

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA No. 3956/MUM/2025

(A.Y. 2017-18)

&

ITA No. 3957/MUM/2025

(A.Y. 2018-19)

Nanne Gulzar & Company 6394/2, 1 st Floor, Bada Maidan, Kasabpura, Bada Masjid, Delhi – 110006, New Delhi.	v/s. बनाम	Assistant Commissioner of Income Tax Central Circle 4(4), Room No. 1922, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400 021, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AALFN4781E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Abhinav Vijh, CA. & Shri Atul Vijh, AR
Revenue by :	Shri Swapnil Choudhari, (Sr. AR.)

Date of Hearing	09.04.2026
Date of Pronouncement	15 .06.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The instant appeals emanating from the appellate order dated 13.10.2025 are preferred by the assessee against the orders passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 30.12.2019 for the Assessment Year [A.Y.] 2017-18 and 2018-19. Since the grounds are identical in both the years, barring

figurative differences and the issues involved are also similar and were also adjudicated by the Id.CIT(A) vide orders of even date, the appellate orders are decided vide a composite order for the sake of convenience and brevity. We take up the appeal for AY 2017-18 as Lead Case. The decision rendered would apply *mutatis mutandis* to appeal for AY 2018-19.

2. ITA No. 3956/MUM/2025 (A.Y. 2017-18)

The grounds of appeal are as under:

“1. That the assessment order passed under Section 143(3) of the Income Tax Act, 1961 is bad in law, being without valid jurisdiction, barred by limitation, and passed in breach of mandatory provisions of the Act.

2. That the CIT(A) erred in law and on facts in upholding the assessment despite the fact that jurisdiction was illegally assumed by the Assessing Officer without granting the Appellant an opportunity of hearing as required under Section 127 of the Act.

3. That the Ld. CIT(A) erred in confirming the finding of the AO that the Appellant was engaged in providing accommodation entries, despite there being no independent investigation, corroborative material, or third-party confirmation on record to support such a conclusion.

*4. That the addition of **Rs. 54,95,920/-** on account of alleged commission at 0.5% of turnover is wholly ad hoc and arbitrary, unsupported by any cogent reasoning, comparable case, or industry norm, and liable to be deleted.*

5. That the AO erred in invoking Section 145(3) to reject the books of accounts without pointing out any specific defect or material discrepancy, and the CIT(A) failed to appreciate that regular books supported by documents were duly maintained and produced.

6. That without prejudice, the AO erred in assessing the alleged commission under the head "Income from Other Sources" under Section 56 of the Act.

7. That the authorities below failed to appreciate that the Appellant is a KachchaArhtiya engaged in livestock commission business, where income arises only on commission and not from trade, and estimation on gross turnover is wholly misconceived.

8. That the AO failed to discharge the burden of proving that the Appellant's transactions were sham or accommodation in nature, particularly in the absence of any rebuttal evidence, third-party enquiry, or material discrediting the Appellant's explanation.

9. That the CTT(A) failed to consider the practical and business realities of rural livestock trade, including non-availability of formal documentation from illiterate suppliers, and erred in not appreciating the evidence submitted in light of human probabilities.

10. That the initiation of penalty proceedings under Section 270A is unjustified and premature, as the additions are based on estimation without any conclusive finding of misreporting, and such initiation deserves to be quashed.

2.1 Additional Grounds of appeal

1. That the AO erred in passing the assessment order u/s 143(3) in contravention of mandatory provisions of section 153C of the Act.

2. That the assessment order passed is illegal as the same has been passed in contravention of CBDT Instruction no.5/2016 dated 14.7.2016 as the AO has expanded the scope of Limited scrutiny without obtaining required approval from competent authority.

3. At the outset, it was noticed that the instant appeal is delayed by 120 days. In this regard, an affidavit along with application for condonation of delay has been submitted by Sri Mohammad Saleem, Partner, submitting that the said delay in filing the appeals occurred due to circumstances that were bonafide and beyond the control of the assessee. He is illiterate and unfamiliar with the legal and procedural intricacies of the Act. Owing to his advancing age and deteriorating health, he was not in a position to actively monitor the Firm's income tax compliances or access the e-filing portal on a regular basis. The impugned order dated 08.11.2024 was not communicated to him by any means. No email, SMS, or any other form of electronic intimation was received from the Income Tax Department. Even upon reviewing the registered email account associated with the e-filing portal, no such order or intimation was found, as of the date of preparation of this application. It became aware of the said order only on 23.05.2025, when its Chartered Accountant accessed the e-filing portal for an unrelated compliance and

discovered that the appellate order had been uploaded. Upon receiving this information, the Firm acted immediately and without delay to initiate the process of filing the present appeals. The delay was neither deliberate nor due to negligence, but is attributable to the partner's ill health, age-related constraints, lack of formal education, and absence of any notification or alert from the Department. The assessee acted diligently and promptly once the existence of the order came to its notice. The appeals involve substantial and arguable grounds on merits. No prejudice would be caused to the Revenue if the delay is condoned, whereas refusal to condone would result in grave injustice to it. It was prayed that this Hon'ble Tribunal may be pleased to condone the delay days in filing the present appeal and admit the same for adjudication on merits, in the interest of justice and equity. The Id.DR. however, strongly objected to the condonation application claiming that the impugned order was uploaded on the date of order itself.

4. On careful consideration of the submissions of the assessee, we are of the considered opinion that the delay in filing of the present appeal was not intentional but due to unavoidable and sufficient cause. Such a bonafide mistake needs to be considered liberally. In this connection, reliance could be placed on the landmark decision of hon'ble Supreme Court which inter alia held in **Collector, Land Acquisition v Mst. Katiji And Others- 167 ITR 471 (SC)** that *“ordinarily, a litigant does not stand to benefit by lodging an appeal late.....Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being*

defeated....Any appeal or any application, other than an application under any of the provisions of [Order XXI of the Code of Civil Procedure, 1908](#), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.... A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.” We therefore, condone the delay and proceed to adjudicate the grounds on merit.

5. The **Additional ground no.1** regarding validity of the assessment order and the notice u/s 148 of the Act has been raised claiming that the assessments framed under section 143(3) of the Act are invalid as the assessments ought to have been made as per provisions of section 153C of the Act. The assessee has filed an application for admission of additional ground for both the assessment years which challenge the legality of the reassessment proceedings and the consequent assessment order. The ground being legal in nature requiring no fresh investigation into the fact is admitted in the light of the landmark decision in the case of **NTPC Ltd vs CIT(1998) 229 ITR 383(SC)** by the hon'ble Apex Court. The ground goes into the very root of the assessment proceedings, we take up for further adjudication.

6. **Ground no.1** is general in nature requiring no adjudication while **ground no.2** has not been pressed.

7. We consider it appropriate to take up the additional ground first in which the assessee has contested reopening proceedings u/s148 of the Act claiming that its case emanating from search and seizure action u/s 132(1) of

the Act in the case of the partner and related concerns, it is required to be completed u/s 153C of the Act instead.

8. Before us, the ld.AR has pleaded that in this case, return of income was filed by the assessee for the relevant year declaring total income at Rs. 1,31,360/-.The case was selected for scrutiny. A search & seizure action was carried out in the case of M/s. Allanasons Pvt. Ltd. & others on 03.01.2019.The assessee is a firm and one of partners is firm Shri Md. Saleem who was claimed to be one of the purchase parties of Allana Group in his individual capacity as well as in the name of his partnership firm i.e. M/s. Nanne Gulzar & Co. During the search & seizure action carried out in case of M/s. Allanasons Pvt. Ltd. & others group, premise of Shri Md. Saleem, was also covered.

8.1 It is submitted that the impugned assessments suffer from a foundational jurisdictional defect inasmuch as the mandatory procedure contemplated under section 153C of the Act has not been followed. It is contended that the impugned assessment framed under section 143(3) of the Act is ex facie illegal and without jurisdiction in view of the overriding scheme of sections 153A and 153C of the Act. Admittedly, a search action under section 132 was conducted on the Alana Group and the premises of the partner, Mr. Mohd. Saleem, were also covered therein, wherein his statement was recorded under section 132(4) of the Act. Copy of complete statement attached had been heavily relied upon in the assessment order of the present assessee, which is a person other than the searched person. Further, the show cause notice dated 22/05/2021 stated that as per data gathered during search and seizure action

of M/s Allanasons Pvt Ltd., the total transactions to the tune of Rs. 268,04,06,987/- had been unearthed and it is on this figure that the profit rate of Rs. 0.5% had been applied. Further, the assessment order itself, at numerous places admits that the foundation of the addition was the information gathered in search of Allanasons.

8.2 It is further pleaded that cases of both the partner Mr. Mohd. Saleem and the assessee firm were centralized by the ld. Pr. CIT, Delhi-21, specifically noting that the cases emanate from search on the Alana Group and, in terms of CBDT instructions, required centralized post-search coordinated assessment. In fact, in the case of the partner, proceedings had rightly been initiated under section 153C of the Act, which has also been upheld by the Hon'ble ITAT, Mumbai Bench in ITA No. 3954/Mum/2025 vide order dated 30.12.2025. However, on identical facts and on the basis of the same material, the assessment in the case of the present assessee firm had been framed under section 143(3) of the Act, which is impermissible in law. The transactions and the nature of business in both firms are same and identical. The action of AO to frame assessments under section 143(3) in case of assessee firm is contrary to his own action of evoking jurisdiction under section 153C in case of assessment of Md. Saleem, the partner of the firm. If the assessments of the assessee under section 143(3) is upheld, it would mean that invocation of provisions of 153C in case of Mohd. Saleem were incorrect and not based on any incriminating material and more so, when both the assessment orders are verbatim. Reference was made to para 3.2 of AO order

and on comparison with assessment order of Md. Saleem at Para 7.2 of AO order, it would be noticed that both the orders are replica of each other, founded on the basis of search material but assessed under different sections.

8.3 It is further submitted that the foundation of the present assessment is the material unearthed during search and the statement recorded therein. Once the very basis of assessment is search material, the Revenue is mandatorily required to proceed under section 153C read with section 153A of the Act, and recourse to regular assessment provisions is barred. As held in **Sejal Jewellery vs Union of India (171 Taxmann.com 846)**, once the basis is search, sections 153A/153C of the Act override regular provisions including section 143(3) of the Act and any contrary action is without jurisdiction. This principle is followed by Hon'ble ITAT Mumbai in **Zubin Paul Driver v. ACIT (ITA 7302/Mum/2015)**.

8.4 Without prejudice, it is contended that by virtue of the second proviso to section 153A read with section 153C, all pending proceedings including those under section 143(2) stood abated. The search date was 03.01.2019 and centralization order dated 20.08.2019 is the relevant date for handing over material. Therefore, assessments could only be framed under section 153C of the Act. Continuation under section 143(3) is invalid. Reliance is placed on *Kalyanika Infra Mega Ventures (P.) Ltd. v. DCIT [2023] 157 taxmann.com 34 (Jabalpur ITAT, TM)* wherein it is held that where assessment is based on search material/statements, proceedings must be

under section 153C and not 143(3), following Hon'ble Supreme Court in Pr. CIT v. Abhisar Buildwell (P.) Ltd. (454 ITR 212).

8.5 The Id.DR on the other hand relied on the orders of the authorities below.

9. We have carefully considered all the relevant facts of the case and also perused the records and more specifically the search assessment orders passed in the case of Md.Saleem whose statement and certain materials found during search and seizure action in the Allana Group revealed suppression of income by him as also by the assessee M/s Nanhe Gulzar and Co. It is noticed from the contents of the assessment order passed in the case of the above partner that proceedings were initiated u/s 153A of the Act since he was also searched and the assessment order was passed accordingly. The assessment order is almost *verbatim* same word by word with the assessment order in the instant case apart in so far as the allegations of the Revenue, materials found and statements of the said person as also the conclusion drawn against him. The same statements and the observations have been narrated in the impugned orders since Md.Saleem was also a partner in the assessee concern and was looking after all business affairs which was exactly identical. Even the conclusion holding the said partner as also the assessee are exactly same and same percentage has been applied for working out the undisclosed income of both of them. The AO has exhaustively narrated and reproduced his statement in both the assessment orders, made similar conclusion of the assessee being Pucca Arhatiya and adopted the undisclosed sales figures emanating from

search and seizure action. Not a single difference is evident on comparative study of these two orders.

9.1 In such a situation, we find merits in the contentions of the assessee that once the case of the partner was considered as search case liable to be taxed under section 153A of the Act, there seems no reasons why the case of the assessee was taken up u/s 147/148 of the Act since the very foundation of both the assesses remains the same. Accordingly, we find sufficient merits in the arguments that the case of the assessee was required to be assessed u/s 153C of the Act as the case, being of the Other person and not u/s 148 of the Act. More so, when it appears that the Assessing Officer of both the cases is the same person as also the materials relied upon for making the impugned additions.

9.2 The Id.AR has strongly relied upon the decision of hon'ble Bombay High Court in the case of **Sejal Jewellery(supra)** wherein it held that the use of the non-obstante clause contained in the provisions u/s. 153C of the Act makes it clear that the legislative intent was for AO to proceed only under section 153C upon receipt of material seized or requisitioned. Hon'ble High Court relied on the judgement of Rajasthan High Court in the case of **Shyam Sunder Khandelwal 2024 (4) TMI 196- Rajasthan High Court** and concurred with the view taken by it. Further, hon'ble High Court has also relied on judgement of hon'ble Karnataka High Court in case of **Sri Dinakara Suvarna us DCIT (2022) 143 taxmann.com 362 (Kar)**.For ready reference, we quote [section 153C](#) as under:-

" 153C. [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](#)."

9.3 This section begins with non-obstante clause and therefore, has an overriding effect on sections 147 and 148 of the Act. As per the scheme and object of section 153C r.w.s 153A, the AO has no discretion or choice to invoke the provisions of section 147/148 instead of section 153C r.w.s. 153A of the Act. Once the case of reassessment is made out by the AO which falls in the preview of specific provisions of section 153C of the Act, the AO cannot resort to invoke the provisions of section 147/148 of the Act to assess or reassess income of the assessee. The action of the AO to initiate the proceedings under section 147/148 of the Act vitiates the entire reassessment proceedings and the assessment order. Once, the AO is satisfied that the documents seized belong to the persons other than the searched person, the AO shall proceed against such other persons and issued notice u/s 153C of the Act and assessee or reassess income of such other persons in accordance with the provisions of section 153A of the Act. Therefore, it is mandatory for the AO to proceed u/s 153C if he is satisfied that the seized material reveals the income of such other persons to be assessed or reassessed.

9.4 In the case of **Sejal Jewellery and Anr vs Union of India (supra)**, the hon'ble Court has duly examined the provisions of section 147 and 153A/153C of the Act in a search and seizure related case. Relevant portions of the order are reproduced as below:

“16. On a plain reading of Section 153A, it is clear that it begins with a ' non-obstante' clause, when it provides that 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 31st May, 2003 but on or before 31 March, 2021, the Assessing Officer shall have jurisdiction to issue notice to such person to furnish the return of income as specified in the

notice or assess or reassess the total income as provided by the provision. [Section 153C](#) also begins with a non-obstante clause, when it provides that notwithstanding anything contained in [Section 139](#), [Section 147](#), [Section 148](#), [Section 149](#), [Section 151](#) and [Section 153](#), to provide that, in a situation which may fall under [Section 153C](#) insofar as assessment of income of any other person is concerned, the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other persons in accordance with the provisions of [Section 153A](#), **if he is satisfied that the books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such person for a period as specified in the said provision and after compliance of other provisions as mandated.** On the other hand, [Section 147](#) provides for "Income escaping assessment", can be invoked when any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year. In such situation, the Assessing Officer may subject to the provisions of [Sections 148 to 153](#), assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year and for which a prior notice under [Section 148](#) would be required to be issued. [Section 147](#) does not contemplate an eventuality which [Section 153A](#) or [Section 153C](#) contemplates, the basis of which is inter alia a search action under [Section 132](#) being resorted as noted hereinabove. Thus, both these provisions are quite compartmentalized although the deeming effect of both the provisions, may be the same. However, the situations in which such provisions operate are required to be invoked are completely different. This is clear from the bare reading of the provisions, hence would not warrant any elaborate discussion.

17. The purport and effect of these provisions had fell for consideration of the Supreme Court in [Abhisar Buildwell P. Ltd.](#) (supra), wherein the scope of assessment under [Section 153A](#) of the I.T. Act was considered. In this case, the Revenue's contention was to the effect that the Assessing Officer was competent to consider all the materials which were available on record, including the materials found during search so as to make an assessment of the total income. Some of the High Courts had accepted such propositions. However, the assessee had contended that there were also decisions of the High Courts to the effect that if assessment proceedings were not pending on the date of initiation of the search, the Assessing Officer needs to consider only the incriminating material found during the search, and was precluded from considering any other material derived from any other source. It is in such context, the Supreme Court considering the purport of the provisions of [Section 153A](#) of the I.T. Act, vis a vis its applicability qua the provisions of [Section 147](#), and the applicability of [Section 132](#), [132A](#) and notably the decision of the Delhi High Court in [Commissioner of Income Tax, Central-III vs. Kabul Chawla](#)⁶ inter alia held that the provisions of [Section 153A\(1\)](#) need to be mandatorily resorted once a search takes place. The Supreme Court held as under:

"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

38. 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 (2015) 61 taxmann.com 412 (Delhi) 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."

18. The Supreme Court held that it was in complete agreement with the view taken by the Delhi High Court in [Kabul Chawla](#) (supra) and of the Gujarat High Court in [Principal Commissioner of Income Tax-4 vs. Saumya Construction](#)⁷ taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

19. Insofar as the present proceedings are concerned, the following observations made by the Supreme Court in the context of [Section 147](#) and [148](#) of the I.T. Act need to be noted:

"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, (2016) 387 ITR 529 (Guj.) 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 147/148](#) of the Act, subject to fulfillment 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."

20. It is thus clear that in the event any incriminating material is found during the search, the Revenue necessarily would be required to take recourse to the provisions of [Section 153A](#) and in the event no incriminating material found during the search, then the power of the Revenue to have the reassessment under [Sections 147/148](#) of the I.T. Act stands saved, failing which, the Revenue would be left without remedy. It is on such observations the conclusions as rendered by the Supreme Court and which are relevant to the case in hand, are required to be noted, which reads thus:

"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."

21. The Rajasthan High Court in *Shyam Sunder Khandelwal s/o. Late Damodar Lal Khandelwal vs. Assistant Commissioner of Income Tax, Central Circle-2, Jaipur* (supra) also had taken a similar view when the issue which had arisen before the Court was in regard to the notice issued under [Section 148](#) of the I. T. Act, the basis of issuance of such notice was the material seized during search. The contention of the assessee was to the effect that in the said circumstances, the proceedings ought to have been initiated under [Section 153C](#) of the I.T. Act. The Division Bench referring to the decision of Supreme Court in *Abhisar Buildwell P. Ltd.* (supra) as also the decision of **Karnataka High Court in Sri Dinakara Swarna (supra)** allowed the petitions observing that the department had not set up a case, that for initiating proceedings under Civil Writ Petition No. 18363/2019 dated 19.03.2024, it had material other than the material seized during the search of a related party. The relevant observations of the Division Bench are required to be noted, which reads thus:

"23. The reasons supplied in case in hand for initiation of proceedings under [Section 147/148](#) are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of [Section 148](#) proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.

24. In the case where search or requisition is made, the AO under [Section 153A](#) mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.

25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under [Section 153C](#). The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of [Section 153A](#).

26. Special procedure is prescribed under [Section 153A to 153D](#) for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of [Section 153A to 153D](#) have prevalence over the regular provisions for assessment or reassessment under [Section 143 & 147/148](#).

27. [Section 153A and 153C](#) starts with non- obstante clause. The procedure for assessment/reassessment in [Section 153A, 153C](#) in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under [Sections 139, 147, 148, 149, 151 & 153](#).

28. The language of explanation 2 to new [Section 148](#) is akin to [Section 153A and Section 153C](#). Corollary being that after seizing of operational period of [Section 153A to 153D](#), the cases being dealt thereunder were circumscribed in the scope of newly substituted [Section 148](#)."

We are in complete agreement with the view taken by the Division Bench of Rajasthan High Court in the aforesaid decision.

22. Applying the principles of law as discussed hereinabove, we are of the clear opinion that the foundation of the present case was certainly a search action which was undertaken by the Revenue against one Shilpi Jewellers Pvt. Ltd. and in such search and seizure action, materials were seized and such materials were further explored and enquired. Such enquiry revealed significant information in regard to M/s. Green Valley Gems Pvt. Ltd., which according to the Revenue had provided accommodation entries to the petitioner, in which it was also revealed that Green Valley Gems Pvt. Ltd. was a shell company. We do not find that the record would indicate something which is not on the basis of such new materials gathered under the search and seizure action under [Section 132](#). If this be the case, then certainly the provisions of [Section 153C](#) read with [Section 153A](#) would be applicable, as held by the Supreme Court in *Abhisar Buildwell P. Ltd.* (supra) when the Court interpreted the effect and purport of [Section 153C and 153A](#), as also held by the Rajasthan High Court in *Shyam Sunder Khandelwal* (supra).

23. Insofar as Mr. Suresh Kumar's contention supporting the proceedings under [Section 147 and 148](#) of I.T. Act are concerned, for the aforesaid reasons, such contention would in fact go contrary to the intention of the legislature as depicted by the provisions of [Section 153A and 153C](#) of the I.T. Act. There would not be any difficulty in accepting the proposition as canvassed by Mr. Suresh Kumar, referring to the decision of the Supreme Court in *Phool Chand Bajrang Lal* (supra), however, the facts in the present case are distinct. There cannot be any doubt on the position in law when the Revenue intends to proceed purely on materials relevant for an action under [Section 148](#) read with [Section 147](#). **We have already observed that**

the provisions of Sections 147, 148 vis-a-vis Section 153A and Section 153 are quite compartmentalized. To avoid any overlapping of these provisions, the legislature in its wisdom has thought it appropriate to provide for an independent effect, to be given under Section 153A read with Section 153C by incorporating the "non-obstante" clause, in these provisions, which carves out an exception to any normal/regular action being resorted under Section 147.

24. In this view of the matter, we are of the clear opinion that the impugned notice under Section 147 of the I.T. Act and all actions consequent thereto are required to be held to be without jurisdiction and bad in law. The petition is accordingly allowed in terms of prayer clauses (a) and (b)."

9.5 We find that the *ratio decidendi* of the above decision squarely applies to the facts of the case under consideration before us. On perusal of the above provisions, it is clear that the provisions of section 153C of the Act were applicable, which supersede the applicability of provisions of section 147 and 148 of the Act. As we have already noted hereinabove that relevant information regarding undisclosed sales and statements were the outcome of the search under s. 132 of the Act, in our view only the provision in which any assessment could be made against the assessee in the Act was section 153C of the Act. Hence, notice issued under s. 148 of the Act and proceedings under section 147 of the Act by the AO are illegal and void *ab initio*. In the instant case, the procedure laid down under section 153C has not been followed by the AO and, therefore, assessment has become invalid. The AO initiated action u/s 147 incorrectly as the on the facts and the circumstances of the case in the presence of incriminating materials found in search action u/s 132 of the Act, only recourse available with him was section 153C of the Act.

9.6 It is worthwhile to mention here that the coordinate Bench of Mumbai ITAT in certain recent decisions have taken similar view in the light of the judgement in the case of Sejal Jewellery (supra) i.e. **Parshwa**

Investment, Mumbai in ITA No.1429/Mum/2025 dated 30 June, 2025
and **Ghanshaym R. Shah in ITA No. 4707/Mum/2024** dated 21.4.2025,
the later decision inter alia holding that,

“the legal issue is agitated before us whether the initiation of reassessment proceedings under [Section 147](#) of the Act, is not legally sustainable in the present case. The foundation of the reopening rests entirely on documents seized during the search and seizure operation conducted on a third party, namely the xxxxxxxxxx. As per the express scheme of the Act, where documents seized in a search pertain to or belong to a person other than the searched party, the appropriate and mandatory course of action is to proceed under [Section 153C](#) and not under [Section 147](#)..... However, if the pre-conditions of [Section 153C](#) were not met, the invocation of [Section 147](#) based solely on the same documents amounts to circumvention of the statutory safeguards embedded in [Section 153C](#). Allowing such a course of action would render [Section 153C](#) otiose, defeating the purpose of the special procedure laid down by the legislature.”

9.7 It may be relevant to mention here that in the judgement by hon'ble Delhi High Court on the same issue in the case of **Naveen Kumar Gupta 2024 (11) TMI 1071- Delhi High Court** did not concur with the view taken by Rajasthan High Court in the case of Shyam Sunder Khandelwal (Supra). Further, hon'ble Delhi High Court has also expressed disagreement with the view taken by hon'ble Karnataka High Court in case of VSL Mining 2024(9) TMI 1383- Karnataka High Court. However, it is a settled law that the jurisdictional High Court is binding on revenue authorities under its jurisdiction.

9.8 Respectfully following the jurisdictional High Court decision in the case of Sejal Jewellery and coordinate bench decisions (supra), we hold that the impugned notice under [section 147](#) of the Act and all actions consequent

thereto are without jurisdiction and bad in law and therefore, quash them allowing the additional ground of appeal.

10. Since the additional ground of appeal has already been allowed, rest of the grounds of appeal have become academic and do not need adjudication but are nevertheless, kept open.

11. In the result, **appeal of the assessee is allowed.**

12. ITA No. 3957/MUM/2025 (A.Y. 2018-19)

That the assessment order passed under Section 143(3) of the Income Tax Act, 1961 is bad in law, being without valid jurisdiction, barred by limitation, and passed in breach of mandatory provisions of the Act.

2. That the CIT(A) erred in law and on facts in upholding the assessment despite the fact that jurisdiction was illegally assumed by the Assessing Officer without granting the Appellant an opportunity of hearing as required under Section 127 of the Act.

3. That the Ld. CIT(A) erred in confirming the finding of the AO that the Appellant was engaged in providing accommodation entries, despite there being no independent investigation, corroborative material, or third-party confirmation on record to support such a conclusion.

*4. That the addition of **1,34,02,035/-** on account of alleged commission at 0.5% of turnover is wholly ad hoc and arbitrary, unsupported by any cogent reasoning, comparable case, or industry norm, and liable to be deleted.*

5. That the AO erred in invoking Section 145(3) to reject the books of accounts without pointing out any specific defect or material discrepancy, and the CIT(A) failed to appreciate that regular books supported by documents were duly maintained and produced.

6. That without prejudice, the AO erred in assessing the alleged commission under the head "Income from Other Sources" under Section 56 of the Act.

7. That the authorities below failed to appreciate that the Appellant is a KachchaArhtiya engaged in livestock commission business, where income arises only on commission and not from trade, and estimation on gross turnover is wholly misconceived.

8. That the AO failed to discharge the burden of proving that the Appellant's transactions were sham or accommodation in nature, particularly in the

absence of any rebuttal evidence, third-party enquiry, or material discrediting the Appellant's explanation.

9. That the CTT(A) failed to consider the practical and business realities of rural livestock trade, including non-availability of formal documentation from illiterate suppliers, and erred in not appreciating the evidence submitted in light of human probabilities.

10. That the initiation of penalty proceedings under Section 270A is unjustified and premature, as the additions are based on estimation without any conclusive finding of misreporting, and such initiation deserves to be quashed.

13. In the instant AY 2018-19, exactly identical addition was made wherein the books of accounts had been rejected, and the AO has resorted to profit estimation by adopting the rate of 0.5% of the total receipts. The quantum of addition was Rs. 1,34,02,05/- which was subsequently reduced to Rs. 1,28,36,665/- as relief of Rs. 5,65,370/- was given by CIT(A) on account of returned income.

14. The decision rendered in appeal for AY 2017-18 in para 9.8 above apply *mutatis mutandis* to the instant appeal which is, accordingly, allowed on the ground of additional ground only and the rest of the ground are left open.

15. In the result, **both the appeals in ITA No.3956 and 3957/Mum/2025 are allowed.**

Order pronounced in the open court on **15/06/2026.**

Sd/-

SAKTIJIT DEY

(उपाध्यक्ष/ VICE PRESIDENT)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य /ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 15.06.2026

Soumili Das / PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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