that the decision relied upon by the ld AR in case of CIT Vs. Kabul Chawla and Meeta Gutgutia (supra) do not apply to the facts of the case for the simple reason that

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incriminating material were found during the course of the search. She further stated that the search at the premises of the assessee revealed that the assessee was manufacturing the Pan Masala at the Noida factory, however, only packing etc was made at Eligible Units in Guwahati and Agartala. She referred that this the report of the investigation wing and discussed at length in the order of the ld AO. She further stated that statement of several persons were recorded which proves beyond doubt that purchases of sandalwood oil is inflated. She further stated that auditor appointed u/s 142(2A) has also shown the serious discrepancies in the book of account of the assessee.

Rejoinder of the assessee

20. The ld Authorised Representative submitted that the ld AO himself has granted higher deduction to the assessee by passing order u/s 154 of the Act u/s 80IC of the Act then what was claimed by the assessee. He referred to the order dated 28.11.2014 for Assessment Year 2005-06 wherein, what addition has been made or disallowance made by the ld Assessing Officer has once again. He placed the order passed by the ld AO u/s 154 or the appeal effect orders for all those years. He therefore, submitted that all adjustments of sandalwood purchases alleged to be bogus are merely an arithmetical exercise as the assessee has been granted deduction on the addition already made.

21. He further submitted that the addition u/s 153A in case of concluded assessment can be made only if there is an incriminating material. It cannot be inferred from the surrounding circumstances. He submitted that there is no evidence available, which even remotely proves that the assessee has debited the bill and has not received sandalwood. Further, there is no evidence that there is over invoicing of purchases of material by the assessee in theses years.

22. Even based on seized material he submitted that there is no over invoicing. He referred to the seized material relied upon by the ld CIT DR placed at page No. 55 of paper book and stated as under :-

a. He submitted that the paper is dated 30.11.2010. No date on the paper pertain to Assessment Year 2005-06 to 2009-10. He referred to the Hon'ble Supreme Court decision in Sinhgad Education Technical Society (supra) and submitted that addition can be made only in the assessment year to which the paper pertains.
b. He further submitted that even otherwise the assessee has received the excess sum and therefore, it cannot be inferred from that paper that assessee has received over invoiced bogus bills of purchase of sandalwood oil from Surya Vinayak Industries ltd or Allied Perfumer Pvt. Ltd . He submitted that in case of over invoicing of the bills, the receiver of the bill first pays than the supplier returns the money generally. In the present case, if the paper is to be believed as it is, assessee has received the money, and not that assessee has to pay the money, that assessee has received higher sum high compared to the purchases. Therefore, this paper does not prove the overbilling of the material.
c. He further submitted that assessee is producing goods in eligible units, which are eligible for tax holidays, why the assessee will purchase goods, which are showing higher purchase prices then the actual price when its full income is exempt. This issue is not answered by revenue or ld CT DR.
d. The assessee as well as the supplier has denied the alleged fact of over invoicing.
e. On the over invoiced bill the duty element and VAT element is chargeable, there is no allegation that those goods are over invoiced.
f. Further as the unit of the assessee manufacturing are free from excise duty, the amount of duty paid on procurement of goods which is on the higher price than the actual sale price as alleged than there is over invoicing of the purchase of material, it will put

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assessee is great financial loss as the duty paid by the assessee on over invoiced amount shall become the cost of the assessee. Hence, no prudent businessperson will do that.

23. He further referred to para no. 98 of the assessment order wherein it has been stated that even that paper which is referred to by the ld CIT DR was not found and seized from the assessee but from other party and therefore, when the Assessing Officer himself is saying that this paper is found from the other party then the action should have been taken u/s 153C of the Act and not u/s 153A of the Act.

