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

WRIT PETITION NO.2595 OF 2021
WITH
WRIT PETITION NO.2593 OF 2021
WITH
WRIT PETITION NO.2847 OF 2021
WITH
WRIT PETITION NO.2588 OF 2021
WITH
WRIT PETITION NO.2598 OF 2021
WITH
WRIT PETITION NO.2597 OF 2021
WITH
WRIT PETITION NO.2696 OF 2021
WITH
WRIT PETITION NO.2625 OF 2021
WITH
WRIT PETITION NO.2594 OF 2021

Ashok Commercial Enterprises)
126, Free Press House, 215, Nariman Point,)
Mumbai 400 021) ….Petitioner

V/s.

Assistant Commissioner of Income Taxation)
Central Circle – 2(4))
Room No.802, 8th Floor, Pratishtha Bhavan,) ….Respondent
Old CGO Annexe, M. K. Road, Mumbai 400020)

Mr. J. D. Mistri, Senior Advocate a/w Ms Rutuja N. Pawar, Ms Hetal Laghave and Ms Sneha More for Petitioner in all petitions.
Mr. Suresh Kumar for Respondents in all petitions.

CORAM : K. R. SHRIRAM AND
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON : 21st JULY 2023
PRONOUNCED ON : 4th SEPTEMBER 2023

JUDGMENT : (PER K.R. SHRIRAM, J.) :

1 Petitioner had filed nine Writ Petitions challenging notices

dated 19th July 2021 and 14th July 2021 issued under Section 153 of the Income Tax Act, 1961 (the Act) for Assessment Year 2011-2012 (WP No.2501 of 2021), Assessment Year 2012-2013 (WP No.2432 of 2021), Assessment Year 2013-2014 (WP No.2411 of 2021), Assessment Year 2014-2015 (WP No.2403 of 2021), Assessment Year 2015-2016 (WP No.2415 of 2021), Assessment Year 2016-2017 (WP No.2423 of 2021), Assessment Year 2017-2018 (WP No.2424 of 2021), Assessment Year 2018-2019 (WP No.2399 of 2021) and Assessment Year 2019-2020 (WP No.2395 of 2021).

Subsequent to filing of these petitions, assessment orders were passed pursuant to the above mentioned notices for the Assessment Years 2011-2012 to 2019-2020. The said assessment orders were also challenged by filing nine separate Writ Petitions mentioned in the cause title for Assessment Years 2011-2012 to 2019-2020 and the grounds of challenge included those raised in the earlier nine petitions. For the reasons set out in the order of this Court passed on 21st July 2023 in above mentioned Writ Petitions, those petitions were disposed as withdrawn.

2 Various independent grounds of challenge have been raised in the Writ Petitions. The petition number and Assessment Year are as under :

WP No.2593 of 2021 - A.Y. 2011-2012

WP No.2598 of 2021 - A.Y. 2012-2013

WP No.2847 of 2021 - A.Y. 2013-2014

WP No.2597 of 2021 - A.Y. 2014-2015

WP No.2594 of 2021 - A.Y. 2015-2016

WP No.2588 of 2021 - A.Y. 2016-2017

WP No.2595 of 2021 - A.Y. 2017-2018

WP No.2625 of 2021 - A.Y. 2018-2019

WP No.2696 of 2021 - A.Y. 2019-2020

The lead petition is Writ Petition No.2595 of 2021 for Assessment Year 2017-2018 and the facts of that case as well as the grounds of challenge arising therein are set out hereinafter. Petitioner prays :

> *(a) That the Hon'ble Court may be pleased to issue a writ of certiorari or mandamus or a writ in the nature of certiorari or mandamus or any appropriate writ, order or direction after calling for the records and proceedings of respondent and quash and set aside the impugned assessment order under Section 153C read with Section 144 of the Act.*

By consent, all these petitions are taken up for hearing at the admission stage itself. Therefore, Rule. Rule made returnable forthwith.

3 Petitioner is a partnership firm engaged in the business of financing, i.e., giving loans to parties on interest against cheques and bills of exchange. Petitioner is also engaged, *inter alia*, in the business of trading in shares, property and broking.

4 On 30th October 2017, petitioner had filed its return of income for Assessment Year 2017-2018 showing a loss of Rs.270,23,38,423/-. Petitioner's trading and profit and loss account, forming part of the return of income showed that loan account balances of Rs.360,59,25,520/- had

been written off during the year and a deduction from petitioner's taxable income was claimed in respect of the same. The amount written off comprised of loans given to Hubtown Limited (Rs.357,22,54,398/-) and to one Vadilal Gada (Rs.3,65,00,000/-), less others (net) Rs.28,28,878/-.

5 During the course of assessment proceedings for Assessment Year 2017-2018, the Assessing Officer issued a notice dated 14th June 2019 under Section 142(1) of the Act requiring petitioner to furnish details regarding the write-off of bad debts. By a letter dated 18th June 2019 petitioner replied to the aforesaid notice providing details of the amounts of loan to Hubtown Limited that had been written off during the year alongwith reasons in support of the claim for deduction thereto when computing its income chargeable to tax. The Assessing Officer passed an assessment order dated 29th June 2019 under Section 143(3) of the Act for Assessment Year 2017-2018, wherein, after specific reference to notice dated 14th June 2019 that was issued under Section 142(1) of the Act, he accepted the claim of petitioner for the write off of loans and advances and assessed petitioner at loss of Rs.270,23,38,422/-.

6 On or about 30th July 2019 Hubtown Limited was subjected to proceedings under Section 132 of the Act. During the course of proceedings above-mentioned under Section 132 of the Act, the Income Tax Department had come across a ledger account of petitioner in the books of Hubtown

Limited. It appears, during the course of proceedings under Section 132 of the Act in the case of Hubtown Limited, certain statements were recorded of employees/officers of Hubtown Limited. Immediately, on the very next day after the search proceedings on Hubtown Limited, i.e., 31st July 2019, Officers of the Income Tax Department conducted a survey under Section 133A of the Act in the premises of petitioner to verify that the entries shown in the ledger account of petitioner in the books of Hubtown Limited, agreed with entries in the ledger account of Hubtown Limited made in the books of account of petitioner. It is not in dispute that the entries in both sets of books were in agreement. Although not relevant for the purpose of this petition, during the course of various proceedings taken in the case of Hubtown Limited it has been clarified that Hubtown Limited's claim that some part of the loan received from petitioner had been recast/adjusted as an advance against property to be sold to petitioner was only an offer made by Hubtown Limited, which was the subject matter of ongoing negotiation with petitioner and no such recast/adjustment had been made. Petitioner's assessment for Assessment Year 2017-2018 was sought to be reopened by issue of a notice dated 8th April 2021 under Section 148 of the Act, which action was challenged by petitioner in Writ Petition No.1730 of 2022.

7 On 13th July 2021, respondent no.1 being the common Assessing Officer of petitioner and Hubtown Limited prepared a satisfaction note (common note for all Assessment Years 2011-2012 to 2019-2020)

dated 13th July 2021. The satisfaction note records :

(a) that the ledger account of petitioner in the books of Hubtown Limited which showed monies received, repayment made, interest entries thereon had a bearing on the income of petitioner. Further, the ledger account revealed income in the form of an asset stated to be a deposit in the account had bearing on income of petitioner "… beyond six years…..";

(b) Proceedings under Section 132 of the Act in the case of Hubtown Limited had unearthed information that petitioner has engaged in share transactions with the promoter entity of Hubtown Group being transactions in shares of Hubtown Limited;

(c) the accounts of Hubtown Limited for the year ended 31st March 2019 (a year with which this is not concerned) and a statement recorded of an employee of Hubtown Limited claimed that part of the loan to Hubtown Limited from petitioner had been recast/adjusted as an advance against property to be sold to petitioner by Hubtown Limited and accordingly, proceedings under Section 153C of the Act were sought to be initiated in the case of petitioner.

8 On 14th July 2021, respondent issued a notice to petitioner under Section 153C(1) of the Act. On 15th August 2021, petitioner filed a return of income pursuant to the notice under Section 153C(1) of the Act. On 31st August 2021, in response to notices dated 26th August 2021 and

27th August 2021 issued by respondent no.1 under Section 142(1) of the Act, petitioner pointed out that pursuant to the notices issued under Section 153C(1) of the Act returns have been filed on the Income Tax Department's portal for Assessment Years 2012-2013 to 2019-2020 and annexed acknowledgment for filing the same. In the said letter, petitioner pointed out that for the Assessment Year 2011-2012, there was some difficulty in filing such a return on the portal and accordingly, requested respondent to consider its original return as a return filed pursuant to notice under Section 153C(1) of the Act. Petitioner also requested respondent no.1 to provide materials in support of his claim to being clothed with jurisdiction to issue the aforementioned notice including copies of the authorization for search on Hubtown Limited, the satisfaction recorded by the Assessing Officer of Hubtown Limited and petitioner, the date on which, it is alleged that any material was handed over to petitioner's Assessing Officer and the material based upon which the satisfaction was recorded.

9 On 9th September 2021, respondent no.1 replied to petitioner's letter dated 31st August 2021 and provided only a copy of the aforementioned satisfaction note dated 13th July 2021. Petitioner says that a perusal of respondent's reply will show that the covering letter along with which the satisfaction note was provided has a DIN and is digitally signed. However, a copy of the satisfaction note, bears no DIN or is the same signed by respondent no.1. Since only the satisfaction note has been produced by

respondent on 9th September 2021, petitioner filed comprehensive objections to the assumption of jurisdiction under Section 153C of the Act by respondent no.1 in the case of petitioner. Specific reference was made to the fact that no incriminating material was found relating to petitioner during the course of the search in the case of Hubtown Limited. Further, that part of the loan (Rs.357,22,54,398/-) given to Hubtown Limited had been written off in petitioner's books of accounts during the year 31st March 2017 (relevant for Assessment Year 2017-2018). Further, this write-off and deduction claimed had been examined during the course of original assessment and allowed via an assessment order dated 29th June 2019 under Section 143(3) of the Act and, therefore, respondent no.1 clearly had no jurisdiction to commence proceedings against petitioner under Section 153C of the Act.

By an order dated 21st September 2021, respondent rejected petitioner's objections.

It is petitioner's case that the rejection is based on some clearly extraneous grounds and without any reference to the relevant facts or the well settled law on the subject. Thereafter, series of notices and exchanges of correspondence and interactions took place between petitioner and respondent no.1 in connection with an assessment sought to be framed under Section 153C of the Act and petitioner replied/responded thereto/sought time to reply thereto, insofar as all such notices are

concerned.

10 On 22nd September 2021, respondent no.1 issued a show cause notice to petitioner requiring petitioner to show cause as to why :

(a) an amount of Rs.360,59,25,520/- being the "… that bad debts written off…." should not be added under Section 37(1) of the Act to the total income of petitioner for Assessment Year 2017-2018;

(b) an amount of Rs.12,12,79,672/- being transactions allegedly entered into by petitioner with one Shah Coal Pvt. Ltd. should not be added to the total income of petitioner for Assessment Year 2017-2018.

The show cause notice insofar as it relates to the alleged transactions with Shah Coal Pvt. Ltd. are not relevant for the purposes of this petition, which is challenging the jurisdiction of respondent to take proceedings under Section 153C of the Act in the case of petitioner.

11 It is petitioner's case that it is well settled that such claim of having jurisdiction has to be established/defended by respondent no.1 only with reference to the satisfaction note which does not refer to Shah Coal Pvt. Ltd. Further, according to petitioner, in this regard the show cause notice claims that a notice dated 11th September 2021 under Section 142(1) of the Act was issued to petitioner but not yet replied to. Petitioner says that the said notice dated 11th September 2021 (a Saturday) required petitioner to reply by 13th September 2021 (a Monday), i.e., giving less than one

working day time, and was issued along with a series of other such notices for various years. Hence by its reply dated 13th September 2023 petitioner had sought time to file a reply. Nevertheless, the very same question was comprehensively replied to in petitioner's reply to the show cause notice as detailed hereinafter. Similar notices were issued and replies were filed for other assessment years.

12 Petitioner filed its reply to the show cause notice dated 22nd September 2021 dealing with all the items required by respondent no.1 including all materials and details in respect of the alleged transactions with Shah Coal Pvt. Ltd.

13 On 28th September 2021, respondent no.1 passed an order under Section 153C read with Section 144 of the Act. In paragraph 4 of the said order, respondent no.1 has claimed that "*.... no return is available on ITBA portal in response to notice under 153C of the Act. Therefore, notice under Section 143(2) could not be issued a show cause notice dated 25.09.2021* (incorrect date mentioned - the correct date appears to be 22.09.2021) *was issued for the Assessee to show cause as to why the Assessment should not be completed under Section 144 of the Act. In absence of return in response to notice u/s. 153C, the assessment is being completed u/s. 144 of the Act after considering the submissions filed by the asseessee on various dates*".

Thereafter, the Assessing Officer has proceeded to review and reconsider the view taken by the Assessing Officer in the original assessment proceedings and has disallowed the amount of loan/bad debts written-off during the Assessment Year 2017-2018 amounting to Rs.360,59,25,520/-. Although, not relevant for the purposes of this petition, respondent no.1 has also proceeded to make an addition of Rs.12,12,79,672/- in respect of the alleged transaction with Shah Coal Pvt. Ltd.

In sum and substance, as against the loss of Rs.270,23,38,422/- previously assessed by order dated 29th June 2019 under Section 143(3) of the Act, respondent no.1 has now assessed income of Rs.102,48,66,770/- as income chargeable to tax in the case of petitioner for Assessment Year 2017-2018.

14 This Court, by an order dated 11th April 2022 in Writ Petition No.1730 of 2022, quashed the notice dated 8th April 2021 issued under Section 148 of the Act. Petitioner says that the quashing of the reassessment proposed by the said notice has been accepted by respondent no.1 and has become final as no further steps have been taken by respondent no.1 in this regard. Petitioner says that the assumption of jurisdiction under Section 153C of the Act and the assessment order dated 28th September 2021 under Section 153C read with Section 144 of the Act cannot be sustained for, *inter alia*, the following reasons set out hereinafter.

15 Mr. Mistri submitted as under :

(a) Section 144 of the Act cannot be invoked to pass a best judgment assessment. This is because an assessment is usually required to be made under Section 143(3) of the Act after considering such evidence the assessee may produce and after hearing the assessee. To invoke Section 144 of the Act, the conditions specified in Section 144 (1) (a), (b) or (c) have to be satisfied. In the instant case, the impugned assessment order shows respondent has erroneously proceeded on the basis that no return has been filed by petitioner pursuant to notice under Section 153C of the Act since no return was available in the ITBA portal. This is factually incorrect as return was filed on 15th August 2021 and an acknowledgment is also on record, Therefore, respondent no.1 could not have passed an order exercising power under Section 144 of the Act relying upon the provisions of Section 144(1)(a) of the Act. As recorded in the impugned assessment order, no notice under Section 143(2) of the Act was issued and, therefore, Section 144(1)(c) is not applicable. Even Section 144(1)(b) of the Act is not applicable because petitioner has not failed to comply with the terms of any notice issued under Section 142(1) of the Act. In any event, even before passing an order under Section 144(1) of the Act, as provided in 1st proviso, the Assessing Officer should have given the assessee an opportunity of being heard as to why the proposed assessment of income to the best of his judgment should not be made. Even such a notice has not

been issued. The order under Section 153C of the Act could have been passed only after notice under Section 143(2) of the Act was issued and no such notice has been issued. As held by the Apex Court in ***ACIT V/s. Hotel Blue Moon***[1], it is a jurisdictional condition precedent that a notice under Section 143(2) of the Act has to be issued.

(b) The impugned assessment order dated 28th September 2021 does not bear a DIN. In view of the Circular No.19/2019 dated 14th August 2019 issued by CBDT in exercise of powers under Section 119(1) of the Act, the assessment order is invalid as no DIN is mentioned. The Delhi High Court in ***CIT (International Taxation) V/s. Brandix Mauritius Holdings Ltd.***[2] has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect.

(c) Respondent has no jurisdiction to take proceedings under Section 153C of the Act in the case of petitioner in respect of assessment years where assessment proceedings have not abated. Respondent can assume jurisdiction to assess or re-assess income under Section 153A/153C of the Act in cases where assessment proceedings have not abated, if and only if any incriminating material relating to petitioner has been found during the course of proceedings under Section 132 of the Act in the case of the person in whose case proceedings under Section 132 of the Act have

1. 188 Taxman 113(SC)
2. (2023) 149 taxmann.com 238 (Del)

been taken as held in (i) ***PCIT V/s. Abhisar Buildwell Pvt. Ltd.***[3] (ii) ***CIT V/s. Continental Warehousing Corporation***[4] (iii) ***CIT V/s. Sinhagad Technical Education Society***[5] and (iv) ***CIT V/s. Kabul Chawla***[6].

Whether any material found during the course of proceedings under Section 132 of the Act in the case of Hubtown Limited is incriminating or otherwise has to be tested based only on the satisfaction note recorded by the Assessing Officer and nothing else as held in ***Ananta Landmark Pvt. Ltd. V/s. DCIT, Central Circle***[7] and ***Jainam Investments V/s. ACIT***[8]. The satisfaction note does not show anything incriminating because it only records that petitioner's account was found in the books of Hubtown Limited. Importantly, it tallied with the account of Hubtown Limited in the books of petitioner. Therefore, there can be nothing incriminating in that.

The satisfaction note also says that petitioner had entered into transactions of purchase and sale of shares of Hubtown Limited which has been recorded in petitioner's books of accounts and tax has been paid on the capital gain. Therefore, there can be nothing incriminating in that.

Reference has also been made in the satisfaction note to an alleged re-cast of loan from petitioner to Hubtown Limited into an advance against property during year ended 31st March 2019 and, therefore, there can be nothing incriminating in that.

3. 149 taxmann.com 399 (SC)
4. 374 ITR 645 (Bom.)
5. 397 ITR 344 (SC)
6. 380 ITR 573 (Delhi)
7. 131 taxmann.com 52 (Bom.)
8. 131 taxmann.com 327 (Bom.)

Since no incriminating material relating to petitioner has been found during the proceedings under Section 132 of the Act in the case of Hubtown Limited and proceedings of petitioner having not abated, respondent cannot assume jurisdiction to assess/re-assess petitioner's income under Section 153A/153C of the Act.

(d) In any event, it cannot be stated that any income chargeable to tax has escaped assessment in respect of the issues set out in the satisfaction note. This is because the satisfaction note seeks to re-assess petitioner's income in respect of two items, viz., (a) the loan account granted by petitioner to Hubtown Limited and (b) transactions of purchase and sale of shares of Hubtown Limited by petitioner. A specific query was raised during the course of the original assessment proceedings regarding write off of part of the loan granted by petitioner to Hubtown. Petitioner replied and that was in consideration and petitioner's explanation was accepted by the Assessing Officer when completing petitioner's assessment on 29th June 2019. Therefore, there can be no question of the allowability of this write-off now being reviewed and a different view being taken in these proceedings. There is no failure to disclose also.

(e) Assuming for the sake of argument, respondent has jurisdiction to take proceedings under Section 153C of the Act, Section 153A (1)(b) of the Act shows that respondent is empowered to assess or re-assess the total income of six years immediately preceding the

assessment year relevant to the previous year in which the search was conducted and for the relevant assessment year or years. In order to make an assessment for assessment year which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year, in which the search was conducted, the 4th proviso to Section 153(A)(1) of the Act sets out certain further conditions which are required to be fulfilled before a notice can be issued for the relevant assessment years. Clause - (a) of the 4th proviso requires that the Assessing Officer must have in his possession books, documents or evidence which reveal that income represented in the form of an asset which has escaped assessment amounts to or is likely to amount to rupees fifty lakhs or more. In the case at hand, the satisfaction note refers only to the loan account between petitioner and Hubtown Limited and the alleged escapement is only in respect of the part thereof which is written off during the year. Writing-off of a bad debt cannot fall within the ambit of "…. income, represented in the form of an asset…". In any event, this write off has been allowed in the original assessment proceedings and hence, the same cannot be said to be income which has escaped assessment. Secondly, the satisfaction note refers to trading in shares of Hubtown Limited which has been undertaken on the stock exchange, recorded in the books of account of petitioner and the resulting capital gain has been offered for tax and the amount has been taxed in the hands of petitioner. Since the write-

off of a bad debt cannot be held to be an asset, clause - (a) of the 4th proviso to Section 153A(1) of the Act would bar any assessment that is proposed to be made for the relevant assessment year/years, i.e., Assessment Year 2011-2012, 2012-2013 and 2013-2014.

16 Mr. Suresh Kumar submitted as under :

(a) The order dated 28th September 2021 and notice of demand dated 28th September 2021 was communicated to assessee vide letter dated 30th September 2021 having computer generated DIN. Thus, communication of the assessment order and notice of demand has been done vide letter dated 30th September 2021 having DIN No.ITBA/COM/F/17/2021-22/1036046315(1). Thus, the communication of assessment order and notice of demand is done only after creation of DIN Number, being letter dated 30th September 2021. Thus this is in compliance with the CBDT Circular No.19/2019 dated 14th August 2019.

(b) The proceeding under Section 153C of the Act was initiated as per provisions of Section 153C of the Act, as the incriminating material was found during the search of another assessee which belongs to petitioner and satisfaction note was recorded by the Assessing Officer who happened to be the Assessing Officer of the searched person as well as of assessee, which was in accordance with Section 153C of the Act. Thus entire proceeding upto stage of passing order dated 28th September 2021 passed under Section 153C read with Section 144 of the Act was done in

accordance with law.

(c) Petitioner had written off the loans provided to Hubtown Limited in Financial Year 2016-2017 and Financial Year 2017-2018 and claimed an extraordinary benefit. This is akin to a mini-banking business which is against the public policy as it is without any license from RBI or state authorities for money lending business.

(d) Petitioner's claim that assessment order is invalid is baseless because the assessment order was passed on 28th September 2021 and as per the records available on the ITBA portal, it was served electronically on 30th September 2021 and also through post. The search in the case of Hubtown was carried out on 30th July 2019. Therefore, as per the provisions of Section 153B of the Act assessment in case of petitioner had to be made on or before 31st March 2021. Owing to the COVID pandemic, this time limit was extended by another six months by the Government of India. The limitation date for making assessment under Section 153C of the Act in the case of petitioner was 30th September 2021 which was adhered to.

(e) Petitioner's case that the assessment having been completed under Section 143(3) of the Act cannot be reviewed based on change of opinion is not correct. Fresh assessment in case of petitioner was made in the light of material/information came to light during the search and certain proceedings and not merely on the basis of change of opinion of the

Assessing Officer. The material/information on the basis of which fresh assessment was made has already been discussed in the satisfaction note.

Findings/Conclusions :

17 Whether the provisions of Section 144 of the Act could be invoked to pass a best judgment assessment?

(a) Under the scheme of the Act, an assessment is usually required to be made under Section 143(3) of the Act, after hearing such evidence as the assessee may produce, after taking into account all relevant material gathered and after hearing the assessee. The provisions of Section 144 of the Act are special and exceptional which can only be invoked if any of the conditions specified in Section 144 (1) (a), (b) or (c) are satisfied. Section 144 of the Act reads as under :

> *Section 144 (1) If any person -*
>
> *(a) fails to make the return required [under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) [or an updated return under sub-section (8A)] of that section, or*
>
> *(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [or fails to comply with a direction issued under sub- section (2A) of that section], or*
>
> *(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,*
>
> *the [Assessing] Officer, after taking into account all relevant material which the [Assessing] Officer has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :*
>
> *[Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his*

judgment :

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.]

[(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

In the instant case, as paragraph 4 of the impugned assessment order for Assessment Year 2017-2018 clearly shows, respondent has erroneously proceeded on the basis that no return had been filed by petitioner pursuant to the notice under Section 153C of the Act, since he records that no return is available on the ITBA portal. This factual basis is demonstrably erroneous. A return of income pursuant to notice issued under Section 153C(1) of the Act has been filed on 15th August 2021 and an acknowledgment showing an e-filing acknowledgment number is on record. Non availability of return on the ITBA portal is the only basis on which respondent no.1 seeks to exercise power under Section 144 of the Act relying upon the provisions of Section 144(1)(a) of the Act. In view of the irrefutable fact that Section 144(1)(a) of the Act cannot apply since petitioner has filed a return, no best judgment assessment under Section 144 of the Act could have been passed;

(b) Respondent no.1 has also, in the impugned order of assessment dated 28th September 2021, recorded that no notice under Section 143(2) of the Act was issued by him. Therefore, there is no question of the provisions of Section 144(1)(c) of the Act being applicable;

(c) Insofar as, the provisions of Section 144(1)(b) of the Act are concerned, as explained hereinabove, there has been no failure to comply with the terms of any notice issued under Section 142(1) of the Act.

Therefore, the purported exercise of powers under Section 144 of the Act cannot be sustained;

(d) Even if one assumes that one of the jurisdictional preconditions set out in Section 144(1)(a), (b) or (c) of the Act is satisfied then, Section 144(1) of the Act read with the 1st proviso requires that an Assessing Officer shall give an assessee an opportunity of being heard as to why the proposed assessment of income to the best of his judgment should not be made. A perusal of the show cause notice dated 22nd September 2021 shows that this has not been done in the instant case.

Further, the provisions of the 2nd proviso to Section 144(1) of the Act cannot apply since petitioner has not failed to comply with any notice under Section 142(1) of the Act;

(e) Therefore, the impugned assessment order dated 28th September 2021 could, if at all, have been passed under Section 153C read with Section 143(3) of the Act. If the validity of the impugned order of

assessment dated 28th September 2021 is tested on this basis it cannot be sustained. It is a jurisdictional condition precedent to passing an order under Section 153C read with Section 143(3) of the Act that a notice under Section 143(2) of the Act must be issued as held in *Hotel Blue Moon* (Supra). The Apex Court held that issuance of notice under Section 143(2) of the Act was a jurisdictional condition precedent for passing an assessment under Section 153A/153C. Paragraphs 15 and 16 of *Hotel Blue Moon* (Supra) read as under :

> *15. We may now revert back to Section 158 BC(b) which is the material provision which requires our consideration. Section 158 BC(b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)/142 and complete the assessment under Section 143(3). This Section does not provide for accepting the return as provided under Section 143(i)(a). The assessing officer has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2)/142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) and (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is*

that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of sub- sections which are to be followed by the assessing officer. Had the intention of the legislature was to exclude the provisions of Chapter XIV of the Act, the legislature would have or could have indicated that also. A reading of the provision would clearly indicate, in our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158 BC(a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act. Where the legislature intended to exclude certain provisions from the ambit of Section 158 BC(b) it has done so specifically. Thus, when Section 158 BC(b) specifically refers to applicability of the proviso thereto cannot be exclude. We may also notice here itself that the clarification given by CBDT in its circular No.717 dated 14th August, 1995, has a binding effect on the department, but not on the Court. This circular clarifies the requirement of law in respect of service of notice under sub-section (2) of Section 143 of the Act. Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act. However, it is contended by Sri Shekhar, learned counsel for the department that in view of the expression "So far as may be" in Section 153 BC(b), the issue of notice is not mandatory but optional and are to be applied to the extent practicable. In support of that contention, the learned counsel has relied on the observation made by this Court in Dr. Pratap Singh's case [1985] 155 ITR 166(SC). In this case, the Court has observed that Section 37(2) provides that "the provisions of the Code relating to searches, shall so far as may be, apply to searches directed under Section 37(2). Reading the two sections together it merely means that the methodology prescribed for carrying out the search provided in Section 165 has to be generally followed. The expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible. The learned counsel for the respondent has brought to our notice the observations made by this Court in the case of Maganlal Vs. Jaiswal Industries, Neemach and Ors., [(1989) 4 SCC 344], wherein this Court while dealing with the scope and import of the expression "as far as practicable" has stated "without anything more the expression `as far as possible' will mean that the manner provided in the code for attachment or sale of property in execution of a decree shall be applicable in its entirety except such provision therein which may not be

practicable to be applied.

> *16. The case of the revenue is that the expression `so far as may be apply' indicates that it is not expected to follow the provisions of Section 142, sub-sections 2 and 3 of Section 143 strictly for the purpose of Block assessments. We do not agree with the submissions of the learned counsel for the revenue, since we do not see any reason to restrict the scope and meaning of the expression `so far as may be apply'. In our view, where the assessing officer in repudiation of the return filed under Section 158 BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143.*

In the instant case, paragraph 4 of the impugned assessment order records that no notice under Section 143(2) of the Act has been issued. The Revenue has erroneously proceeded on the basis that the said notices are not required since no return of income had been filed by petitioner which was factually incorrect;

(f) For all the reasons set out above, the impugned order dated 28th September 2021, whether treated as having been passed under Section 153C read with Section 144 or Section 143(3) of the Act cannot be sustained and is bad in law, of no legal effect and ought to be quashed and set aside;

(g) On this ground alone, rule ought to be made absolute in terms of prayer clause - (a) of the following petitions :

A.Y. 2012-2013 - WP No.2598 of 2021

A.Y. 2013-2014 - WP No.2847 of 2021

A.Y. 2014-2015 - WP No.2597 of 2021

A.Y. 2015-2016 - WP No.2594 of 2021

A.Y. 2016-2017 - WP No.2588 of 2021

A.Y. 2017-2018 - WP No.2595 of 2021

A.Y. 2018-2019 - WP No.2625 of 2021

A.Y. 2019-2020 - WP No.2696 of 2021

18 Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?

(a) The CBDT, in exercise of powers under Section 119(1) of the Act, has issued a Circular No.19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income Tax Authority *inter alia* relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under :

CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II],
DATED 14-8-2019

> *With the launch of various e-governance Initiatives, Income tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice. order, summons, letter and any correspondence (hereinafter referred to as "communication" were found to have been issued manually, without maintaining a proper audit trail of such communication.*
>
> *2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to*

assessment, appeals, orders, statutory or otherwise, exemptions, enquiry. investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer- generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as,-

(i) when there are technical difficulties in generating/allotting/ quoting the DIN and issuance of communication electronically;or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or

(iii) when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) when the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/ Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

"……. This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/ 3(v) of the CBDT Circular No …. dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number …. dated ….

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

> *5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by-*
>
> *i. uploading the manual communication on the System.*
>
> *ii. compulsorily generating the DIN on the System;*
>
> *iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.*
>
> *6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.*
>
> *7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.*

Paragraph 3 of the Circular sets out five exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.

Paragraph 4 of the Circular provides that any order/ communication which is not in conformity with paragraphs 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been

issued.

The contents of the Circular have been re-iterated in a Press Release dated 14th August 2019;

(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in *Brandix Mauritius Holdings Ltd.* (Supra) where the Hon'ble Delhi High Court has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect. Paragraphs 16 to 17.1, 18 and 19 read as under :

> *16. The final assessment order was passed by the Assessing Officer (AO) on 15.10.2019, under Section 147/144(C) (13/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, albeit, without DIN.*
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> *16.1. Given this situation, clearly paragraph 4 of the 2019 Circular would apply.*
>
> *17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in*

law.

17.1. It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue.

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18. The argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B of the Act, is untenable, having regard to the phraseology used in paragraph 4 of the 2019 Circular.

19. The object and purpose of the issuance of the 2019 Circular, as indicated hereinabove, inter alia, was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular.

(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021 stating that the order dated 28th September 2021 under Section 153C of the Act has a DIN, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without DIN, this can only seek to regularize the failure to generate a DIN, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;

(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no.1. The satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to any person. In the case of the satisfaction note no

regularization dated 13th October 2021 has been issued;

(e) In view of the binding nature of Circular issued under Section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the Circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation therefrom can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;

(f) On this ground, rule ought to be made absolute in the following petitions :

A.Y. 2011-2012 - WP No.2593 of 2021

A.Y. 2012-2013 - WP No.2598 of 2021

A.Y. 2013-2014 - WP No.2847 of 2021

A.Y. 2014-2015 - WP No.2597 of 2021

A.Y. 2015-2016 - WP No.2594 of 2021

A.Y. 2016-2017 - WP No.2588 of 2021

A.Y. 2017-2018 - WP No.2595 of 2021

A.Y. 2018-2019 - WP No.2625 of 2021

A.Y. 2019-2020 - WP No.2696 of 2021

19 Whether respondent has jurisdiction to take proceedings under Section 153C of the Act in the case of petitioner in respect of assessment years where assessments proceedings have not abated?

Section 153A and Section 153C of the Act read 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 May, 2003, the Assessing Officer shall -

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

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

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

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

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

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

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income,

represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

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

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

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

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

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

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

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

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates (i) in as applicable to such assessment year.

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

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

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

[Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:]

[Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [and for the relevant Assessment year or years as referred to in sub-section (1) of section 153A] except in cases where any assessment or reassessment has abated.]

[(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year -

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

> *(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or*
>
> *(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]*
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> *xxxxxxxxxxxxxxxx*

(a) Respondent can assume jurisdiction to assess or re-assess income under Section 153A/153C of the Act in cases where assessment proceedings have not abated, if and only if any incriminating material relating to petitioner has been found during the course of proceedings under Section 132 of the Act in the case of the person in whose case proceedings under Section 132 of the Act have been taken (*Hubtown Limited*). In *Abhisar Buildwell Pvt. Ltd.* (Supra), the Apex Court held that where no incriminating material is found/unearthed during the search, the Assessing Officer cannot assess or re-assess taking into consideration the other materials in respect of unabated/completed assessments. Paragraphs 5 to 7.1, 8 and 11 to 14 in *Abhisar Buildwell Pvt. Ltd.* (Supra) read as under :

> *5. That the question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or*

requisition under Section 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132A, the assessment has to be done under Section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr. Commissioner Of Income Tax v. Mehndipur Balaji, 2022 SCC OnLine All 444 : (2022) 447 ITR 517 has taken a contrary view.

7.1. In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under: Summary of the legal position. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under :

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

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such Ays will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words,

there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

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

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be 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.

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

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

assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of

search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

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

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

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

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

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The

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

(emphasis supplied)

Therefore, no addition can be made by the Assessing Officer in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act;

(b) In *Continental Warehousing Corporation* (Supra), the Court held that the notice under Section 153A was founded on search. If there was no incriminating material found during the search then the Tribunal was right in holding that the power under Section 153A being not expected to be exercised routinely, should be exercised if the search revealed any incriminating material. If that was not found then in relation to the second phase of three years, there was no warrant for making an order within the meaning of this provision;

(c) In *Sinhagad Technical Education Society* (Supra), the Court held that in satisfaction note incriminating material seized must pertain to assessment year in question. Notices issued under Section 153C for other assessment years are not sustainable. Therefore, under Section 153C of the Act incriminating material which was seized had to pertain to the assessment years in question;

(d) The question of whether any material found during the course of proceedings under Section 132 of the Act in the case of Hubtown Limited is incriminating or otherwise has to be tested based only on the satisfaction note recorded by the Assessing Officer/s. The contents of the said satisfaction note are the only item/material to be looked at in this regard and respondent cannot seek to augment, supplement or add to materials recorded to support the claim that incriminating material has been found. Further respondent cannot refer to any other documents or material to establish such a claim. We find support in (i) *Ananta Landmark Pvt. Ltd.* (Supra) and (ii) *Jainam Investments* (Supra), where the Courts have held that the question of the Assessing Officer's jurisdiction to undertake proceedings has to be tested/examined only on the basis of reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submission;

(e) In the instant case, the satisfaction note dated 13th July 2021 (common for all Assessment Years) insofar it relates to Assessment Year 2017-2018 only records that :

(i) an account of petitioner in the books of Hubtown Limited was found.

It is important to note that the said account agreed exactly to the account of Hubtown Limited in the books of petitioner, a fact verified during the course of the survey on the day after the search, i.e., 31st July 2019.

(ii) petitioner had entered into transactions of purchase and sale of shares of Hubtown Limited which have been recorded in petitioner's books of accounts and tax paid on the resulting gain.

(iii) reference is made to an alleged re-cast of loan from petitioner to Hubtown Limited into an advance against property during year ended 31st March 2019 and the same is not relevant to Assessment Year 2017-2018.

(f) Accordingly, it is irrefutable that no incriminating material relating to petitioner has been found during proceedings under Section 132 of the Act in the case of Hubtown Limited;

(g) The assessment of petitioner has clearly not abated in terms of the 2nd Proviso to Section 153A(1) of the Act. Although the 1st proviso to Section 153C(1) of the Act says "*provided that in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132A in the second proviso to sub-section (1) of Section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other*

person", the same cannot be applied in the instant case. This is because :

(i) in cases such as the present case where the Assessing Officer of the person searched and the other person is the same there is no requirement (or possibility) to hand over or receive books of account/documents to/from the very same Assessing Officer. Consequently, the date for testing whether assessment proceedings have abated is as specified in 2nd Proviso to Section 153A of the Act.

In ***Super Malls Pvt. Ltd. V/s. PCIT***[9] the court held as under:

> *5.1. As observed hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of Section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings under Section 153C of the Act have been satisfied or not?*
>
> *6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd. (supra). As held, before issuing notice under Section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment under Section 158BD of the Act and the other provisions of Chapter XIV-B shall apply.*
>
> *6.1. It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer*

9. 423 ITR 281(SC)

of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap (supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under Section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself."

(emphasis supplied)

(ii) in any case, the date of any presumed/assumed hand-over of books/documents from respondent to himself has not been specified by

respondent, even though such handover is not possible and held not to be necessary by the Hon'ble Supreme Court.

(iii) In any event, the notice dated 8th April 2021 under Section 148 of the Act was quashed by this Court in Writ Petition No.1730 of 2022 and must be held never to have been issued. As a result, the assessment proceedings came to an end on 29th June 2019 when the order under Section 143(3) of the Act was passed and hence, assessment proceedings were not pending thereafter. For this reason as well, the assessment is not abated.

(h) The Revenue also concurs with and proceeds on the basis set out in paragraph 19(e)(i) above in as much as limitation under Section 153B(1) of the Act, 3rd proviso (ii) which is in pari-materia to the 1st proviso to Section 153C(1) of the Act is computed by the Revenue on the same basis. In paragraph 4.9 of the affidavit in reply filed through one Kartik Saresa, DCIT Central Circle – 2(4), Mumbai, affirmed on 24th March 2022, it is stated :

> *4.9. With reference to the contents of Para No.4(g) of the Writ Petition, I say that under this para, the petitioner has claimed that the assessment order was made beyond the time limit prescribed in section 153B of the Act. In this regard, reference is invited to section 153B, the relevant proviso to the same is reproduced hereunder -*
>
> *"Provided also that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,-*
>
> *(i) the provisions of clause (a) or clause (b) of this sub- section shall have effect, as if for the words "twenty-one months", the*

words "twelve months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve months 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 or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later…"

The search in case of M/s Hubtown was carried out on 30.07.2019. Therefore, as per the provisions of section. 153B, the assessment in case of the petitioner had to be made on or before 31.03.2021. Owing to the Covid-19 pandemic, this time limit was extended by another six months by the Govt. of India. The limitation date for making assessment u/s 153C in case of the petitioner was 30.09.2021 which was adhered to. Hence, the claims of the petitioner in this regard do not hold any merit.

(i) Therefore, for all the reasons set out hereinabove, since the original assessment in the case of petitioner has not abated, and since no incriminating material has been found relating to petitioner in the course of proceedings under Section 132 of the Act in the case of Hubtown Limited, respondent cannot assume jurisdiction to assess/re-assess petitioner under Section 153C of the Act;

(j) On these grounds also, rule ought to be made absolute in terms of prayer clause – (a) in the following petitions :

A.Y. 2011-2012 - WP No.2593 of 2021

A.Y. 2012-2013 - WP No.2598 of 2021

A.Y. 2013-2014 - WP No.2847 of 2021

A.Y. 2014-2015 - WP No.2597 of 2021

A.Y. 2015-2016 - WP No.2594 of 2021

A.Y. 2016-2017 - WP No.2588 of 2021

A.Y. 2017-2018 - WP No.2595 of 2021

(k) For the sake of completeness, we set out, as pointed out by Mr. Mistri, the minor differences in each of the assessment years above-mentioned, although the same will make no difference to the findings set out in paragraph 19 hereinabove.

Event	Assessment Years					
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Last date for issue of notice u/s. 143(2)						30.09.2017
Assessment order u/s. 143(3)	21.02.2014	31.03.2014	06.08.2015	14.12.2015	09.06.2017	
Section 148 seeking to re-open assessment			19.04.2021		08.04.2021	08.04.2021
Order in Writ Petition quashing the section 148 notice.			11.04.2022		11.04.2022	11.04.2022

20 Whether it can be said that any income chargeable to tax has escaped assessment in respect of the issues set out in the satisfaction note?

(a) Insofar as Assessment Year 2017-2018 is concerned,

respondent no.1, in the satisfaction note, has recorded that he seeks to re-assess petitioner's income in respect of two items – (i) the loan account recording the loan granted by petitioner to Hubtown Limited and (ii) transactions of purchase and sale of shares of Hubtown Limited by petitioner;

(b) During the course of the original assessment proceedings, a specific query was raised by respondent as to the allowability of write off of part of the loan granted by petitioner to Hubtown Limited. In response, full and comprehensive details of the amount written-off was provided as well as the reasons therefore and the same were accepted by the Assessing Officer when completing petitioner's assessment on 29th June 2019. Therefore, there can be no question of the allowability of this write-off now being reviewed and a different view being taken in these proceedings. Ex-facie, there has been no failure to disclose truly and fully all material facts. Further, no new tangible material having a bearing on petitioner's income in this regard has come to the notice of respondent. Disallowing the very same write-off that had been allowed in the original assessment clearly constitutes a change of opinion and a review of the original decision taken by the assessing officer and cannot fall within the ambit of the phrase "*the Assessing Officer is satisfied….. that the documents… seized….. have a bearing on the determination of the total income….*" of petitioner. The provisions of Section 153C of the Act cannot override the jurisdictional

safeguards and conditions precedent required to assess or re-assess income such as a review, a change of opinion, a different view being taken without any new tangible material and without any failure on the part of petitioner to disclose fully and truly all material facts. In similar circumstances, this principle has been upheld by this Court in the context of issue of a notice under Section 148 of the Act [***Urban Homes Realty V/s. Union of India***[10]];

(c) On this ground also, rule ought to be made absolute in terms of prayer clause - (a) in the following petitions :

A.Y. 2013-2014 - WP No.2847 of 2021

A.Y. 2014-2015 - WP No.2597 of 2021

A.Y. 2015-2016 - WP No.2594 of 2021

A.Y. 2017-2018 - WP No.2595 of 2021

21 Assuming that respondent has jurisdiction to take proceedings under Section 153C of the Act, whether assessments can be made in respect of years beyond six years preceding the assessment year relevant to the previous year in which the proceedings under Section 132 of the Act was conducted?

(a) A plain reading of Section 153A (1)(b) of the Act shows that respondent having jurisdiction under the said section is empowered to assess or re-assess the total income of six years immediately preceding the assessment year relevant to the previous year in which the search was conducted and for the relevant assessment year or years. Explanation 1 below Section 153A of the Act defines the expression relevant assessment

10. WP No.7994 of 2023 dated 4.7.2023 (unreported)

years as "*…….shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made*". In order to make an assessment for assessment year which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year, in which the search was conducted, the 4th proviso to Section 153(A)(1) of the Act sets out certain further conditions which are required to be fulfilled before a notice can be issued for the relevant assessment years. Clause - (a) of the 4th proviso requires that the Assessing Officer must have in his possession books, documents or evidence which reveal that income represented in the form of an asset which has escaped assessment amounts to or is likely to amount to rupees fifty lakhs or more. Explanation 2 to Section 153A(1) of the Act sets out an expanded definition of the word "asset" for the purposes of the 4th proviso. In the instant case, the satisfaction note refers to two items. First, the loan account between petitioner and Hubtown Limited and the alleged escapement is only in respect of the part thereof which is written off during the year. That clearly, i.e., the writing-off of a bad debt cannot fall within the ambit of "…. income, represented in the form of an asset…". Further, in view of the fact that this has been considered and allowed in the

original assessment proceedings, the same cannot be said to be income which has escaped assessment. Secondly, the other item referred to in the satisfaction note, that is to say, trading in shares of Hubtown Limited has been undertaken on the stock exchange, recorded in the books of account of petitioner, and the resulting gain offered for tax and the amounts taxed in the hands of petitioner. Finally, even in the impugned re-assessment order for A.Y. 2017-2018 no addition has been made on this account;

(b) Since the write-off of a bad debt cannot be held to be an asset, clause - (a) of the 4th proviso to Section 153A(1) of the Act would bar any assessment that is proposed to be made for the relevant assessment year/years, i.e., Assessment Year 2011-2012, 2012-2013 and 2013-2014;

(c) Therefore, rule ought to be made absolute in terms of prayer clause – (a) in the following petitions :

A.Y. 2011-2012 – WP No.2593 of 2021

A.Y. 2012-2013 – WP No.2598 of 2021

A.Y. 2013-2014 – WP No.2847 of 2021

22 All petitions disposed in terms of prayer clause – (a) therein.

(FIRDOSH P. POONIWALLA, J.) **(K. R. SHRIRAM, J.)**