

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA Nos.6435 to 6440/Del/2025
(ASSESSMENT YEARS 2019-20 to 2024-25)**

Vintage Distillers Ltd., 710, B-9, ITL Twin Tower, Netaji Subash Place, Pitampura, Delhi-110034. PAN-AAACV2120K	Vs.	DCIT, Central Circle-02, Delhi.
(Appellant)		(Respondent)

**ITA Nos.7701 & 7704/Del/2025
(ASSESSMENT YEARS 2021-22 & 2022-23)**

ACIT, Central Circle-02, Delhi.	Vs.	Vintage Distillers Ltd., 710, B-9, ITL Twin Tower, Netaji Subash Place, Pitampura, Delhi-110034. PAN-AAACV2120K
(Appellant)		(Respondent)
Assessee by	Shri Amit Goel, CA & Shri Pranav Yadav, Adv.	
Department by	Shri Sanjeev Kaushal, CIT-DR	
Date of Hearing	25.02.2026	
Date of Pronouncement	17.04.2026	

ORDER

PER BENCH:

These following appeals are filed by the assessee and the Revenue for various Assessment Years. Since, these appeals are related to one assessee and having common issues in all the years, therefore they are taken together and decided by a common order. The details of the appeals are tabulated as under:

Sr. Nos.	ITA Nos.	Appeal By	Asst. Year	CIT(A)'s Order dated	Assessment Order under section
1	6435/De/2025	Assessee	2019-20	12.08.2025	143(3)/147
2	6436/De/2025	-do-	2020-21	-do-	143(3)/147
3	6437/De/2025	-do-	2021-22	-do-	143(3)/147
4	6438/De/2025	-do-	2022-23	-do-	143(3)/147
5	6439/De/2025	-do-	2023-24	-do-	143(3)/147
6	6440/De/2025	-do-	2024-25	13.08.2025	143(3)/147
7	7701/De/2025	Revenue	2021-22	12.08.2025	143(3)/147
8	7704/De/2025	-do-	2022-23	-do-	143(3)/147

2. First we take assessee's appeal in ITA No. 6435/Del/2025 for AY 2019-20.

ITA No. 6435/Del/2025 AY 2019-20

3. Brief facts of are that assessee filed its return of income u/s 139(1) of the Act on 30.09.2019 declaring loss of Rs.42,58,807/-. A search and seizure action u/s 132 was carried out in the case of i.e., Vintage Group on 11.05.2024 of which the assessee is one of the entity. As a result of search, reassessment proceedings u/s 147 were initiated by issue of notice u/s 148 on 27.11.2024. In response to which, assessee filed its return of income on 22.01.2025 declaring loss of Rs. 42,55,162/-. Thereafter, notice u/s 143(2) followed by notices u/s 142(1) alongwith questionnaires were issued from time to time which were duly replied by the assessee. During the course of search various incriminating loose papers and documents were found and seized indicating unaccounted for transactions carried by the assessee company with various persons which fact was also admitted by its Director and Employees in their statements recorded during the course of search. Based on these documents, AO alleged that assessee has made expenses in cash which were not recorded in the books of account. Besides this assessee has unaccounted for sales. All these facts are discussed in detailed in the assessment order and finally the AO in para 12 at page 139 of the assessment order concluded that there are unaccounted receipts as well as unaccounted expenses.

as per the seized material which are not forming part of business expenses but represents withdrawal by promoters. The AO thus estimated the profit @50% from such unaccounted for sales as the additional undisclosed income of the assessee and made the addition of Rs.28,07,608/- and the total income of the assessee was finally computed at a loss of Rs.14,51,199/-.

4. In first appeal, Ld. CIT(A) has reduced the profit estimated at 50% to 15 % of the gross undisclosed turnover and the addition made is reduced to Rs.19,65,325/-.

5. Aggrieved by the said order, the assessee is in appeal before the Tribunal by taking following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the assessment proceedings initiated is bad-in-law and without jurisdiction. The proceedings initiated are beyond the scope of provisions of sections 147/148 of the Act and CIT(A) erred in not holding so.*
2. *On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is bad-in-law, illegal, without jurisdiction and barred by limitation and, therefore, the said notice u/s 148 along with assessment order passed on the foundation of such notice are liable to be quashed and CIT(A) erred in not holding so.*
3. *On the facts and circumstances of the case and in law, the reassessment proceedings initiated are contrary to the provisions of law including the specific provisions of section 147 to section 151 of Income Tax Act, 1961 and therefore, the reassessment proceeding initiated along with assessment order passed are liable to be quashed and CIT(A) erred in not holding so.*
4. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition made by the Ld. Assessing Officer to the extent of Rs. 8,42,282/- as alleged business income u/s 28 of the Act.*
5. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is contrary to the provisions of section 148B of the Income Tax Act, 1961.*

6. Grounds of appeal Nos. 1 to 3 are with respect to the reopening of assessment without independent application of mind and in mechanical manner and further on the ground that order is barred by limitation being reopened beyond period of three years and conditions as provided in section 149(1)(b) of the Act are not satisfied.

7. Before us, Ld. AR of the assessee submits that in the reasons recorded for reopening as well as in the notice issued u/s 148 of the Act, the AO was not clear whether the assessee was the person search or the person other than the person on searched. For this, he drew our attention to approval given u/s 151 wherein the AO observed that the case of the assessee is reopened by stating that the books of account/documents seized on requisition in other case but pertinent to the assessee. For this he placed reliance on the judgment of the Co-ordinate Bench in the case of *Optus Developers Pvt. Ltd. vs. ACIT, CC-32 ND reported in (2026) ITMI 1037 (ITAT Delhi.)*

8. The Ld. AR further submits that the case of the assessee is reopened after the expiry of three years from the end of the relevant assessment year as the notice for Assessment Year 2019-20 was issued on 27.11.2024. As per clause (1) of section 149 states that when three years have been lapsed from the relevant assessment years and the AO has in possession of books of account of other documents or evidence revealed that the income chargeable to tax represented in the form of assets or expenditure or any entry which have escaped assessment likely to amount Rs. 50 lacs or more. In the instant case, as per Ld. AR the income which has been alleged as escaped assessment was neither represented in the form of assets nor as expenditure and AO himself has estimated the income of the assessee by applying net profit rate of 50% on the undisclosed sales, and such

estimation of income cannot be termed as an asset or expenditure for the purpose of section 149(1) of the Act. For this reliance is placed on the judgment of the Coordinate Bench of Hyderabad Bench of ITAT in the case of M/s ACE Tyres (P) Ltd. Hyderabad Vs. ACIT Central Circle 1(2), Hyderabad, reported in 2025 (1) TMI 936-ITAT, Hyderabad. The Ld. AR thus sprayed that the reopening of the assessment being without independent application of mind and based on incorrect appreciation of facts and further without bringing on record any asset or expenditure exceeding Rs.50 lacs, therefore, the reopening of the assessment u/s 148 of the Act deserves to be held as bad in law and consequent reassessment order be quashed.

9. On the other hand, the Ld. CIT-DR vehemently supports the orders of the lower authorities and submits that in the reasons recorded, it is clearly stated by the Assessing Officer that there were documents found as a result of search which contained the entries of income in the shape of undisclosed receipts which exceeds Rs.50 lacs and, therefore, the action of the AO treating the same as escaped income is correct and requested for the confirmation of the reopening of the assessment.

10. Heard the parties and perused the materials available on record. From the perusal of the notice issued u/s 148 of the Act, it is observed that in the said notice AO was recorded the satisfaction whether the reopening is done in the case of person searched or in the case of some other person where documents found relates to the assessee. The notice so issued u/s 148 is reproduced as under:

Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/M/s.

- **I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are the assessable under the Act on the date 11/05/2024.**

- **I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of VINTAGE DISTILLERS LIMITED pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act.**

This notice is being issued after obtaining the prior approval of the CCIT (CENTRAL), DELHI accorded on date 27-NOV-24 vide Reference No. 100000066631623 and annexed herewith.

2. *I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2019-20 and I, hereby, require you to furnish, within a period of three months from the end of month in which this notice is issued, a return in the prescribed form for the Assessment Year 2019-20.*

Note: Please note that any return of income, required to be furnished by you under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139 of the Act. (Proviso 3 to Section 148)

11. This fact is further confirmed from the approval given u/s 151 of the Act where in Item No.8 it is observed as under:

“8. The clause and explanation to section 148 of the Act under which it shall be deemed as information suggesting that income chargeable to tax has escaped assessment.

Remark: If clause (iii) and (iv) of Explanation 2 to section 148 is applicable. Annexure C-proforma for approval by the PCIT/CIT as required under clause (iii) and (iv) of explanation 2 to section 148, shall be attached.

Clause (i) of explanation 2 – action 132/132A of the Act in the case of the assessee.

Clause (iv) of explanation 2- books of account/document seized or requisitioned in other case but pertains to the assessee or any information contained therein related to the assessee.”

12. From the reasons recorded as available in PB page 3 to 16 filed before us, it is observed that AO has reached to the satisfaction of escaped of income based on the entries found in the loose paper related to scrap sale of Rs. 56,15,215/- which was not recorded in the books of accounts however, nowhere in the reasons

recorded it is stated that how this income has represented in the form of asset exceeding Rs. 50.00 lacs. Besides this, it is further observed that the AO in the order passed u/s 147 of the Act, has assessed the income of the assessee by estimating net profit @50% on such undisclosed receipts from scrap sales as undisclosed income of the assessee and nowhere in the reassessment order, it is established that such income has represented in the form of asset. Under identical circumstances has held that section 149(1) of the Act which reads with the reopening of assessment after a period of three years from the end of the relevant issue relates as under:

Section 149(1) in The Income Tax Act, 1961

(1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion;
or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

[(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

13. The Co-ordinate Bench of Hyderabad Tribunal in the case of ***M/s ACE Tyres (P) Ltd. Hyderabad Vs. ACIT*** (supra) has held the reopening u/s 148 after expiry of three years as invalid since the satisfaction of mandatory condition u/s 149(1)(b) is missing. The relevant observations of the Bench are as under:

22.1 Section 149 of the Act stipulates the limitation for issuing notice u/s 148. The normal time limit as provided u/s 149(1)(a) is 3 years from the end of the relevant A.Y. However, if the case which fall in the ambit of sub clause (b) of section 149(1) of the Act, the time limit is extended upto 10 years from the end of the relevant A.Y subject to the condition that material in the possession of the Assessing Officer including the books of account of other documents or evidence reveals that the income chargeable to tax is represented in the form of an asset, expenditure in respect of transaction or in relation to an event or an occasion, or an entry of entries in the books of account and farther such income which has escaped the assessment amount to or likely amounts to fifty lakh rupees or more. In the case in hand, undisputedly the notice issued u/s 148 of the Act for the A.Y 2014-15 to 2018-19 ware issued after 3 years from the end of the relevant A.Y. Therefore, until and unless the conditions as stipulated in clause (b) of section 149(1) of the

Act are satisfied, the notice issued u/s 148 of the Act would be invalid being barred by limitation provided in 149(1) of the Act.

23. The Assessing Officer in the reasons recorded for reopening of the assessment stated that the income chargeable to tax represented in the form of an asset and an entry/entries in the books of account as per the provisions of section 149(1)(b) of the Act. Therefore, the Assessing Officer proposed to bring the case of the assessee in sub-clause(i) and sub-clause (iii) of clause (b) of section 149(1) of the Act. From the details of the transactions as found in the Laptop, it is clear that these are receipts and payments in cash and no corresponding cash or any other assets were found during the course of search and seizure action representing these entries. It is not the case of either party that these transactions as found in the Laptop in question are in respect of purchase or acquisition of any asset. Therefore, the business transactions of sale of scrap or commission income etc, as well as the expenditure incurred in relation to the business activity would not constitute of an asset in terms of section 149(1)(b) of the Act. It is also a matter of fact and record that these transactions as found in the Laptop in a software FOCUS 5.5 are not in the nature of any accounts much less the books of account. These are the simple details of cash receipts and cash payments in respect of the transaction of scrap sale etc, as well as payment towards expenditure and that too the consolidated details of the entire Exel Group not a separate account of each company is maintained. Further, these are only the details of selective transaction in cash and not the transactions of other than cash. Therefore, these details found in the Laptop of the Sr. Accounts Manager, Shri Ramesh Kumar Sanaka would not constitute the books of account or parallel/duplicate books of account and consequently would not fall in the ambit of sub clause (iii) of clause (b) of section 149(1) of the I.T. Act.
24. Once the case of the assessee does not fall in the ambit of clause (b) of section 149(1) of the Act, then the reasons recorded by the Assessing Officer for reopening of the assessment giving the details of undisclosed income as quantified by the ADIT (Inv) Unit-1, reveals that the Assessing Officer has recorded his satisfaction in the reasons mechanically without application of mind so far as the correct amount of escaped income for each of the years and each of the companies. This non-application of mind at the time of recording the reasons also corroborated by the fact that in the assessment order, the Assessing Officer has determined the different amount of escaped income for each A.Y which is estimated in the ratio of turnover of each of the group companies from the total amount of cash receipts found in the Laptop of Shri Ramesh Kumar Sanaka, pertaining to the entire group. Even if for the sake of argument, it is presumed that the quantum of escaped income for each AY was more than Rs.50 lakhs and the Assessing Officer at the time of recording the reasons was not supposed to undertake a detailed or depth examination of evidence collected during the search, the prima facie

undisputed fact is that the details of unaccounted cash receipts and cash payments found during the course of search & seizure action were not specifically attributed to each of the group companies and further only the receipts found in the said seized material are taken into consideration for arriving to the conclusion that the income of more than Rs. 50 lakhs for each of the companies has escaped assessment. The Assessing Officer has proceeded on the basis of the details provided by the ADIT (Inv) and not proceeded on the basis of the seized material containing these transactions of unaccounted cash receipts and payments. The reasons recorded by the Assessing Officer manifest that no such minimum verification was done by the Assessing Officer regarding the nature of the transaction, the net outcome of the receipt and payment as recorded in the said seized material, apportionment of the amounts of receipts and payments to each of the group companies to quantify the income escaped assessment for the A.Ys 2014-15 to 2018-19. Thus it is a simple case of non-application of mind and a borrowed satisfaction on the part of the Assessing Officer while recording the reasons for reopening.

25. *Apart from the non-application of mind regarding the nature of the transaction, quantification of the income and allocation of the amounts of receipts and payment to each of the group companies, the Assessing Officer has though recorded that the income chargeable to tax represented in the form of an asset and an entry or entries in the books of account as per the provisions of section 149(1)(b) of the Act. However, not a single word is stated by the Assessing Officer either in the reasons recorded for reopening of the assessment or in the assessment order to prima facie show that the income escaped assessment represents an asset and further what kind of an asset. Similarly, these details as recorded in the software Focus 5.5 in the Laptop of Shri Ramesh Kumar Sanaka do not constitute the entries in the books of account, therefore, two statement of the Assessing Officer in the reasons recorded for reopening of the assessment is very vague and without any basis. The Assessing Officer ought to have given the minimum description of the assets and the nature of the entries in the books of account so as to bring the case in the ambit of section 149(1)(b) of the Act, to the extent that the conditions provided in sub clause (i) and sub clause (iii) of clause (b) of section 149(1) of the Act satisfied. It is pertinent to note that the seized material in question is only a print out of the details found in the Laptop of Shri Ramesh Kumar Sanaka and none of the transactions as found in the seized material is representing any asset in existence at the time of the search & seizure action or even at the time of the assessment. It is not the case of the Department that any cash equivalent to the alleged undisclosed income/income escaped assessment was either found or converted into any other asset. Therefore, the Assessing Officer has completely failed to bring the case of the assessee in the ambit of sub clause (i) of clause (b) of section 149(1) of the I. T. Act. Further, the seized material is not in the nature of*

books of account, therefore, the details recorded in the seized material would not constitute as entry or entries in the books of account.

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41. *Therefore, in view of the fact that notice issued u/s 148 of the Act in respect of A.Ys 2014-15 to 2018-19 after the expiry of 3 years from the end of the A.Y. the approval of the specified authority granted in a mechanical way renders the reopening of the assessment itself bad in law. Accordingly, in view of the facts and circumstances as cited above and various decisions as stated above, we hold that the reopening of the assessment is not valid and liable to be set aside. Apart from the invalid approval/sanction u/s 151 of the Act, the Assessing Officer has also failed to bring the case in the category where mandatory conditions u/s 149(1)(b) of the Act are satisfied for initiation of proceedings u/s 147/148 of the Act after the expiry of 3 years from the end of the relevant A.Ys and therefore, the reopening of the assessment for want of the satisfaction of mandatory condition u/s 149(1)(b) of the Act is also invalid and liable to be quashed. We order accordingly.*

In view of the above, the notice issued u/s 148 is barred by limitation.”

14. The assessments beyond 3 years can be reopened only when the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of an asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. Hence, the Legislature in their wisdom has introduced new provisions to mean that for assessing or re-assessing any year beyond 3 years, consequent to search on or after 1st April, 2021, the requirement of incriminating material is mandatory. As observed above, in the present case also the AO has failed to satisfy the mandatory condition/s 149(1)(b) where the reopening is done after the expiry of three years and no income whatsoever has been brought on record as escaped assessment in the form of any asset or expenditure of more than Rs.50 lacs. Therefore, the mandatory condition as provided u/s 149(1) of the Act has not been fulfilled in the instant case, and, therefore, by respectfully following the order of the coordinate bench in the case of Ace Tryes (supra), we hold that the reopening of the assessment u/s 147 of the

Act is bad in law and consequent reassessment order passed is hereby quashed. The grounds of appeal Nos.1 to 3 raised by the assessee are thus allowed.

15. Since, we have already allowed the assessee's legal ground of appeal and quashed the reassessment order, other grounds of appeal taken on merits of additions and approval u/s 148B of the Act become academic in nature, thus not adjudicated.

16. In the result, the appeal of the assessee is allowed.

ITA No. 6436/DEL/2025 for AY 2020-21

17. The facts of the case of the assessee for this assessment year are that the assessee has challenged the reopening u/s 148 of the Act on the ground that the mandatory satisfaction u/s 149(1)(b) of the Act is missing since the case of the assessee was reopened after the expiry of three years from the end of relevant assessment year without their being any satisfaction of escapement of income of Rs.50 lacs or more represented in the form of asset.

18. The facts being identical with the facts of AY 2019-20 as fairly admitted by both the parties before us, therefore, by following the observations made herein above in assessee's appeal for AY 2019-20 in ITA No. 6035/Del/2025 which are *mutatis mutandis* applied to the facts of the present case, the legal grounds of appeal taken by the assessee are allowed.

19. In the result, the appeal of the assessee is allowed.

ITA No.6437/DEL/2025 for AY 2021-22

20. Brief facts of the case are that the assessee has filed its return of income u/s 139(1) on 12.01.2022 declaring total income of Rs. 2,85,46,110/- under normal provisions and book profit was declared at Rs.6,07,38,445/-. As a result of search case of the assessee was reopened u/s 147 and the assessee has filed the return of income on 22.01.2025 declaring same income as was declared in the return of income filed u/s 139(1) of the Act. Thereafter based on the documents found and seized from the course of search, the AO concluded that assessee has undisclosed receipt of Rs.10,63,85,181/- on which net profit was estimated @50% resulting into addition of Rs.5,31,92,590/-. Besides this, the AO further computed unaccounted for sale of cattle feed at Rs. 2,90,57,499/- on which net profit rate of 15% is applied and addition of Rs. 43,58,625/- is made. Accordingly, total income of the assessee was computed at Rs. 8,60,97,325/-.

21. Against the said order, assessee preferred an appeal before the Ld. CIT(A) wherein assessee has challenged the additions besides this, reopening of assessment u/s 147 of the Act was also challenged, however, Ld. CIT(A) has partly allowed the appeal of the assessee by reducing the profit from undisclosed sales from 50% to 15 % and dismissed the legal grounds of appeal taken by the assessee against the reopening of assessment.

22. Aggrieved by the said order, assessee is in appeal before the Tribunal in present appeal. In grounds of Appeal Nos.1 to , assessee has challenged the initiation of proceedings u/s 147 being mechanical and without independent application of mind as the notice issued u/s 148 does not speaks whether the case of assessee is reopened as a person searched or the person other than the person searched.

23. Heard bot the parties at length and perused the materials available on record. From the perusal of the notice issued u/s 148 as available at PB 33 and 34, it is observed that the AO in the said notice has observed as under:

*“ I have information that a search was initiated under section 132 of the Act **in your case or in the case of the person in respect of which you are the assessable** under the act on the date 11/05/2024.*

*I am satisfied, with the approval of Principal Commissioner or Commissioner, that books of accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of VINTAGE DISTILLERS LIMITED **pertains or pertain to, or any information contained therein, relate to you or the person in respect of which you are assessable under the Act.**”*

24. From the perusal of the above observations made in the notice issued u/s 148 of the Act, it is clear that AO while reopening the assessment was not sure whether the assessee is the person searched or the other person whose documents were fund from the person searched. It is undisputed fact that search action u/s 132 of the Act was carried out in the case of Vintage Group on 11.05.2024 and assessee being the member of such group its business premises was also covered under the search u/s 132 of the Act. However, in the notice issued u/s 148, the Assessing Officer was not clear whether the reopening u/s 148 is made in the case of person searched or in case of non-searched person. Thus, the notice u/s 148 of the Act is ambiguous and issued without application of mind and, therefore, the said notice is invalid and be quashed. The Co-ordinate Bench of the Tribunal in the case of *Optus Developers Pvt. Ltd. vs. ACIT, CC-32, New Delhi* in *ITA Nos.4384 & 4385/Del/2025* vide its order dated 17.12.2025 has held as under:

“2. Hearing both the sides we find that the assessee now questions the notice u/s 148 dated 31.03.2023 alleging same is outcome of non application of mind and for that as a matter of fact we find that in the notice AO mentioned.

“I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are the assessable under the Act on the date 17/09/2021.

This notice is being issued after obtaining the prior approval of the PCCIT, Delhi accorded on date vide Reference No. 100000038640175.

3. Undisputedly and admittedly present case is of non-searched case (third party case) so when reopening u/s 148 of the Act is made directly on non-searched person same has different nature and has scope is to be strictly. As evident from cursory look to notice u/s 148 it is totally without application of mind as it is stated assessee is searched and non searched person both. As the impugned assessment order passed u/s 147/144 of the Act is considered we find that the assessment is conclude referring to some search action u/s 132 on Deepak Aggarwal and Mukesh Kumar dated 17.12.2021, and there is no mentions to how this search is related to search dated 17/09/2021 referred in the impugned notice. This thus leaves no doubt in the mind of this bench that impugned notice is outcome of utter casualness and not just non-application of mind. Corresponding ground deserves to be sustained.”

25. As observed above, facts of the case of the assessee are identical to the facts in the case of Optus Developers Pvt. Ltd. vs. ACIT (supra). In the instant case, the AO while reopening the assessment in the notice u/s 148 it has not clarified whether it is issued for the person searched and in the case of other person as could be observed from the notice issued u/s 148 of the Act. In the light of the above discussion and by respectfully following the judgement of Co-ordinate Bench in the case of Optus Developers (supra), we hold that the notice issued u/s 148 in casual manner, without application of mind and thus is bad in law and is in valid and accordingly the grounds of appeal Nos. 1 to 3 of the assessee are allowed.

26. Since, we have already allowed the assessee's legal grounds of appeal, the other grounds of appeal taken on merits become academic in nature.

27. In the result appeal of the assessee is allowed.

ITA No.6438/DEL/2025 for AY 2022-23

28. The facts of the instant case and the argument put forth by the both the parties are identical and common as made for AY 2021-22 in ITA No. 6437/Del/2025 as assessee has challenged the validity of the notice issued u/s 148 in casual manner and without roper application of mind. We have already allowed the legal grounds of appeal taken by the assessee while deciding the assessee's appeal in AY 2021-22 in ITA No. 6437/Del/2025 and such observations are *mutatis mutandis* applied to the facts of the present case. Therefore, by respectfully following the same legal ground taken by the assessee are allowed.

29. Since, we have already allowed the legal grounds raised by the assessee, the other grounds of appeal become academic, thus, not adjudicated.

30. In the result appeal of the assessee is allowed.

ITA No.6439/DEL/2025 for AY 2023-24

31. During the course of hearing vide letter dated 25.02.2026, the assessee has raised additional grounds of appeal wherein the assessee has challenged the assessment order passed u/s 143(3) of the Act dated 31.03.2025 without issue of notice u/s 148 as the assessment in the case of the assessee was solely based on the documents found as a result of search. The additional grounds of appeal so taken are as under:

“1. On the facts and circumstances of the case and in law, no notice u/s 148 was issued by the assessing officer and hence, the assessment proceedings initiated and the assessment order passed are liable to be quashed.

2. On the facts and circumstances of the case and in law, the assessment proceedings initiated without complying with the provisions of section 148 of the Act is bad-in-law and without be quashed. jurisdiction and therefore, the assessment order passed by the assessing officer is liable to

3. On the facts and circumstances of the case and in law the assessment framed u/s 143(3) is bad-in-law, as it pertains to a year preceding search year where the mandatory approval as prescribed u/s 148B of the Act has not been followed.”

32. The additional grounds of appeal No. 1 to 3 are legal in nature and requires no separate verification on the part of the AO, therefore, by respectfully following the judgment of Hon’ble Apex Court in the case of *National Thermal Power Co. Ltd. v. Commissioner of Income-tax [1998] 229 ITR 383 (SC)* the additional grounds of appeal are admitted for adjudication. First we take up the additional grounds of appeal taken by the assessee for consideration.

33. Before us, Ld. AR for the assessee in support of the additional grounds of appeal No.1 & 2 submits that in the instant case, a search u/s 132 was conducted on 11.05.2024 which is related to Financial Year 2024-25 relevant to Assessment Year 2025-26. As per Explanation 2 to section 148, assessment in the case prior to the year of search should be completed u/s 148 of the Act. It is thus submitted by Ld. AR for Assessment Year 2023-24 i.e. the year before us, only permissible statutory course is to initiate the reassessment proceedings by issue of notices u/s 148 and complete the assessment after obtaining the mandatory approval 148B of the Act which has not been done in the instant case, therefore, the assessment proceedings so initiated and the order passed u/s 143(3) based on the search carried on 11.05.2024 is bad in law and is without jurisdiction. He placed reliance on the judgment of the Coordinate Bench of ITAT Delhi in the case of *Deepak Agarwal, C/o Kapil Goel, Adv. vs. DCIT, CC-25, New Delhi, 2025 (10) TMI 1101-ITAT Delhi* and in the case of *Montage Enterprises Pvt. Ltd. vs. DCIT/ACIT, Central Circle-II, Noida in ITA No. 5458/Del/2025 & 5906/Del/2025, ITAT Delhi.*

34. On the other hand, the Ld. CIT-DR supported the orders of the lower authorities and submits that the assessee has not challenged this issue before the lower authority and participated in the assessment proceedings, therefore, this issue cannot be raised at this stage. She prayed accordingly.

35. Heard the contention of both the parties and perused the materials available on record. Before us, the claim of the assessee is that the case of the assessee is taken up for assessment based on the search conducted on 11.05.2024 which fallen in Financial Year 2024-25 relevant to Assessment Year 2025-26 and as per Explanation 2 to section 148 of the Act, the proper course of action would be to reopen the assessment by issue of notice u/s 148 of the Act which has not been done. Before going further, we first examine the provisions as contained in Explanation- 2 to section 148 which reads as under:

- Explanation 2. For the purposes of this section, where.-

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or*
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is*

initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.”

36. From the above, it is clear that where the search is conducted u/s 132 of the Act on or after 1st April, 2021, the AO record the satisfaction that income has escaped assessment that the assessment has years prior to the year of search and proceed further in terms of section 148 of the Act. Vide Finance Act, 2021, the Parliament has done away with the existing legal framework for assessment in case of search or requisition forming part of Chapter XIV of the Income Tax Act, 1961- Procedure for Assessment i.e. sections 153A to 153D of the Income Tax Act, 1961 in respect of search or requisition conducted on or after 1st April 2021. For the searches conducted u/s 132(1) of the Act on or after 1st April 2021, the assessments shall now be framed under section 147 read with section 148, 148A, 149,151 of the Income-tax Act, 1961 as substituted by the Finance Act, 2021. As observed above, in the present case, the search was conducted on 11.05.2024 and the assessment year under appeal before us is AY 202023-24 thus as per the new scheme, the assessment should have been completed after reopening the assessment u/s 148 of the Act and not u/s 143(3) as has been done in the present case.

37. Further section 148B of the Act provides that the approval by the Additional Commissioner of Joint Commissioner should be taken as per section 148B of the Act before passing the order u/s 148B of the Act. The relevant provisions of section 148B of the Act is reproduced herein under appeal.

-Provision of section 148B are as under: -

148B. No order of assessment or reassessment or recomputation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause

(ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.]

38. The memorandum explaining the provisions of section 148B introduced by Finance Bill 2022 reads as under:

-Memorandum explaining the provision of section 148B introduced by Finance Bill 2022 are as under: -

“Clause 46 seeks to insert a new section 148B in the Income-tax Act relating to prior approval for assessment, reassessment or recomputation in certain cases.

The proposed new section seeks to provide that no order of assessment or reassessment or recomputation under the Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of an assessment year to which clause (i), clause (ii), clause (iii) or clause (iv) of the Explanation 2 to section 148 apply.

This amendment will take effect from 1st April, 2022.”

39. From the above, it is clear that notice where the search is conducted after 01.04.2021, the assessment prior to the year of search should be completed u/s 148 of the Act after obtaining the approval of competent authority as provided u/s 148B of the Act. The Co-ordinate Bench of Delhi Tribunal in the case of Montage Enterprises Pvt. Ltd. (supra) by placing reliance of order in the case of Homelife Buildcon (P.) Ltd. Vs. DCIT, (2025) 176 taxman.com 614 (Chandigarh and further in the case of Jamna Das Nikkamal Jain Saraf Pvt. Ltd. vs. DCIT in ITA No.403/Chd./2025 dated 04.11.2025 held that the order passed without following the procedure section 148 and without obtaining approval u/s 148B is bad in law and quashed such order. The relevant observations as contained in para 2 to 5 are as under:

“Heard both the parties. Case files perused.

2. We notice at the outset that there arises the first and foremost issue of validity of the impugned section 143(3) assessment itself framed by the learned DCIT, Central

Circle-II, Noida as per the assessee's pleadings in its appeal ITA No.5458/Del/2025. A combined perusal of both these case files indicates that the assessee/appellant is engaged in the business of manufacturing and sale of flexible packaging material etc. It has filed its return for the impugned assessment year 2022-23 on 29.10.2022, declaring loss of Rs.64,53,88,702/-. And the same was taken for scrutiny. The learned departmental authorities thereafter carried out section 132 search action as well as section 133A survey in its case on 21.02.2023. There is further no dispute that the learned Assessing Officer then proceeded to frame the impugned assessment on 30 March, 2024 in its case inter alia making various disallowances/additions etc., involving varying sums, which stand partly upheld in the CIT(A)'s lower appellate discussion.

3. It is in this factual backdrop that the assessee seeks to raise it's precise question challenging validity of the impugned assessment for the sole reason that the same ought to have been framed under section 148 with approval under section 148B of the Act in light of Homelife Buildcon (P.) Ltd. Vs. DCIT, (2025) 176 taxmann.com 614 (Chandigarh Trib.) as relied in Jamna Das Nikkamal Jain Saraf Pvt. Ltd. Vs DCIT (ITA No. 403/Chd./2025) decided on 04.11.2025, adjudicating the very issue against the department as under:

"11.4 In conclusion, it was submitted that since the year under appeal formed part of the three assessment years immediately preceding the year in which search was conducted, the assessment ought to have been framed under section 148 with approval u/s 148B. The framing of the assessment u/s 143(3) and approval taken only for the purposes of section 143(3) was thus asserted to be fundamentally defective, non-compliant with statutory mandate, and consequently void ab initio. On these grounds, following the ratio in Homelife Buildcon Put. Ltd., it was prayed that the impugned assessment be quashed.

12. The Ld. CIT-DR Shri Manav Bansal opposed the contention, stating that the return for A.Y. 2022-23 was filed prior to the date of search, and validly selected for scrutiny under CASS. The AO was competent to complete the assessment u/s 143(3).

12.1 He contended that section 148B applies only to "re-assessment" and not to "regular assessments." The AO's approval from Addl. CIT, being in line with the CBDT Instruction No. 7/2022 dated 15.07.2022, fulfils the supervisory requirement. The DR also submitted that Homelife Buildcon is distinguishable, as the AO therein relied on third-party search data, whereas the present case is based on assessee's own seized material.

13. We have carefully considered the rival submissions and perused the record. It is undisputed that search u/s 132 was conducted on 24.11.2022, relevant to A.Y. 2023-24. Thus, A.Y. 2022-23 is one of the three preceding years under Explanation 2(iv) to section 148. The Explanation reads that if a search is initiated, "the Assessing Officer shall be deemed to have

information suggesting escapement of income for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated."

- 13.1 Therefore, the only permissible statutory course was to issue notice u/s 148 and obtain prior approval u/s 148B before passing assessment order.*
- 13.2 As the Assessing Officer completed the assessment under section 143(3) of the Act without issuing the notice under section 148 of the Act. Therefore, the question before us is whether the assessment proceedings initiated under section 143(3) of the Act can be validly continued and completed after a search under section 132 has been conducted in the case of the same assessee, without following the procedure prescribed under section 148 (Explanation 2) of the Act.*
- 13.3 In our considered opinion, the answer lies in the scheme of the Act itself. Section 143 provides the general framework for regular assessment, whereas sections 147-148 (post-2021 regime) deal with reassessment based on information suggesting escapement of income, including that unearthed during a search.*
- 13.4 A plain reading of section 143(2) shows that such notice can be issued only when a return of income is furnished under section 139 or in response to a notice under section 142(1). It empowers the Assessing Officer to scrutinize that return if he considers that income has been understated or tax underpaid. However, when a search under section 132 takes place and materials are found indicating possible escapement of income, the statute envisages a different route for carrying out assessment or reassessment under section 147 read with section 148, which is the special mechanism for bringing to tax the income discovered in consequence of a search.*
- 13.5 Although section 148 (inserted w.e.f. 01.04.2021) does not begin with a non obstante clause similar to the erstwhile section 153A, its context and Explanation 2 make it clear that where a search is initiated, the jurisdiction thereafter must flow through this special channel, subject to prior satisfaction and approval of the Principal Commissioner or Commissioner. The legislative intent is to ensure that when a search is carried out, the assessment is framed under the specific provisions meant for such cases and not under the general provision of section 143(3). Further we may mention that no notice under section 143(2) could have been issued after 3 months from the from the end of the financial year in which the return is furnished. In the present case the original return of income was filled on 4/11/2022 for the assessment year 202223 and 143 (2) was issued on 21/6/2023, therefore also the assessment was framed under 143(3) of the Act is not sustainable. In other words the time required for issuing the notice under 143(2) had already expired, and the revenue can not be allowed to issued issue 143(2)*

on 21.6.2023 after the search was carried out and notice had been issued on 21.6.2023 and assessment was framed under 143(3) of the Act. The relevant portion of section 143(3) reads as under:-

143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income tax authority, as the case may be, if considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be issued after the expiry of three months from the end of the financial year in which the return is furnished.

- 13.6 *This position finds substantial support from the ratio of various decisions of Hon'ble High Court and Hon'ble Supreme Court. The Courts unanimously held that once a search has been conducted and proceedings are triggered under section 153A, the Assessing Officer cannot continue parallel proceedings under section 143(3) or section 147 for the same assessment year, because the entire assessment for that year stands merged in the search assessment. The Courts emphasized that the existence of a special procedure for assessment consequent to a search is a complete code in itself; therefore, ordinary assessments abate and cannot coexist with the search-based assessment.*
- 13.7 *Drawing this analogy to the current regime, it is evident that when a search takes place and information is unearthed suggesting escapement of income, the Assessing Officer must act under section 148 (which now performs the role formerly assigned to section 153A) rather than continuing with a pending section 143(3) proceeding. The legislative intent remains the same to prevent multiplicity of proceedings and ensure that only one comprehensive order is passed, factoring in both the pre-search and post search materials.*
- 13.8 *The rationale is further reinforced by the well-settled principle of generalia specialibus non derogant the special provision overrides the general. Section 148 (as a special provision triggered by search information) must prevail over section 143 (the general provision for regular scrutiny). Allowing the Assessing Officer to continue and conclude proceedings under section 143(3) after a search would defeat this legislative scheme and render the safeguards, such as prior approval of the Principal Commissioner, redundant.*

13.9 Accordingly, we hold that once a search is initiated under section 132 and material is found relating to the assessee, the pending assessment under section 143(3) cannot validly continue, as the time for issuing the 143(2) in response to original return of income had already expired, therefore the Assessing Officer must necessarily proceed in accordance with the special provisions contained in section 148 of the Act"

4. *Learned CIT(DR) representing the Revenue vehemently supports the impugned assessment that the Assessing Officer had rightly finalized the same under the normal provision once the entire issue was pending before him as on the date of search.*
5. *We have given our thoughtful consideration to the assessee's and the Revenue's foregoing vehement submissions. We find merit in the assessee's legal ground herein once the impugned search had taken place in its case, no normal assessment under section 143(3) of the Act could have been framed in light of the tribunal's foregoing twin decisions going against the department. We thus adopt the above extracted reason mutatis mutandis to quash the impugned assessment framed by the learned Assessing Officer on 30th March, 2024 in very terms."*

40. Admittedly, the facts are identical, thus, by following the order of the Co-ordinate Bench in the case of Montage Enterprises Pvt. Ltd. (supra) and of Homelife Buildcon (P.) Ltd. (supra) we are of the considered opinion that the assessment order passed u/s 143(3) is bad in law and the same should have been passed after reopening by issue of notice u/s 148 of the Act and after obtaining the mandatory approval u/s 148B of the Act and therefore the order so passed is hereby quashed. The additional grounds of appeal No. 1 & 2 of the assessee are allowed.

41. Since, we have already allowed the legal grounds raised by the assessee, the other grounds of appeal become academic, thus, not adjudicated.

In the result appeal of the assessee is allowed.

ITA No.6440/DEL/2025 for AY 2024-25

42. The facts being identical as admitted by both the parties before us, therefore, by following the observations made hereinabove in assessee's appeal in AY 2023-24 in ITA No. 6439/Del/2025 which are applied *mutatis mutandis* to the facts of the case of the assessee in the year before us, the additional legal grounds of appeal taken by the assessee are allowed.

43. Since, we have already allowed the legal grounds raised by the assessee, the other grounds of appeal become academic, thus, not adjudicated.

44. In the result appeal of the assessee is allowed.

ITA No.7701/DEL/2025 for AY 2021-22

45. The Revenue has also filed the appeal against the order of Ld. CIT(A) for AY 2021-22. While deciding the appeal of the assessee in ITA No.6437/Del/2025 for AY 2021-22, we have already quashed the reassessment order passed by holding the reopening u/s 147 of the Act as bad in law. Therefore, all the grounds taken by the Revenue against merits of the additions deleted by the Id. CIT(A) become infructuous, thus, dismissed.

46. In the result appeal of the revenue is dismissed.

ITA No.7704/DEL/2025 for AY 2022-23

47. The Revenue has also filed the appeal against the order of Ld. CIT(A) for AY 2022-23. While deciding the appeal of the assessee in ITA No.6438/Del/2025 for AY 202223, we have already quashed the reassessment order passed by holding the reopening u/s 147 of the Act as bad in law. Therefore, all the grounds taken by the Revenue against merits of the additions deleted by the Id. CIT(A) become infructuous, thus, dismissed.

48. In the result appeal of the revenue is dismissed.

49. In the final result, all the six appeals filed by the Assessee for AY 2019-20 to AY 2024-25 in ITA Nos. 6435/Del/2025 to 6440/Del/2025 are allowed and both the appeals filed by the Revenue for AY 2021-22 and AY 2022-23 in ITA Nos.7701/Del/2025 and 7704/Del/2025 respectively, are dismissed.

Order pronounced in the open Court on 17.04.2026.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 17.04.2026.

PK, Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI