आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ- अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'
[Conducted Through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sr.No.	IT(SS)A.No. Asstt.Year	Appellant	Respondent
1-6	118 to 123/Ahd/2019 Asstt.Years : 2009-10 to 2014-15	Shri Hitesh Ashok Vaswani 10, Talka Nagar Old Vadaj Ashram Road Ahmedabad. PAN : AAOPV 7214 K	The DCIT, Cent.Cir.1(1) Ahmedabad.
7-12	124 to 129/Ahd/2019 2009-10 to 2014-15	Smt.Vanita Dilip Vaswani 2, Shree Samprat Co-op Hsg. Society Ltd. Opp: Rivera-11 Prahladnagar Ahmedabad. PAN : AAKPV 7868D	The DIT Cent.Cir.1(1) Ahmedabad.
13-18	130 to 135/Ahd/2019 2009-10 to 2014-15	Smt.Mamata Ashok Vaswani 10, Talka Nagar Old Vadaj Ashram Road Ahmedabad. PAN : AAOPV6845 N	The DCIT, Cent.Cir.1(1) Ahmedabad.
19-21	204 to 206/Ahd/2019 2009-10 to 2013-14	Smt.Harsha Deepak Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar Ahmedabad. PAN : AAOPV 6846 R	The DCIT Cent.Cir.1(1) Ahmedabad.
22-23	278 and 279/Ahd/2019 Asstt.Year 2012-13 and 2013-14	M/s.Shri Sai Siddhi Corporation 901, Sapphire Complex	The DCIT Cent.Cir.1(1) Ahmedabad.

		Nr.Cargo Motors C.G. Road Ahmedabad. PAN : ABXFS 9861 M	
24-28	280 to 284/Ahd/2019 Asstt.Year : 2010-2014-15	M/s.Venus Township India P.Ltd. 801-802, Broadway Business Centre Opp: Mayor's Bungalow Law Garden Ellisbridge Ahmedabad. PAN : AACCV 6265 F	The DCIT Cent.Cir.1(1) Ahmedabad.
29-31	834 to 836/Ahd/2019 2012-13 to 2014-15	M/s.Venus Infrabuild 801, Broadway Business Centre Opp: Mayor's Bungalow Law Garden Ellisbridge PAN : AAJFV 3857 F	The DCIT, Cent.Cir.1(1) Ahmedabad.
32-37	75 to 80/Ahd/2019 Asstt.Year : 2009-10 to 2014-15	Shri Dilip Kumar Lalwani R-649, New Rajendra Nagar New Delhi PAN : AAEPL 5472 F	The DCIT Cir.1(1) Ahmedabad.
38-43	195 to 200/Ahd/2019 2009-10 to 2014-15	The DCIT, Cir.(1)(1) Ahmedabad.	Shri Dilip Kumar Lalwani R-649, New Rajendra Nagar New Delhi PAN : AAEPL 5472 F
44—50	88 to 94/Ahd/2019 Asstt.Year : 2009-10 to 2015-16	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad PAN : AAOPV 6849 A	The DCIT, Cent.Cir.1(1) Ahmedabad.

51-57	241 to 247/Ahd/2019 Asstt.Years 2009-10 to 2015-16	The DCIT, Cent.Cir.1(1) Ahmedabad.	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad PAN : AAOPV 6849 A
58-64	102 to 108/Ahd/2019 Asstt.Year 2009-10 to 2015-16	M/s.Venus Infrastructure & Developers P.Ltd. 801-802, Broadway Business Centre Opp: Mayor's Bungalow Law Garden Ellisbridge Ahmedabad. PAN : AAHCS 6254 J	DCIT, Cent.Cir.1(1) Ahmedabad.
65-71	228 to 234/Ahd/2019 Asstt.Year 2009-12 to 2015-16	DCIT, Cent.Cir.1(1) Ahmedbad.	M/s.Venus Infrastructure & Developers P.Ltd. 801-802, Broadway Business Centre Opp: Mayor's Bungalow Law Garden Ellisbridge Ahmedabad. PAN : AAHCS 6254 J
72-78	111 to 117/Ahd/2019 Asstt.Year 2009-10 to 2015-16	Shri Deepak Budharmal Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar, Satellite Ahmedabad. PAN : AAPPV 8625 F	DCIT, Cent.Cir.1(1) Ahmedabad.
79-85	248 to 254/Ahd/2019 2009-10 to 2015-16	The DCIT, Cir.1(1) Ahmedabad.	Shri Deepak Kumar Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai

			Institute Prahaladnagar, Satellite Ahmedabad. PAN : AAPPV 8625 F
86-92	95 to 101/Ahd/2019 Asstt.Year 2009-10 to 2015-16	Shri Rajesh Sunderdas Vaswani 10, Tila Nagar Old Vada Ashram Road Ahmedabad. PAN : AAOPV6848B	The DCIT, Cir.1(1) Ahmedabad.
93	ITA No.805/Ahd/2019 Asstt.Year 2008-09	DCIT, Cent.Cir.1(1) Ahmedabad.	Shri Rajesh Sunderdas Vaswani Ashram Road Ahmedabad PAN : AAOPV 6848 B
94-99	235 to 240/Ahd/2019 Asst.Year 2009-10 to 2015-16	-do-	-do-
100-101	109 and 110/Ahd/2019 Asstt.Year :2012-13 and 2013-14.	M/s.Sanjeet Motors Finance P.ltd. 6, Sarthi Bungalows Prenathirth Derasar Road Satellite Ahmedabad. PAN : AAMCS 8522 L	The DCIT Cent.Cir.1(1) Ahmedabad.
102	ITA No.456 /Ahd/2019 Asstt.Year : 2008-09	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad PAN : AAOPV 6849 A	The DCIT, Cent.Cir.1(1) Ahmedabad.
103	ITA No. 806/Ahd/2019 Asstt.Year : 2008-09	The DCIT, Cent.Cir.1(1) Ahmedabad.	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad

			PAN : AAOPV 6849 A
104	ITA 457/Ahd/2019 Asstt.Year 2008-09	Shri Rajesh Sunderdas Vaswani 10, Tila Nagar Old Vada Ashram Road Ahmedabad. PAN : AAOPV6848B	The DCIT, Cir.1(1) Ahmedabad.
105	ITA 461/Ahd/2019 Asstt.Year 2008-09	Shri Deepak Budharmal Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar, Satellite Ahmedabad. PAN : AAPPV 8625 F	The DCIT, Cir.1(1) Ahmedabad.
106	ITA No.807/Ahd/2019 Asstt.Year 2008-09	DCIT, Cent.Cir.1(1) Ahmedabad	Shri Deepak Budharmal Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar, Satellite Ahmedabad. PAN : AAPPV 8625 F.
107	IT(SS)A.No.837/Ahd/2019 Asstt.Year 2015-16	M/s.Venus Infrabuild 801, Broadway Business Centre Opp: Mayor's Bungalow Law Garden Ellisbridge PAN : AAJFV 3857 F	The DCIT, Cent.Cir.1(1) Ahmedabad.

(Applicant)		**(Responent)**

Revenue by :	Shri Virendra Ojha, CIT-DR
Assessee by :	Shri Tushar Hemani with Shri ParimalsinhB. Parmar Shri Vijay Govani, ARs.

सुनवाई की तारीख/**Date of Hearing:25/08/2020,31/08/2020&07/09/2020**
घोषणा की तारीख /**Date of Pronouncement: 12/11/2020**

आदेश/O R D E R

PERBENCH:-

This is a bunch of 107 appeals; out of which 71 appeals are directed at the instance of the assessee, and 36 at the instance of the Revenue. Thus, in some of the assessment years, and in the case of some of the assessees, there are cross-appeals. The facts for the purpose of procedural requirements are concerned, they are common.

2. Brief facts of the case are that the department has carried out searches on the following places:

Person Searched as per Panchnama	Address of premises searched	Date and Time of Initiation of Search	Date and Time of Conclusion of Search
Ashok Sunderdas Vaswani	1-Rajdeep Villas, B/h. Chimanbhai Patel Institute, Prahladnagar, Ahmedabad	10.03.2015 08:05 A.M.	12.03.2015 07:00 P.M.
Deepak Budharma Vaswani	2-Rajdeep Villa, Opp. Rivera-11, B/h Chimanbhai Patel Institute, Prahladnagar, Ahmedabad. 3-Rajdeep Villa, Opp. Rivera-11, B/h Chimanbhai Patel Institute, Prahladnagar, Ahmedabad. 501, Sapphire Complex, Opp: Ratnam, CG Road, Ahmedabad.	10.03.2015 06:30 A.M.	12.03.2015 10:30 P.M.

	G-9, Gold Souk Complex B/h. Sapphire Bldg. CG Road Ahmedabad. 10, Rajdeep Tilak NagarSociety Old Wadaj,Ashram Road Ahmedabad. Prakash Building Kalupur Ahmedabad.		
Rajesh Sunderdas Vaswani	*Rajdeep Villa, 10, Tiilak Nagar Society, Old Vadaj, Asram Road, Ahmedabad Prakash Buildig, Kadia Kui Katni Rang Road Relief Road Kalupur Ahmedabad.*	*10.03.2015 06:40 A.M.*	*11.03.2015 11:35 P.M.*
M/s Venus Infrastructure & Developers (P) Ltd (Rajesh Vaswani was available here)	*i) 801-802, Broadway Business Centre, Opp. Mayor's Bunglow, Law Garden, Ellisbridge, Ahmedabad ii) 901, Sapphire Complex, Opp. Ratnam, CG Road, Ahmedabad iii) G-9, Gold Souk Complex, B/h Sapphire building, CG Road, Ahmedabad iv) A-101, Project site office, Venus Parkland, Near Vejalpur police chowky, Vejalpur, Ahmedabad*	*10.03.2015 12:05 P.M*	*12.03.2015 11:20 P.M.*

	v) Terrace of Crystal Arcade, Besides Navrangpura, Tele. Exchange, CG Road, Ahmedabad *vi) D-5, New Garden flats, Ellisbridge, Law garden, Ahmedabad* *vii) House of Vasibhai Vasrambhai Desai at village Khadeda, Rabari Vas, Dist. Patan*		
Ashok Sunderdas Vaswani & M/s Venus Infrastructure-& Developers (P) Ltd	*i) Terrace of Crystal Arcade Besides Navrangpura Telephone Exchange, C.G. Road, Ahmedabad.* *ii) 901, Sapphire Complex, Opp. Ratnam, CG Road, Ahmedabad* *iii) 307, 3rd floor, Crystal Arcade, Besides Navrangpura Telephone Exchange, CG Road, Ahmedabad* *iv) 10, Raj deep Tilak Nagar society, Old Wadaj, Ashram Road, Ahmedabad.* *v) 2, Raj deep Villas, Opp. Rivera 11, B/h Chimanbhai Institute, Prahladnagar, Ahmedabad.* *vi) Prakash Building, Kadia Kui, Kami Rang Road, Relief Road, Kalupur, Ahmedabad*	*12.03.2015 09:30 A.M.*	*13.03.2015 07:20 P.M.*

	v) Terrace of Crystal Arcade, Besides Navrangpura, Tele. Exchange, CG Road, Ahmedabad *vi) House of Vasibhai Vasrambhai Desai, at village Khadeda, Rabari Vas, Dist. Patan.*		
Sanjeet Motors Finance P.Ltd.	*6, Saarthi Bungalows Prernatirth Derasar Road Satellite, Ahmedabad.* *17/B/1, Devendra Society Naranpura Ahmedabad.* *B/6, Pallavi Apartment Opp: Municipal Market C.G.Road Ahmedabad.*		

3. In order to give logical end to the search, the ld.AO had issued notice under section 153A, 153C and 148 of the Income Tax Act as required in the particular case of an assessee, and directed them to file their return. The returns were filed. The assessments have been completed, and the appeals have been decided by the ld.CIT(A) vide orders impugned in these appeals.

4. At the time of hearing, we have appraised the parties as to how they would argue the appeals, because, if we look to the total number of appeals, and papers submitted therein, then details on different issues in all these appeals must be running in more than 20,000 pages. The ld.counsel for the assessee has submitted that he has divided his submissions in four compartments, and most of

these submissions are related to jurisdictional and legal issues. The adjudication of these jurisdictional grounds would be the basis for proceeding further on merit. Broadly, both the parties have agreed for commencing the hearing in the manner suggested by the ld.counsel for the assessee. Four compartments are –

(i) whether the assessment proceeding undertaken under section 153C is sustainable in the eyes of law. For this proposition, the lead matter has been suggested as ITA No.75/Ahd/2019 of the assessee's appeal, and cross appeal of the Revenue i.e. ITA No.195/Ahd/2019 for the Asstt.Year 2009-10;

(ii) Whether the assessments under section 153A is to be framed strictly on the basis of incriminating material found during the course of search in the case of concerned assessee. The lead matter suggested for the proposition is IT(SS)A.No.95Ahd/2019 and IT(SS)A.No.235/Ahd/2019 for the Asstt.Year 2009-10 in the case of Rajesh Sunderdas Vaswani.

(iii) Whether the assessments completed under section 153A are within the limitation or not. The lead matter suggested by the parties for the proposition is Ashok Sunderdas Vaswani, IT(SS)A.No.88/Ahd/2019 and cross appealbearing no.IT(SS)A.No.241/Ahd/2019 for the Asstt.Year 2009-10;

iv) Ithas been pleaded that whether reopening of the assessment in the Asstt.Year 2008-09 in the case of Ashok Sunderdas Vaswani is justifiable. This is the single assessment order in the case of Ashok Sunderdas Vaswani for the Asstt.Year 2008-09, ITANo.456/Ahd/2019, and ITA No. 806/Ahd/2019 are to be taken together.

v) The last compartment of the argument is with regard to the appeal in ITA No.837/Ahd/2019 in the case of Venus Infrabuild for the Asstt.Year 2015-16. It is also to be decided independently on merit.

5. Thus, as agreed by the ld.representatives, we have heard first proposition canvassed by the ld.counsel for the assessees on 25.8.2020. The issue under the first proposition is, whether the proceedings initiated under section 153C are valid? According to the ld.counsel for the assessee, this proposition would be applicable on the 43 appeals mentioned in serial no.1 to 43 of the cause-title.

6. The ld.counsel for the assessee would submitted that search in the present case was commenced on 10.3.2015 and concluded on 13.3.2015. Taking us through section153C, he submitted that this section has been amended subsequent to the search w.e.f. 1-6-2015. An action under section 153C can only be initiated if the documents belongs to person other than the person referred to section 153A of the Act. Thus, according to him, primarily the Act expects that cognizance of searched material should be taken primarily in the case of searched persons, except that, if the AO of the searched person is satisfied that the seized material belongs to some other persons. Once the AO of the searched person arrives at the decision that material belongs to some other persons, then he would record his satisfaction to that effect, and transmit those materials to the AO having jurisdiction over other such persons. He submitted that prior to 1.6.2015, the section contemplates that material found during the course of search and considered by the AO of the searched person, belongs to some other person. However, after amendment in section 153C w.e.f. 1.6.2015 this expression "belongs" or "belong" to has been restricted with regard to any money, bullion, jewellery and other valuable article or things seized or requisitioned during the course of search. With regard to any books of accounts or documents seized or requisitioned, the expression "belongs to" and "belong to" has been eliminated; and in place of this expression "pertains to" or "pertain

to" or any information contained therein relates to, has been used. Thus, according to the ld.counsel for the assessee the expression "pertains" or "pertain" to or any information contained therein relates to, has wider scope for taking action under section 153C instead of expressions "belongs or belong to" used in the original section prior to its amendment w.e.f. 1.6.2015. The ld.counsel for the assessee further submitted that action under section 153C could be taken against the assessee if during the course of search any money, bullion, jewellery or other valuable article or thing; or any books of account or documents, seized or requisitioned, were found to be belonged to or belong to, other than the searched person. In that situation, the AO of the searched person would recordhis satisfaction that the action is required against other such person with regard to undisclosed income embedded in that evidence. He took us through the satisfaction-note recorded by the AO, for example in the case of Dilipkumar Lalwani [IT(SS)A.No.75/Ahd/2019] and others.

7. The ld.counsel for the assessee drew our attention towards page no.456 to 483 of the paper book, wherein the satisfaction note recorded by the AO of the searched person is placed on record. He also pointed out that the AO of the searched person as well as all the present assessees is common, but according to the requirement of law, he has to record satisfaction first while examining these documents in the capacity of AO of the searched person, thereafter, fresh satisfaction was to be recorded while issuing notice under section 153C. While taking us through this satisfaction, he contended that a perusal of the satisfaction would indicate that the AO nowhere recorded a finding that documents belong to the assessees were found at the premises of the searched person. In all of his narrations, he has only recorded that documents contained information which relates to the assessee. From the reading of these, he pointed out that it appears that the AO was under the impression that he was required to examine the evidence alleged to have found during the course of search under the new

provision which has made applicable w.e.f. 1.6.2015. This is contrary to the law laid down by the Hon'ble jurisdictional High Court in the case of Anil Kumar Gopikishna Agrawal Vs. ACIT, (2019) 106 taxmann.com 137 (Guj). Copy of this decision has been placed on record by the ld.counsel for the assessee. He further submitted that subsequently this decision has been followed by the Hon'ble jurisdictional High Court in the following cases:

i) Mahendrabhai Kasturchand Son Vs. ITO, SCA No.11817 of 2019 (Guj);

ii) Charmy Sanket Naik Vs. ACIT, SCA No.13374 of 2019 (Guj);

iii) Nita Chaitanya Shah, SCA No.14059 of 2019 (Guj).

8. Taking us through the judgment of Hon'ble jurisdictional High Court in the case of Anil Kumar Gopikishna Agrawal Vs. ACIT(supra), he submitted that Hon'ble High Court has considered a large number of writ petitions, and ultimately propounded that amendment in section 153C is prospective and it will be applicable w.e.f. 1.6.2015. Prior to this amendment, search conducted by the Department would be governed by old section. In other words, according to the ld.counsel for the assessee, search conducted upto 1.6.2015, the department has to record a satisfaction that documents found during the course of search belongs or belong to an assessee, after recording such a satisfaction, action under section 153C can be taken.

9. The ld.counsel for the assessee thereafter took us through paragraph-2.4 of the judgments. He pointed out that one of Special Civil Applications bearing no.19647 of 2018 was filed by M/s. Ocean Valves Mfg. Co. The proprietor had filed his return of income on 14.3.2013 declaring total income of Rs.7,27,700/-. A search was conducted on various premises of Shri Ashok Sundardas Vaswani, M/s.Venus Infrastructure and Developers P.Ltd. on 13.3.2015. According to the Revenue, during the course of search various documents were seized in which

information about the transactions relating to the petitioners were found. The seized incriminating documents related to unaccounted cash transactions as recorded in the seized unaccounted cash books which were found during the course of search. A reference was also made to the petitioner i.e. proprietor of Ocean Valves Mfg. Co. Notice under section153C was issued and these notices were challenged by the assesees in SCA No.19647 of 2018. Hon'ble Gujarat High Court has quashed these notices by holding that information recorded by the Revenue couldbe termed as relates to or pertains to petitioner. It could not be construed as a document belongs to the petitioner. Similarly, a large number of other cases have been considered by the Hon'ble Gujarat High Court. Thus, according to the ld.counsel for the assessee, this judgment is fully applicable on these 43 appeals, where assessments have been passed under section 153C of the Income Tax Act, 1961.

10. The ld.CIT-DR, on other hand, submitted that the assessment proceeding of the searched person was pending when the amendment in section 153C was made. The position of law for the purpose of section 153C is that during the course of search, if any material belongs to some other person was found and seized, and the AO of the searched person was satisfied that this material belongs to the person other than the searched person, then he would record his satisfaction about the undisclosed income embedded in those documents and transmit those papers to the AO having jurisdiction over such other person. The AO of that person would record his satisfaction again after making analysis of the material, and thereafter notice under section 153C would be issued. Once notice under section 153C was issued, the assessment proceedings would take place as if it was a notice under section 153A. The assessment of the searched person was not concluded, and any document belongs to the person other than the searched person could be unearthed during the assessment of the searched person. In between, the amendment came, and scope of section has been

widened. Therefore, the AO has rightly recorded the satisfaction taking into consideration the law as on the date, when he lays his hand on the documents showing undisclosed income of the person other than the searched person. He further submitted that in the present appeals, both the events, that is, recording of satisfaction by the AO of the searched person, and by the AO of these appellants, have happened subsequent to 1.6.2015 because Ld. AO is common. Therefore, new section is applicable. He also submitted that section 153C is a procedural section, and no vested right has been taken away by the amendment. Thus, it will be applicable on the pending assessment.

11. The ld.DR further submitted that the assessee did not cooperate during the assessment proceedings. He took us through para 9.2 at page no.30 of the assessment order. According to him, first facts and conduct of the assessee are to be seen; law will come later on. It was also submitted that responsibility to prove that these documents did not belong to these assessees was upon them, and they did not produce any evidence in this regard.

12. The ld.CIT-DR further took us through pages 38 to 41; 58, 68, 71 to 79 of the assessment order. He pointed out that there were certain messages recovered by the Revenue, and these messages were on the direction of Director i.e. Shri Dilipkumar Lalwani. According to him, these are not dumb documents. In support of his contentions, he relied upon the order of the ITAT, Ahmedabad Bench in the case of Pravinbhai Keshavbhai Patel Vs. DCIT, reported in 45 taxmann.com 533. He also put reliance on the judgment of Hon'ble Kerala High Court in the case of E.N. Gopakumar, 75 taxmann.com 215 (2016). He placed on record copies of these judgments. On the strength of these judgments, it was contended that the moment search is conducted, then a valid notice under section 153A should be issued, even on non-disclosure of any incriminating material, which could reveal undisclosed income. Thus, according to the ld.CIT-DR there is no necessity of incriminating material unearthing the undisclosed income for

assessments under section 153A or 153C of the Act. Only searching the assessee under section 132 is sufficient. The ld.CIT-DR further submitted that "sufficiency of satisfaction" and "satisfaction" are different thing. It was the satisfaction only or word "belongs" or "pertains to" could not be construed to quash the orders passed by the AO. If the AO was satisfied for taking action under section 153C, then the meaning of words "belongs" or "pertains to" would not change the colour.