24. He further referred to the para No. 1(iii) of assessment order wherein, it is mentioned that this paper was drawn by Surya Vinayak Industries ltd and was handed over to Shri Rajiv Gupta and therefore, excess cash was paid as per cash given by M/s. Surya Vinayak Industries Ltd to M/s. Dharampal Satyapal Ltd for the cheques received from M/s. Dharampal Satyapal Ltd. He submitted that this fact is recorded by the ld Assessing Officer is contrary to the facts alleged. He submitted that in fact, the paper shows and as corroborated by the ld Assessing Officer that assessee has received more cash from Surya Vinayak Industries ltd then the cheques given. Therefore, according to him if assessee is purchasing sandalwood compound by receipt of bogus bills from Surya Vinayak Industries then that party would not have paid higher cash of such a high magnitude to the assessee. He submitted that the excess amount paid by that party is to the tune of Rs. 12.54 crores. He further referred that at the bottom of the page the amount of excess received is shown to be of Rs. 9.49 crores. He further submitted that Surya Vinayak Industry has denied having issued any bogus/ over invoiced bills to the assessee.

25. He further stated that the ld CIT (A) in his order has not stated that assessee has purchased the bogus bills for sandalwood compound from those parties. He submitted that ld CIT(A) himself has stated that whatever quantity has been built by those parties has been received by

the assessee and consumed too otherwise, the consumption ratio of finished will given an absurd result. He further stated that as the ld CIT (A) himself has agreed that material purchased has been received there couldn't be any basis for booking the bogus bills. In view of this he submitted that there is no evidence found during the course of search which shows that bogus bills. He further referred to page No. 107 of the assessment order wherein, the ld AO has stated that there is no product by the name of sandalwood oil or sandalwood oil SU being supplied by Surya Vinayak Industries to the assessee. He further referred to para No. 109 and 110 of the assessment order. He further referred to para No. 120 wherein, the additions with respect to the bogus purchases have been made. His argument was that there is no evidence of inflation in the rate or bogus purchase of the material from Surya Vinayak Industries and APPL by the assessee. In nutshell he submitted that there is no evidence found during the course of search of nature of incriminating evidence based on which the ld Assessing Officer has made the addition.

Decision and reasons

26. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, the assessee is a company, which was subjected to search on 21.01.2011. Therefore, on the date of search the Assessment Year up to 2009-10 were completed assessment year. Therefore, for disturbing the already assessed income/ returned income for all those years there has to be a recovery of any incriminating evidence during the course of search. Any addition or disallowance to be made in these years u/s 153A of the Act has to be made on evidences found during the course of search. The evidences have also to be with respect to each of the Assessment Year involved in the appeal. Therefore, if the incriminating material for example found during the course of search is pertaining to one Assessment Year then, addition can also be made based on that material in that Assessment

Year only. Meaning thereby if there is no incriminating material found during the course of search for a particular year then even if assessment is made u/s 153A of the Act for that Assessment Year no addition can be made in that year. Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla 380 ITR 573 and Pr. CIT Vs. Meeta Gutgutia 395 ITR 526 has enunciated the above principle. Further, Hon'ble Supreme Court in case of CIT Vs. Sinhgad Technical Educational Society 397 ITR 344 has further held that incriminating material had to pertain to Assessment Year for making the addition. It is further held therein that document wise correlation is required to be established with respective Assessment Years in question. In view of the above facts, it is apparent that if any addition is made to the total income of the assessee u/s 153A of the Act in concluded assessment then it has to be based on incriminating material, which needs to be correlated with respective Assessment Year in which the addition is made. We have also perused the decision relied up on by the revenue of Hon kerala High court in case of E N Gopakumar (supra) where in para no . 8 honourable high court has held that the addition can be made in search assessment years without incriminating evidences. However as Honourable jurisdictional high court binds us and further it also has the support of several other Honourable high courts such as Bombay and Gujarat, we hold that in absence of incriminating material in concluded assessment years, no additions can be made in the hands of the assessee.

27. In the light of the above judicial principle, now we proceed to analyze various seized material relied up on by revenue for making the additions/ disallowances in respective years. The relevant documents are furnished by the ld CIT DR in paper book No. 2 filed by her, which contains the document as annexure A-1 and part D-8. The page No. 14 to page No. 17 of the paper book is the average rate of perfumes as on 31.03.2010. That document contains the description of various raw materials, various rates are mentioned. Page No. 18 is the list of some

batch of the production. It does not have any date or reference of any transaction. Page No. 19 is also similar to page NO. 18. Page No. 20 to 30 of the paper book is the purchase quantity of the raw material for FY 2006-07, 2007-08 and for eight months of 2008-09. It is the quantitative details of purchase of various materials. Page No. 31 is the title for Annexure A-14 and page No. 32 is a quantitative reconciliation of perfume as on 31.12.2010. This statement shows the reconciliation of the receipt as per MD and receipt as per account. Each of the difference of excess or shortage have been reconciled and given in the remarks column. Page No. 33 is the title of annexure A-15 and page No. 35 to 44 is the annual financial statement under the Central Excise Rules. These are the copies of returns filed submitted by the assessee to the Superintendent Central Excise, Range -27, Division-VI, Nehru Palace, New Delhi vide letter dated 24.11.2009 of the perfumery division of the assessee. These are extracted from the regular books of account and stock records maintained by the assessee. Annexure A-16 page NO. 7 to 12 is the copy of the stock register from 01.04.2009 to 31.03.2010, which shows the name of the item, unit, opening balance, total receipts, total consumption, closing stock, physical stock and the shortages and excesses.

28. The main seized paper on which heavy reliance is placed up on by revenue is Page No. 52 of annexure A-1 which is a statement dated 30.11.2010 where in the details of three bills dated 19.11.2010 and 26.11.2010 are given. The details of the bill show quantity, rate, and the amount. The total quantity purchased by the assessee is 650 kgs and corresponding amount is Rs. 4.64 crores. There is account statement below which gives the details of payment made up to 31.10.2010 of Rs. 6.70 crores as excess and there is two entry of rate difference and further there is an adjustment on account of excise duty and thereafter Rs. 2.04 crores is determined as amount to pay from which an amount

paid by party of Rs. 10.50 crores is deducted which resulted into excess paid of Rs. 12.54 crores.

Below that, there is a statement in which details of cash payment starting from 02.11.2010 to 24.11.2010 is mentioned totaling to Rs. 10.50 crores. A further details of account of SVIL and APPL is mentioned and net of it is stated to have been amount excess received of Rs. 9.49 crores which result in to amount to receive of Rs. 30436590/-. The paper seized is in fact (typed) as under:-

Date	*Bill No.*	*Qty*	*Rate*	*Amount*
19.11.10	*SVI-128*	*250*	*70000*	*17500000*
19.11.10	*SVI-128*	*300*	*70000*	*21000000*
26.11.10	*SVI-132*	*100*	*79000*	*7900000*
	Total	*650*		*46400000*
Excess paid up to 31.10.2010				*(67056965)*
Less Bill NO 121 for 110 KG @ 7000/- (81850-74850) RATE DIFF				*770000*
Less Bill NO. 137 for 175 Kg"3000 (83000-80000) rate difference				*525000*
Add 30% of 56% i.e. 22.4% on 285 Kgs on 2,22,33,500/-				*498030*
Add. 40% of 56% i.e. 22.4% on 650 Kgs on 46400000				*1039360*
Amount to pay				*(20414575)*
Paid by us				*105000000*
Amount excess paid				*125414575*

Details of cash paid	
02.11.2010	*5000000*
04.11.10	*10000000*
08.11.10	*10000000*
11.11.10	*7000000*
12.11.10	*3000000*
15.11.10	*5000000*
16.11.10	*5000000*
18.11.10	*10000000*
19.11.10	*5000000*
20.11.10	*5000000*
22.10.10	*10000000*
23.11.10	*10000000*
24.11.10	*10000000*
	105000000

Balance in SVIL	*CR*	*95049737*
Balance in appl	*DR*	*71752*
Amount excess received	*CR*	*94977985*
Amount to received		*30436590"*

29. Surya Vinayak Industries in fact gave this document to Shri Rajiv Kumar who is managing Director of Dharampal Stayapal Ltd. This paper was shown to him vide question No. 13, which was replied by him by asking for some time. He further replied this question vide question No. 27. The ld AO further examined Shri Rajiv Gupta on 13.06.2011 where he has denied of having paid any excess cash to the assessee. The director of M/s. Surya Vinayak Industries Ltd was also summoned and his statement was recorded on 02.05.2011 wherein, he too have denied having received the payment other than by cheque or payment any cash in lieu of sales of material to the assessee company. The ld Assessing Officer himself has stated that the paper is dated 30.11.2010 that means the transaction in this paper are showing the transaction for the month of November 2010. The excess amount paid up to 31.10.2010 is mentioned. The balance is also shown up to 30.11.2010, therefore, it is apparent that this paper does not pertain to Assessment Year 2005-06 to 2009-10 but for Assessment Year 2011-12. None of the transaction showed in this paper pertain to the impugned Assessment Years mentioned before us. The Hon'ble Supreme Court in case of Sinhagd Technical Educational Society (Supra) has held that the incriminating material seized must pertain to assessment years in question. In that particular case the ITAT in [2011] 16 taxmann.com 101 (Pune)/[2012] 50 SOT 89 (Pune)(URO)/[2011] 140 TTJ 233 (Pune) has held in para no 9 that In the process, the AO totally missed the requirements of the law *i.e.* only the assessment year with the pending assessments and the assessment year with the assessment year specific incriminating documents/transactions or seized asset should only be reopened under

the provisions of the first proviso to s. 153A of the Act and not otherwise. It was further held as under in para no 13 that :-

> "**13.** From the above, it is evident that the where nothing assessment year and assessee specific incriminating "money, jewellery or other valuable article or thing or books of account or documents", the assessments for assessment years cannot be disturbed. Further, the concluded assessments should not be disturbed merely for making routine additions, which could have been otherwise done in the regular assessment and of course, the pending assessments fall under exceptions. As stated by the learned counsel point No. 9 of his note reproduced above, "nothing is seized pertaining to asst. yrs. 2000-01 to 2003-04 obviously there is no question of recording satisfaction note". On this reasoning itself, we find that the assessee has to succeed. Therefore, we do not examine the other arguments of the counsel. Otherwise, the counsel argued that the reopening of the assessment for the asst. yrs. 2000-01 to 2001-02 is impermissible in view of the judgment of Ahmedabad Bench in the case of *Vijay M. Vimawal* (*supra*). Further, he also argued that the assessment of asst. yr. 2003-04 was actually completed under s. 143(3) on 30th March, 2006 *i.e.* prior to receipt of the impugned documents by the AO on 18th April, 2007, this assessment was not pending. Attending to these arguments of the counsel is superfluous and merely an academic exercise as we have upheld the applicability of the decision of the Tribunal in the case of *LMJ*

> *International Ltd.* (*supra*) for the proposition that the "where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be disturbed" and other local decision cited above. Accordingly, the additional ground raised by the assessee for all the four appeals under consideration is allowed and in favour of the assessee."

The matter reached honourable Bombay High court [2015] 63 taxmann.com 14 (Bombay)/ [2015] 235 Taxman 163 (Bombay)/ [2015] 378 ITR 84 (Bombay)/ [2015] 278 CTR 144 (Bombay) where in para no 7 it is held that If there is reference made to some loose papers found and seized from his residence indicating some "on money" receipt during the admission process then above co-relation and assessment year wise ought to have been established. In the circumstances, we do not think that the tribunal's order raises any substantial question of law.

On further appeal before Honourable Supreme court in [2017] 84 taxmann.com 290 (SC)/ [2017] 250 Taxman 225 (SC)/ [2017] 397 ITR 344 (SC)/ [2017] 297 CTR 441 (SC) held as under:-

> "**15.** At the outset, it needs to be highlighted that the assessment order passed by the AO on August 7, 2008 covered eight Assessment Years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act, which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four Assessment Years, namely, 2000-01 to 2003-04 covered by

notice under Section 153C of the Act. There is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.

16. In these appeals, *qua* the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17. First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent,

argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.

20. Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.

21. Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons:

"8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in case of *SSP Aviation Ltd.* v. *Deputy Commissioner of Income Tax* [2012] 346 ITR 177 is misplaced. There, search was carried out in the case of "P" group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from "P" group of companies. Based thereon, the satisfaction was recorded by the Assessing Officer and he issued notice in terms of Section 153C. Thereupon the proceedings were initiated under section 153A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessees filed returns for those years but disclosed Nil taxable income. These returns were accepted by the Assessing Officer, however, in respect of the assessment

year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for the assessment year 2007-08. Thus, the receipt of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 and later on became subject matter of the writ petition before the Delhi High Court. That was challenging the validity of notice under section 153C read with section 153A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under section 153C read with section 153A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further."

We, thus, do not find any merit in these appeals."

Therefore as per principle enunciated by the Honourable supreme court, there has to be specific incriminating material for each assessment year assessed u/s 153A / 153C which is concluded and addition can be made based on that only.

30. Based on the page no 52 of annexure A/1 that is containing accounts as at 31/10/2010. Therefore, it relates to AY 2011-12 only. No documents were shown to us or referred to in the Assessment order shows that any incriminating material was found which even remotely shows that assessee has purchased sandalwood at over invoiced price from those parties. The rate list of material was found for the years in appeal and no attempt was made to show that the material purchased

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by the assessee from this party is not at the market rate prevailing on those days. Mere assertion that assessee has purchased material from this party in these years and therefore there has to be over invoicing of the purchases is a mere assertion without any material. Therefore, we do not have any hesitation to hold that In the present case the impugned seized paper does not belong to the Assessment Years involved in the impugned appeals.

31. Furthermore, with respect to the same paper it is also important to note that it is evident from that paper that Surya Vinayak Industries have over paid the assessee than what it should have allegedly paid for over invoicing. This evident facts also runs contrary to the other finding that Surya Vinayak industries is company of not having capacity to supply so much material in para no 145 of the order. If it is so then how it could have paid the assessee over and above what is required to be paid if the goods are over invoiced. The sum over paid by that company to the appellant is not small compared to the purchases. Even circular route stated by ld AO in various para of assessment order 143 onwards also proves contrary if read with the order passed u/s 154 of the act. Therefore according to revenue assessee has reduced the profit by booking the over invoiced purchases of the eligible units, and such income is also derived from the eligible industrial undertaking and further assessee is eligible for higher deduction u/s 80 IC of the act.

32. The LD AO has stated that the companies from whom the material has been purchased are not capable of supplying that quantity of raw material. The ld CIT (A) has held that the quantity details of the assessee cannot be doubted for the reason that amount of finished goods assessee has produced does not justify the lower consumption of material than what is shown by the assessee. This finding of facts is not disputed by revenue. Therefore it cannot be disputed that assessee has purchased the material. Now the issue is at what rate. If it s the case of the revenue that assessee has purchased goods at Rs 100 But has

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booked purchases at Rs 150 and received Rs 50 back from the supplier in cash, then revenue should have brought on record the near about comparable prices of those material with reasonable evidences. These facts could have been proved either by the availability of the material in the market or also by the production cost of the supplier. Revenue has not brought on record any such material. Most of the part of the order justifying the addition in absence of this merely remains allegations without evidences. Additions in such a manner cannot be sustained.

33. With respect to the other seized material which have been dealt with by the ld Assessing Officer are dealt with at para No. 107 of the Assessment order as under:-

> *"107. Certain other seized documents also confirm the fact that there is no product by the name of Sandalwood oil (C) or Sandalwood oil (SU) being supplied by M/s Surya Vinayak Industries Ltd. to M/s Dharampal Satyapal Ltd.*
>
> *Page No. 61-71 of Annexure A-ll seized from Perfumery Division, Okhla*
>
> *In these pages, there is a chart depicting purchase of various raw materials (132 in total) by DSL [Perfumery Division] for the year 2006-07, 2007-08 and 2008-09 and suppliers thereof. The first and very important aspect of this chart is that wherever necessary, each and every item has been classified and named separately and it contains various compounds. But nowhere in this chart there is any mention of Sandalwood oil [C] and Sandalwood Oil [SU]. At S. No. 121, there is mention of 'SANDALWOOD OIL' as 'raw material'. Their suppliers are mentioned in the next column with party name and yearly quantity purchased from them. In this column there is no classification of any sandalwood oil [C] or sandalwood oil [SU]. Just one item is mentioned and that is sandal wood oil. SVIL and Kamakhya Oil Co and other concerns are shown as their suppliers. This proves that only sandalwood oil is being supplied by SVIL.*
>
> *Page No.7 to 12 of Annexure A-16 of Perfumery Division is the statement of raw materials taken from the I.A.S. software which is used in the perfumery division. This statement shows the opening balance, total receipts, total*

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consumption, closing balances, physical balance along with short/excess for

the period 1.4.09 to 31.03.10. This statement is showing the date in respect of more than 150 raw materials being purchased by Perfumery Division. In this statement there is mention of only sandalwood oil and not any [C] or

[SU].

In the same way page No.2 to 6 of this annexure are the statement of physical stock as on 23.03.2010 prepared by the staff of Perfumery Division. All the items of this physical stock statement dated 23.03.2010 tally with the I.A.S. statement available in page No.9 to 12 taken on 31.3.2010. But surprisingly, the sandalwood oil is not included in this statement of physical stock taken on 23.03.2010 which goes to show there was no stock of sandalwood oil present on that day, whereas the closing balance of I.A.S. statement says closing balance of 2926 Kgs. This again proves the booking of bogus purchase of sandalwood oil by M/s DSL.

Page no. 72 of Annexure 14 seized from Perfumery Division of Okhla are now being referred to and discussed. On page 72 there is mention of various raw material purchases as on 31.12.2010. Item No.8 is sandalwood oil where receipt as per MD (Shri Rajiv Gupta) is 12,694 Kg and as per Accounts it is 12,894. A different of 200 Kgs is there and in the remarks column it is mentioned that details are attached. And in this context entries of Page no. 67 are being referred. On this page bill wise detail of purchase from various parties of sandalwood oil for the period 1.4.10 to 31.12.2010 are mentioned.

Page No.87 to 90 of Annexure A-11 of the Perfumery Division are now being referred to and discussed. In these pages DSL has calculated the average rate of its raw materials. In these pages also there is no mention of any raw material by the name of Sandalwood oil [C] or [SU]. What is there, is only sandalwood oil, whose average rate is mentioned at Rs.62503/- per kg.

In the same annexure in page no.83 to 86, DSL has made a chart of average rate or last rate whichever is higher as on 31.3.2010 for its raw materials. In this chart only the price of sandalwood oil is mentioned which Rs.67,864/- per kg. and there is no [C] or [SU].

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Further, page no.79 to 89 of Annexure A-15 contains the office of Form ER- 4 (Annual Return F.Y. 2008-09) which was submitted to the Excise Department. In annexure I (page No.84) information relating to major purchase of raw materials for 2008-09 is given. It contains only one item and that is SANDALWOOD OIL, quantity purchased is shown at 17,066 Kgs valuing Rs.l 18,69,74,659/-. And th-is includes all the purchases made from SVIL, APPL and Kamakhya Oil Co. and others. Annexure II [page 82 to 83] contains the detail of finished goods. Finished goods are 39 in number and value there of is declared at Rs. 142^92,20,822/-. It is surprising to see that out of Rs.l 42.00 crores of sale, the most expensive ingredient is sandalwood oil and value thereof is Rs.118.00 crores"

34. On reading of the above paragraph the main contention of the ld Assessing Officer is that there is no product by the name of sandalwood oil (C) or Sandalwood Oil (U) being supplied by Surya Vinayak Industries ltd to M/s. Dharampal Stayapal Ltd (assessee). The page NO. 226 of Annexure 11, which is also the statement of physical stock as on 23.03.2011, does not fall into the assessment years in the above appeal. Further page NO. 72 of Annexure A-14 also pertain financial year 01.04.2010 to 31.12.2010. The central Excise Return Filed in Form NO. ER-1 cannot be said to be incriminating material, as it does not show any escapement of income involved in those papers. Hon'ble Supreme Court Sinhgad Technical & Education society (supra) in the para No. 18 has endorsed the reasoning given by the coordinate bench stating it to be logical and valid that incriminating material, which was seized, had to pertain to the Assessment Years in question and the documents seized must established any correlation document-wise with the Assessment Years involved. From the above reading of the documents, it is apparent that none of the seized documents belongs to the Assessment Years 2005-06 to 2009-10. Even otherwise, without commenting whether they are incriminating or not, it does not pertain to the assessment years involved. The ld CIT DR could not show us any

document, which pertained to the Assessment Year 2005-06 to 2009-10. As none of the documents seized during the course of search are shown to us pertaining to the Assessment Year 2005-06 to 2009-10, we are of opinion that all the additions made by the ld Assessing Officer are not based on incriminating documents found during the course of search, hence they are not sustainable.

35. The ld CIT DR has also controverted that the order of the coordinate bench in assessee's own case are passed u/s 147 of the Act whereas, the impugned assessments are framed in this appeal are u/s 153A of the Act. We fully agree with the ld CIT DR that both these sections operate in different fields. We agree to this for the simple reason that there may be cases where the assessment may be required to be reopened u/s 147 of the Act and there are instances where mandatorily the assessment in case of search are required to be carried out u/s 153A of the Act. However, what is important is that in u/s 147 there have to be a 'reason to believe' of the Assessing Officer, that income chargeable to tax has escaped assessment. Such reasons also have to be based on some tangible material. The provisions of section 153A of the Act deals with the specific chapter in the case of the persons where proceedings u/s 132 takes place. Even in those cases, it has been held by several Hon'ble High Courts that the concluded assessments can be disturbed only on the basis of some material, which shows a prima facie escapement of income i.e. 'Incriminating material'. The provision of section 147 and Section 153A of the Act both deals with the concluded assessments and both provides for disturbing them only on the basis of prima facie material showing escapement of income. Therefore, it cannot be said that the order of the coordinate bench in case of assessee for Assessment Year 2004-05 does not have any persuasive value. To disturb the concluded assessment year the revenue requires incriminating material showing escapement of income for each of the assessment year, hence, the above order of the coordinate bench has

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merely a persuasive value. Each year assessed u/s 153A of the Act is required to be tested as per the principle laid down by the Hon'ble Supreme Court in case of Sinhghad Technical Education Society (supra).

36. The ld CIT DR heavily relied on the seized page 52 Annexure A1. We have already dealt with the above paper in earlier paragraphs and noted that it does not pertain to the impugned assessment years involved in these appeals. Therefore, no cognizance of the same can be taken for sustaining any addition in these years. No such material or evidences have been placed before us pointing out such inferences. Therefore, we are afraid, we cannot subscribe to the view canvassed that this paper applies to all the years involved in these appeals. Such an argument is contrary to the decision of Hon'ble Supreme Court as stated above.

37. The revenue further argued that the surrounding circumstances of the case coupled with the statement of the employees, the facts pertaining to the affairs of M/s. Surya Vinayak Industries must be looked into, and these surrounding circumstances are relevant for making the addition. The ld CIT DR in her submission vehemently relied upon the decision of the Hon'ble Delhi High Court in case of Smt Dayawanti Vs. CIT in ITA No. 357/2015. The facts in that case were that incriminating material was found pertaining to one year and the statement was recorded wherein, the unaccounted income was confessed. Therefore, there was an addition on account of gross profit for the relevant years. The above decision of the Hon'ble Delhi High Court has been stayed by Hon'ble Supreme Court vide its order dated 03.10.2017 in SLP No. 20559/2017. Therefore, that decision now does not help the revenue.

38. Further, the ld Authorised Representative has also made an argument that as the assessee is eligible for the deduction 80IC of the Act and the major addition has been made with respect to the disallowance of deduction under that section, the ld Assessing Officer by passing the order u/s 154 of the Act has increased the deduction, therefore, the whole exercise is revenue neutral. The above argument deserves to be

rejected at the threshold itself for the simple reason is that whatever is the disallowance or the adjustment that is required to be made to be eligible undertaking increases the profit derived from that industrial undertaking and consequently, the deduction increases. That does not make the addition unsustainable. It does not have any impact on the nature of addition made by the ld AO.

39. Now we come to various additions made by the ld Assessing Officer for Assessment Year 2005-06 and examine whether it has been made based on any incriminating material found during the course of search for that year. We have weighed the seized papers as per chart submitted by the ld CIT DR, which were referred to by the ld Assessing Officer in the assessment order and also analyzed them with respect to various additions for the impugned assessment years involved. No other documents were produced before us pertaining to the impugned Assessment Years involved in these appeals. The table below shows the various additions made by the ld Assessing Officer for AY 2005-06.

Sl No.	*Particulars*	*Amount*
1.	*Prior period expenses*	*1128236*
2.	*Transfer pricing adjustment as per order u/s 92CA(3)*	*5135817*
3.	*Bogus purchases of sandalwood oil*	*349002066*
4.	*Disallowance u/s 40A(3)*	*115024*
5.	*TDS is neither deducted nor deposited*	*430429*
6.	*Diversion of funds to group entities not backed by business expediency and amount of interest to be disallowed u/s 36(1)(iii) of the Income Tax Act, 1961*	*5496058*
7.	*Details of amount charged at lesser to group concerns rate than rate charged to others*	*4271539*
8.	*Disallowance u/s 14A interest paid on investment made out of borrowed funds in equity*	*4911624*
9.	*Additions made u/s 143(3) in order dated 30.03.2007*	

10.	*Disallowance u/s 14A interest paid on investment made out of borrowed funds in equity*	*500000*
11	*Disallowance for foreign travelling expenses*	*486409*

Similar are the facts for the additions of the AY s 2006-07 to 2009-10.

40. The ld CIT DR could not show us any other material pertaining to Assessment Year 2005-06 other than that has been relied upon by the ld Assessing Officer and contested by ld CIT DR before us. We have examined each of the above addition as well as the computation of deduction made by the ld Assessing Officer and we do not find any incriminating material with respect to all these additions for these years. It is also the fact for Assessment Year 2006-07 to 2009-10.

41. In view of the above facts, for the ground No 1 of the appeal of the assessee, we hold that there is no incriminating material found during the course of search relevant to Assessment Year 2005-06 to AY 2009-10, which are concluded Assessment Year, and could have been disturbed only on the basis of any incriminating material showing escapement of income found during the course of search relevant to that assessment year only. Hence, we do not have any other option but to allow ground No. 1 of the appeal of the assessee for the impugned assessment years.

42. In the result ground No. 1 of the appeal of the assessee is allowed for all Ay 2005-06. Accordingly, respective grounds of the appeal of the assessee for Assessment Year 2006-07 to 2009-10 challenging the additions in absence of any incriminating material stands allowed. All other grounds of appeal of the assessee are not required to be adjudicated as assese’s appeals succeeds on the that issue and hence are dismissed. Hence, appeal of the assessee is partly allowed.

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43. The appeals of the revenue wherein various additions deleted by the ld CIT (A) are contested are dismissed, as these additions were not based on any incriminating material found during the course of search. the appeal of the revenue becomes infructuous and hence, they are dismissed.

44. In the result all the appeals of the assessee are partly allowed and appeals of the revenue are dismissed.

Order pronounced in the open court on 17 /05/2018.

-Sd/-	-Sd/-
(H.S.SIDHU) JUDICIAL MEMBER	(PRASHANT MAHARISHI) ACCOUNTANT MEMBER

Dated: 17/05/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi