

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos. 1167, 2354/KOL/2025
(Assessment Years: 2018-19, 2019-20)**

**MAAN STEEL & POWER
LIMITED**
Maanheruka Building 58/1,
Bhawanipore S.O Kolkata
Kolkata-700025,west Bengal
Kolkata-700025
(Appellant)

Vs.

**DEPUTY COMMISSIONER OF
INCOME TAX, CENTRAL
CIRCLE-1(2), KOLKATA**
Aayakar Bhawan Poorva, 3rd
Floor, 110, Shantipally,
Kolkata-700107, West Bengal
(Respondent)

PAN No. AACCG1590N

**ITA Nos.1096, 2609/KOL/2025
(Assessment Years: 2018-19, 2019-20)**

**DEPUTY COMMISSIONER OF
INCOME TAX, CENTRAL
CIRCLE-1(2), KOLKATA**
Aayakar Bhawan Poorva, 3rd
Floor, 110, Shantipally,
Kolkata-700107, West Bengal
(Appellant)

Vs.

**MAAN STEEL & POWER
LIMITED**
Maanheruka Building 58/1,
Bhawanipore S.O Kolkata
Kolkata-700025,west bengal
Kolkata-700025
(Respondent)

Assessee by : S/Shri AK Tulsyan &
Robin Maheswari, ARs
Revenue by : Shri Md. Gayasuddin Ansari, DR

Date of hearing: 10.06.2026
Date of pronouncement: 25.06.2026

ORDER

Per Rajesh Kumar, AM:

These are the cross appeals preferred by the revenue and the assessee against the orders of the Commissioner of Income-tax

(Appeals), Kolkata-20(hereinafter referred to as the "Ld. CIT(A)") dated 12.03.2025, 26.08.2025 for the AYs 2018-19 2019-20.

2. At the outset, we observe from the appeal folder in ITA No. 2609/Kol/2025 A.Y. 2019-20 that there is a delay of 11 days in filing the appeal by the department in support of which a condonation petition was filed. It was stated in the condonation petition that the delay has occurred due to obtaining the administrative approval from the competent authorities, which took quite a long time and accordingly, the delay may be condoned. The Id. AR, on the other hand, did not oppose the condonation of delay. Considering the reasons cited before us, we are inclined to condone the delay and admit the appeal for hearing.

For A.Y. 2018-19

ITA No. 1167/KOL/2025

3. At the time of hearing, the Id. Counsel for the assessee brought to our notice the petition filed before the Bench, dated 8thSeptember, 2025, raising additional ground, which is extracted below:-

"That A.O was wrong in initiating reassessment proceedings based on the seized document seized from the third party (Majee Group) in course of search & seizure action u/s 132 on 05.11.2020. That the assessment of appellant was completed u/s 153A/143(3) of the Income Tax Act, 1961 for assessment year under appeal. That in case the documents found and seized in search and seizure action against Majee Group if it belong to the appellant as alleged by the AO then 153C proceedings should have been initiated based on search and seizure action dated 05.11.2020 against Majee Group. As per amended Section 149(1) 2nd Proviso (As amended by Finance Act 2021), where 153A or 153C applies, section 148 will not apply to the search case u/s 132 on or before 31st March 2021. Reassessment proceedings u/s 148 cannot be made in this case on basis of alleged seized documents, seized in third party search i.e. Majee group whose search took place on 05.11.2020, hence 148 proceedings is itself bad in law & needs to be quashed."

3.1. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised the above additional

ground of appeal challenging the jurisdiction of the AO to make addition. In our opinion the issued raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

4. The Learned AR vehemently submitted before us that the impugned assessment year involved is 2018-19, which has been reopened under Section 147 of the Act, under the new regime by following the procedure laid down in the Act and finally, notice under Section 148 of the Income-tax Act, 1961 (the Act), was issued on 31st March, 2022.
5. The assessee filed the return of income on 21st April, 2022, declaring total income at ₹6,65,36,720/-. The said reopening was made by the AO on the basis of search and seizure operation conducted on Majhi Group and others by the Investigation Wing on 5-11-2020, consequent to detection of coal scam in respect of illegal mining of coal by the authorities. It was noted by the AO that it was found during the course of above search that assessee is involved in coal

purchases from the said party. Thus, based on the search operation conducted on the Majhi Group and others, information was received by ITO through Insight Portal *inter-alia* that assessee is engaged in purchase of illegal excavated coal in cash to the tune of ₹13,62,19,119/- from Anoop Majhi Group. Thereafter, notice under Section 143(2) and 142(1) of the Act along with questionnaire were issued to the assessee to furnish the details of transactions with the Majhi Group along with supporting documentary evidences. The assessee furnished the details of entire purchases made during the year along with necessary evidences before the AO. The assessee denied to have entered into any purchase transactions of coal with Anup Majhi Group during financial year under consideration. Thereafter, the Ld. AO issued show cause notice on 18-03-2022 to the assessee referring to the substantial evidences and evidences in possession of the AO suggesting that the assessee actually made huge cash purchases of coal to the tune of ₹13,62,19,119/- from the said Majhi Group. The AO also referred to the material found during the course of search and seizure operation on Majhi Group and noted that entries were found recorded in the incrementing documents and also after due deliberation of such facts and figures, the AO noted that the list compiled by the Investigation Wing suggested that the assessee had made purchases of the above amount from the Majhi Group. The learned AO also extracted the details of coal transported and sold to Mann Steel in Para 7.7 and thereafter AO in Para 7.14 noted that the total revenue from operation of the assessee during the year under consideration was ₹241,24,88,855/- which includes sale of traded goods amounting to ₹9,08,98,884 and sale of raw material to the tune of ₹7,70,56,007. The AO accordingly determined

the revenue generated from manufacturing activities at ₹224,45,33,964/- after reducing the sale of raw material as noted above and compared the same with the total quantity of consumption of coal for production of sponge iron and billets of 49,813 metric ton of coal. The assessee has generated the revenue from sale of sponge iron and billets of ₹224,45,33,964/-. The Ld. the AO then calculated the coal purchased from Anoop Majhi Group at ₹26,67,713 metric ton, which according to the AO was not accounted for in the books of accounts and on the same methodology, the AO computed the revenue generated from the consumption of 26677.13 metric ton of coal at ₹128,15,99,562/- $(224,45,33,964 \times 2,66,77,13 / 49,813)$. Thereafter, the Ld. AO applied the GP rate as disclosed by the assessee in the manufacturing activity at 6.43% and applied the same to the aforesaid suppressed revenue and estimated the income at ₹7,72,62,851 and added the same to the income of the assessee in the assessment framed under section 147 dated 30-03-2023.

6. In the appellate proceeding, the Learned CIT (A) partly allowed the appeal of the assessee by directing the AO to apply a GP rate of 6% and thereby reducing the addition to ₹40,86,00,572/- and the remaining was deleted.
7. Now the Id. Counsel for the assessee vehemently submitted before us since, the re-opening of assessment has been made on the assessee by issue of notice under section 148 on 31-03-2022 on the basis of material found during the course of search on the MAJI group and others, by the Investigation Wing on 05-11-2020, the, the re-opening of assessment as made under section 147 of the Act is

invalid and bad in law. The Id. AR submitted that in this case the re-opening of assessment cannot be made under the new regime applicable post 01-4-2021, as the basis for re-opening is the search on the Majhi Group and others on 05-11-2020. Therefore, in terms of second provision to section 149(1) of the Act, the assessment is to be framed under section 153C of the Act, which is exclusive code for assessing the income in case of search prior to 1.4.2021. The Ld. AR therefore prayed that the reopening of assessment under section 147 read with section 148 of the Act is bad in law, and so is the consequent assessment framed under section 147 of the Act, dated 30-03-2023. In defense of this argument the Learned Year relied on series of decisions, as under:-

- i. DCIT Vs. Nawal Kumar Kanodia in ITA No. 1952/KOL/2025 vide order dated 06.03.2026.
- ii. DCIT Vs. Ajay Jalan, in ITA No. 2521/KOL/2025 vide order dated 21.04.2026.
- iii. DCIT Vs. Suresh Kumar Banthia, in ITA No. 1894/KOL/2025 vide order dated 13.01.2026.
- iv. ACIT Vs. Gopal Prasad Gupta reported in (2026) 183 taxmann.com 384 (SC).
- v. Shyam Sunder Khandelwal Vs. ACIT reported in (2024) 161 taxmann.com 255 (Rajasthan), against which the SLP filed by the Revenue is dismissed by the Hon'ble Court.
- vi. DCIT Vs. Sri Dinakara Suvarna (2023) 151 taxmann.com 489 (SC).

- vii. Tirupati Construction Company Vs. ITO (2024) 465 ITR 611 (Rajasthan) dated 21.03.2024.
 - viii. Sejal Jewellery Vs. Union of India (2025) 171 taxmann.com 846 (Bombay)
8. The learned AR submitted that in all the above decisions it has been clearly held that in case of search on the third party if any material/documents seized suggesting that income of the assessee has escaped assessment, then the assessment has to be made under section 153C of the Act. The Ld. AR also prayed that prior to 1.4.2021, if any search conducted then the proceeding has to be undertaken under section 153C of the Act or 153A of the Act and not under section 148 of the Act. The learned AR therefore prayed that re-opening of assessment may kindly be quashed.
 9. The learned DR on the other hand, relied on the order of the authorities below by submitting that since, re-opening was made under the new regime, post to 01.4.2021, after following the procedure laid down under section 148A of the Act, the legal issue raised by the assessee is devoid of any merit and may kindly be dismissed.
 10. After hearing the rival contributions and perusing the materials available on record, we find that undisputedly the facts are that the case of the assessee was re-opened by issuing notice under section 148 of the Act on 31.03.2022. It is also disputed that trigger point was the information/documents found and seized during the course of search and seizure action on Majhi Group and others, by the investigation wing on 5.11.2020, in which it was found that assessee

has indulged in purchasing of coal in cash from the Majhi Group. Therefore, we find merit in the contention of the assessee that proceeding should have been initiated under section 153C of the Act and not under section 147 of the Act. We have perused the provisions of section 149(1) of the Act and second proviso thereto and are of the considered view that in terms of the proviso, the assessment has to be framed under section 153C of the Act. For the sake of ready reference, provisions of section 149(1) of the Act and second proviso is extracted below:-

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

- (a) if three years and three months have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) if three years and three months, but not more than five years and three months, 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 related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, 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 ²⁸[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:

10.1. Therefore, the re-opening of assessment under section 147 read with section 148 of the Act as well as the consequent assessment framed under section 147 are nullity and bad in law and cannot be sustained. The case of the assessee find support from the following decision of the co-ordinate Bench in case of DCIT Vs. Nawal

Kumar Kanodia in ITA No. 1952/KOL/2025 vide order dated 06.03.2026, wherein it has held as under:-

"5. After hearing the rival contention and perusing the material available on record, we find that incriminating material on the basis of which proceeding u/s 147/148 of the Act were initiated apparently on the basis of said incriminating material found and seized during the course of search on Kasera and Sanwaria Group on 30.11.2018. Therefore proceeding have been initiated to assess the escaped income u/s 153C of the Act which is the special provisions provided under the Act as it overrides the other provisions of the Act. Therefore, the Ld. CIT(A) has rightly annulled the assessment framed by the AO. The case of the assessee is squarely covered by the decision as discussed by the Ld. CIT(A) in the appellate order. Beside the case is squarely covered by decision in the case of Shyam Sunder Khandelwal Vs. ACIT (supra) which was duly approved by the Hon'ble Apex Court in the case of ACIT Vs. Promod Jain (2025) 163 taxman.com 762 (SC). Thus we do not find any infirmity in the appellate order which a very reasoned and speaking order. We are inclined to uphold the order of CIT(A) and dismissed the appeal of the revenue. The appeal of the revenue is dismissed6. Upon hearing the submission of the counsel of the respective parties and on perusal of the impugned order, we find that Assessing Officers in the assessment order has stated that information".

10.2. Further, in case of DCIT Vs. Ajay Jalan, in ITA No. 2521/KOL/2025 vide order dated 21.04.2026, the coordinate bench held the issue as under:-

"6. Upon hearing the submission of the counsel of the respective parties and on perusal of the impugned order, we find that Assessing Officers in the assessment order has stated that information in the case of assessee was received on insight portals stating that as per ceased materials found in search at the premises of Kasera Group, the assessee Shri Ajay Jalan has given cash loan amount to Rs. 3,50,00,000/- through the finance broker Kasera and has earned interest income on the said loan. The Assessee in his submission has clearly stated that other than search U/s 132(1) on 30.11.2018 at the premises of Kasera, search U/s 132(1) was also conducted at the premises of assessee Shri Ajay Jalan and its other group concern on 07.12.2020. Consequent to the search on the assessee, the case of the assessee for the assessment year 2019-20, was assessed u/s 153(A)/143(3) on 28.03.2022. It is pertinent to mention here that search in the case of finance brokers Kasera was conducted on 30.11.2018 much prior to the assessment order passed U/s 153(A)/143(3) dated 28.03.2022 and the AO was in possession of the alleged incriminating material relating to cash loan and the same was not considered for making addition in the case of the Assessee. So, the further reopening of the assessment in some information by issuing notices u/s 148 on 06.04.2023 as nothing but change in the opinion of the AO. It is further important to mention here that addition made of cash loan of Rs. 6,65,00,000 and Rs. 5,95,00,000 u/s 69A based on the same information in the assessment year 2016-17 and 2017-18 had been deleted

by the CIT(A). It is important to mention here that in case of search at the premises of a person if certain incriminating documents relating or belonging to an assessee is found and ceased the Section to open the case of the assessee is Section 153C of the Act. It is further important to mention here that during the assessment proceeding by filing an affidavit assessee has submitted that he does not know any person by the name of any person Sri. Prabhat Kumar Kasera.

7. On perusal of the impugned order and finding of the CIT(A), we find that CIT(A) has discussed the legality of the issuance of the notices u/s 147, discussed the case of the assessee on merit and thereafter allow the appeal of the assessee on legal ground as well as on merit also. We do not find any infirmity in the impugned order."

10.3. In case of DCIT Vs. Suresh Kumar Banthia, in ITA No. 1894/KOL/2025 vide order dated 13.01.2026, the coordinate bench held as under:-

"3.4. After hearing the rival contentions and perusing the materials available on record, we find that a search action u/s 132 of the Act was conducted on finance brokers Kasera and Sanweria on 30.11.2018. We note that during the course of said search, certain documents/ papers were impounded and seized. The statements of the finance brokers were also recorded u/s 132(4) of the Act with regard to the modus operandi of arranging loans. We note from the said statements that though the brokers admitted to have engaged in the business of arranging cash loans but the none of the brokers in the statements named the assessee as loan provider or loan receiver nor the documents seized during the course of search contained the name of the assessee. We note that the assessee was surveyed u/s 133A of the Act on 19.02.2020, along with group concerns Citizen Umbrella Mfg Co. Ltd. and during the course of search, the some documents marked as SKB/1 and 2 of the assessee and CUML/1 and 2 of Citizen Umbrella Mfg. Co. Ltd. were impounded. The statement u/s 133A of the Act was recorded on 20.02.2020, wherein the assessee admitted to have given some initial loan of ₹1.60 crores during the financial year 2016-17, which was only rotated periodically. However, the assessee made disclosure by ₹50 crores during the course of survey in the statement recorded on 20.02.2020. We note that the said surrender/ disclosure was withdrawn on 24.02.2020, within three days by filing an affidavit before ADIT and therefore, statements were retracted. The case of the assessee was reopened on 26.03.2021, after recording the reasons to believe which stated that during the course of search operation on finance brokers Sanwaria and Kasera group on 31.11.2018, certain incriminating material/ documents were seized pertaining to the assessee group in which the assessee Suresh Kumar Bathia alias Jain is main person of Citizen Group and abbreviated as SK Jan/ Citizen. The Id. AO further noted that thereafter a survey was carried out on the assessee. The Id. AO also noted that there was a low profitability vis a vis the high turnover and high cash loan transactions and thus, the Id. AO noted that the assessee Shri Suresh Kumar Banthia was involved in unaccounted cash transactions. The Id. AO bifurcated the year wise loan transactions and for the year under consideration the Id. AO computed the loan transactions at 36.65 crores by relying on the statement of Shri Pravin

Kumar Kasera and concluded that the same was accepted by the assessee in the statement recorded on 20.02.2020 that he used to lend cash through Praveen Kasera.

3.5. We have perused the rival contention material before us as well as the appellate order and find that the source of incriminating material/ documents on the basis of which the assessment was reopened was the documents seized during the course of search and the finance brokers Kasera and Sanwaria on 30.11.2018. Therefore, the proceedings u/s 153C of the Act should have been initiated as there exists separate code for assessing such incomes which starts with non-abstane clause overriding the other provisions of the Act. Therefore, the Id. CIT (A) has correctly passed the order that the proceedings u/s 147 of the Act as well as the consequent assessment proceedings were invalid and void ab initio. The same have been initiated under the wrong provisions of the Act. We note that the Id. CIT (A) while passing the order relied on several decisions as extracted above. Therefore, we do not find any occasion to interfere with the said appellate order which is very reasoned and speaking order. Consequently, we uphold the order of Id. CIT (A) on this issue by dismissing the ground no.1 of Revenue's appeal."

10.4. In case of Shyam Sunder Khandelwal Vs. ACIT reported in (2024) 161 taxmann.com 255 (Rajasthan), the Hon'ble' High Court has held that in case of third party search, the assessment has to be framed u/s 153C of the Act. The SLP filed by the Revenue against the said decision is dismissed by the Hon'ble Apex Court. The operative part of the decision of the Hon'ble'High Court read as under:-

"30. *The argument that by enactment of section 153A to 153D has not eclipsed section 148 does not enhance the case of respondent to initiate the proceedings under section 148. On fulfillment of two conditions for invoking section 153C the proceeding in accordance with section 153A are to be initiated. The operating field of and section 153A to 153D and section 148 are different. Applicability of section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.*

31. *The other aspect of the matter is that under section 153A and 153C, 'the total income' is to be assessed. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources.*

For Illustration:- An assessee had returned income of Rs.100, undisclosed income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs.150/-.

The AO under section 153A and 153C shall pass order dealing with income of Rs.100+Rs.200+Rs.150, the total income being Rs.450/-. In cases where there is no unearthing of undisclosed income of Rs.200/-, the department can resort to proceeding under section 147/148.

32. The argument that section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under section 153C, the AO has to proceed in accordance with section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassessee the 'total income'. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relating to the person other than on whom search was conducted, section 153C is to be resorted to.

33. Before concluding, it would be fair to deal with the case law cited by both the parties.

34. Reliance of respondents on decision of M/s. M.R. Shah Logistics Pvt. Limited (*supra*) is of no avail. The issue of interplay of provisions of section 147/148 vis-a-vis section 153C in the case of seized material relating or belonging to the person other than on whom the search was conducted or requisition made was not the issue before the Supreme Court.

35. The Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)* while dealing with the provisions of section 153A held that in case of absence of incriminating material seized during the search, the department is not remediless for reassessing the unabated assessment on the basis of material received from the other sources and can proceed under section 148. The decision does not support the contentions raised that section 148 is rendered redundant if section 153C is to be resorted to in the facts of the present case.

36. The Single Bench of this Court in the case of *Vijay Kumar Mehta (supra)* held that if the Department has chosen not to proceed under section 153C, no right is created to the petitioner for getting the notice under section 148 quashed. Moreover, learned Single Judge was not having the benefit of the decision of the Supreme Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)*. The appeal against the order was dismissed having rendered infructuous in view of the subsequent developments that the assessment order was passed.

37. The decision of the Madras High Court in the case of *Saloni Prakash Kumar (supra)* is of no help to the respondents. The High Court held that section 153C does not preclude issuance of notice under section 148. The field of applicability of two sections was not the issue before the Court.

38. The petitioner relied upon the decision of the Karnataka High Court in the case of *Sri Dinakara Suvarna (supra)*. It would be relevant to quote Para-10:

10. Admittedly no proceedings were initiated under section 153C of the Act. Thus, there is patent non-application of mind. It is relevant to note that the author of the diary Smt. Soumya Shetty had passed away prior to the date of search. It was argued on behalf of the Revenue that Shri. Ashok Kumar Chowta had offered tax on lump-sum income.

39. Further reliance was placed upon the decision of the Bombay High Court in the case of *M/s. Aditi Constructions (supra)*. The para-9 is quoted:-

"9. We find that the jurisdictional conditions for invoking section 147-148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11th September 2015 (Exhibit H) the Petitioner have submitted all the particulars along with supporting documents to the Respondent No.1. Hence the reasons to believe and a presumption based on the statement of Shri Bhanwarlal Jain (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover, the specific provisions of S. 153C would prevail over the general provisions of section 147 in the case of search on 3rd party."

40. In view of above discussion the notices issued under section 148 and the impugned orders are quashed. However, the respondents shall be at liberty to proceed against the petitioners in accordance with law."

10.5. The case of the assessee is also squarely covered by the decision of Hon'ble Karnataka High Court in the case *Sri Dinakara Suvarna Vs. DCIT (2023) 454 ITR 21 (Karnataka)*, wherein the Hon'ble Court has held that where the AO on the basis of search conducted at the premises of third party reopened the assessment of the assessee and if no proceedings were initiated u/s 153C of the Income-tax Act, 1961 (the Act) then same is not sustainable. The SLP filed by the Revenue against the above decision has been dismissed by the Hon'ble Supreme Court in the following case.

10.6. In case of *DCIT Vs. Sri Dinakara Suvarna (2023) 151 taxmann.com 489 (SC)*, the operative part read as under:-

"2. This Court is of the opinion that the order impugned does not call for interference. The Special Leave Petition is, accordingly, dismissed."

10.7. In case of Tirupati Construction Company Vs. ITO (2024) 465 ITR 611 (Rajasthan) dated 21.03.2024, the Hon'ble' Court held as under:-

"14. In view of above, it is clear that the entire basis for reopening the assessment is nothing but the material and information collected during search conducted in the premises of another assessee. Collection of details relating to search would not mean collection of new incriminating material and information, independent of the incriminating material and information collected during search proceedings.

15. Learned counsel for the petitioner is correct in submitting that in fact, search was carried out in the year 2016 and the respondents had the authority to reopen the assessment by invoking the powers under section 153C of the Act of 1961 and draw reassessment proceedings under section 153A of the Act of 1961. That was not done within the period of limitation prescribed under section 153B of the Act of 1961. The respondent-authority was fully aware of the fact that proceedings under section 153C of the Act of 1961 would be barred by limitation, therefore, recourse was taken to the provisions contained in Section 148 and Section 148A of the Act of 1961 which has no application in the present cases.

16. Learned counsel for the revenue does not dispute the legal position that where the basis for reassessment is incriminating material and information collected during search, the only legally permissible course of action is the one provided under section 153C of the Act of 1961 and not under section 148 of the Act of 1961. Admittedly, present are not the cases where search was carried out after 1-4-2021, i.e., after coming into force the Finance Act, 2021. Present are the cases of search of prior period.

17. In view of above considerations, impugned orders passed on 27-7-2022 in both the cases cannot be sustained in law and the same are, accordingly, quashed and set aside."

10.8. In case of Sejal Jewellery Vs. Union of India (2025) 171 taxmann.com 846 (Bombay), the operative part read as under:-

"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).*

25. *Learned counsel for the parties are ad idem that the aforesaid observations would cover the other companion matters, which also stand allowed in terms of our aforesaid reasoning and the operative order passed in Writ Petition No. 3057 of 2019. The said petitions hence stand allowed in terms of prayer clauses (a) and (b) of each of these petitions.*

26. *Rule is made absolute in the aforesaid terms. No costs."*

10.9. The facts and the of the instant case before us are materially same vis-a-vis the facts of the decisions as discussed above, therefore respectively following the ratio laid , the re-opening of assessment as well as the consequent assessment framed are quashed as the same are in consonance with second proviso to section 149(1) of the Act. The additional ground raised by the assessee is allowed.

11. Even on merit the assessee has a very strong case. We note that the additions have been made by the AO on the basis of document

/material seized from the third-party search without any corroboration. We note that the documents were not confronted to the assessee and statement relied by the AO were not provided to the assessee nor any opportunity of cross examination of the person whose statement was relied by the AO to make the addition was allowed to the assessee. The assessee is squarely covered by the decisions of the coordinate Bench wherein the identical issue of coal purchase from Manjhi group in cash were made .The decisions of the coordinate Bench in case of M/s Shakambhari Ispat & Power Limited Vs. DCIT in ITA Nos. 931, 1194,1195,1196,1197,1198/KOL/2025, 1436,1515,1541,1591,1560,1561/KOL/2025 vide order dated 02.01.2026, wherein it has held asunder:-

"15. After hearing the rival contentions of the parties and perusing the material available on record, we find that the basis of the addition made by the Assessing Officer was the documents seized as SMVD-01 to SMVD-18 from the Majee Group during the course of search on the Majee Group on 05.11.2020 which revealed the cash payments made by the assessee to Majee Group. The Assessing Officer calculated the quantity of coal purchases at 13919.25 MT from Majee Group and after applying estimated rate of coal @Rs. 4000/- per MT computed the unexplained purchases at Rs.5,56,77,000/-. The Assessing Officer also noted that the assessee has repaid certain cash loans amounting to Rs.3,50,00,000/-. The AO aggregated both these amounts to Rs.9,06,77,000/- and noted that this may be the unrecorded purchases. However he further noted that since the cash payments revealed on the basis of seized materials were on higher side, therefore he took higher of the two amounts, and, accordingly added Rs.29,93,22,967/- u/s.69C of the Act as unreported purchases in the books of accounts. We note that Ld.CIT(A) partly allowed the appeal by directing the Assessing Officer to apply GP rate @8.01% on the said estimated purchases. Now the assessee filed appeal before the tribunal challenging the application of 8.01% of the GP on the alleged bogus purchases whereas the revenue has challenged the order of the Id. CIT(A) allowing part relief to the assessee. We note that in this case the assessee has been denying the transactions right from the search days till the appellate proceedings before the Id.CIT(A) that it had not made any purchases from Majee Group. We note that the assessee also requested the Assessing Officer to provide the alleged documents/evidences/information, which were found during the course of search on the Majee Group and others. The Assessing Officer has hopelessly failed to confront the assessee with the same. We also note that the observations of the Assessing Officer is based on the documents seized in the course of search which was never confronted to the assessee and the assessee has been denying any transactions with the Majee Group and also with the transporter who was alleged to

have transported the material to the assessee premises. We note that AO calculated the estimated purchase quantity of coal at 13919 MT and the unexplained purchases were calculated at Rs.5,56,77,000/- by applying average rate of Rs.4000/- per MT to the quantity delivered to the assessee of 13919.25, which is again based on presumption and surmises whereas the actual purchase cost of coal varies from Rs.2,500/MT to Rs.17,000/MT depending upon the Carbon Content, Ash content and various other factors. Therefore, the very basis of the Assessing Officer that the assessee has made bogus purchases has no legs to stand. Moreover we find that the coal manufacturing requirement of the plant are within the acceptable norms and parameters as has been prescribed by the government in the manufacturing process of steel. Even if we assume that there has been purchase of coal from the Majee Group, then the same might have used for manufacturing plant but no evidence to that effect was brought on records. We note that as the accounts of the assessee have not been disturbed and the manufacturing calculation of the assessee as disclosed in the audit report had not been disturbed and doubted by the Id. AO. Obviously, it cannot be assumed that the assessee has made any unaccounted purchases from the Majee Group. Further, for the purposes of making any addition u/s 69C of the Act something should have been found to show that the assessee had incurred unaccounted expenditure by way of purchase of coal from Majee group. In the present case, what has been found is certain bills/ receipts in the search of the Majee Group. The assessee has categorically denied such coal purchases from the Majee group. The concerned person of Majhi Group was not examined by the AO nor the assessee was given cross-examination of the said person. We also note that the AO has also not conducted any enquiry on the basis of bills and documents found during search on Majee group. The so-called bills and documents found in the course of search on Majee group are not supported with other corroborating evidences. These documents which have been found in the hands of the Majee Group are only documents having no initials. It also does not contain the clear name of the assessee. This being so, we are compelled to hold that the so-called sales which has been done by Majee Group in the name of the assessee do not belong to assessee. Effect of the addition as made by the Id. AO would mean that such unaccounted purchases of coal have resulted in unaccounted manufacturing of steel. For this, there is no evidence the raw material for the manufacture of the steel. This would again result in unaccounted manufacture of steel and there were no evidences of any such manufacture much less unaccounted sale of such unaccounted manufacture iron and steel. The further result of this addition is that the stock statement of the assessee in regard to so called unaccounted purchases of coal would have to be adjusted thereby distorting the entire manufacturing cost structure of the assessee. None of this have been found much less alleged. Obviously, such addition cannot be made. Insofar as the coal purchase from Majee group is concerned, the assessee has categorically denied the transactions by stating that it has never made purchases from Majee Group either earlier or later nor during the year. The person who is taken the assessee's name has also not been put to assessee for cross-examination. In these circumstances, the addition made by the Id. AO and the estimation as made by the Id. CIT (A) cannot be sustained and would stand deleted. We further note that the statements recorded during the course of search of Shri Anup Majee and materials gathered during search on such third party, which was relied by the Id. AO without confronting the same to the assessee or allowing any cross examination which is in violation of principle of natural justice as has been held in the

case of *Andaman Timber Industries Vs. CIT (2015) 10 TMI 442 (SC)&PCIT vs. Sreeleathers [2022] 143 taxmann.com 435 (Calcutta)/[2022] 448 ITR 332 (Calcutta)[14-07-2022]*.

16. We have also perused the provisions of Section 142(2) and 142(3) of the Act and find that Section 142(2) of the Act deals with the obtaining full information in respect of income or loss of any person qua which the Id. AO wants enquire into as he considered necessary whereas the provisions of Section 142(3) of the Act provides that unless the assessment is made u/s 144 of the Act, the assessee has to be given an opportunity of hearing in respect of any material gathered on the basis of enquiry u/s 142(2) of the Act or any audit under sub section 2A of the Act, which are proposed to be relied for the purpose of assessment. However, in the present case, we note that the material gathered by the Id. AO during the course of enquiry were never confronted to the assessee thereby violating the mandate of provisions of Section 142(2) and 142(3) of the Act as the information gathered at the back of the assessee was used in framing the assessment against the assessee without providing any opportunity to the assessee. The case of the assessee find support from the decision of the co-ordinate Bench in case of *M/s SPML Infra Ltd. Vs DCIT ITA No. 1228/KOL/2018*, vide order dated 17.01.2020, wherein it has been held as under:-

"14. To conclude: We note that none of the statements were recorded by the assessing officer of the assessee company, and no opportunity for cross examination has been provided to the assessee company. The mandate of law to conduct enquiry by the Assessing Officer on due information coming to him to verify authenticity of information was not done as per section 142 of the Act. Therefore, mere receipt of unsubstantiated statement recorded by some other officer in some other proceedings more particularly having no bearing on the transaction with the assessee does not create any material evidence against the assessee. This is because section 142(2) mandates any such material adverse to the facts of assessee collected by AO u/s 142(1) has to be necessarily put to the assessee u/s 142(3) before utilizing the same for assessment so as to constitute as reliable material evidence through the process of assessment u/s 143(3) of the Act."

16. Similarly, in the case of *ACIT Vs. Sur Buildcon Pvt. Ltd. ITA No. 6174/DEL/2013*, vide order dated 15.07.2021 has held as under:-

"7.11 Applying the law to the case at hand, it is evident that the Inspector Reports, that had been relied upon by the A.O., have been reproduced in length for the first time in the Assessment Orders only. The A.O., by failing to confront the assessee with the evidence he had gathered u/s 142(2) Act, has, therefore, erroneously skipped the mandatory intermediary step prescribed u/s 142(3) of the Act. Thus, when the A.O. has directly gone on to pass the Assessment Orders u/s 147/143(3) of the Act to make the impugned additions u/s 68, the same is in direct violation of the procedure of enquiry prescribed in the Statute that inherently encompasses the Principle (s) of Natural Justice. We derive support to our line of reasoning from the decision of the coordinate Bench of

the Hon'ble Kolkata Tribunal in M/s. SPML Infra Ltd. vs. DCIT, ITA No. 1228/Kol/2018 wherein it has been held as under:

.....

It was further held that,

7.14 Since the results of the enquiries conducted by the A.O. u/s 142(2) of the Act have not been confronted to the assessee, we are inclined to agree with the Ld. A.R. that there has been a violation of the Principle(s) of Natural Justice implied within Section 142 (2) of the Act and such statutory non-compliance vitiates the entire assessment proceedings, therefore, rendering it to be null and void. Thus, the Cross Objection taken on the violation of the Principle(s) of Natural Justice is also allowed in favour of the assessee.

17. Similarly, PCIT Vs. Best Infrastructure (India) Pvt. Ltd. (2017) 397 ITR 0082 (Delhi) and others. It was held that statement recorded u/s 132(4) of the Act do not by these constitute incriminating material and copy of the statement together that opportunity to cross-examine the deponent has to be provided to the assessee. The Hon'ble court held that if the statement is retracted or if cross examination is not provided the statement has to be discarded, wherein it is held as under:-

"Statements recorded u/s 132 (4) do not by themselves constitute incriminating material. A copy of the statement together with the opportunity to cross-examine the deponent has to be provided to the assessee. If the statement is retracted and/or if cross-examination is not provided, the statement has to be discarded. The onus of ensuring the presence of the deponent cannot be shifted to the assessee. The onus is on the Revenue to ensure his presence"

18. Therefore, the addition made on the said materials/statement and without cross-examination is not sustainable in the eyes of law. Consequently, we set aside the order of Id. CIT(A) on this issue and direct the AO to delete the addition. The ground no. 6 to 12 are allowed."

12. Therefore, we set aside the order of Ld. CIT (A) on merit as well and direct the AO to delete the additions. The appeal of the assessee is allowed on merit also.

For A.Y. 2019-20

ITA No. 2354/KOL/2025

13. The issue raised in this appeal is similar to one as decided by us in ITA No. 1167/KOL/2025. Accordingly, our decision would, mutatis

mutandis, apply to this appeal of assessee in ITA No. 2354/KOL/2025. Hence, the appeal of assessee is allowed.

For A.Ys. 2018-19 & 2019-20

ITA Nos. 1096 & 2609/KOL/2025

14. In view of our decisions of assessee's appeals, the cross appeals filed by the Revenue become infructuous and are accordingly dismissed.
15. In the result, the appeals of the assessee are allowed and that of the Revenue are dismissed.

Order pronounced in the open court on 25.06.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 25.06.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Asst. Registrar
Income Tax Appellate Tribunal, Kolkata