13. In rebuttal, the ld.counsel for the assessee submitted that the Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. Saumya Construction P.Ltd. 387 ITR 529 (Guj) has held that addition under section 153A can be made only on the basis of incriminating material found during the course of search. Decision of Hon'ble Kerala High Court is not in line of the decision of Hon'ble Gujarat High Court, and ITAT is bound to follow the decision of Hon'ble jurisdictional High Court only. As far as other submissions made by the ld.CIT-DR are concerned, these aspects have been considered by the Hon'ble jurisdictional High Court in the case of Anilk Kumar Gopikishna Agrawal Vs. ACIT (supra).

14. We have duly considered rival contentions and gone through the record carefully. Before we embark upon an inquiry, whether the material found at the premises of the searched person, would indicate that these documents falls in the category of documents, which could be termed as document belong to or belongs to the assessee or entry embedded in them falls within the ambit of expression "pertains to" or "relates to". We have to determine under which clause one has to construe the documents found during the course of search. Therefore, it is imperative upon us to take note of section 153C, which reads as under:

2.2.2 UPTO 01.06.2015:

Assessment of income of any other person. -

153C. *-[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person —[and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A]:]*

2.2.3 **WITH EFFECT FROM 01.06.2015:**

Assessment of income of any other person. -

— 153C. -[(1)] —[Notwithstanding anything contained in section 139. section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—
(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, ~ belongs to; or

(b) any books of account or documents, seized or requisitioned, or any information contained therein,

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

15. A perusal of the above provisions would reveal that in the case of search action, carried out under section 132 of the Income Tax Act, prior to 1.6.2015, if any money, bullion, jewellery or other valuable article or thing, or books of accounts or documents, seized or requisitioned “belongs” or “belong” to a person other than the person referred to section 153A, then the AO of the searched person while passing assessment order under section 153A or prior to that, record his satisfaction about those documents, and if those documents

disclosed undisclosed income of the person other than the searched person. He will transmit those documents along with his satisfaction note to the AO having jurisdiction over that other person. Jurisdiction under section 153C of the Act prior to 1.6.2015 could be invoked only if the material seized during the course of search in the case of third-person “belongs to” to some persons other than the searched person. However, after 1.6.2015, the Legislature has categorized two situations. As far as recovery of any money, bullion jewellery or other valuable article or thing seized or requisitioned belongs to person other than the searched person, then section 153C would be justified. However, with regard to the recovery of any books of accounts or documents, seized or requisitioned, then if they pertain to other person, or any information contained therein relates to person other than the searched person, then the action under section 153C could be there. The scope of section 153C after 1.6.2015 has been widened; viz. if a person at whose premises search was carried out maintaining certain details in his regular day-to-day business, and that contain certain information exhibiting the undisclosed income of the person other than the searched person, then the action under section 153C could be justified. But prior to 1.6.2015, the documents ought to be belonged to person other than the searched person. There is a clear distinction between both the conditions. Subsequent to 1.6.2015, the information embedded in the document is sufficient for taking action under section 153C, but prior to 1.6.2015 action under section 153C could be taken if documents belong to the person other than the searched person was found during the course of search.

16. Hon’ble Gujarat High Court in its decision rendered in the case of Anilk Kumar Gopikishna Agrawal Vs. ACIT (supra) considered an issue, whether post-amended section could be applicable on the pending assessments, meaning thereby, if search was conducted prior to 1.6.2015, but assessments were not

concluded, whether post-amended section is to be applied in such cases or not; because that would change the very nature of the disputes.

17. Hon'ble Gujarat High Court has formulated the following question

"whether section 153C of the Act as amended w.e.f. 1.6.2015 would be applicable to cases where search initiated prior to that date ?"

After an elaborate discussion, Hon'ble court arrived at the conclusion that this section would be applicable prospectively only on the search conducted after 1.6.2015. We would like to take note of the relevant discussion made in the judgment, which reads as under:

"19.8 While it is true that section 153C of the Act is also a machinery provision for assessment of income of a person other than the person searched, in the opinion of this court, this is not a case where by virtue of the amendment, there is merely a change in the procedural provisions affecting the assessees who were covered by the unamended provision. By the amendment, a new class of assessees are sought to be brought within the sweep of section 153C of the Act, which affects the substantive rights of the assessees and cannot be said to be a mere change in the procedure. Since the amendment expands the scope of section 153C of the Act by bringing in an assessee if books of account or documents pertaining to him or containing information relating to him have been seized during the course of search, within the fold of that section, this question assumes significance, inasmuch as in the facts of the present case, as on the date of search, it was only if such material belonged to a person other than the searched person, that the Assessing Officer of the searched person could record such satisfaction and forward the material to the Assessing Officer of such other person. However, subsequent to the date of search, the amendment has been brought into force and based on the amendment, the petitioners who were not included within the ambit of section 153C of the Act as on the date of the search, are now sought to be brought within its fold on the ground that the satisfaction note and notice under section 153C of the Act have been issued after the amendment came into force. Therefore, this case does not relate to the interpretation of the provisions of any of the sections, but relates to the stage at which the amended section 153C of the Act can be made applicable, as to whether it relates to the date of search; or the date of recording of satisfaction by the Assessing Officer of the searched person; or the date of recording of satisfaction by the Assessing Officer of the other person; or the date of issuance of notice under section 153C of the Act.

19.9 In the facts of the present case, the search was conducted in all the cases on a date prior to 1st June, 2015. Therefore, on the date of the search, the Assessing Officer of the person searched could only have recorded satisfaction to the effect

that the seized material belongs or belong to the other person. In the present case, the hard-disc containing in the information relating to the petitioners admittedly did not belong to them, therefore, as on the date of the search, the essential jurisdictional requirement to justify assumption of jurisdiction under section 153C of the Act in case of the petitioners, did not exist. It was only on 1st June, 2015 when the amended provisions came into force that the Assessing Officer of the searched person could have formed the requisite belief that the books of account or documents seized or requisitioned pertain to or the information contained therein relates to the petitioners.

19.10 In this backdrop, to test the stage of applicability of the amended provisions, a hypothetical example may be taken. The search is carried out in the case of HN Safal group on 4.9.2013. If the Assessing Officer of the searched person had recorded satisfaction that some of the seized/requisitioned material belongs to a person other than the searched person and forwarded the material to the Assessing Officer of the other person, had issued notice under section 153C of the Act prior to the coming into force of the amended provision. The notice under section 153C of the Act was challenged before the appropriate forum on the ground that the seized material does not belong to such other person and such issue was decided in favour of such person on a finding that the seized material does not belong to the other person. Thereafter, in view of the amendment in section 153C (1) of the Act, since the books of account or documents did not belong to the other person but did pertain to him or the information contained therein related to him, can the Assessing Officer of the searched person once again record satisfaction as contemplated under the amended provision and forward the material to the Assessing Officer of such other person. The answer would be an emphatic "no" as the Assessing Officer of the searched person after recording the earlier satisfaction would have already forwarded the material to the Assessing Officer having jurisdiction over the other person, therefore, there would be no question of his again forming a satisfaction as required under the amended provisions of section 153C of the Act.

19.11 In the opinion of this court, if a date other than the date of search is taken to be the relevant date for the purpose of recording satisfaction one way or the other, it would result in an anomalous situation wherein in some cases, because the notices under section 153C of the Act were issued prior to the amendment, they would be set aside on the ground that the books of account or documents seized or requisition did not belong to the other person though the same pertained to or the information contained therein related to such person, whereas in other cases arising out of the same search proceedings, merely because the notices are issued after the amendment, the same would be considered to be valid as the books of account or documents seized or requisitioned pertain to or the information contained therein relate to the other person. It could not have been the intention of the legislature to deal with two sets of identically situated persons differently, merely because in one case the Assessing Officer of the searched person records satisfaction as required under section 153C of the Act prior to the coming into force of the amended provisions and in any another case after the coming into force of the amended provisions.

19.12 In Pr. CIT v. Vinita Chaurasia, [2017] 394 ITR 758/248 Taxman 172/82 taxmann.com 153 (Delhi), the Delhi High Court has held that, at the outset, it requires to be noticed that the search in the present case took place on 19th June, 2009, i.e., prior to the amendment in section 153C(1) of the Act with effect from 1st June, 2015. Therefore, it is not open to the Revenue to seek to point out that the document in question 'pertains to' or 'relates to' the assessee. Against this decision the revenue filed a special leave petition before the Supreme Court being Pr. CIT v. Vinita Chaurasia [2018] 98 taxmann.com 414/259 Taxman 88 (SC) condoned the delay and dismissed the special leave petition.

19.13 In Pr. CIT v. Index Securities (P.) Ltd. , [2017] 86 taxmann.com 84 (Delhi), on which reliance had been placed on behalf of the petitioners, the Delhi High Court has held thus:

> *"28.4 The Supreme Court also agreed with the decision of the Gujarat High Court in Kamleshbhai Dharamshibhai Patel (supra) to the extent it held that "it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of account or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act." The Supreme Court observed: "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."*

28.5 The above categorical pronouncement of the Supreme Court cannot, by any stretch of imagination, be termed as obiter as has been suggested by Mr. Manchanda. Even the obiter dicta of the Supreme Court is binding on this Court.

29. The search in the case before the Supreme Court was prior to 1st June 2015. Apart from the fact the Supreme Court approved the above decision of the Gujarat High Court holding that the seized documents should 'belong' to the other person, the legal position in this regard where the search has taken place prior to 1st June 2015 has been settled by the decision of this Court in Pepsico India Holdings (P.) Ltd. v. ACIT (supra). In Commissioner of Income Tax v. Vinita Chaurasia (supra), this Court reiterated the above legal position after discussing the decisions in Principal Commissioner of Income Tax v. Super Malls (P) Limited (supra) and Commissioner of Income Tax(Central)-2 v. Nau Nidh Overseas Pvt. Ltd. (supra). The essential jurisdictional requirement for assumption of jurisdiction under Section 153 C of the Act (as it stood prior to its amendment with effect from 1st June 2015) qua the 'other person' (in this case the assessees) is that the seized documents forming the basis of the satisfaction note must not merely 'pertain' to the other person but must belong to the 'other person'.

30. In the present case, the documents seized were the trial balance and balance sheets of the two Assessees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assessees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assessees, they did not belong to them. Therefore, one

essential jurisdictional requirement to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assessees."

19.14 Thus, it is the date of search that has been considered to be the relevant date for the purpose of applying the amended provisions of section 153C(1) of the Act.

19.15 This court is of the considered view that the trigger for initiating action whether under section 153A or 153C of the Act is the search under section 132 or requisition under section 132A of the Act and the statutory provisions as existing on the date of the search would be applicable. The mere fact that there is no limitation for the Assessing Officer of the searched person to record satisfaction will not change the trigger point, namely, the date of the search. The satisfaction of the Assessing Officer of the searched person would be based on the material seized during the course of the search or requisition and not the assessment made in the case of the searched person, though he may notice such fact during the course of assessment proceedings. Therefore, whether the satisfaction is recorded immediately after the search, after initiation of proceedings under section 153A of the Act or after assessment is framed under section 153A of the Act in the case of the searched person, the trigger point remains the same, viz., the search and, therefore, the statutory provision as prevailing on that day would be applicable. While it is true that sections 153A and 153C of the Act are machinery provisions, but the same cannot be made applicable retrospectively, when the amendment has expressly been given prospective effect. Besides, though such provisions are machinery provisions, the amendment brings into its fold persons who are otherwise not covered by the said provisions and therefore, affects the substantive rights of such person. In the opinion of this court, the decision of the Supreme Court in M.A. Merchant (supra) would be squarely applicable to the facts of the present case wherein it was held thus:…"

18. This judgment has been followed by the Hon'ble Gujarat High Court in the cases of i) Mahendrabhai Kasturchand Son Vs. ITO, SCA No.11817 of 2019 (Guj); ii) Charmy Sanket Naik Vs. ACIT, SCA No.13374 of 2019 (Guj); iii) Nita Chaitanya Shah, SCA No.14059 of 2019 (Guj).

19. In the light of the above position of law, let us take note of the satisfaction recorded by the AO of the searched person as well as AO of the present assessees. Though, the AO is common, but while exercising his dual capacity, he has recorded first his satisfaction in the capacity of searched person's AO, and thereafter he recorded his satisfaction in the capacity of the AO of the present assessees. For the facility of reference, we take note the satisfaction from the lead case of Shri Dilipkumar Lalwani placed at page no.456 to 483. Relevant part of the satisfaction while issuing notice under section 153C is

available at page no.457 and we deem it appropriate to take note of this part, which reads as under:

7.	*Satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S.No.5 relates/pertains to the person referred to in S.No.4*	***As per Annexure – B*** *In view of above facts as mentioned in the Annexure - B. I am satisfied that the documents seized from the premises (i) 801-802, Broadway Business Centre, Opp. Mayor's Bungalows, Law Garden. Ellisbridge, Ahmedabad and (ii) Terrace of Crystal Arcade, Nr. Navrangpura Telephone Exchange, C.G Road, Ahmedabad - contains information,which relates to the assessee, Shri Dilip Kumar Lalwani. Further, I am also satisfied that documents seized have a bearing on the determination of the total income of the assessee, I Shree Dilip Kumar Lalwani for assessment years 2009-10 to 2014-15 The assessee being other than the person referred to in section 153A of the Act. I have satisfaction to proceed against the assessee Shri Dilip Kumar Lalwani as per the provisions of Section 153C of the Income Tax Act, 1961. Therefore, it is fit case for initiation of proceeding u/s 153C of the I.T.Act .*
8.	*Assessment years involved*	*A.Y. 2009-10 to A.Y.2014-15*

20. Thereafter, we find that the AO has annexed annexure-A which contained the details of documents considered by him. Annexure-B is the satisfaction in the capacity of the AO of the searched person. It is a very exhaustive note, and with the assistance of the ld.representativs, we have gone through all these pages. We would like to take note of relevant part of the satisfaction viz. para-7.3, which reads as under:

> *7.3 On the basis of discussion in the preceding paragraphs, it is noticed that XXX account mentioned in various documents seized during the course of search in the Venus Group refers to Shri Dilip Kumar Lalwani and the information contained therein relates to Shri Dilip Kumar Lalwani. There are various transaction recorded in the cash book and related cash vouchers."*
>
> ….. ….. …..

> *10. In view of above facts as mentioned above, I am satisfied that the above mentioned documents seized from the from the premises (i) 801-802, Broadway Business Centre, Opp. Mayor's Bungalows, Law Garden. Ellisbridge. Ahmedabad and (ii) Terrace of Crystal Arcade, Nr. Navrangpura Telephone Exchange, C. G. Road, Ahmedabad contains information which relates to the assessee, Shri Dilip Ku/riar Lalwani. Further, I am also satisfied that satisfied that documents seized have a bearing on the determination of the total income of the assessee, Shree Dilip Kumar Lalwani for assessment years 2009-10 to 2014-15. The assessee being other than the person referred to in section 153A of the Act. I have satisfaction to proceed against the assessee Shri Dilip Kumar Lalwani as per the provisions of Section 153C of the Income Tax Act, 1961. Therefore, it is fit case for initiation of proceeding u/s 153Cof the l.T. Act.*

21. A perusal of both the satisfaction would indicate that the AO nowhere observed that these documents belonged to the assessee i.e. Shri Dilipkumar Lalwani. He only observed that these documents contained information which relate to the assessee. Thus, it could be construed that documents seized during the course of search; again carried out in the cases of concerned third person, were observed as "relates to" the assessee. They do not belong to the assessee. When the assessee took this objection before the ld.first appellate authority, the ld.CIT(A) was of the view that since law has been changed, and scope of section 153C w.e.f. 1.6.2015 would be applicable on these cases, because the assessments have not been concluded when the scope of section 153C was widened. The finding of the ld.CIT(A) is worth to note in this connection i.e. in the case of Shri Dilipkumar Lalwani, which reads as under:

> *"4.3. I have carefully considered the facts of the case, assessment order and submission made by the appellant. The Assessing Officer [DCIT, Central Circle-1 (1), Ahmedabad] of M/s. Venus Infrastructure and Developer Pvt. Ltd., in whose case the search was conducted and documents relating to the appellant company was found and seized has recorded his satisfaction note for initiation of assessment proceedings in the case of appellant and forwarded to the ACIT, Circle-50(l), New Delhi, being the Assessing Officer of the appellant. The AO of appellant has recorded his satisfaction and issued notice u/s. 153C of the I. T. Act, 1961. The case of appellant was subsequently transferred to the ACIT, Central Circle -1(1), Ahmedabad. The appellant had raised objection before the new Assessing Officer against the earlier notice issued by DCIT, Circle -50(1), New Delhi, u/s. 153C of the I. T. Act,1961. The AO who was also AO of M/s. Venus Infrastructure*

and Developer Pvt. Ltd. has withdrawn the earlier notice and issued fresh notice duly recording the satisfaction. The appellant has contended that the notice issued u/s. 153C of the Act was not valid as the seized material on the basis of which notice u/s. 153C was issued did not belong to the appellant. The appellant has also contended that there is no provision in the Income Tax Act either to drop the proceedings u/s. 153C or to issue second set of notices. The appellant has also relied upon the case laws in the case of Pepsico India Holding Pvt. Ltd. Vs. ACIT, RRJ Securities Ltd. [62 Taxmann.com 391] (2015) & Sinhgad Technical Education Society [84 Taxmann.com 290]. The AO has dealt with the argument raised by the appellant in Para 4.9, 4.10 & Para 5 of assessment order. The provision of Section 153C has been amended with effect from 01/06/2015 where if the Assessing Officer is satisfied that any books of account or documents seized pertains to, or any information contained therein relates to any person, other than the person referred to in Section 153A of the Income Tax Act, then books of account or document shall be handed over to the Assessing Officer having jurisdiction over such other person and the AO shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of section 153A. Earlier scope of section 153C was in the cases where the documents seized belong to the assessee, but subsequently the provision of Act has been amended by adding the word 'relating to' in the section 153C. The AO in the present case has issued notice after first day of June, 2015, therefore, the amended provision is applicable in appellant's case. The AO in the satisfaction note has referred the material relating to the appellant found during the course of search in M/s. Venus Infrastructure and Developer Pvt. Ltd. The appellant has relied on the case laws which are on the 'belonging to' prior to the amended provisions of 153C w.e.f. 01/06/2015, therefore, not relevant to the facts of the case. Appellant's contention that there is no provision for issue of second notice u/s. 153C on the same set of facts is not tenable as the Assessing Officer has withdrawn the earlier notice and issued fresh notice after recording the satisfaction. The Honourable Gujarat High Court in the case of A.G. Group Corporation Vs. Harsh Prakash [2013] [35 Taxmann. com 48] has held that, if in the earlier notice a fatal error has been crept in AO will be free to issue another notice provided jurisdiction and limitation aspects are satisfied."

22. This finding is not in the line of law laid down by the Hon'ble Gujarat High Court in the case of Anilk Kumar Gopikishna Agrawal Vs. ACIT, and further reiterated in other cases. At this stage, it is pertinent to note that, otherwise also, these 43 appeals are directly covered by the decision of Hon'ble jurisdictional High Court in the case of Anilk Kumar Gopikishna Agrawal Vs. ACIT (supra) because on the basis of entries embedded in the documents found at the premises of Venus Infrabuild and Shri Ashok Vaswani, notice under

section 153C was issued in the case Ocean Valves Mfg. Co. Proprietor of that concern filed an SCA No.19647 of 2018. This was lead case, and notice issued under section 153C of the Act was quashed. The above facts are contained in paragraph-2.4 of the Hon'ble High Court's decision. For ready reference, we take note of this fact from there. It reads as under:

> *"2.4 By an order dated 23.7.2018, the Assessing Officer rejected the objections filed by the petitioner." Being aggrieved, the petitioner has approached this court by way of present petition challenging the impugned notice dated 8.2.2018 issued by the Assessing Officer under section 153C of the Act for assessment year 2012-13."*
>
> > *2A In case of Venus Group, reference is made to the facts as appearing in Special Civil Application No. 19647 of 2018.*
> >
> > *2A.1 The petitioner, who is an individual and proprietor of M/s. Ocean Valves Mfg. Co. filed his return of income for assessment year 2012-13 on 14.3.2013 declaring total income of Rs.7,27,700/-. A search came to be conducted on various premises of Shri Ashok Sundardas Vaswani, M/s. Venus Infrastructure and Developers P. Ltd. on 13.3.2015. During the course of search various documents were seized in which information about transactions relating to the petitioner was found. The seized incriminating documents related to unaccounted cash transactions which were analysed and correlated with other seized documents. Among the cash transactions as recorded in the seized unaccounted cash book which was found during the course of search, reference was also made to the petitioner. Based on such seized material, the Assessing Officer initiated proceedings under section 153C of the Act by issuing the impugned notices dated 22.3.2018 and 14.8.2018. Subsequently notices have been issued to the petitioner under section 142(1) of the Act to which the petitioner has responded."*

23. In the appeals of the present assessees, identical situation is there. A perusal of the satisfaction note would indicate that the AO nowhere held that documents belonged to the present appellants were found at the premises of searched person/entity. As far as case laws relied upon by the ld.CIT-DR are concerned they are not directly on the point. He put emphasis on the decision of Hon'ble Kerala High Court cited (supra) for buttressing his contentions that no incriminating material is required for proceedings under section 153A or 153C. This proposition is contrary to the decision of Hon'ble Gujarat High Court rendered in the case of Pr.CIT Vs. Saumya Construction P.Ltd. (supra).

Similarly, the order of the ITAT referred by the ld.CIT-DR is with respect to the presumption of truth of certain documents found during the course of search. It is not directly on the point. Other arguments raised by the ld.CIT-DR were raised by the ld.Senior standing counsel before the Hon'ble Gujarat High Court in the case of Anil Kumar Gopikishna Agrawal Vs. ACIT (supra) and those arguments have been considered. Though, section 153C is a procedural section, but the jurisdiction to assess an assessee under this section is being invoked with help of the section. The AO will be in a position to pass assessment order only if during the course of search, any money, bullion, jewellery and other valuable article or thing, or the documents found belong to other person prior to 1.6.2015, and the AO of the searched person was satisfied that such documents disclosed undisclosed income. The documents belonged to the appellants considered under this compartment of the arguments were not found, rather certain information relating to the assessees were found to be embedded in these documents, but prior to 1.6.2015, jurisdiction under section 153C cannot be invoked on the basis of such information. Therefore, we allow this preliminary ground of appeal raised by these 43 appellants (assessees) and quash all these assessment orders passed in the appeals mentioned at serial no.1 to 43 of the cause title of this order. Thus all the appeals of the assessee are partly allowed whereas the Revenue's appeal are dismissed.

Compartment No.2 of the arguments:

24. Under this fold of submission, point in dispute requires tobe adjudicated is, whether the assessment under section 153A is to be framed directly based on incriminating material found during the search carried out in the cases of the concerned assessees. Under this fold of arguments, we take up the following appeals:

Assessee	Appeal No.	Asst. Year	Appeal by
Rajesh Sunderdas Vaswani	IT(SS)A 95/Ahd/2019	2009-10	Assessee

Rajesh Sunderdas Vaswani	IT(SS)A 96/Ahd/2019	2010-11	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 97/Ahd/2019	2011-12	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 98/Ahd/2019	2012-13	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 99/Ahd/2019	2013-14	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 100/Ahd/2019	2014-15	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 101/Ahd/2019	2015-16	Assessee
Rajesh Sunderdas Vaswani	IT(SS)A 235/Ahd/2019	2009-10	Department
Rajesh Sunderdas Vaswani	IT(SS)A 236/Ahd/2019	2011-12	Department
Rajesh Sunderdas Vaswani	IT(SS)A 237/Ahd/2019	2012-13	Department
Rajesh Sunderdas Vaswani	IT(SS)A 238/Ahd/2019	2013-14	Department
Rajesh Sunderdas Vaswani	IT(SS)A 239/Ahd/2019	2014-15	Department
Rajesh Sunderdas Vaswani	IT(SS)A 240/Ahd/2019	2015-16	Department
Sanjeet Motors Finance P. Ltd.	IT(SS)A 109/Ahd/2019	2012-13	Assessee
Sanjeet Motors Finance P. Ltd.	IT(SS)A 110/Ahd/2019	2013-14	Assessee
Deepak Budharmal Vaswani	IT(SS)A 111/Ahd/2019	2009-10	Assessee
Deepak Budharmal Vaswani	IT(SS)A 112/Ahd/2019	2010-11	Assessee
Deepak Budharmal Vaswani	IT(SS)A 113/Ahd/2019	2011-12	Assessee
Deepak Budharmal Vaswani	IT(SS)A 114/Ahd/2019	2012-13	Assessee
Deepak Budharmal Vaswani	IT(SS)A 115/Ahd/2019	2013-14	Assessee
Deepak Budharmal Vaswani	IT(SS)A 116/Ahd/2019	2014-15	Assessee
Deepak Budharmal Vaswani	IT(SS)A 117/Ahd/2019	2015-16	Assessee
Deepak Budharmal Vaswani	IT(SS)A 248/Ahd/2019	2009-10	Department
Deepak Budharmal Vaswani	IT(SS)A 249/Ahd/2019	2010-11	Department
Deepak Budharmal Vaswani	IT(SS)A 250/Ahd/2019	2011-12	Department
Deepak Budharmal Vaswani	IT(SS)A 251/Ahd/2019	2012-13	Department
Deepak Budharmal Vaswani	IT(SS)A 252/Ahd/2019	2013-14	Department
Deepak Budharmal Vaswani	IT(SS)A 253/Ahd/2019	2014-15	Department
Deepak Budharmal Vaswani	IT(SS)A 254/Ahd/2019	2015-16	Department

25. The ld.counsel for the assessee while impugning orders of the Revenue authorities contended that almost all the Hon'ble High Courts are unanimous on the point that assessment under section 153A is to be framed on the basis of material found during the course of search or requisitioned under section 132A of the Act. Other information gathered during the search and survey carried out

on third person, those materials cannot be used for the purpose of section 153A. The AO ought to have framed assessment orders either under section 153C with such material or under section 147 of the Act as the case may be. Taking us through the facts, he pointed out that in hands of these three assessees, the additions have been made based on followings viz.

i) "Cash book" seized from "Terrace of Cystal Arcade" Ashok Sunderdas Vaswani and Venus Infrastructure and Development P.Ltd.

ii) "Material" seized from "901, Sapphire Complex", search in the case of Ashok Sunderdas Vaswani and Venus Infrastructure and Development P.Ltd.

iii) Information gathered during various "search" and "survey" carried out in the case of Shirish Chandrakant Shah & Prraneta Industries Ltd., i..e completely unconnected third parties;

iv) Information gathered during various "search" and "survey" carried out by Kokatta Investigation Wing" in the case of completely unconnected third parties;

26. The ld.counsel for the assessee first appraised us with the scheme of assessments in the case of search. He took us through section 153A as well as 153C. Thereafter, he took us through the judgments of Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. Saumya Construction 387 ITR 529 (Guj). He particularly took us through paragraph no15 onwards. Apart from this judgment, he relied upon the following other decisions:

i) DCIT vs. Smt. Shivali Mahajan and others –ITA 5585/Del/2015 and others
ii) Krishna Kumar Singhania vs. DCIT - 168 ITD 271 (KolkattaTrib.)
iii) Pavitra Realcon Pvt. Ltd. vs. ACIT - (2017) 87 taxmann.com 142 (Delhi Trib.)
iv) CIT vs. Pinaki Mishra – 392ITR 347 (Delhi)
v) DIT vs. Lalitkumar M. Patel - (2013) 36 taxman.com 554 (Gujarat)
vi) PCIT vs. Subhash Khattar - ITA 60/2017 (Del. HC)
vii) SubhagKhattar vs. ACIT - ITA 902/Del/2015
viii) Asha Rani Lakhotia vs. ACIT - ITA 424/Del/2015
ix) Krishna Bhagwan vs. ACIt - ITA 423/Del/2015

x) Sushila Lakhotia vs. ACIT - ITA 770/Del/2015

Copies of these decisions have been placed on record. After appraising us the scope of assessment under section 153A vis-à-vis section 153C, he contended that when search action under section 132 of the Act is carried out in the case of particular assessees, then the following aspects are to be taken care of, while framing assessment under section 143(3) r.w. section 153A. Section 143(3) r.w.s. 153A is to be framed strictly on the basis of incriminating material found during the course of search carried out in the case of the assessee. No cognizance is to be taken on any material which was not found during the course of search action. If search action under section 132 of the Act has simultaneously been carried out in the cases of some other assessees, and some material belong to the assessee was found, then such material can be taken into cognizance only for the purpose of proceedings under section 153C of the Act, and not in the proceedings under section 153A of the Act. Thus, according to the ld. counsel for the assessee, material collected during the course of search action carried out in the cases of some third parties, cannot be considered while framing assessment under section 143(3) r.w.s. 153A of the Act. For that purpose, proceedings under section 153C must be initiated. The ld.counsel for the assessee thereafter took us through the assessment orders, and submitted that on the basis of finding recorded in the assessment orders, the assessees have compiled the details in tabular forms exhibiting the additions made in a particular year, and basis on which, such addition was made. These details have been placed on the paper book. Taking us through these details, he specifically submitted that none of the additions was made on the basis of material found during the course of search carried out in the case of these three assessees. The additions are made mainly on the basis of four materials extracted (supra) viz.

xi) "Cash book" seized from "Terrace of Cystal Arcade" Ashok Sunderdas Vaswani and Venus Infrastructure and Development P.Ltd.

xii) "Material" seized from "901, Sapphire Complex", search in the case of Ashok Sunderdas Vaswani and Venus Infrastructure and Development P.Ltd.

xiii) Information gathered during various "search" and "survey" carried out in the case of Shirish Chandrakant Shah & Prraneta Industries Ltd., i..e completely unconnected third parties;

xiv) Information gathered during various "search" and "survey" carried out by Kokatta Investigation Wing" in the case of completely unconnected third parties;

27. He also took us through the copy of *panch nama* drawn in the case of Ashok Sunderdas Vaswani in order to demonstrate that the cash book was found from his premises, and other material used was also found in the search carried out at his premises viz. 901, Sapphire Complex.

28. On the other hand, the ld.CIT-DR relied upon orders of the Revenue authorities. For buttressing his contentions, he mainly made reference to the following decision rendered by the Hon'ble Kerala High Court:

i) DR.A.V.Sreekumar Vs. CIT, 90 taxmann.com 355 (Ker)

ii) Sunny Jacob Jewellers and Wedding Centre Vs. DCI, 48 taxmann.com 347 (Ker.)

iii) CIT Vs. St.Francis Clay Décor Tiles, 70 taxmann.com 234 (Ker)

iv) E.N.Gopakumar Vs. CIT, 75 taxmann.com 215 (Ker)

v) Pr.CIT Vs. Saumya Construction P.Ltd., 387 ITR 529 (Guj)

vi) Par Excellence Leasing & Financial Services P.Ltd. Vs. ACIT, 115 taxmann.com 38 (Delhi-Trib)

vii) Pravinbhai Keshavbhai Patel Vs. DCIT, 45 taxman.com 533 (Ahd-Trib.)

He submitted that Hon'ble Kerala High Court has held that for the purpose of assessment required to be made under section 153A, it is not necessary that search should yield incriminating material. The role of the search is only to issue notice under section 153A, thereafter, the AO can look into any other aspects for determining taxable income.

29. We have duly considered rival contentions and gone through the record carefully. Before adverting to the facts and alleged seized material considered by the ld.AO for making the addition in the hands of the present three assessees, we deem it appropriate to bear in mind the position of law propounded in various authoritative judgments recording scope of section 153A of the Act. We are of the view that in this regard, there were large numbers of decisions. First we refer to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla, 380 ITR 573 (Del). Hon'ble Delhi High Court after detailed analysis has summarized the following legal position:

> *37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
>
> i. *Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
>
> ii. *Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
>
> iii. *The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
>
> iv. *Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
>
> v. *In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

> vi. *Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
>
> vii. *Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

30. ITAT, Delhi Bench in the case of DIT Vs. Smt. Shivali Mahajan and others, rendered in ITA No.5585/Del/2015 (copy of the decision placed on record) has considered this aspect in its decision. Thereafter, the Tribunal has specifically held that serial no.(iv) of the above proposition, the Hon'ble Delhi High Court has specifically held that assessment under section 153A of the Act has to be specifically made on the basis of seized material. ITAT Delhi Bench was considering an aspect whether the evidence in the shape of books of accounts, money, bullion, jewellery found during the course of search relates to other person than the searched person, can that be considered while making assessment under section 153A of the Act. Like in the present appeals, simultaneous search was carried out at the premises of the Venus Infrastructure and Ashok Sunderdas Vaswani, and the material found during the search of Venus Infrastructure Developers or Ashok Sunderdas Vaswani could be used while framing the assessment of Rajesh Sunderdas Vaswani and Deepak Budharmal Vaswani under section 153A of the Act. ITAT Delhi Bench has specifically held that material recovered from the premises of other person cannot be used in the hands of the searched person. For that purpose an assessment under section 153C or 147 is to be made. At this stage, in order to fortify ourselves, we would like to make reference to the following paragraphs of the ITAT Delhi Bench's order. It reads as under:

> *"15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person."*

31. Order of the ITAT Delhi Bench in other cases viz. Asha Rani Lakhotia vs. ACIT and Subhag Khattar Vs. ACIT are on the same line.

32. Hon'ble Delhi High Court in the case of Subhag Khattar in Tax Appeal No.60 of 2017 has considered the following question of law:

> *"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the additions made under Section 153A read with Section* 143(3) *of the Income Tax Act, 1961 in the circumstances of the case, were not justified and supportable in law? "*

33. After putting reliance upon its decision in the case of CIT Vs. Kabul Chawla (supra) has replied this question as under:

> *"6. The Assessee went in appeal before the Commissioner of Income Tax (Appeals) who dismissed it by an order dated 27th November, 2014. A further appeal was filed by the Assessee before the ITAT. The ITAT, inter alia, found substance in the contention of the Assessee that the assessment under Section 153(A) of the Act, in the absence of any incriminating material found during the search on the premises of the Assessee was not sustainable in law. Reliance was placed on the decision of this Court in Commissioner of Income Tax v. Kabul Chawla, [2016] 380 ITR 573.*
>
> *7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the*

Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter."

34. Hon'ble Court has specifically observed for the purpose of section 153A that only seized material is required. However, if there is any other incriminating material belong to the assessee found at the premises of the some other person, then the assessment has to be made under other provisions and not under section 153A of the Act. Hon'ble jurisdictional high Court has also considered the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (supra). Hon'ble Gujarat High Court framed the following question of law in the case of Pr.CIT Vs. Saumya Construction (supra):

"[A] *Whether the order of Tribunal is right in law and on facts in deleting the addition made in assessment made u/s 153A of the Act?*

[B] *Whether the Tribunal is right in law in holding that the addition should be based on the incriminating material found during the course of search under new procedure of assessment u/s 153A which is different from earlier procedure u/s 158BC r.w.s. 158BB of the Act and by reading into the section, the words 'the incriminating material found during the course of search' which are not there in section 153A?*

[C] *Whether the Tribunal erred in relying on the ITAT order in Sanjay Aggarwal v. DCIT (2014) 47 Taxmann.Com 210 (Del) which has interpreted undisclosed income unearthed during the search to imply incriminating material, as against the finding of the Delhi High Court in Filatex India Ltd. v. CIT-IV (2015) 229 Taxman 555 wherein it is held that during the assessment u/s 153A additions need not be restricted or limited to incriminating material found during the course of search?"*

35. Hon'ble Court concurred with the decision of Hon'ble Delhi High Court. We deem it appropriate to take note of relevant part of the decision, which reads as under:

"16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the legislature is clear viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without

saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

17. In the facts of the present case, a search came to be conducted on 07.10.2009 and the notice was issued to the assessee under section 153A of the Act for assessment year 2006-07 on 04.08.2010. In response to the notice, the assessee filed return of income on 18.11.2010. In terms of section 153B, the assessment was required to be completed within a period of two years from the end of the financial year in which the search came to be carried out, namely, on or before 31st March, 2012. Here, insofar as the impugned addition is concerned, the notice in respect thereof came to be issued on 19.12.2011 seeking an explanation from the assessee. The assessee gave its response by reply dated 21.12.2011 calling upon the Assessing Officer to provide copies of statements recorded on oath of Shri Rohit P. Modi and Smt. Pareshaben K. Modi during the search as well as the copies of the documents upon which the department placed reliance for the purpose of making the proposed addition as well as the copy of the explanation given by Shri Rohit P. Modi and Smt. Pareshaben K. Modi regarding the on-money received, copies of the assessment orders in case of said persons and also requested the Assessing Officer to permit him to cross-examine the said persons. The Assessing Officer issued summons to the said persons, however, they were out of station and it was not known as to when they would return. In this backdrop, without affording any opportunity to the assessee to cross-examine the said persons, the Assessing Officer made the addition in question.

18. In this case, it is not the case of the appellant that any incriminating material in respect of the assessment year under consideration was found during the course of search. At the relevant time when the notice came to be issued under section 153A of the Act, the assessee filed its return of income. Much later, at the fag end of the period within which the order under section 153A of the Act was to be made, in other words, when the limit for framing the assessment as provided under section 153 was about to expire, the notice has been issued in the present case seeking to make the proposed addition of Rs.11,05,51,000/- on the basis of the material which

was not found during the course of search, but on the basis of a statement of another person. In the opinion of this court, in a case like the present one, where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search under section 132 or making of requisition under section 132A, while computing the total income of the assessee under section 153A of the Act, additions or disallowances can be made only on the basis of the incriminating material found during the search or requisition. In the present case, it is an admitted position that no incriminating material was found during the course of search, however, it is on the basis of some material collected by the Assessing Officer much subsequent to the search, that the impugned additions came to be made.

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India), Jodhpur (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.

20. For the foregoing reasons, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, dismissed."

36. As far as decisions relied upon by the ld.CIT-DR are concerned, we have already considered the decision in the case of E.N. Gopakumar (supra). Other decisions are also on the similar line, but they are not in coherence with the position of law propounded by the Hon'ble jurisdictional High Court. Therefore, Tribunal being subordinate to the Hon'ble Gujarat High Court, is required to first follow Hon'ble Supreme Court and thereafter Hon'ble jurisdictional High Court.

If no ratio of the law is available from Hon'ble Supreme Court as well as Hon'ble jurisdictional high Court, then the decision of non-jurisdictional High Court is to be followed. Therefore, we do not deem it necessary to recapitulate the decisions of Hon'ble Kerala High Court and make discussion on them. Ld.CIT-DR was unable to bring any authoritative decision from the Hon'ble Supreme Court or from the Hon'ble jurisdictional High Court to support the case of the Revenue. He made reference to para-18 of the Pr.CIT Vs. Saumya Construction (supra), which we have considered; but paragraph nowhere buttress the case of the ld.CIT-DR. On a detailed analysis of these case laws, it is pertinent to observe that scheme of the Income Tax Act would provide that a regular assessment of the income is to be made under section 143(3)/144. In the case of an escaped income, then a notice under section 148 should be issued and the assessment is to be made under section 147 r.w. section 143(3). In case a search is carried out on an assessee, then that search could give rise to a proceedings viz. under section 153A *qua* the person who has been searched. The income has to be assessed on the basis of material found during the course of search. The second category of the person is third-party and the assessment could be made under section 153C of the Act. The assessment under section 153C is to be made on a condition that during the course of search any money, bullion, jewellery, assets, documents belonged to the assessee prior to 1.6.2015, and information relates/pertains to assessee after 1.6.2015 was found *qua* to the person other than the searched person. In that situation, the AO of the searched person would record his satisfaction that such material belongs to third-person, and he would transmit that material along with his satisfaction to the AO having jurisdiction on such other person. The AO thereafter issue notice under section 153Cafter recording his satisfaction and the assessment proceedings under section 153C r.w. section 153A would commence. One more situation would arise, which we are going to discuss in this very group in the later part of the order that material was found during the course of search, but six years have

expired, then the assessment could be reopened. In other words, the material belonged to some other person was found during the course of search. Prior to 1.6.2015, a possible angle could be that such material is to be construed, whether the income has escaped assessment or not. Broadly, these are basic parameters for making assessment under different sections. In the present group of three assessees in different assessment years, search was conducted, but the additions have been made on the basis of the material found during the search relating to some third person. In other words, the AO has not made the addition on the basis of material found during the course of search of these three assessees. We will discuss the material considered by the AO in the subsequent part of his order. Primarily, after looking the material considered by the AO and compiled in tabular form by the ld.counsel for the assessee, we have verified that these additions are not based on the material found during the course of search conducted at the premises of these three assessees. Let us take note of the material considered by the AO for making the addition. These details have been compiled in tabular form and they read as under:

RAJESH SUNDERDAS VASWANI

Particulars	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	***Total* (*09-10 to 15-16*)**	***Basis of addition***
Investment in land property:									
Land at Ambali FP - 22	72500000	0	0	0	0	0	0	72500000	***Note - 1***
Land at Santej, Survey No.618	0	2500000	6500000	0	0	0	0	9000000	***Note - 1***
Land at Santej, Survey No.654	0	7000000	6757900	0	0	0	0	13757900	***Note - 1***
Land at Ambai - FP/22	0	28120000	0	0	0	0	0	28120000	***Note - 1***
Land at Ognaj, Survey No.1441/11	0	0	11000000	21040000	136500	0	0	32176500	***Note - 1***
Land at Ognaj, Survey No.1441/12	0	0	5500000	24442250	13700	0	0	29955950	***Note - 1***
Land at Santej, Survey No.669	0	0	32000000	1000000	0	0	0	33000000	***Note - 1***
Land at Santej, Survey No.711	0	0	20600000	33200000	0	0	750000	54550000	***Note - 1***
Land at Shilaj, Survey No.804	0	0	13720000	25000	26000000	5800000	21500	45566500	***Note - 1***

Land at Thaltej, Survey No.518, 519, FP 84	0	0	30000000	116500000	72050000	10000000	0	228550000	***Note - 1***
Land at Ranakpur, Survey No.144	0	0	0	6100000	7000000	0	0	13100000	***Note - 1***
Land at Vejalpur, Survey No.688	0	0	0	3815000	3600000	5875000	20579250	33869250	***Note - 1***
Land at Santej, Survey No.712	0	0	0	0	3014800	2518000	0	5532800	***Note - 1***
Land at Ognaj, Survey No.1300/2	0	0	0	0	23930000	0	0	23930000	***Note - 1***
Land at Ognaj, Survey No.1441/10	0	0	0	0	0	22600000	0		***Note - 1***
Other land transactions	166667	0	4129000	19633	1250	6200	0	4322750	***Note - 1***
Expenses related to projects:									
Venus Amadeus & Venus IVY	0	0	2078200	1800000	0	0	0	3878200	***Note - 1***
Atlantis & Benicia	0	778250	6689750	0	0	0	0	7468000	***Note - 1***

Particulars	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	***Total (09-10 to 15-16)***	***Basis of addition***
Investment in shops at 3rd Eye building, Panchwati Road, Ahmedabad	1492000	16080	0	41814	567608	155308	354	2273164	***Note - 1***
Investment / Expense at Bungalow	14492605	9630436	1055493	524910	4544693	9897843	12597300	52743280	***Note - 1***
Transactions of personal nature	7211300	21017100	7120165	9029055	9717070	15100220	11199280	80394190	***Note - 1***
Misc. transactions	0	0	4507500	2300000	0	0	15933650	22741150	***Note - 1***
SMFPL & SSAHPL	0	0	0	219250000	59725567	3091050	952383	283019000	***Note - 2***
Payment to Prakash Tekwani	0	0	3666667	8400000	3333333	0	0	15400000	***Note - 1***
LTCG from sale of shares of Prraneta Industries Ltd.	0	0	174102529	69266623	0	0	0	243369152	***Note - 3***
Total	**95862572**	**69061866**	**329427204**	**516754285**	**213634521**	**75043621**	**62033717**	**1361817786**	

Note - 1: Additions based on "cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in case of "ASV" & "VIDPL" (not "RSV");

Note - 2: Addition based on -

- "information" gathered during various search / survey carried out by Kolkatta Investigation Wing in cases of completely unconnected third parties ; (not "RSV") ;

- "Material" seized from "901, Sapphire complex" which was searched in the case of "ASV" and "VIDPL" (not "RSV") ; &

- "cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in the case of "ASV" and "VIDPL" (not "RSV") ;

Note - 3: Addition based on -

- "information" gathered from "search" and "survey" in the case of "SCS" & "PIL" i.e. completely unconnected third parties (not "RSV") ; &

- "cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in the case of "ASV" and "VIDPL" (not "RSV") ;

ASV - Ashok Sunderdas Vaswani

VIDPL - Venus Infrastructure & Development Pvt. Ltd.

RSV - Rajesh Sunderdas Vaswani

SCS -Shirish Chandrakant Shah

PIL - Prrante Industries Ltd.

SANJEET MOTORS FINANCE PVT. LTD.

Particulars	**2012-13**	**2013-14**	***Total***	***Basis of addition***
Share capital	493300000	500000	493800000	***Note - 1***
Total	**493300000**	**500000**	**493800000**	

Note - 1: Addition based on -

- ***"information" gathered during various search / survey carried out by Kolkatta Investigation Wing in cases of completely unconnected third parties (not "SMFPL");***
- ***"Annexure A-1" seized from "901, Sapphire complex" searched in the case of "ASV" and "VIDPL" (not "SMFPL") ; &***
- ***"cash book" seized from "terrace of Crystal Arcade" (i.e. Annnexure A-1 to 142) searched in the case of "ASV" and "VIDPL" (not "SMFPL") ;***

ASV - Ashok Sunderdas Vaswani
VIDPL - Venus Infrastructure & Development Pvt. Ltd.
SMFPL - Sanjeet Motors Finance Pvt. Ltd.

DEEPAK BUDHARMAL VASWANI

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	*Total (09-10 to 15-16)*	*Note / Pgs. of DR's P/B*
Investment in land property:									
Land at Bodakdev, Survey No.166/1	0	0	0	0	0	11500000	43136000	54636000	***Pgs.364-365***
Land at Shilaj, Survey No.56	0	0	7500000	4065000	1025000	0	0	12590000	***Pgs.366-367***
Land at Vejalpur, Survey No.688	0	0	0	3815000	3600000	5875000	20579250	33869250	***Pgs.368-370***
Expenses for Saurabhi	0	0	0	0	0	346544	161300	507844	***Pgs.371-373***
Transactions with Thakore family	0	2000000	8500000	18515000	46750000	13800000	9800000	99365000	***Pgs.374-376***
Investment in land at Nidhrad and Chekla	51000000	20250000	113426000	389277000	352579600	165404970	83490500	1175428070	***Pgs.377-393***
Other land transactions / Expenses related to land	464551755	195205900	674366872	505642204	359395385	257513000	163484290	2620159406	***Pgs.394-428***
Expenses related to projects:									
Venus Amadeus & Venus IVY	37839771	32400000	6829800	3957300	3961000	9337450	37348810	131674131	***Pgs.429-441***
Atlantis & Benicia	1941000	38887150	81105770	12148850	29653502	6805000	5308500	175849772	***Pgs.442-455***
Venus Pahel	0	0	31465900	6408700	8800000	45300000	903300	92877900	***Pgs.456-457***
C. G. Square Mall (K - mall)	734800	430000	28446500	200000	150000	2186050	4310000	36457350	***Pgs.458-459***

Venus Parklands and Venus Park Heights	2557500	27923000	16950140	16761192	28639600	14460500	500000	107791932	***Pgs.460-464***
Shyam Residency	4700500	274750	15345575	25863100	49818975	73783250	72775600	242561750	***Pgs.465-474***
VS	1993000	1287900	704000	7642000	9023500	2491300	6250700	29392400	***Pgs.475-479***
Venus Township	0	48790	310330	36600	0	205000	250000	850720	***Pgs.480-481***

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	*Total (09-10 to 15-16)*	*Basis of addition*
Investment in shops at 3rd Eye building, Panchwati Road, Ahmedabad	7460000	80400	0	209068	2838042	776542	1772	11365824	***Pgs.482-485***
Investment / Expense at Bungalow	14492605	9630436	1055493	524910	4544693	9897843	12597300	52743280	***Pgs.486-496***
B-45, Sarvoday Nagar expenses	0	365000	0	0	0	0	0	365000	***Pgs.497-498***
Law Garden / New garden	100000	0	0	0	5000000	0	0	5100000	***Pgs.499-500***
Transactions of personal nature	2826267	3950341	11531808	16462770	8547925	14988970	8367080	66675161	***Pgs.501-517***
Misc. transactions	79414430	51002062	87796668	63425622	108511740	19364400	83749140	493264062	***Pgs.518-560***
Payment to Prakash Tekwani	0	0	3666667	8400000	3333333	0	0	15400000	***Note 2***
LTCG from sale of shares of Prraneta Industries Ltd.	0	0	195941921	53239970	0	0	0	249181891	***Note 3***
SMFPL & SSAHPL	0	0	0	219250000	59725567	3091050	952383	283019000	***Note 4***
Jewellery	0	0	0	0	0	0	4448456	4448456	***Note 5***
Total	**669611628**	**383735729**	**1284943444**	**1355844286**	**1085897862**	**657126869**	**558414381**	**5995574199**	

Note - 1: Pages mentioned in the last column are of <u>DR's paperbook</u> running into 4203 pages; All these additions are based on "cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in case of "ASV" and "VIDPL" (not "DBV")

Note - 2: Additions based on "cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in case of "ASV" & "VIDPL" (<u>not "DBV"</u>);

Note - 3: Addition based on -

- ***"information" gathered from "search" and "survey" in the case of "SCS" & "PIL" i.e. <u>completely unconnected third parties (not "DBV")</u> ; &***
- ***"cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in the case of "ASV" and "VIDPL" <u>(not "DBV")</u> ;***

Note - 4: Addition based on -

- ***"information" gathered during various search / survey carried out by Kolkatta Investigation Wing in cases of <u>completely unconnected third parties (not "DBV")</u> ;***
- ***"Material" seized from "901, Sapphire complex" which was searched in the case of "ASV" and "VIDPL" <u>(not "DBV")</u> ; &***
- ***"cash book" seized from "terrace of Crystal Arcade" (i.e. Annexure A-1 to 142) searched in the case of "ASV" and "VIDPL" <u>(not "DBV")</u> ;***

Note - 5: Addition based on "jewellery" found in the case of "DBV";

ASV - Ashok Sunderdas Vaswani
VIDPL - Venus Infrastructure & Development Pvt. Ltd.
RSV - Rajesh Sunderdas Vaswani
SCS -Shirish Chandrakant Shah
PIL - Prrante Industries Ltd.

37. With the assistance of the ld.representatives, we have gone through the record carefully, and material available on record. For the sake of reference, let us take the assessment of Shri Deepak Budharmal Vaswani for the assessment year 2009-10. The assessee has filed his return of income under section 139(1) of the Act on 30.9.2009 declaring total income at Rs.2,57,82,210/-. His income has been determined under section 153A r.w. section 143(3) at R.69,53,93,838/-. One of the additions made is of Rs.5.10 crores which is discernible in the chart also. According to the ld.counsel for the assessee, this addition has been made on the basis of pages 374 to 376 of the Department's paper book. The addition has been discussed in para-30 of the assessment order. A perusal of the paragraph-30.2 of the assessment order for the Asstt.Year 2009-10 in the case of Deepak Budharmal Vaswani would reveal that this addition has been made on the basis of the details of cash payments recorded in unaccounted cash book seized from "Terrace of Crystal Arcade". The following observation of the AO would make it clear:

> *"On the basis of the above incriminating material seized evidences, it is noticed that details of cash payment have been found recorded in unaccounted cash book seized from Terrace of Crystal Arcade, C.G.Road, Ahmedabad and upon correlation of seized documents, it has been established that the land at Nidhrad, Chekhla villages have been purchased by Vaswani family members/Venus group concerns/Thakor family members. The land was purchased in the name of Thakor family members but the funds were made available by Vaswani family members and Venus group concerns. The on-money has been paid over and above the registered value of the land."*

38. Thus, the AO is talking of on-money which has been unearthed, according to him, during the course of search, on the basis of alleged cash book. This cash book was not found from the premises of the assessee. It was found from the premises of Ashok Sunderdas Vaswani and Venus Infrastructure and Developers. Similarly, the ld.counsel for the assessee took us through various conclusions of the AO in other assessment orders, and the basis of the documents considered by the AO. None of the additions, except addition of jewellery in the assessment year 2015-16 in the case of Deepak Budharmal

Vaswani was made on the basis of seized material. As far as the case of Sanjeet Motors and Finance Ltd. is concerned, these additions are based on the basis of certain information gathered during the various investigation carried out by Kolkatta Investigation Wing in the case of completely an unconnected third-person. So these materials could not be considered in the assessment proceedings under section 153A. They ought to be considered under some other provisions viz. Section 153C or some other sections; but not under this section.

39. On due consideration of the above facts and circumstances, we are of the view that additions made by the AO in the case of Rajesh Sunderdas Vaswani in different assessment years are not sustainable, because they are not based on the seized material found during the course of search carried out at his premises. Similarly, the additions made in the case of Sanjeet Motors and Finance are also not sustainable. As far as addition in the case of Deepak Budharmal Vaswani is concerned the addition in the assessment year 2015-16, amounting to Rs.44,48,456/- is concerned, it deserves to be confirmed because the material to this effect was found during the course of search carried out at the premises of the assessee. The rest of the additions are not supported by any material which was discovered during the course of search at his premises. Therefore, the appeal for the Asstt.Year 2015-16 is dismissed, whereas all other appeals are partly allowed i.e. IT(SS)A No.117/Ahd/2019 is dismissed, and rest of the appeals are partly allowed. Consequently, the appeals of the Revenue are dismissed. We have treated the appeals of the assessees as partly allowed, because in case on further appeal to the Hon'ble High Court, the position of law as stood today changes on interpretation of the scope of section 153A then, explanations of the assessees' on merit *qua* the evidence considered by the AO have to be dealt on merit. At this stage, the issue is covered in favour of the assessees by the decision of Hon'ble jurisdictional High Court, therefore, we do not deem it necessary to deal with other grounds.

40. The proposition No. 3 is, whether the assessments framed under Section 153A of the Act were within the limitation or not? Under this fold of arguments, we take up the following appeals:

ASHOK SUNDERDAS VASWANI

Appeal No.	Asst. Year	Appeal by	Section	Date of Asst. Order	Within limitation ?
IT(SS)A 88/Ahd/2019	2009-10	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 89/Ahd/2019	2010-11	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 90/Ahd/2019	2011-12	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 91/Ahd/2019	2012-13	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 92/Ahd/2019	2013-14	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 93/Ahd/2019	2014-15	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 94/Ahd/2019	2015-16	Assessee	143(3) r.w.s. 153B	26.12.17	No
IT(SS)A241/Ahd/2019	2009-10	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A242/Ahd/2019	2010-11	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A243/Ahd/2019	2011-12	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A244/Ahd/2019	2012-13	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A245/Ahd/2019	2013-14	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A246/Ahd/2019	2014-15	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A247/Ahd/2019	2015-16	Department	143(3) r.w.s. 153B	26.12.17	No

VENUS INFRASTRUCTURE &DEVELOPERS PVT. LTD.

Appeal No.	Asst. Year	Appeal by	Section	Date of Asst. Order	Within limitation?
IT(SS)A 102/Ahd/2019	2009-10	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 103/Ahd/2019	2010-11	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 104/Ahd/2019	2011-12	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 105/Ahd/2019	2012-13	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 106/Ahd/2019	2013-14	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 107/Ahd/2019	2014-15	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 108/Ahd/2019	2015-16	Assessee	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 228/Ahd/2019	2009-10	Department	143(3) r.w.s, 153A	29.12.17	No
IT(SS)A 229/Ahd/2019	2010-11	Department	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 230/Ahd/2019	2011-12	Department	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 231/Ahd/2019	2012-13	Department	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 232/Ahd/2019	2013-14	Department	143(3) r.w.s. 153A	29.12.17	N
IT(SS)A 233/Ahd/2019	2014-15	Department	143(3) r.w.s. 153A	29.12.17	No
IT(SS)A 234/Ahd/2019	2015-16	Department	143(3) r.w.s. 153A	29.12.17	No

DEEPAK BUDHARMAL VASWANI

Appeal No.	Asst. Year	Appeal by	Section	Date of Asst. Order	Within limitation?
IT(SS)A lll/Ahd/2019	2009-10	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 112/Ahd/2019	2010-11	Assessee	143(3) r.w.s. 153A	26.12.17	No

IT(SS)A 113/Ahd/2019	2011-12	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 114/Ahd/2019	2012-13	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 115/Ahd/2019	2013-14	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 116/Ahd/2019	2014-15	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 117/Ahd/2019	2015-16	Assessee	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 248/Ahd/2019	2009-10	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 249/Ahd/2019	2010-11	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 250/Ahd/2019	2011-12	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 251/Ahd/2019	2012-13	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 252/Ahd/2019	2013-14	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 253/Arid/2019	2014-15	Department	143(3) r.w.s. 153A	26.12.17	No
IT(SS)A 254/Ahd/2019	2015-16	Department	143(3) r.w.s. 153A	26.12.17	No

41. The learned AR for the assessee before us submitted that the provisions of Section 153B(1)(a) of the Act mandate that assessment for six assessment years referred under Section 153A(1)(b) of the Act should be completed within a period of 2 years from the end of the financial year in which last of the authorization for search under Section 132 or for requisition under Section 132A of the Act was executed. The learned AR further submitted that search in case of appellants has been conducted on 10thMarch 2015 and 12th March 2015 and the same was lasted as on 13th March 2015 at various premises of the appellant. Accordingly, the ld. AR contended that the time limit for passing the assessment order would expire on 31-3-2017 i.e. within a period of 2 years from the end of the financial year (i.e. 2014-15) in which last of the authorization for search was executed whereas the assessments have been framed in the month of December 2017after the expiry of the time provided under the Act.

42. The learned counsel for the assessee while elaborating his arguments under this compartment would submit that before adverting to the facts for adjudicating this proposition, one has to bear in mind the scheme of Income Tax Act with regard to search action carried out under s.132 of the Act as applicable on the date of the search in the present group of cases i.e. 10.03.2015. Thus, he took us through Sections 132(3), 153A, 153C, 153B & 158BE, Explanation2. He submitted that after the search is carried out and incriminating material unearthed during the search disclosing undisclosed income then, AO will issue notice for six assessment years immediately preceding assessment year relevant to the previous year in which search is conducted and assessed or re-assessed income for such six assessment years.

43. As far as issuance of notice under s.153A upon the appellants herein is concerned, the assessees have not raised any objection but their main grievance is that assessment orders have not been passed within the limitation provided in the Act. For buttressing these contentions, he took us through Section 153B sub Section (1) & (2) and submitted that language of sub Section (2) is verbatim same as Explanation 2 of Section 158BE which earlier governed the area of time limit for passing assessment order in search cases. The idea behind appraising us with both Sections was that most of the judgments on this issue were delivered by the Hon'ble High Courts and the Hon'ble Supreme Court while expounding and explaining the scope of Section 158BE and the Explanation (2) inserted in this Section Income Tax (Amendment Act, 1997) w.e.f. 01.01.1997.We will be taking cognizance of both the provisions.

44. The learned counsel further submitted that as far as time period for passing the assessment provided in sub-Section (1) of Section 153B is concern, there is no dispute between the parties. This Section contemplates that assessment order would be passed within two years from the end of the financial

year in which the last of the authorization for search under s.132 of the Act or requisition under s.132A of the Act was executed. It means that in the present appeals, the search actions started on 10.03.2015. Search was concluded on 13.03.2015 meaning thereby last of the authorization was executed before the end of the FY 2014-15 i.e. 31st March, 2015. The assessment was required to be passed before the 31stMarch, 2017 i.e. within two years from 31st March 2015 but prohibitory orders were put on certain items/premises while executing the authorization of warrants. In the present case, these orders were put under s.132(3) on 11th March & 12th March, 2015. According to the Revenue, prohibitory orders were lifted in the month of May and thus it is to be construed that search was concluded in F.Y. 2015-16 i.e. before 31st March, 2016. The time limit would be two years from this date and i.e. available up to 31st March, 2018. The assessment orders have been passed in December 2017 and thus the department has treated all the assessment orders passed within the time limit. The area of dispute between the parties relates to this aspect.

45. The learned counsel for the assessee while further submitting his arguments had contended that he has two fold of contention on this limb of arguments; in the first fold, he submit that search would be treated as concluded when an authorization of warrant was executed and panchnama was drawn. If any prohibitory order was put under s.132(3), then it has limited scope for authorized person to re-visit the place but it cannot keep the search proceedings pending, search shall be termed as 'concluded'. The moment authorization was executed and the panchnama was drawn on the date of search or whenever after conducting the search continuously the search team came out after drawing the panchnama. As in the case of assessees all the warrants were executed between 10.03.2015 to 13.03.2015 and panchnamas were drawn thereafter only three prohibitory orders were passed which the learned counsel will be explaining in the second fold of his contention under this compartment in order to appraise us

the scope of Section 153B Sub Section (2). The learned counsel submitted that it is verbatim same as the Explanation (2) of Section 158BE. This aspect has been considered by Hon'ble Karnataka High Court in case of C. Ramaiah Reddy vs. ACIT reported in 339 ITR 210 (Kar.). The learned counsel submitted that against this judgment, department went before the Hon'ble Supreme court. The Hon'ble Supreme Court has admitted the SLP, in other words, leave to file appeal against the judgment was granted but Civil Appeal was dismissed. The learned counsel submitted that he is unable to lay his hand on the judgment of the Hon'ble Supreme Court but he placed on record the case status report from the Hon'ble Supreme Court showing that Civil Appeal was dismissed against this judgment. Copies of these details have been annexed as 'Annexure A' with the brief synopsis submitted by the learned counsel for the assessee under the head 'Additional Note'. He particularly took us through paragraph no. 76. He further relied upon the judgment of Hon'ble Kerla High Court in the case of Dr. C. Balakrishnan Nair vs. CIT reported in 237 ITR 70 (Ker.) as well as upon the judgment of Hon'ble Bombay High Court in the case of CIT vs. Sandhya P. Naik 253 ITR 534 (Bombay). He placed on record copies of all these judgments.

46. In the second fold of argument in this compartment, he contended that no doubt Section 132 sub Section (3) authorizes Authorized Officer for putting prohibitory orders, however, such power cannot be exercised according to the whims of the Officer it can only be exercised under the circumstances namely; (a) it is not practicable to seize any books of accounts, other documents, money, bullion, jewellery or other valuable articles or things & (b) reasons for the same that is why it is not practicable to seize ought to be recorded by the concerned Officer. In other words, the Officer ought to have recorded his satisfaction as to why he wants to put the prohibitory orders. He further submitted that if prohibitory order is put with the intention to prolong the alleged search under the

impression that it will keep the search proceeding open and department will have a longer period of limitation for passing assessment order then that intention has to be truncated.

47. Taking us to the record, learned counsel for the assessee submitted that on 12thMarch, 2015, 901, Sapphire Complex was searched and a prohibitory order was put. This prohibitory order was with regard to the search at Ashok Sundardas Vasvani& Venus Infrastructure & Development Pvt. Ltd. The prohibitory order was lifted on 8th May, 2015. The copy of the revocation of the prohibitory order has been placed on page no.21 of the Annexure 'B' (colly.) with synopsis of argument. Alongwith this order, a panchnama was drawn and copy of this panchnama has also been made part of Colly 'B', at Serial No. 5 of the panchnama. The heading is "in the course of search…….(a)the following were found –" thereafter two items have been mentioned books of accounts, documents, valuable articles. Against these serial numbers, the recovery is shown as Nil. A perusal of this document would indicate that nothing was seized while revoking the prohibitory order. Thus, on the strength of these details, the learned counsel for the assessee submitted that what was the reason for putting the prohibitory order when nothing was to be recovered and what prohibited the department to inspect the alleged premises on the date of search.

48. The learned counsel for the assessee thereafter took us the second prohibitory order. It was placed on 501, Sapphire Complex11th March, 2015 and lifted on 5th May, 2015. This complex relates to Deepak Budharmal Vasvani according to the panchnama 45 pages were found and seized but no additions on the basis of these pages have been made. The contention of the learned counsel for the assessee was that when thousands of pages were seized at the time of search what prohibited the Revenue to take possession of 45 pages. It is a loose file and these documents were not of any use for the department. Similarly, the

3rd prohibitory order was put at 801-802 Broadway Business Centre, this is also connected with VIDPL. Prohibitory order was revoked on 6th May, 2015 and two annexures containing 69 pages and 163 pages were recovered from this place but none of the page was used for assessing or re-assessing the income of the assessee. These were not incriminating papers. According to the learned counsel for the assessee, this aspect would show that these prohibitory orders were put only in order to explore the possibility of longer period of limitation for passing the assessment order. For buttressing his contentions, he relied upon the following judgments and also placed on records of copies of the judgments:

1. PCIT vs. PPC Business & Products (P.) Ltd. - (2017) 398 TTR 71 (Delhi)
2. CIT vs. S. K. Katyal - (2009) 308 ITR 168 (Delhi)
3. CIT vs. Sarb Consulate Marine Products (P.) Ltd. -(2007) 294 ITR 444 (Delhi)
4. CIT vs. Deepak Aggarwal - 308 ITR 116 (Del)
5. CIT vs. D. D. Axles (P.) Ltd. - 323 ITR 558 (Del)
6. A. Rakesk Kumar Jain vs. JCIT - (2013) 31 taxmann.com 312 (Madras)
7. ACIT vs. Shree Ram Lime Products Ltd. - 137 ITD 220 (Jodhpur) (SB)
8. Bharat Sekhsaria vs. DCIT - (2015) 60 taxmann.com 476 (Mumbai - Trib.)
9. DCIT vs. Sushil Kumar Jain - 127 ITD 264 (Indore)
10. Nandlal M. Gandhi vs. ACIT - 1 15 ITD 1 (Mumbai)
11. Plastika Enterprises vs. ACIT - (2007) 161 Taxman 163 (Mumbai) (MAG.)
12. Smt. NeenaWadlrwa vs. DCIT - (2003) 128 Taxman 149 (Delhi) (MAG.)
13. CIT vs. Om PrakashMandora - (2013) 37 taxmann.com 426 (Rajasthan)
14. Woodword Governors India vs. CIT - 253 ITR 745 (Del.)

49. On the other hand, learned CITDR relied upon the findings of Revenue authorities. He contended that last panchnama was drawn in the month of May when prohibitory orders were lifted. Therefore limitation is to be counted from the end of the F.Y. 2015-16 i.e. 31stMarch, 2016, if two years are being taken

from this date, then, assessment could be passed upto 31st March, 2018. These were passed in the month of December 2017. Therefore, they are within the limitation. He further contended that a similar situation was considered by the Hon'ble Supreme Court in the case of VLS Finance Ltd. Vs. CIT reported in 384 ITR 1. He placed on record the copy of the judgment taken from Taxman and the citation is (2016) 68 taxmann.com 368. He submitted that in this judgment Hon'ble Supreme Court considered Explanation (2) to Section 158BE which is similar to sub Section (2) to Section 153B. He thereafter put reliance upon the judgment of Hon'ble Delhi High Court in the case of PCCIT vs. PPC business. This judgment has been referred by the assessee also. The learned CITDR further relied upon the decision of Hon'ble Madras High Court in the case of CIT vs. Smt. P. Shanti reported in33 taxmann.com 674. He also relied upon the judgment in the case of DCIT vs. RakeshSarin reported in 362 ITR 619 (Mad.).

50. We have duly considered the rival contentions and gone through the record carefully. Section 153B has a direct bearing on the controversy. Therefore, we take note of the relevant part of this Section.

> ***153B.*** *(1) Notwithstanding anything contained in Section 153, the Assessing Officer shall make an order of assessment or reassessment,—*
>
> *(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of [81][sub-Section (1) of] Section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under Section 132 or for requisition under Section 132A was executed;*
>
> *(b) in respect of the assessment year relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under Section 132 or for requisition under Section 132A was executed :*
>
> *(2) The authorisation referred to in clause (a) and clause (b) of sub-Section (1) shall be deemed to have been executed,—*
>
> *(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;*
>
> *(b) in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.*

51. A bare perusal of Section would reveal that it start with a non obsenate clause " – notwithstanding anything contained in Section 153……" An assessment order has to be passed within two years from the end of the FY in which the last of the authorization for and each under s.132 of the Act was executed or requisition under s.132A is executed. The expression " last of the authorization" has been explained in sub Section (2). The explanation of expression last of the authorization provided in sub Section (2) is identical in Explanation (2) of Section 158BE which read as under:

> *'Explanation 2.-For the removal of doubts, it is hereby declared that the authorisation referred to in sub-Section (1) shall be deemed to have been executed,-*
>
> *(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued ;*
>
> *(b) in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.'*

52. In the large number of judgments cited before us by the parties, this provisions under s.158BE Explanation (2) has been explained elaborately and the first judgment we would like to put in service is the judgment of the Hon'ble Karnataka High Court. The relevant discussion in that judgment is contained in para 73 to 75 which reads as under:

> *"73. The second proviso to Section 132(1) deals with the "deemed seizure". When in the course of search, it is not possible to seize for the reasons set out in the aforesaid provisions. It is possible under four circumstances:*
>
> *(a) where it is not possible or practicable to take physical possession of any valuable article or thing ;*
> *(b) remove it to a safe place due to its volume, weight;*
> *(c) other physical characteristics ; and*
> *(d) due to being its dangers nature.*
>
> *74. Therefore, the law recognizes such a situation and has provided a remedy to tackle such problems. Theauthorised officer has been given a discretion for the reasons to be recorded in writing to pass a restraint order in respect of the articles, books and other material which he could not take physical possession of, i.e., by making an inventory and leaving it to the custody of the assessee and directing him not to part with the same without his permission.*
>
> *75. Similarly, in circumstances not covered under those provisions, it is open for him to pass a prohibitory order under sub-Section (3) not amounting to seizure which order will be in force for a period of 60 days after securing the possession of the materials, articles, etc., in the aforesaid manner. Action under Section 132(3) of the Income-tax Act can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income. Power under Section 132(1)(iii) of the Income-tax Act thus cannot be exercised, so as to circumvent the provisions 3 Section 132(1)(iii) read with Section 132(1)(v) of the Income-tax Act. It is open for the authorised officer to visit the place for the purpose of*

investigation securing further particulars. Under the scheme, the law provides for such procedure. But not when he visits the premises for further investigation for the materials already secured. It does not amount to search as the materials to be looked into and investigated is already known and is the subject-matter of a prohibitory order or a restraint order. Though it isj not seizure or deemed seizure, it amounts to deemed possession. What is in your possession is to be looked into to find out, is there any incriminating material. It does not amount to search as understood under Section 132 of the Act. It is only because of paucity of time he has gone back and wants to come back and look into the matter leisurely. There is no provision in the Criminal Procedure Code or in the Income-tax Act or the rules for postponing the search for a long period. Then, the concept of search as understood either under the provisions of the Criminal Procedure Code or the Act which are made applicable expressly, would lose its meaning. If such a course is attracted, it is open to an authorised officer to keep the authorisation in his pocket like a season ticket and go on visiting the premises according to his whims and fancies. It seriously affects the valuable right of the assessee conferred under the Constitution. To keep the affected parties in a suspended animation about the probable continuation of search would be agonising. It is invading the right and freedom of the petitioners for a period more than required or necessary. The orders which are passed under Section 132(3) may have a very far-reaching effect on the business of an assessee. The order of restraint may adversely affect the business and, therefore, adequate safeguards are sought to be provided in the Act by the insertion of the provisions of sub-Section (8A) in Section 132. In order that the restraint order must not be continued indefinitely, sub-Section (8A) of Section 132 provides that the restraint order can be continued only if, before the expiry of 60 days, and for reasons to be recorded, the Commissioner grants an extension. The provisions of sub-Section (8A) cannot be bypassed or rendered nugatory by revoking an order under Section 132(3) and, thereafter, pass another order on the same date. In the nature of things, the search is to be done expeditiously and the undisclosed income is to be unearthed and proceeding has to be initiated against such person and the tax legitimately due to the Government is to be recovered. There cannot be any laxity on the part of the authorised officer in this regard. Any other interpretation would run counter to the scheme of search provision under the Act. Therefore, by passing a restraint order, the time limit available for framing of the order cannot be intended. Once an order under Section 132(3) has been passed, then the limitation period commences and such order cannot be continued unless and until the provisions of Section 132(8A) are satisfied."

53. Though Hon'ble Court has explained the scope of expression " execution of last of authorization" but we are of the view that Hon'ble Court thereafter took cognizance of Explanation (2) inserted by Finance Act, 1997 and we deem it appropriate to take note of the discussion made by the Hon'ble Court from paragraph nos. 78 to 82 which reads as under:

"78. The law expressly provides for more than one authorisation. A search authorisation could specify only one building/place/vessel/vehicle/aircraft. This is clear from the use of the building, etc., in the singular sense. Section 132(1) uses building/place/vessel/vehicle/aircraft in singular sense. Further, clause (a) in Form 45 uses the word, "to enter and search, the said building/place/vessel/vehicle/aircraft. When there are multiple places to search and such places are far off, it is impractical to have a single authorisation. Different persons will be carrying out search and each one of them is required to be authorised through the search authorisation. In other words, search authorisation should authorise a particular official for executing the search. Therefore, when there are different places to be searched, , separate search authorisation should be drawn with reference to each place of search. The said authorisations may be issued on different dates in which case, the last of such authorisations is to be looked into for the purpose of limitation. However, it is possible that there may be more than one authorisation on the same day. Then the question is which is the last of such authorisations for the purpose of limitation. When all the authorisations are executed there will be one panchnama in respect of each such authorisation. The authorisations may be executed on different dates also. Then the doubt would arise regarding which authorisation to be looked into for the purpose of limitation as all of them are last authorisation. It

is for removal of that doubts that the Explanation is inserted. For the purpose of computing the limitation, it is the one year from the end of the month in which the last of the authorisations was executed. If there are more than one authorisation issued on the same day, then the last panchnama drawn in relation to thewarrant of authorisation issued on the same day. As the period commences from the end of the month of the execution of the authorisation, the law has provided for the authorised officer to visit the purpose of inspection regarding the material which is the subject-matter of prohibitory order or the restraint order, even after search. However, the said exercise has to be done expeditiously, as the period of limitation starts from the date of search was concluded as evidenced by the panchnama, as otherwise the very object with which these provisions was introduced would be defeated.

79. Circular No. 772, dated 23rd December, 1998, issued by Central Board of Direct Taxes explains this position as under ([1999] 235 ITR (St.) 35) :

> *"According to Section 158BE, limitation of 2 years has to be counted from the end of the month in which last of the authorisations was executed. Use of the word 'authorisations' implies issue of more than one authorisation. Supposingly two authorisations are issued one after the other and the last authorisation is executed first while the authorisation issued earlier is executed later on. In such case, limitation should be counted from the date of issue of the execution of the last authorisation, though it is executed earlier and not from the execution of the earlier authorisation which is executed later. This anomalous situation is intended to be removed by insertion of Explanation 2 below Section 158BE with effect from July I, 1995, by the Finance (No. 2) Act, 1998. This Explanation reads as follows*
>
> *'Explanation 2.-For the removal of doubts, it is hereby declared that the authorisation referred to in sub-Section (1) shall be deemed to have been executed,-*
>
> *(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued ;*
>
> *(b) in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.'*
>
> *According to this Explanation, limitation is to be counted with reference to the last panchnama drawn on execution of a warrant of authorisation as referred to in Section 158BE. The main attribute of the panchnama is stated to be that it should record the conclusion of search."*

80. The law does not contemplate the authorised officer to set out in any of the panchnama that he has finally concluded the search. If for any reason the authorised officer wants to search the premises again, it coould be done by obtaining a fresh authorisation. There is no prohibition in respect of the same premises. It is open to the empowered authority to issue authorisation but when the authorisation is issued once, the authorised officer cannot go on visiting the premises under the guise of search. Therefore, it is clear once .n pursuance of an authorisation issued the search commences, it comes to an end with the; drawing of a ranchnama. When the authorised officer enters the premises, normally, the panchnama is written when he comes out of the premises after completing the job entrusted to him. Even if after such scare he visits the premises again, for investigation or inspection of the subject-matter of restraint order or proiibitory order, ifa panchnama is written, that would not be the panchnama which has to be looked into for the purpose of computing the period of limitation. But, such a panchnama would only record what transpires on a re-visit to the premises and the incriminating material seized would become part of the search conducted in pursuance of the authorisation and would become the subject-matter of block assessment proceedings. But, such a panchnama would not extend the period of limitation. It is because the limitation is prescribed under the statute. If proceedings are not initiated within the time prescribed, the remedy is lost. The assessee would acquire a valuable right. Such a right cannot be at the mercy of the officials, who do not discharge their duties in accordance with law. The procedure prescribed under Section 132 of the Act is elaborate and exhaustive. The said substantive provision expressly provides for search and seizure. In the entire provision there is no indication of that search once commenced can be postponed. What can be postponed is only seizure of the articles. Therefore, once search commences it has to come to an end with the search party leaving the premises whether any seizure is made or not. The limitation for completion of block assessment is expressly provided under Section 158BE which clearly declares that it is the execution of the last of authorisation which is to be taken into consideration. The word "seizure" is

conspicuously missing in the said Section. The same cannot be read into the Section for the purpose of limitation. Then it amounts to rewriting the Section by the court, which is impermissible in law.
81. The aforesaid Circular No. 772, dated December 23, 1998 (see [1999] 235 ITR (St.) 35) refers to this dilemma faced by the Department.

> *"127. Execution of last of the authorisation or requisition*
> *The word 'execute' is defined in Black's Law Dictionary, fifth edition, page 509 as follows: 'to complete ; to make ; to sign ; to perform ; to do ; to carry out according to its terms ; to follow up ;to fulfil the command or purpose of ; to perform all necessary formalities ; to make and sign a contract; to sign and deliver a notes.'*
> *The word 'execution' is defined at page 510 of the said Law Dictionary as follows :*
> *Carry out some act or course of conduct to its completion. Northwest Steel Rolling Mills v. Commissioner of Internal Revenue, C.C.A. Wash., 110 F.2d 286, 290 : completion of an act : putting into force : completion fulfilment : perfecting of anything or carrying it into operation and effect "Execution" a process in action to carry into effect the directions in a decree or judgment –Foust v. Foust, 47 Cal. 2d 121, 302 p.2d 11, 13.'*
> *In the light of the above definition of the words 'execute' and 'execution', one may argue that until and unless the final act is performed, the warrant of authorisation should not be treated asexecuted and it order or for any other reason may not be treated as 'execution' of the warrant. But this interpretation would behypertechnical and it needs detailed discussion as is done in the following paras.*
> *The question arises as to whether execution of a warrant of authorisation or requisition refers to the conclusion of the proceedings under Section 132 and/or 132A or it refers only to the execution of thewarrant even though as a result of such execution the proceedings under Section 132 or 132A are yet to he completed. The latter situation will include a case in which a restraint order132(3) is passed. In such a case, it can be said that though the warrant of authorisation has been executed, proceedings under Section 132(3) are pending. Since the word 'execute', also means 'to complete', one has to wait for conclusion of the proceedings under Section 132(3) for the purpose ofcomputation of limitation under Section 158BE(1) and the period of one year has to be computed from the end of the month in which the proceeding under Section 132(3) are conclude. If there are more than one warrant limitation will be counted from the execution of the last one.*
> *A contrary view is as much possible if one were to consider the spirit of the scheme which envisagesexpeditious disposal of the search cases and it would be reasonable to interpret that execution of warrant is not tantamount to completion of proceedings under Section 132 or 132A the period during which the proceedings under Section 132(3) remained pending has to be excluded for the purpose ofcounting limitation of one or two years under Section 158BE. Otherwise, it may lead to absurd results as it may take several years before restraint under Section 132(3) is lifted and it may thus extend the period of one or two years by all those years during which proceedings under Section 132(3) remained pending it may be agreed against this view that Section 132(8A) takes care that there is no extension of proceedings under Section 132(3) and that the view cannot be taken without doing violence to the language of the Act."*

82. Therefore, the Explanation added to remove a doubt cannot be construed as a provision providing a longer period of limitation than the one prescribed in the main Section. When under the scheme of the Section there is no indication of a second search on the basis of the same authorisation issued under the said provision, the legislative intention is clear and plain and the interpretation to be placed by the courts should be in harmony with such an intention. Therefore, one authorisation is to be issued in respect of one premises in pursuance of which there can be only one search and such a search is concluded, when the searching party comes out of the premises, which is evidenced by drawing up a panchnama. When there are multiple places to search and when multiple authorisations are issued, on different dates or on the same date or in respect of the same premises more than one authorisation is issued on different dates, the last panchnama drawn in proof of conclusion of search in respect of the authorisation is to be taken into consideration for the purpose of limitation for block assessment.
Conclusions

> *(1) The Tribunal has got powers to look into all aspects of search and a valid search is sine qua non for initiating block assessment.*
> *(2) Materials seized during an invalid search cannot be used in block assessment proceeding but can be used in other assessment proceedings under the Act.*
> *(3) The power to put prohibitory order under Section 132(3) is under law but the reasons for doing so has to be recorded in writing and are justiciable.*
> *(4) The period of limitation starts on the date on which the last of authorisation has been executed and not when the authorised officer states that the search is finally concluded. Putting a prohibitory order under Section 132(3) does not elongate the starting point of limitation."*

54. The Revenue challenged this order before the Hon'ble Supreme Court SLP was admitted but ultimately Civil Appeal was dismissed. The next judgment which has been put in service by both the parties is the judgment of Hon'ble Delhi High court in the case of PCIT vs. PPC Business & Products Pvt. Ltd. In this case, two places were searched one authorization was for the search to be undertaken Pithampura, Delhi and other premise Ashok Vihar, Delhi. In the authorization both the premises were shown to be in possession of the assessee and his brother both being the Directors of the entity including JHM. In respect of the authorization of the search of Ashok Vihar premise of first panchnama dated 22ndMarch, 2007 and the warrant was in the case of assessee's brother i.e. Mr. Sanjay Jain. The search was closed on 22ndMarch, 2007 as temporarily concluded. Second panchnama in relation to authorization of Ashok Vihar premises was prepared on 15thMay 2007 when prohibitory order was lifted. One Neena Jain was the person who has made acknowledgement of having received the second panchnama dated 15thMay, 2007 but according to the assessee, the jwellery belonging to Neena Jain at Ashok Vihar premise was valued on 21stMarch, 2007 when the alleged search was temporarily concluded. The case of the assessee was that search was concluded on 22ndMarch, 2007 when panchnama was prepared and restrain order was passed. The case of the Revenue, on the other hand, was that limitation for passing the assessment order is to be seen from the date when prohibitory order was lifted and second panchnama was drawn. The ITAT has held that assessment orders were time barred. Hon'ble Delhi High Court considered the judgment of Hon'ble

Karnataka High Court in the case of C. Ramy Reddi also considered the Explanation (2a) to Section 158BE and observed that this Explanation (2a) is pare materia with sub-Section (2a) of Section 153B. The Hon'ble Court put reliance upon the judgment of C. Ramya Reddi and upheld the order of the ITAT.

55. The much reliance placed by the learned CITDR on the judgment of the Hon'ble Supreme Court in the case of VLS Finance Ltd. We deem it appropriate to take note of the following observations of the Hon'ble Supreme Court from this judgment on which emphasizes was put by the learned CITDR.

> *"27. We may point out that the appellants never challenged subsequent visits and searches of their premises by the respondents on the ground that in the absence of a fresh authorisation those searches were illegal, null and void. Notwithstanding the same, it was argued that at least for the purpose of limitation the subsequent searches could not be taken into consideration, as according to the learned counsel, the legal position was that the authorisation dated 19th June, 1998, was executed on 22nd June, 1998 and the search came to an end with that when the search party left the premises on 23rd June, 1998 after making seizure of certain documents etc and issuing restraint order under Section 132(3) of the Act in respect of certain items which they allegedly could not seize due to impracticability on that day. Some judgments of various High Courts are relied upon to support this proposition. It was also argued that there was no concept of 'revalidation of authorisation' provided under the Act, which has been applied by the High Court in the impugned judgment, which according to the learned counsel for the appellants, amounts to legislating a new concept which is contrary to law."*

56. The learned counsel for the assessee submitted that in this case Hon'ble Supreme Court has not interpreted the scope of Section 153B(2) or scope of Explanation (2) to Section 158BE though attention of the Hon'ble Supreme Court was drawn by the Addl. Solicitor General from the Explanation (2) of Section 158BE but in paragraph no.29, Hon'ble Supreme Court had specifically observed that without going into legal niecety. Thus according to the learned counsel for the assessee, it is the judgment on the facts of that case. This aspect has been considered by the Hon'ble Delhi High Court in the case of CIT vs. S. K. Katiyal. In this case also, an identical issue came up before the Hon'ble Delhi High Court and Hon'ble Court has considered the judgement of Bombay High Court in the case of Sandhya P. Naik, Kerala High Court in Dr. C. Balakrishnan Nair &hon'ble Karnataka High Court in , C. Ramaiah Reddy,

while dealing with its earlier decision in the case of VLS Finance. The Hon'ble Court made following observations:

> *"30. The decision in VLS Finance (supra) also rests on a factual basis which is different from that of the present appeal. First of all, VLS Finance (supra) is a decision rendered in a writ petition under article 226 of the Constitution of India. In exercise of its writ jurisdiction a High Court decides cases on the basis of affidavits. It is open to the High Court to arrive at conclusions of fact (as well as of law) based upon the affidavits. The present case is an appeal from the order of the Tribunal, which is the final fact finding authority under the Income Tax regime. The facts, as determined by the Tribunal, unless they are held to be perverse, form the basis of the substantial questions of law which are to be determined by High Court's in appeals under Section 260A of the said Act. It ought to be remembered that the Tribunal was of the view that the search and seizure, in the present case, was completed on 17.11.2000. The Tribunal also held that the panchnama of 03.01.2001 was ―merely a release order‖. Secondly, in VLS Finance (supra), the search and seizure operations commenced on 22.06.1998 and continued till 05.08.1998. As many as 16 panchnamas were drawn upon in respect of the visits made to the assessee's premises. There was a mass of documents which were searched and seized from time to time. The court found that the search concluded on 05.08.1998 and not on 22.06.1998. The court also found that the search was also not unduly prolonged. The court held:-*
>
> > *"Consequently, we are of the opinion that the respondents did not complete the search on 22-6-1998, as alleged by the petitioners, nor did they unduly prolong it. The search concluded on 5-8-1998, and so in terms of Explanation 2 to Section 158BE of the Act the period of limitation would begin from the end of August, 1998, that is, 31-8-1998 onwards…" (p. 297)*
>
> *31. The factual basis of the decision in VLS Finance (supra) is entirely different to that of the present case. On law, there is nothing in VLS Finance (supra) which contradicts what we have explained above. If the search concluded on 5-8-1998, as held by the court, and the panchnama of that date was the last of the string of 16 panchnamas, obviously this would be the date on which the search was concluded and the date on which the warrant of authorization for search was executed. But, in the present appeal, no search whatsoever was conducted on 03.01.2001. Hence, the panchnama drawn up on 3-1-2001 cannot be regarded as a document evidencing the conclusion of a search. If that be so, 3-1-2001 cannot be regarded as the date on which the warrant of authorization was executed. Moreover, while in VLS Finance (supra), the court held that the search was not unduly prolonged, in the present case the gap between 17-11-2000 and 3-1-2001 is unexplained."*

57. In other words, the Hon'ble Delhi High Court did not accept the contention of VLS Finance and dismissed its writ petition. The decision of Hon'ble Delhi High Court was taken up to the Hon'le Supreme Court and Hon'ble Supreme Court affirmed the Delhi High Court. The Hon'ble Delhi High Court while dealing with this point was of the view that proposition in VLS Finance based on its facts is altogether different.

58. The next decision which was relied upon by the learned counsel for the assessee is the third member decision in the case of Nandlal M. Gandhi vs. ACIT 115 ITD 1. The facts in this case are that a search and seizure operation was

carried out under s.132 of the Act at the residential premises of the assessee on 28th July, 1997 and continued till 02:30 a.m. on 29th July, 1997. During the said search, certain incriminating materials which *inter alia* included jwellery and shares, were found and the search party prepared an inventory in respect of search material as per para 5 of the panchnama only books of accounts and documents as per Annexure 'A' were seized and no seizure was affected in respect of other materials found during the course of search including jewellery and shares. In para 8 of the panchnama, it was stated that the search was temporarily concluded for the day to be commended subsequently. However, prohibitory order was issued under s.132(3) in respect of jewellery and shares found from the cupboard kept in the bed room of assessee's son Shri Bakul N. Gandhi. The prohibitory order issued under s.132(3) of the Act in respect of jewellery therefore lifted on 1st August, 1997 at 04:00 p.m. while prohibitory order in respect of share certificates was lifted on 08th September, 1997. On 08th September, 1997, another panchnama was prepared wherein it was stated the search is finally concluded and no other comments/remarks were recorded therein. The dispute arose whether it is to be construed that search was concluded on 28th July 1997 or it was concluded on 08th September, 1997. The period of two years from the end of the month in which warrant of authorization of search was executed was required to be computed. The bench who heard the matter had divided in its opinion. The hon'ble Judicial Member has assigned four reasons for concluding that the subsequent panchnama is not a valid panchnama for computing the limitation because there is no search carried out in September 1997 but the panchnama is prepared and this panchnama cannot be treated as a panchnama for the purpose of Section 158BE read with Explanation (2). The hon'ble Accountant Member did not concur with and treated the second panchnama valid for computing the limitation. The dispute referred to the third member for his opinion and the question formulated 602 the third member was;

"Whether in the facts and circumstances of the case, the order under s.158BC made by the AO is time barred within the meaning of Section 158BE of the Act.?"

59. The third member has taken into consideration the judgment of Hon'ble Bombay High Court in the case of Sandhya P. Naik and Hon'ble Kerala High Court in case of Dr. C Balakrishnan Nair. The Hon'ble third member concur with the Judicial Member and held that issue in dispute is covered by the decision of hon'ble Bombay High Court in the case of Sandhya P. Naik and it is to be construed that the search was concluded on 29th July 1997 and not from the date when panchnama was prepared while revoking the prohibitory order. The hon'ble Bombay High Court in the case of Sandhya P. Naik while explaining the scope of Section 132(3) has observed that passing restraint order under Section 132(3), the time limit available for assessment cannot be extended. The other decisions referred by the learned counsel for the assessee are also to this effect, in the case of PPC Business hon'ble Delhi High Court has categorically observed that when nothing was recovered while revoking the prohibitory order there cannot give rise to second panchnama. The Hon'ble Court in paragraph 26 of the judgment recorded that when nothing new for being seized was found then there would be no occasion to draw up a panchnama at all. It has been demonstrated before us that in the case of Ashok Sundardas Vasvani nothing was recovered when prohibitory order was lifted.

60. The relevant extract of the judgment of Hon'ble Kerala High court in the case of Dr. C Balakrishnan Nair v CIT reported in 237 ITR 70 reads as under:

***10.** From Ext.P3 second Panchanama dated 10-11-1995 seven items, books of account and other valuable articles were seized. These articles which were available on 27-10-1995 were put in an almirah, according to the 2nd respondent, and sealed since scrutiny could not be completed during the search and investigation and prohibitory order under Section 132 was served on the petitioners. Sub-Section (3) of Section 132 empowers the authorised officer to pass an order on the owner that he shall not remove, part with or otherwise deal with articles and books of account, etc., except with the previous permission of the officer. But this can be served only if it is not practicable to seize any such books of account, other documents, etc. It is not stated as to why the books of account, documents, etc., was not practicable to be seized on 27-10-1995. The 2nd respondent had collected the listed documents from the premises and has put them in the almirah and sealed it. In the absence of any satisfactory explanation as to why the books of account, pass book and the documents were not practicable to be seized on 27-10-1995 itself, it is a case of contravention of sub-Section (3) of Section 132. The number of documents, pass book and the jewellery found and ultimately seized*

were few in number and the statement that the scrutiny could not be completed, nor practicable to seize, is impossible to accept on the face of it. It is in this context the allegation made against the second respondent that he carried away certain documents in his bag unauthorisedly on 27-10-1995 and brought them back on 10-11-1995 assumes significance. However, the action of the search party headed by the second respondent in collecting the documents and various items from different parts of the premises and again putting them in the almirah in the bed room of the first floor of the residential premises is unreasonable and no provision is relied on for such a cause of action. Rule 112(4C) of the Income-tax Rules, 1962 empowers the authorised officer to serve an order on the owner that he shall not remove, part with or otherwise deal with it except with the previous permission only in cases where it is not practicable to seize the article or thing or any books of account or document. Therefore, the action of the second respondent and his members in dumping the documents, etc., seized in the almirah cannot be supported, but violates the mandatory requirement.

61. Likewise, the Hon'ble Bombay High Court in the case of CIT v. Sandhya P. Naik [2002] 124 Taxman 384 (Bom.)has observed that where a search party seized and removed from the premises of the assessee 5,729 gms. of gold ornaments, cash of Rs. 1,69,000 and books of account weighing nearly 500 kgs, then argument of the department that 45 kg. of silver ornaments had to be placed under PO due to their weight was not found tenable by the Tribunal and confirmed by the High Court as no impracticability was visualized in non-seizure of 45 kg. of silver ornaments.

62. Now coming to the case on hand, we find that on the revocation of the prohibitory orders, the search team has seized only 277 pages which was very much possible to seize them during the search proceedings which were concluded on 13thMarch 2015. The search team has to justify in the order passed under Section 132(3) of the Act that books/documents/valuables are not practicable to seize along with the reasons other than those mentioned in second proviso to Section 132(1).

63. A situation also arises where the authorised officers impose PO considering that the goods found in the search are not practicable to seize. On the subsequent visit, PO is revoked leading to inference that they consider that goods are now practicable to seize. But the authorised officer has not brought anything

on record describing in the Panchnama or in the revocation order how it has become practicable to seize the documents.

64. In fact we are of the view that the conditions imposed under Section 132(3) of the Act for passing the prohibitory orders were not complied with. Accordingly, these orders passed under Section 132(3) of the Act have no validity in the eyes of law.

65. Once the prohibitory orders in the case on hand has been held as invalid then the search concluded in the month of March 2015 shall be taken as the base for calculating the period of passing the assessment order as provided under Section 153B of the Act. In other words the time limit in the case on hand expires for passing the order as on 31 March 2017. Therefore, in the present case the orders have been framed beyond the time prescribed under the provisions of law.

66. Before parting we also note that the bank lockers with respect to which prohibitory orders were passed under Section 132(3) of the Act were belonging to the other parties who are the income tax assessee. On this count only the prohibitory orders passed by the authorised officer in the name of the assessee in connection with the lockers held by other parties, though related to the assessee cannot be used for extending the time for the assessment provided under Section 153B of the Act. As we have held that assessment orders has been framed beyond the time provided under the statute which has no validity in the eyes of law, accordingly we quash the same.

67. As we have decided the technical ground in favour of the assessee as discussed above, we are not inclined to refer the issue on merit. Accordingly we dismiss the grounds of appeal raised by the assessee on merit as infructuous.

68. In the result, the appeals filed by the assessee are partly allowed whereas the appeals filed by the revenue are dismissed.

69. The next proposition no. 4 is against the validity of the proceedings under Section 147 of the Act for various reasons specified in the grounds of appeal bearing Nos. 1 to 7. Under this fold of arguments, we take up the following appeals:

Sr. No.	IT(SS)A. No. Asst. Year	Appellant	Respondent
1.	ITA No.805/Ahd/2019 Asst. Year: 2008-09	DCIT, Cent. Cir. 1(1) Ahmedabad	Shri Rajesh Sunderdas Vaswani Ashram Road Ahmedabad PAN : AAOPV6848B
2.	ITA 457/Ahd/2019 Asst. Year: 2008-09	Shri Rajesh Sunderdas Vaswani 10, Tila Nagar Old Vada Ashram Road Ahmedabad. PAN: AAOPV6848B	The DCIT, Cir.1(1) Ahmedabad
3.	ITA No.456/Ahd/2019 Asst. Year: 2008-09	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera- 11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad PAN No: AAOPV6849A	The DCIT, Cent. Cir.1(1) Ahmedabad
4.	ITA No.806/Ahd/2019 Asst. Year: 2008-09	The DCIT, Cent. Cir.1(1) Ahmedabad	Shri Ashok Surendras Vaswani 1, Rajdeep Villa Opp: Rivera- 11 B/h. Chimanbhai Institute Prahalad Nagar, Satellite Ahmedabad PAN No: AAOPV6849A
5.	ITA No.461/Ahd/2019 Asst. Year: 2008-09	Shri Deepak Budharmal Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar,	The DCIT, Cir.1(1) Ahmedabad

		Satellite Ahmedabad PAN: AAPPV8625F	
6.	ITA No. 807/Ahd/2019 Asst. Year: 2008-09	DCIT, Cent. Cir1(1) Ahmedabad	Shri Deepak Budharmal Vaswani 3, Rajdeep Villa Opp: Rivera-11 B/h. Chimanbhai Institute Prahaladnagar, Satellite Ahmedabad PAN: AAPPV8625F

<u>We take ITA No. 456/Ahd/2019 – Shri Ashok Sunderdas Vaswani (A.Y. 2008-09) as the lead case.</u>

70. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT (A) has erred on facts and in law upholding the assessment order passed in contravention of specific provisions of Section 153A by reopening the assessment of the appellant under Section 147 of the Income Tax Act, 1961 solely on the basis of documents seized during the course of search.

2. The Ld. CIT (A) has erred on facts and in law in upholding the mechanical reopening of the assessment u/s 147 of the Income Tax Act, 1961 without any independent application of mind.

3. The Ld. CIT (A) has erred on facts and in law in upholding the reopening of the assessment beyond the statutory period of 4 years as laid down by the Proviso to Section 147 of the Income Tax Act, 1961.

4. The Ld. CIT (A) has erred on facts and in law upholding the issue of notice u/s 148 of the Income Tax Act, 1961 beyond the time limit laid down u/s 149 of the Act.

5. The Ld. CIT (A) has erred on facts and in law in upholding the inference drawn by the Assessing Officer that the loose paper found and seized from the Terrace of Crystal Arcade CG Road Ahmedabad represented the alleged unaccounted cash book of Venus Group, that the signature found on the documents were of the appellant, that the date of transactions were recorded in the coded form to disguise the relevant date of transactions, that the entries were recorded in such a way that two zero at end of each entry were omitted and that the word 'estimate' had been mentioned against the actual transactions.

6. The Ld. CIT (A) has erred on facts and in law in upholding the various additions u/s 69, 69A, 69B and 69C of the Income Tax Act, 1961 relying on the alleged cash book which was not even alleged to be belonging to the appellant especially in view of the AO own findings that the alleged cash book belonged to Venus group and also without identifying the corresponding asset or investment or expenditure pertaining/relating to the appellant.

7. The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer on the basis of the alleged signature of the appellant especially when the investment or expenses were not even alleged to be belonging/pertaining/related to the appellant as that was against the specific law laid down for assessing income under the Income Tax Act, 1961.

8. The Ld. CIT (A) has erred on facts and in law in partly upholding the additions made by the Assessing Officer on account of alleged unexplained expenditure u/s 69C of the Income Tax Act, 1961 under the group named as Other land transactions/expenses related to land amounting to Rs. 1,14,87,884/-applying the peak principle ignoring the fact that the additions were made purely on the basis of alleged signature of the appellant on the unilateral interpretation of the alleged cash book without establishing that the alleged expenditure pertained to the appellant and the same were incurred by the appellant and without any corroboration or confirmation of the alleged expenditure from the corresponding recipients.

9. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer on account of alleged unexplained investment u/s 69B of the Income Tax Act, 1961 in shops at 3rd Eye Building, Panchwati Road, Ahmedabad amounting to Rs. 1,00,00,000/- solely on the basis of unilateral interpretation of the alleged cash book without any third party evidence.*
10. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer on account of alleged unexplained investment u/s 69B of the Income Tax Act, 1961 in Bungalow amounting to Rs. 7,84,085/-, solely on the basis of unilateral interpretation of the alleged cash book even though the appellant did not own the alleged bungalow and had made no investment in the same.*
11. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer on account of alleged unexplained expenses of personal nature u/s 69C of the Income Tax Act, 1961 Rs. 38,65,839/- and miscellaneous transactions Rs. 1,55,0007- and considering the remaining expenditures under the aforesaid said two groupings for peak working ignoring the fact that the additions were made by the Assessing Officer solely on the basis of alleged signature by the appellant based on his unilateral interpretation of the alleged cash book without establishing that the alleged expenditures pertained to the appellant and the same were incurred by him.*
12. *The Ld. CIT (A) has erred on facts and in law in partly upholding the additions made by the Assessing Officer u/s 69A of the Act on account of alleged negative peak balance of certain groupings of transactions amounting to Rs. 1,22,49,000/- on the basis of unilateral interpretation of the Assessing Officer of the alleged cash book.*
13. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer under Section 69B of the Income Tax Act, 1961 amounting to Rs. 33000/- on account of 'Swapanlok' relying upon the loose sheets seized from the Terrace of Crystal Arcade C.G. Road Ahmedabad.*
14. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer under Section 69C of the Income Tax Act, 1961 amounting to Rs. 6,28,200/~ on account of 'Abhishek' merely on surmises and conjectures while relying upon the noting made under the head Abhishek in the loose sheet seized from the Terrace of Crystal Arcade Ahmedabad.*
15. *The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer under Section 69C of the Income Tax Act, 1961 amounting to Rs. 1,05,00,000/- on account of Tarmanand Khatter' merely on surmises and conjectures while relying upon loose dumb sheets alleged to be cash book seized from Terrace of Crystal Arcade C.G. Road Ahmedabad.*
16. *The Ld. CIT (A) has erred on facts and in law in denying the application of principles of telescoping which resulted into double/multiple taxation in the case of the appellant.*
17. *The Ld. CIT (A) has erred on facts and in law in giving direction to the Assessing Officer under Section 150 of the Income Tax Act, 1961 to reopen the assessment in the case of M/s Venus Infrastructure & Developers (P) Ltd. without providing an opportunity of being heard.“*

The assessee has challenged the validity of the assessment framed under Section 147 of the Act for various reasons in the grounds of appeal bearing Nos. 1 to 7.

71. The facts in brief are that the assessee in the present case is an individual and engaged in the business of property development. There was a search carried out under Section 132 of the Act dated 10th and 12th March 2015 on the Vasvani Group. The assessee being a part of the group was also subject to search action

carried out under Section 132 of the Act. During the course of search proceedings, various documents of incriminating nature were found out.

72. However, the year under consideration was beyond the period for which the proceeding under Section 153A of the Act could have been initiated. Accordingly, the AO on the basis of the materials found during the search proceedings initiated the income escapement proceedings under Section 147 of the Act. Consequently, the AO issued a notice dated 30th March 2015 under Section 148 of the Act for initiating the proceedings under Section 147 of the Act which were completed vide order dated 11th August 2016 after making the disallowance of Rs. 45,40,09,937/- for different items of addition.

73. The assessee, subsequently contested the validity of the assessment framed under 147/143(3) of the Act besides challenging the additions on merit before the ld. CIT-A. However, the ld. CIT-A upheld the assessment order of the AO by observing as under:

> *4.3. I have carefully considered the facts of the case, re-assessment orders and submissions made by the appellants. The Assessing Officer has issued notice u/s. 148 of the I. T. Act, 1961 on 30/03/2015 after duly recording the reasons. The appellants were provided copy of reasons recorded. The appellants have objected the reopening proceedings which were disposed off by passing a speaking order by the Assessing Officer. Shri Ashokkumar Sunderdas Vaswani has filed Special Civil Application No, 2550 of 2016 before Honourable Gujarat High Court against the notice u/s. 148. The Honourable Court has upheld the reopening of assessment as under:-*
>
> > *"14. The second issue pertains to recording of reasons before issuance of notice. In this context, we have perused the original files. We notice that relevant material was placed before the Assessing Officer on 30.3.2015. Upon perusal of such material, considering the fact that the process of reopening would get time-barred soon, on the very same date, he recorded his reasons which are also contained in the file along with a letter of the sire date written by him to the Principal Commissioner sepicing approval. In the file, we also find the approval granted by the Principal Commissioner of the Income tax also on 30.3.2015. In fact, the suggestion placed by Assessing Officer was first screened by the Joint Commissioner of Income-tax which was then placed before the Principal Commissioner who recorded as under –*
> >
> > *"After perusal of the reasons given by the Assessing Officer in the annexure, I am satisfied that that this is a fit case for issue of notice in lieu of Section 148"*
> >
> > *15. This was written by the Principal Commissioner Shri Sandeep Kapoor in his own handwriting below which he signed putting the date of 30.3.2015. Such materials on record would therefore, destroy the petitioners' theory that reasons were recorded later but notice was issued prior in point of time. On this count also, petitions must fail."*
>
> *"4.6 The appellants have also argued that the assessment has been reopened beyond four years, and therefore, proviso to Section 147 is applicable where the Assessing Officer has to give a finding that there was a failure on the part of assessee to disclose fully and truly all material facts necessary for assessment. It is seen that the AO has reopened the assessment on the basis of seized*

material. The unaccounted cash transactions were not disclosed by the appellant in regular return, and therefore, failure was on the part of appellants. Appellant's argument is therefore found not correct and same is rejected. The grounds of appeal are accordingly ***dismissed.****"*
"5.1.3. I have carefully considered the facts of the case, assessment orders and submissions made by the appellant. A search was initiated on 10/03/2015 in the case of appellant at the various premises u/s. 132 of the I.T. Act, 1961. Copy of panchnamas of all the search proceedings were provided to the appellant. The Assessing Officer relying upon Board's Instruction and judicial pronouncements in the case of Jain & Jain V. Union of India [1982] 134 ITR 655 (Bom.), V. K. Jain V. Union of India [1975] 98 ITR 469 (Delhi)] and [Southern Herbals Ltd. v. DIT (Investigation) [1994] 207 ITR 55 (Kar.)] has held that there is no provision of the Act for providing copy of authorisation of warrant to the assessee. The law only requires that warrant must be produced by the authority before the commencement of the proceeding of search and the same has been done. I agree with the findings of the Assessing Officer that AO is not required to provide a copy of warrant of authorisation before assuming jurisdiction u/s. 153A. The ground of appeal is accordingly ***dismissed****."*

Now the assessee in the ground of appeal before us has challenged the validity of the assessment framed under Section 147 of the Act.

74. The learned AR before us contended that search proceedings are the special proceedings as provided under Section 153A of the Act which has overriding effect over Section 147 of the Act. Thus in the search proceedings any material found having bearing on the income of the assessee, there can be proceedings under Section 153A of the Act. Accordingly, the revenue is barred to take the shelter for taxing the income based on the search materials under any other provisions of law i.e. 143(3), 263, 147 of the Act. The learned AR in support of his contention relied on the following judgments:

Amar Jewellers Ltd. – SCA 17598 of 2019 (Guj)
Ishwarlal mahidas Bhut Vs. ITO – SCA 18983 of 2019 (Guj)
Vikram Munishwarlal Bajaj vs. ITO – ITA 2552/Pun/2017

75. The ld. AR also contended that there was no addition made in the assessment order framed under Section 147 r.w.s. 143(3) of the Act dated 11thAugust 2016 on the materials based on which re-assessment proceeding was initiated. Accordingly, the learned AR submitted that once the additions documented in the reasons recorded were dropped by the AO, consequently, no assessment under Section 147/143(3) of the Act can be made with respect to the other material which comes into notice of AO during reassessment proceeding.

76. The learned AR further contended that the AO before issuing notice under Section 148 of the Act for income escaping assessment has to form prima facie opinion that the income of the assessee has escaped assessment based on some tangible materials and that too after verification of such materials. But in the present case, the AO without verifying the details received from the search team and without applying his mind, has just came to the conclusion that the income of the assessee has escaped assessment.

77. On the other hand, the learned DR contended that search proceedings are applicable for the specified years as provided under Section 153A of the Act. Thus to that extent the proceedings can only be initiated under Section 153A of the Act. Any period which is beyond the period specified under Section 153A of the Act and fall within the period provided for income escaping assessment under the provisions of Section 147 of the Act, there can be proceedings which can be initiated under the provisions of Section 147 of the Act. As per the learned DR There is no prohibition for initiating the proceedings under Section 147 of the Act based on the materials found during the course of search carried out under Section 132 of the Act provided such initiation of proceedings is beyond the period specified under Section 153A of the Act. Accordingly the learned DR contended that the assessment framed under Section 147 of the Act is valid and within the frame work of law.

78. The learned DR has also contended that the additions made by the AO in the assessment framed under Section 147 read with Section 143(3) of the Act can be categorized in two compartment. In the 1st compartment, there were the additions which were documented in the reasons recorded. Similarly, in the 2nd compartment, there were the additions which were not documented in the reasons recorded. As such the additions represented in the 2nd compartment signifies those items of additions, representing the escapement of income which

were not documented in the reasons recorded but were found by the AO during the assessment proceedings. The learned DR in support of his contention has filed the summary of the additions representing the addition which were documented in the reasons recorded viz a viz not documented in the reasons recorded under Section 147 of the Act.

79. As per the ld. DR, once any addition documented in the reasons recorded under Section 147 of the Act has been sustained, then other addition (non-documented in the reasons recoded) shall survive under the provision of Section 147 of the Act. Consequently, the assessment framed under Section 147 of the Act cannot be challenged on the reasoning that there was no addition made to the total income of the assessee as proposed/ documented in the reasons recorded.

80. The learned DR further contended that the AO has recorded the reasons for income escaping assessment under Section 147 of the Act after applying his mind and after verification of the search materials.

81. In nutshell the learned DR opposed the issue raised by the assessee on the validity of the assessment framed under Section 147/143(3) of the Act as discussed above and further vehemently supported the order of the authorities below.

82. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the following issues arise for our consideration as detailed under:

(1) *Whether in case of search under Section 132 of the Act, the proceeding under Section 153A of the can only be initiated without resorting to the provisions of Section 147 of the Act.*

(2) *Whether the AO can initiate the re-assessment proceeding under Section 147 of the Act on the basis of information received from the Investigation wing but without application of his mind on such materials.*

(3) *Whether the order under Section 147 of the Act survives in a situation where there was no addition with respect to the items which was documented in the reasons recorded but the additions were made with respect to the issues which come into notice of the AO during assessment/re-assessment proceeding under Section 147 of the Act in the final assessment/ reassessment order under Section 147 r.w.s. 143(3) of the Act.*

83. The first question arises for our adjudication whether the material found during the search proceedings under Section 132 of the Act can be used for invoking the provisions of income escaping assessment under Section 147 of the Act. At this juncture were inclined to refer the provisions of Section 153A (1) of the Act which deals with the assessment proceedings in case of search being the special proceedings. The provisions of Section 153A (1) reads as under:

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

The above provisions begins with the non obstante clause overriding the provisions of Section 147 of the Act. The provisions of Section 153A (1)(a) of the Act provides that once the search under Section 132 of the Act is conducted or requisition is made under Section 132A of the Act in the case of a person, the AO shall require such person to file return of income under for six preceding assessment year immediate to the assessment year in which search or requisition was made. Similarly the provision of Section 153A(1)(b) empowers the AO to assess or reassess the income for such six assessment year preceding to the A.Y. in which search conducted or requisition made. Thus in other words, the assessment under Section 153A of the Act as a result of search is applicable for the specified number of 6 years.

84. To illustrate the above provision, if a search was conducted dated 11th June 2015 falling under P.Y. 2015-16 relevant to A.Y. 2016-17, then, the following number of assessment years will be subject to assessment or reassessment under the special proceedings (search assessment) under Section 153A of the Act.

1. A.Y. 2015-16
2. A.Y. 2014-15
3. A.Y. 2013-14
4. A.Y. 2012-13
5. A.Y. 2011-12
6. A.Y. 2010-11

85. Thus what is inferred is this that the assessment subsequent to search under Section 132 or requisition made under Section 132A of the Act, being special proceedings, are governed under the provisions of Section 153A of the Act. The provision of Section 153A(1)(b) provides that in case of search, six assessment years preceding to A.Y. in which search was conducted or requisition made will be assessed or reassessed. Thus the situation arises whether the materials discovered during search proceedings for beyond six preceding A.Y. can be used for invoking the provisions of Section 147 of the Act for the period not covered under the provisions of Section 153A of the Act. The answer stands in favour of the Revenue. It is because there is no denial under the provisions of law for using the search material under the provisions of Section 147 of the Act in a situation where the period/year in dispute is not covered within the provisions of Section 153A of the Act. It is not out of place to mention that the conditions precedent to invoking the provisions to Section 147 of the Act have to be complied by the Revenue. In holding so we draw support and guidance from

the order of Hon'ble MP High Court in case Ramballabh Gupta vs. ACIT reported in 288 ITR 347 where it was held as under:

> *In order to decide the legality and validity of notice issued under Section 148, it is necessary to see as to whether conditions precedent provided in Section 148 are satisfied or not. Once the conditions prescribed under Section 148 are found present in the notice issued then, in that event, the notice has to be upheld being issued in conformity with the requirement of Section 148. [Para 9]*
>
> *While deciding the legality of notice issued under Section 148, it is not necessary to look to the provisions of Section 153A because both Sections operate in different field and sphere. [Para 10]*
>
> *The Assessing Officer does not have jurisdiction to issue notice under Section 148 in respect of those six assessment years which fall within the exclusive jurisdiction of Section 153A. Such was not the case in the instant case. [Para 11]*
>
> *Admittedly, the Assessing Officer had not issued notice of reassessment under Section 153A in respect of six assessment years, i.e., 2003-04 to 1998-99 whereas he had issued impugned notice of reassessment for the assessment year 1997-98 under Section 148 which was the subject-matter of the instant writ. [Para 12]*
>
> *The submission of the assessee that in cases of search, Section 148 had no application and, secondly, no order for reassessment could be passed beyond six years as provided in Section 153A could not be accepted. [Para 13]*
>
> *Section 148 being an independent Section, powers exercised by the Assessing Officer cannot be curtailed if the impugned notice otherwise satisfies the requirement of Section 148. The only fetter put on the powers of the Assessing Officer in taking recourse to Section 148 is that notice under said Section cannot be issued in relation to those six assessment years which are defined in Section 153A. This fetter is due to use of non obstante clause in Section 153A. In all other cases and for all other assessment years, Section 148 can always be resorted to subject of course to the condition that it must satisfy the requirement specified in Section 148. [Para 14]*
>
> *It was not the case of the assessee that the impugned notice did not satisfy the requirement of Section 148. On the other hand, it clearly appeared that firstly, notice under Section 148 could be issued for the assessment year 1997-98 being well within time, secondly, the Assessing Officer was empowered and had an authority to issue such notice. Thirdly, notice contained reasons as required under Section 148 and same were supplied to the assessee and lastly, on the strength of the material collected in the raid conducted in the premises of the assessee, a formation of belief for escape assessment could validly be formed for reopening of assessment made for the assessment year 1997-98. The assessee did not challenge the notice on any of those grounds which alone could be made basis to challenge the impugned notice, it being issued under Section 148 and, hence, there was no difficulty in upholding the impugned notice which was rightly issued in conformity with the requirement of Section 148. [Para 16]*

In view of the above judicial pronouncement, we hold that material found during the course of search proceedings can be used for invoking the provisions of Section 147 of the Act. However, it is important to note that the provisions of Section 147 of the Act can be invoked only after complying the provisions/conditions as provided under Section 147/148/149/150 and 151 of the Act.

86. We also note that case law referred by the learned AR for the assessee at the time of hearing are distinguishable from the facts of the present case. In view of the above and after considering the facts in totality, we are not inclined to disturb the finding of the authorities below. Hence the contention raised i.e. the provisions of Section 147 of the Act cannot be invoked in view of the fact that there was special proceedings under Section 153A of the Act in case of search, by the assessee is dismissed. Thus the contention of the assessee is hereby dismissed.

87. Coming to the second question of the assessee, we note that the power of reassessment is conferred on the Assessing Officer by the provisions of Section 147/148 of the Act. But such power is subject to the certain conditions laid down under Section 147/148/149/151 of the Act. One of the very first condition is that before issuing notice under Section 148 of the Act for reassessment proceeding under Section 147 of the Act the AO must have reason to believe that income has been escaped assessment. Thus the AO for that purpose has to record a satisfaction note which must fulfill the parameters of the undefined expression 'reason to believe'. The expression ‘reason to believe’ occurring in Section 147 of the Act has been interpreted by various Hon'ble High Courts as well as the Hon'ble' Supreme Court of India in numerous cases. The question in the present case is as to whether the information received from the investigation wing/search team would constitute 'reason to believe' empowering the Assessing Officer to reopen the assessment. Indeed the 'reason to believe' being a condition precedent for reopening the assessment is a question of jurisdiction.

88. The expression 'reason to believe' occurring in Section 147 of the Act inter-alia postulates that the information received from investigation wing, emanating from the search records would not *per se* empower the Assessing Officer to exercise the power of reassessment. Such information with regard to escapement of income which comes into possession of an Assessing

Officer has to be processed and, on the basis, thereof an opinion has to be formed objectively before issuing notice under Section 148 of the Act to an assessee. In other words the information received from the investigation wing cannot be said to be tangible material *per se* without a further inquiry being undertaken failing which the decision of the Assessing Officer in issuing notice for reopening of assessment would be a result of borrowed satisfaction and notices would be as a result of assumption of jurisdiction.

While the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation wing.

89. In the assessee's case, the crucial link between the information made available to the Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the information received from the Director (Investigation). Hence it is nothing but a "Borrowed satisfaction".

90. The AO, in the reasons recorded, discussed in details the materials found by the search team and thereafter initiated the proceedings by observing as detailed under:

On the basis of analysis base on above seized documents it has been found that these transaction are done in cash by ASV (Ashok Sunderdas Vaswani) for the relevant assessment year 2008-09.

Date	*Page no./Annexure*	*Receipt (Rs.)*	*Reference of receipt*	*Payment (Rs.)*	*Reference of Payment*
5.10.2007	*145/A-64*	*9800000*	*Vejalpur-1062 71p*	*61500*	*ASV*
		450000	*ASV sarafi from Gopal/ishwar*	*-*	*-*
08.10.2007	*140/A-64*	*10400000*	*Vejalpur-1062*	*41400*	*ASV*

			71p		
		3300000	*ASV*	*-*	*-*
15.10.2007	*126/A-64*	*9800000*	*Vejalpur-1062 71p*	*2500000*	*ASV*
		1700000	*ASV*	*1057600*	*ASV*
		-	*-*	*68837*	*ASV*
		-	*-*	*15000*	*ASV*
24.10.2007	*104/A-64*	*5000000*	*Vejalpur-1062 71p*	*11400*	*ASV*
		1000000	*ASV*	*-*	*-*
8.02.2008	*81/A-66*	*5000000*	*Vejalpur 1062*	*-*	*-*
8.02.2008	*81/A-66*	*500000*	*ASV*	*-*	*-*
Total		*43980000*		*3755737*	

In view of the above facts, I have reason to believe that income amounting to Rs. 4,77,35,737/- chargeable to tax has escaped assessment within the meaning of Section 147 of the Act by reason of the failure of the assessee to disclose fully and truly all material facts necessary for assessment."

91. Thus what is inferred from the satisfaction recorded by the AO is that there was no application of the mind of the AO which was pre-requisite for acquiring the jurisdiction under Section 147/148 of the Act. As such the AO in the reason recorded nowhere mentioned how he reached to believe that the information received form the investigation wing represent income of the assessee and such income has escaped assessment. There is no mention in reasons recorded with respect to the fact that whether the assessee has filed original return or weather assessment under Section 143(3) was made earlier or not. if assessment under Section 143(3) completed earlier then how it was failure on the part of the assessee to disclose all material facts fully and truly during assessment proceeding for initiating reassessment proceeding after expiry of 4 year from the end of relevant assessment year.

92. Further, we note that search under Section 132 of Act was conducted as on 10th and 12th March 2015 in case of assessee group. The last date of Panchnama was made as on 6th and 8th May 2015. From this what doubt arises is that there was no material available before the AO as on the date of issue of notice under Section 148 of the Act to analyze and form a prima facie believe that the income has escaped assessment for the year under consideration.

93. In the present case the search information received from the investigation wing was used to form the reason to believe by the AO but without applying the mind. Thus the reasons were merely recorded on the borrowed satisfaction by the AO. The source for all the conclusions was of the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment.

94. The Hon'ble High Court of Bombay in the case *Principal Commissioner of Income-tax-5 v. Shodiman Investments (P.) Ltd.* reported in 422 ITR 337 holding that reopening notice on the basis of intimation from DDIT (Investigation) about a particular entity entering into suspicious transactions, was clearly in breach of the settled position of law that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction. The Hon'ble Court has pronounced as under:

> *"12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to*

believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction."

95. The power to reopen a completed assessment under Section 147 of the Act has been bestowed on the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. However, this belief that income has escaped assessment has to be the reasonable belief of the Assessing Officer himself and cannot be an opinion and/or belief of some other authority. On the basis of the information by itself received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee by applying his mind and thereafter is required to form an independent opinion on the basis of the material on record that the information has bearing on the income of the assessee and such income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be

'independent' and not 'borrowed' or 'dictated' satisfaction. Law in this regard is now well-settled.

96. The Hon'ble Supreme Court in the case of *Anirudh Sinhji Karan Sinhji Jadeja v. State of Gujarat* reported in *[1995] 5 SCC 302* as well has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether. The cases reopened on the basis of information received from the other Departments are also governed by the aforesaid principle of making an independent inquiry and recording of satisfaction by the Assessing Officer issuing notice under Section 148 of the Act.

97. Third party information is only an information and does not constitute 'reason to believe' until and unless the third party information is subjected to investigation and on the basis thereof independent reasons are recorded by the Assessing Officer before issuance of notice under Section 148 of the Act.

98. Moving further, we also note that the assessee was already assessed under the provisions of Section 143(3) of the Act vide order dated 22nd November 2010. Accordingly the 1st proviso in Section 147 of the Act has a direct bearing on the issue on hand. It is stated therein that there cannot be any action under Section 147 of the Act after the expiry of the 4 years from the end of the relevant assessment year until and unless the income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make disclosure of all the material facts truly and fully necessary for assessment. In the present case, we have already held that initiation of the proceedings under Section 147 of the Act was based on the borrowed satisfaction. Thus it is implied that the AO has not applied his mind to arrive at

the conclusion that there was of failure on the part of the assessee to disclose fully and truly all the material facts. In other words, mentioning by the AO that the assessee has failed to disclose all material facts in the reasons recorded is not sufficient enough. Rather the AO is under the obligation to arrive at such conclusion that the assessee failed to disclose all material facts necessary for the assessment after applying his mind and verification of the facts. But the AO has not done so. In holding so we draw support and guidance from the judgment of Hon'ble Bombay High court in case of Gateway Leasing (P.) Ltd vs. ACIT reported in 117 taxmann.com 442 where it was held as under:

> ***35.*** *Having discussed the above, we may once again revert back to the reasons furnished by Respondent No. 2 for re-opening of assessment under Section 147 of the Act. After referring to the information received following search and seizure action carried out in the premises of Shri Naresh Jain, it was stated that information showed that Petitioner had traded in the shares of M/s. Scan Steels Ltd., and was in receipt of Rs. 23,98,014.00 and therefore, Respondent No. 2 concluded that he had reasons to believe that this amount had escaped assessment within the meaning of Section 147 of the Act.*
>
> ***36.*** *First of all it would be evident from the materials on record that Petitioner had disclosed the above information to the Assessing Officer in the course of the assessment proceedings. All related details and information sought for by the Assessing Officer were furnished by the petitioner. Several hearings took place in this regard where-after the Assessing Officer had concluded the assessment proceedings by passing assessment order under Section 143 (3) of the Act. Thus it would appear that Petitioner had disclosed the primary facts at its disposal to the Assessing Officer for the purpose of assessment. He had also explained whatever queries were put by the Assessing Officer with regard to the primary facts during the hearings.*
>
> ***37.*** *In such circumstances, it cannot be said that Petitioner did not disclose fully and truly all material facts necessary for the assessment. Consequently, Respondent No. 2 could not have arrived at the satisfaction that he had reasons to believe that income chargeable to tax had escaped assessment. In the absence of the same, Respondent No. 2 could not have assumed jurisdiction and issued the impugned notice under Section 148 of the Act*

In view of the above, we hold that the initiation of proceedings under Section 147/148 of the Act are not valid in the eyes of law and liable to be quashed for the reason that the AO failed to apply his mind. Thus the reasons were merely recorded on the borrowed satisfaction by the AO. The source for all the conclusions was of the investigation report. Accordingly, we quash the same.

99. Moving ahead to question number 3we note that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to

153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. The issue arises whether AO on having dropped the item of escaped income, on the basis of which reasons to believe were formed and notice u/s. 148 was issued, after getting a satisfactory explanation from the assessee, can validly tax "other items of escaped income" which come to his notice during reassessment proceedings. In this regard, the Courts have noticed that the Parliament has used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. The correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that the Parliament has not used the word "or". The legislature did not rest content by merely using the word "and". It has been emphasized that the words "and", as well as "also" have been used together and in conjunction.

100. Evidently, therefore, what the Parliament intends by use of the words "and also" is that the AO, upon the formation of a reason to believe under Section 147 and the issuance of a notice under Section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the Section. The words 'such income' refer to the income which became the basis for recording reasons and issue of notice u/s. 148. The expression "any other income" refers to such escaped income which came to the notice of the AO during the course of reassessment proceedings and in respect of which no reasons were recorded before issue of notice u/s 148. The Hon’ble Bombay high Courts in case of CIT vs. Jet Airways reported in 331 ITR 236 have held that:

*Interpreting the provision as it stands without adding or deducting from the words used by the Parliament, it is clear that upon formation of a reason to believe under Section 147 and following the issuance of a notice under Section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by the Parliament otiose. The Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard these words as being conjunctive and cumulative. It is of some significance that the Parliament has not used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in conjunction. Evidently, therefore, what the Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under Section 147 and the issuance of a notice under Section 148(2), must assess or reassess: (*i*) 'such income'; and also (*ii*) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the Section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language used by the Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the Section as having escaped assessment. If upon the issuance of a notice under Section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. The Parliament, when it enacted the provisions of Section 147 with effect from 1-4-1989, clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.* [Para 11]

Similarly the Hon'ble Karnataka High Court in case of N Govindraju v ITO reported in 377 ITR 243 held as under:

24. *The 'reason to believe' that any income chargeable to tax has escaped assessment, is one aspect of the matter. If such reason exists, the Assessing Officer can undoubtedly assess or reassess such income, for which there is such 'reason to believe' that income chargeable to tax has escaped assessment. This is the first part of the Section and up to this extent, there is no dispute.*

25. *It is the latter part of the Section that is to be interpreted by this Court, which is as to whether the second part relating to 'any other income' is to be read in conjunction with the first part (relating to 'such income') or not. If it is to be read in conjunction, then without there being any addition made with regard to 'such income' (for which reason had been given in the notice for reopening the assessment), the second part cannot be invoked. But if it is not to be read in conjunction, the second part can be invoked independently even without the reason for the first part surviving.*

26. *From a plain reading of Section 147 of the Act it is clear that its latter part provides that 'any other income' chargeable to tax which has escaped assessment and which has come to the notice of the Assessing Officer subsequently in the course of the proceedings, can also be taxed. The said two parts of the Section having been joined by the words 'and also', what we have to now consider is whether 'and also' would be conjunctive, or the second part has to be treated as independent of the first part. If we treat it as conjunctive, then certainly if the reason to believe is there for a particular ground or issue with regard to escaped income which has to be assessed or reassessed, and such*

ground is not found or does not survive, then the assessment or reassessment of 'any other income' which is chargeable to tax and has escaped assessment, cannot be made.

101. In the light of the above stated discussion, we proceed to adjudicate the issue on hand. From the reasons recorded we note that the AO has proposed the additions in the reasons recorded as detailed under:

On the basis of analysis base on above seized documents it has been found that these transaction are done in cash by ASV (Ashok Sunderdas Vaswani) for the relevant assessment year 2008-09.

Date	*Page no./Annexure*	*Receipt (Rs.)*	*Reference of receipt*	*Payment (Rs.)*	*Reference of Payment*
5.10.2007	*145/A-64*	*9800000*	*Vejalpur-1062 71p*	*61500*	*ASV*
		450000	*ASV sarafi from Gopal/ishwar*	-	-
08.10.2007	*140/A-64*	*10400000*	*Vejalpur-1062 71p*	*41400*	*ASV*
		3300000	*ASV*	-	-
15.10.2007	*126/A-64*	*9800000*	*Vejalpur-1062 71p*	*2500000*	*ASV*
		1700000	*ASV*	*1057600*	*ASV*
		-	-	*68837*	*ASV*
		-	-	*15000*	*ASV*
24.10.2007	*104/A-64*	*5000000*	*Vejalpur-1062 71p*	*11400*	*ASV*
		1000000	*ASV*	-	-
8.02.2008	*81/A-66*	*5000000*	*Vejalpur 1062*	-	-
8.02.2008	*81/A-66*	*500000*	*ASV*	-	-
Total		*43980000*		*3755737*	

However, the AO has made the addition in the assessment framed under Section 147/143(3) of the Act as detailed under:

Sr.No.	*Item of Addition*	*Amount (in Rs.)*
1.	*Parmanand Khattar*	*1,05,00,000/-*
2.	*Investment in Shop in 3rd Eye*	*1,00,00,000/-*
3.	*Investment in Bungalows*	*10,45,410/-*
4.	*Golden*	*4,16,35,050/-*
5.	*Swapnalok*	*33,000/-*
6.	*Abhishek*	*6,28,200/-*
7.	*Transaction of Personal Nature*	*8,29,49,396/-*
8.	*Transaction marks as "against EC/Sarafi etc''*	*28,30,01,684/-*
9.	*Transaction related to Projects*	*37,31,117/-*
10.	*Other land Transaction*	*74,25,715/-*
11.	*Miscellaneous Transactions*	*1,35,60,365/-*

On comparison to the above additions documented by the AO in the reasons recorded with the actual addition made by the AO in the assessment order, we note that there was no addition made by the AO in the assessment order which was proposed in the reasons recorded by the AO in actuality.

102. The learned DR at the time of hearing has submitted that the following addition made by the AO in the assessment framed under Section 147 /143(3) of the Act were also proposed in the reasons recorded.

On analysis of cash book (total 142 annexure), it was noticed that

> *(i) Rs.8,29,49,396/- is in nature of payment in cash was recorded in name of the assessee.*
>
> *(ii) Rs.1,35,60,365/- is in nature of payment in cash which was paid to others.*
>
> *The above payments made by the assessee were remained unexplained and following additions were made:*

Sr. No	*Particulars*	*Amount in Rs.*
1	*Unexplained expenditure towards payment made in cash (personal nature)*	*8,29,49,396*
2	*Unexplained expenditure (miscellaneous transaction)*	*1,35,60,365*

In view of the above, the learned DR contended before us that the assessment framed under Section 147/143(3) of the Act is valid as 2 addition which were proposed in the reasons recorded were also actually added to the total income of the assessee.

103. However, on comparison of the additions proposed in the reason to believe recorded for the assessment under Section 147 of the Act with the actual addition made by the AO as contended by the learned DR hereinabove, we find that the additions which were proposed in the reasons recorded were not matching with the actual additions made by the AO in the assessment order under Section 147/143(3) of the Act. As such the amount of addition viz a viz the basis of re-opening as proposed in the reasons recorded were not matching with the addition made by the AO in the assessment framed under Section 147/143(3) of the Act. Accordingly, we hold that there cannot be any addition in the assessment framed under Section 147/143(3) of the Act in the given facts and circumstances. In view of the above we quash the assessment framed under 147 of the Act. Hence, the grounds of appeal of the assessee are allowed.

104. The assessee in grounds nos. 1 to 18 of the appeal has challenged the additions made by the AO on merit which were partly confirmed by the ld. CIT-A.

105. As the assessment order framed under Section 147 r.w.s. 143(3) of the Act has been held as invalid by us in the paragraph bearing No.78of this order, therefore we are not inclined to decide the issues raised by the assessee on merit. Accordingly, we dismiss the same as infructuous.

Coming to the Revenue appeal No.806/Ahd/2019 for A.Y. 2008-09.

106. At the outset we note that the assessment framed under Section 147/143(3) have been held by us as invalid in the appeal filed by the assessee bearing ITA No.456/Ahd/2019 for A.Y. 2008-09 at paragraph No.105 of this order. Accordingly, we hold that no separate adjudication is required for the grounds raised by the revenue. Accordingly, we dismiss the appeal filed by the Revenue as infructuous.

107. In the result, the appeal filed by the assessee bearing ITA No.456/Ahd/209 is partly allowed and appeal filed by the revenue bearing ITA No. 806/Ahd/2018 is dismiss as infructuous.

Coming to the ITA No. 457/Ahd/2019, an appeal filed by the assessee for A.Y. 2008-09

108. At the outset, we note that issues raised by the assessee are identical to the issue raised by the assessee in ITA No. 456/AHD/2019 which has been decided in favor of the assessee by us vide paragraph No.107 of this order. Respectfully following the same, the appeal filed by the assessee is partly allowed.

Now coming to the Revenue appeal bearing No. ITA No.805/Ahd/2019 for A.Y. 2008-09

109. At the time of hearing, it was submitted by the Ld.AR for the assessee that appeal filed by the Revenue is hit by recently issued CBDT Circular No.17 of 2019 dated 08/08/2019 revising the previous thresholds pertaining to tax effects. As per aforesaid Circular, all pending appeals filed by Revenue are liable to be

dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.50 Lakhs. In the instant case, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.50 lakhs and therefore appeal of the Revenue is required to be dismissed in limine.

110. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 17 of 2019. Accordingly, appeal of the Revenue is dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeal on showing inapplicability of the aforesaid CBDT Circular in any manner.

111. In the result, the appeal filed by the revenue is dismissed due to low tax effect.

112. In the result, the appeal filed by the assessee bearing ITA No.457/Ahd/2019 is partly allowed and appeal filed by the revenue bearing ITA No. 805/Ahd/2019 is dismiss due to low tax effect.

Now coming to the ITA no.461/Ahd/2018 appeal filed by the assessee and ITA No.807/Ahd/2019 appeal filed by the revenue for A.Y. 2008-09.

113. At the outset, we note that issues raised by the assessee and the Revenue are identical to the issue raised by the assessee ITA No. 456/AHD/2019 which has been decided in favor of the assessee and against the Revenue by us vide paragraph No.87 to 89 of this order. Respectfully following the same, the grounds of appeal raised by the assessee is partly allowed and appeal filed by the Revenue is dismiss as infructuous.

114. In the combined results the appeals filed by the revenue and different assessee are as follows:

Sr.No.	**ITA No.**	**Assessee**	**A.Y**	**Appeal by**	**Result**
1.	456/Ahd.2019	Ashok S Vaswani	2008-09	Assessee	Partly allowed
2.	806/Ahd/2019	-do-	-do-	Revenue	Dismiss as infructuous
3.	457/Ahd/2019	Rajesh S Vaswani	-do-	Assesse	Partly allowed
4.	805/Ahd/2019	-do-	-do-	Revenue	Dismiss due to low tax effect
5.	461/Ahd/2019	Deepak B Vaswani	-do-	Assessee	Partly allowed
6.	807/Ahd/2019	-do-	-do-	Revenue	Dismiss as infructuous

<u>ITA No. 837/Ahd/2019 – M/s. Venus Infrabuild (A.Y. 2015-16)</u>

115. The next proposition no. 5 is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 46,45,274.00 on account of interest free loans and advances provided to the partners in ITA No. 837/Ahd/2019 – M/s. Venus Infrabuild (A.Y. 2015-16).

116. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT (A) has erred on facts and in law in holding that the jurisdiction under Section 153C of the Income Tax Act, 1961 was correctly assumed by the Assessing Officer without dealing with various infirmities of facts and law with regard to the assumption of jurisdiction u/s 153C having been pointed out by the appellant.

2. The Ld. CIT (A) has erred on facts and in law in upholding the assessment order u/s 143(3) r.w.s 153A(1) of the Income Tax Act, 1961 passed by the Assessing Officer on 26.12.2017 which is beyond the time limitation as laid down u/s 153B of the Act.

3. The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer relying on the alleged incriminating material which was neither seized from a place covered by search in the case of appellant nor even alleged to be belonging to the appellant in contravention of the settled law on the scope of assessment u/s 153A of the Income Tax Act, 1961.

4. The Ld. CIT (A) has erred on facts and in law in upholding the inference drawn by the Assessing Officer that the loose paper found and seized from the Terrace of Crystal Arcade CG Road Ahmedabad represented the alleged unaccounted cash book of Venus Group, that the signature found on the documents were of the family members of the appellant, that the date of transactions were recorded in the coded form to disguise the relevant date of transactions, that the entries were recorded in such a way that two zero at end of each entry were omitted and that the word 'estimate' had been mentioned against the actual transactions.

5. The Ld. CIT (A) has erred on facts and in law in upholding the additions relying on the alleged cash book which was not even alleged to be belonging to the appellant especially in view of the AO own findings that the alleged cash book belonged to Venus group and also without identifying thecorresponding asset or investment or expenditure pertaining/relating to the appellant.

6. The Ld. CIT (A) has erred on facts and in law in upholding the additions made by the Assessing Officer on account of alleged unexplained expenditure u/s 69C of the Income Tax Act, 1961 being for the project developed by the appellant at Baroda namely Venus Pahel on peak basis, without establishing that the alleged expenditure was made by the appellant and without any corroboration of the alleged expenditure from the corresponding recipients.

7. The Ld. CIT (A) has erred on facts and in law in confirming the additions on the basis of alleged unaccounted receipts and payments when all these alleged receipts and payments were pertaining to the project and the appellant's accounting of entire expenses in the year under consideration as project work in progress and receipts from the customers as advances was accepted by the Assessing Officer and upheld by the Ld. CIT (A).

8. The Ld. CIT (A) has erred on facts and in law in changing the entire basis of addition without providing adequate opportunity of being heard to the appellant.

9. The Ld. CIT (A) has erred on facts and in law in denying the application of principles of telescoping which resulted into double/multiple taxation. The Ld. CIT (A) has erred on facts and in law in confirming the addition on account of notional addition for non charging of interest amounting to Rs. 46,45,274/- when the partnership deed itself provided that charging of interest on debit balance is not mandatory.

11. The Ld. CIT (A) has erred on facts and in law in confirming the addition on account of notional interest without giving a corresponding direction for claim of expenditure of the interest by the partners of the aforesaid interest / amount.

12. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal."

The assessee in ground No. 1 to 3 has challenged the validity of the assessment framed under Section 143(3) of the Act on account of various reasons.

117. At the outset the learned AR for the assessee before us submitted that he has been instructed by the assessee not to press impugned grounds of appeal. Accordingly we dismiss the same as not pressed.

118. The issues raised by the assessee in ground No. 4 to 9 are against various additions made by the AO which were subsequently partly confirmed by the learned CIT (A).

119. At the outset the learned AR for the assessee before us submitted that he has been instructed by the assessee not to press impugned grounds of appeal on account of smallness of the amount. Accordingly we dismiss the same as not pressed.

120. The last issue raised by the assessee in ground no. 10 and 11 is that learned CIT (A) erred in confirming the addition made by the AO for Rs. 46,45,274.00 on account of interest free loans and advances provided to the partners.

121. The assessee in the present case is a partnership firm and engaged in the business of construction activities. The AO during the assessment proceedings found that the assessee has been incurring interest cost on the capital contributed by the partners and at the same time the assessee has not been charging any interest from the partners for the loans and advances extended to them despite there was the clause in the deed of partnership for charging interest on the loans and advances given to the partners. As per the AO the interest that should have been charged from the partners stands at Rs.59,41,768.00 only in the earlier years. The details of such interest is given hereunder:

Assessment year 2012-13	*Rs.*	*9,72,212.00*
Assessment year 2013-14	*Rs.*	*49,69,559.00*

122. The AO further found that the assessee has not debited any interest expenses to the profit and loss account which was incurred on the capital contributed by the partners in the assessment years 2012-13 and 2013-14 respectively. As such, the amount of interest expenses was capitalized in the work-in-progress. However, the assessee in the year under consideration has recognized the income based on percentage of project completion method. As such the assessee has recognized the income for the year under consideration to the tune of 78.18% based on percentage of project completion method. Accordingly the AO was of the view that such interest income on the loans and advances given to the partners as discussed above should have been recognized as income for Rs. 46,45,274.00 being 78.18% of the interest i.e. Rs.59,41,768.00 and the balance amount of Rs.12,96,494.00 (Rs. 59,41,768.00-46,45,274.00) should have been reduced from the capital work-in-progress shown in the year

under consideration. Consequently, the AO disallowed the sum of Rs. 46,45,274.00 representing the amount of interest that should have been charged on the advances given to the partners and finally added the same to the total income of the assessee.

123. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

> *"10.4.* ***Decision:***
>
> *I have carefully considered the facts of the case, assessment order and submission filed by the appellant. The Assessing Officer in the assessment order has noted that there is a debit balance of Rs.44,23,493/-of partner Shri Narandas N. Hamrajani and Rs.46,07,443/- of M/s. Venus Infrastructure and Developers Pvt. Ltd. in A. Y. 2012-13. Similarly, there is debit balance of partners capital in respect of Shri Dhanraj G. Manglani, Rs.86,01,167/-, Shri Kamleshkumar D. Manglani of Rs.77,41,047/-, Shri Narandas N. Hamrajani of Rs.4,98,21,976/- and Rs.8,67,46,820/- of M/s. Venus Infrastructure and Developers Pvf. Ltd. in A. Y. 2013-14. Appellanthas not charged interest on partners on the debit balance. The Assessing Officer has noted that appellant was required to charge interest @ 12% on the debit balance in A. Y. 2012-13 & 2013-14 and accordingly the interest cost on project will decrease by Rs.59,41,768/- in A. Y. 2015-16. As 78.16% of the project has been completed during the year, AO has made the addition of Rs.46,45,274/- being 78.16% of the interest chargeable from partners of Rs.59,41,768/- in A. Y. 2015-16.*
>
> *Appellant has contended that Assessing Officer has assumed that interest on partners capital is to be charged mandatory @ 12% though it has been specifically mentioned in Clause - 6 of the partnership deed that interest may be charged on the debit balance as per mutual understanding or the partners. It has also been mentioned that interest can be increased or decreased at the mutual understanding of partners. The Assessing Officer has not made any addition of interest chargeable on partners in A. Y. 2012-13 & 2013-14 but has given effect of interest in A. Y. 2015-16 which is contrary to his own stand. The appellant has also submitted that there is no incriminating material relating to nationally computed interest, therefore, no addition can be made u/s. 153C. Appellant has relied on various case laws.*
>
> *It is seen that appellant has paid interest on the partner's capital @ 12%, but has not charged interest on the debit balance of the partners. The appellant has been paying interest on the capital on one hand and advancing money to other partners interest free. The Assessing Officer, was therefore, justified to make adjustment on account of interest capitalised in the construction work. As regard to appellant's argument on the addition made not on the basis of incriminating material and reliance on the case of PCIT v. Saumya Construction (P.) Ltd. [2017] 81 Taxmann.com 292 (Guj), the same is not applicable in appellant's case as assessment for A. Y. 2015-16 was pending on the date of initiation of search u/s. 132 of the I. T. Act, 1961. As regard to appellant's argument that Assessing Officer has not made addition of interest on debit balance in A. Ys. 2012-13 & 2013-14 is not material as Assessing Officer has power to re-compute the work in progress in A. Y. 2015-16 in which 78.18% of the project has been completed. In view of the above, the addition made by the AO is confirmed. The ground of appeal is accordingly* ***dismissed****."*

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

124. The learned AR before us submitted that it was not mandatory to charge interest on the amount of the loans and advances given to the partners. As such it was optional to charge interest from the partners which can be verified from the partnership deed.

125. Alternatively, the learned AR contended that amount of interest treated as income by the AO in the year under consideration pertains to the assessment year 2012-13 and 2013-14. Therefore if at all an addition is to be made or the effect of the same has to be given by reducing the capital work-in-progress that can be done in the respective assessment years i.e. 2012-13 & 2013-14 and not in the year under consideration.

126. On the other hand the learned DR vehemently supported the order of the authorities below.

We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute in the facts of the case on hand which have already been discussed in the preceding paragraph. Therefore, for the sake of brevity and convenience, we are not inclined to repeat the same. At this juncture we are tending to refer the relevant clause as incorporated in the deed of partnership which was submitted by the assessee before the learned CIT (A) during the proceedings. The relevant clause reads as under:

> *"In our partnership firm partners can bring capital by mutual understanding and as per the need of the business according to the sharing of partnership ratio and as per the Section 40(b) of the Income Tax Act, 1961 interest will be given @ 12 % simple interest on capital account/loan account in every accounting year and as per the mutual understanding of the partners the interest can be increased or decreased and in the same way on debit balance of the partners, the firm can charge the interest as per the mutual understanding of the partners it can be increased or decreased. As well as if any extra capital is required for business that can be brought from outside with interest or without interest by way of loan from the bank or sarafi from the private parties and '. interest on the same will be debited to the profit and loss account of the firm"*

127. On perusal of the above clause, we find that it was not mandatory to charge the interest on the amount of loans and advances given to the partners, rather it was based on the mutual acceptance of the partners. Accordingly, to our

understanding, the assessee has not charged any interest from the partners on the amount of loan/advances provided to the partners. It was the wisdom of the assessee not to charge the interest from the partners and the AO cannot direct to do otherwise. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High court in the case ofPr.CIT vs. Alidhra Taxspin Engineers Tax Appeal No. 265 of 2017 wherein it was held as under:

> *"[4.0] We have heard Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue. On interpretation of the partnership agreement and considering the wish of the partners reflected in the partnership deed, not to pay /charge interest on the partners capital and the remuneration, the learned tribunal has rightly deleted the disallowance made by the Assessing Officer with respect to the deduction claimed under Section 80IB of the Income Tax Act. As rightly observed by the learned Tribunal, mere incorporation of interest on the partners' capital and remuneration does not signify that the same are mandatory in nature. We concur with the view taken by the learned Tribunal. We see no reason to interfere with the impugned judgment and order passed by the learned tribunal. No substantial questions of law arise in the present Tax Appeal. The present Tax Appeal deserves to be dismissed and is accordingly dismissed. "*

We also find force in the alternate contention of the learned AR for the assessee. The amount of interest which is in dispute pertains to the earlier assessment year. At all any adjustment if need to be made , then the AO can do so in the respective assessment years 2012-13 and 2013-14 without disturbing the same in the year under consideration.

128. In view of the above, we are not impressed with the finding of the authorities below and therefore decline to uphold the same. Thus we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

129. In the combined result:

1. ITA No. 118 to 123/A/2019 appeal filed by the assessee is partly allowed.
2. ITA No. 124 to 129/A/2019 appeal filed by the assessee is partly allowed.

3. ITA No. 130 to 135/A/2019 appeal filed by the assessee is partly allowed.
4. ITA No. 204 to 206/A/2019 appeal filed by the assessee is partly allowed.
5. ITA No. 278 & 279/A/2019 appeal filed by the assessee is partly allowed.
6. ITA No. 280 to 284/A/2019 appeal filed by the assessee is partly allowed.
7. ITA No. 834 to 836/A/2019 appeal filed by the assessee is partly allowed.
8. ITA No. 75 to 80/A/2019 appeal filed by the assessee is partly allowed.
9. ITA No. 195 to 200/A/2019 appeal filed by the Revenue is dismissed.
10. ITA No. 88 to 94/A/2019 appeal filed by the assessee is partly allowed.
11. ITA No. 241 to 247/A/2019 appeal filed by the Revenue is dismissed.
12. ITA No. 102 to 108/A/2019 appeal filed by the assessee is partly allowed.
13. ITA No. 228 to 234/A/2019 appeal filed by the Revenue is dismissed.
14. ITA No. 111 to 117/A/2019 appeal filed by the assessee only ITA No. 117/A/2019 is dismissed and remaining are partly allowed.
15. ITA No. 248 to 254/A/2019 appeal filed by the Revenue is dismissed.
16. ITA No. 95 to 101/A/2019 appeal filed by the assessee is partly allowed.
17. ITA No. 805/A/2019 appeal filed by the Revenue is dismissed.

18. ITA No. 235 to 240/A/2019 appeal filed by the Revenue is dismissed.

19. ITA No. 109&110/A/2019 appeal filed by the assessee is partly allowed.

20. ITA No. 456/A/2019 appeal filed by the assessee is partly allowed.

21. ITA No. 806/A/2019 appeal filed by the Revenue is dismissed.

22. ITA No. 457/A/2019 appeal filed by the assessee is partly allowed.

23. ITA No. 461/A/2019 appeal filed by the assessee is partly allowed.

24. ITA No. 807/A/2019 appeal filed by the Revenue is dismissed.

25. IT(SS)A No. 837/A/2019 appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 12th November, 2020 at Ahmedabad.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Ahmedabad; Dated12/11/2020

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad