* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th NOVEMBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC011589192018**

\+ **ITA 740/2018**

PARAG DALMIA .....Appellant

Through: Mr. Satyen Sethi, Mr. Arta Trana Panda, Ms. Gargi Sethee, Advocates

versus

COMMISSIONER OF INCOME TAX.CIRCLE-1 & ANR.

.....Respondent

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain, JSC, Mr. Udit Dad and Mr. Ujjwal Jain, Advocates.

\# **CNR No. DLHC011049822024**

\+ **ITA 22/2025**

PARAG DALMIA .....Appellant

Through: Mr. Satyen Sethi, Mr. Arta Trana Panda, Ms. Gargi Sethee, Advocates

versus

DY. COMMISSIONER OF INCOME TAX. & ANR.

.....Respondent

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain, JSC, Mr. Udit Dad and Mr. Ujjwal Jain,

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Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. By this Judgment, both the Appeals filed by the Assessee are being disposed of.

2. The Assessee has chosen to approach this Court challenging the Orders dated 26.02.2018 and 30.08.2024 passed by the Income Tax Appellate Tribunal ("ITAT") in ITA No.5499/Del/2017and ITA No.1871/Del/2023 respectively for the Assessment Year 2006-07, by which the learned ITAT upheld the assessment made under Sections 153A of the Income Tax Act, 1961.

3. Shorn of unnecessary details, the facts leading to the two appeals are as under:-

i. The Assessee being an individual filed his income tax returns on 30.10.2006 declaring total income of Rs. 20,73,131/- for the Assessment Year 2006-07.

ii. A search and seizure action was carried out in the residential premises of the Assessee on 20.01.2012.During search, a seven-page document was admittedly shown to the Assessee-Appellant, which allegedly showed him to be a beneficial owner of accounts with HSBC Bank in Switzerland. It is pertinent to mention that the document was already in possession of the officer and was not recovered during the search.

iii. A notice under Section 153A of the Income Tax Act was

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issued to the Assessee on 17.10.2012.In response to such notice, Assessee filed his income again as Rs.20,73,131/-.

iv. The Assessing Officer issued notice under Section 142(1) of the Income Tax Act on 18.07.2013, requiring the Assessee-Appellant to file certain information with respect to the said HSBC Bank, Switzerland. The Assessing Officer placed reliance on the documents which were allegedly collected by the Government of India from credible sources wherein the name, date of birth, address and other details of the Assessee appeared.

v. Subsequent thereto, Assessment was made under Section 153A of Act, whereby the Assessing Officer made an addition of Rs.1,20,37,863/-under Section 69 of the Income Tax Act. Further, addition was also made of Rs.1,23,130/- being the income on undisclosed interest earned on such undisclosed foreign bank account deposit under Section 69 of the Income Tax Act.

vi. The matter was taken to the CIT (Appeals). The CIT (Appeals) deleted the interest on the foreign bank account amounting to Rs.1,23,130/-, however, confirmed the amount of Rs.1,20,37,863/- added by the Assessing Officer to the total income of the Assessee for the Assessment Year 2006-07. The learned CIT (Appeals) recorded that Assessee's name and other relevant details are clearly shown to be associated with HSBC Bank and accordingly upheld the said addition of Rs.1,20,37,863/-. Before the CIT (Appeals), the validity of assessment completed under Section 153A

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Signing Date:18.11.2026 19:37:56

was also challenged insofar as the alleged incriminating material was not found "during" the course of the search. The learned CIT (Appeals) rejected such challenge on the ground that there cannot be a fit all template in such cases and that incriminating material has to be construed in a harmonious fashion.

vii. The order passed by the CIT (Appeals) was subject matter of challenge before the ITAT in ITA No. 5499/Del/2017. The Assessee contended that without any incriminating material found against the Assessee during the course of search, further proceedings on the basis of such material could not have been initiated, being contrary to the provisions of the Income Tax Act. It was further contended by the Assessee that the Assessing Officer had obtained these documents under the Double Taxation Avoidance Agreement (DTAA), but other than the said statement there was nothing on record as to under which DTAA and from which country the said documents had been obtained. In absence thereof, reliance cannot be placed on such documents.

viii. The learned ITAT *vide* impugned Order dated 26.02.2018 partly allowed the appeal of the Assessee recording that the documents showed to the Assessee by the income tax authorities were not duly verified, and remanded the matter back to the Assessing Officer. The Assessing Officer was accordingly directed to adjudicate the issue afresh after obtaining the verificatory report of the documents in

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Signing Date:18.11.2026 19:37:56

question. Paragraph 36 of the said impugned Order reads as under:-

> *"36. This shows that the verificatory letters from the competent authorities in Switzerland was yet to be received before completion of the assessment. Before ld. CIT(A) was also, the same was not available. Even before us nothing was brought to our notice regarding the verificatory letters received from Switzerland. Since assessee in the instant case was denying from the beginning that the accounts does not belong to him and since verificatory report in respect of above is yet to be received, and since in absence of such verificatory letter, it cannot be conclusively proved that the accounts in fact do belong to the assessee, therefore, considering the totality of the facts and in the interest of justice, we restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law after obtaining the verificatory report. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are partly allowed for statistical purposes."*

ix. After the matter was remanded back, the Assessing Officer once again proceeded to re-examine the matter. Subsequently, the matter again reached The CIT (Appeals). The learned CIT (Appeals)was of the opinion that the documents received under the DTAA/DTAC runs into seven pages containing the name, date of birth, place of birth, nationality, gender along with the address of the Assessee and that the details available in the document pertain to the Assessee. The CIT (Appeals) also recorded that during the search under Section 132 of the Act, the statement of the Assessee was recorded under Section

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Signing Date:18.11.2026 19:37:56

132(4) wherein the Assessee denied having such foreign account. The CIT (Appeals) also noted that the Assessee *vide* letter dated 09.02.2012had agreed to pay tax on the deposits in the said foreign account but had later on retracted from his statement after nine months.

x. The CIT (Appeals) was of the opinion that the retraction has to be made within a reasonable time and at the earliest opportunity when the element of pressure and coercion ceases to exist on the Assessee, and therefore, the retraction made after a lapse of around nine months raises doubts on its credibility. The CIT (Appeals) after placing reliance on the documents came to the conclusion that the documents under reference were received from credible sources under mutual agreement with the foreign country and the Assessee did not sign the consent form to provide 'Waiver' to secure bank particulars in respect of the overseas account of the Assessee for further details. It was recorded that it was for the Assessee to get the charges cleared against him by permitting the department to seek complete information against him and by cooperating in this regard.It was held that the evidence received by the department are through official channels and therefore constitute a credible source for making the addition. Accordingly, the appeal filed by the Assessee was dismissed.

xi. During the second round in ITA No.1871/Del/2023, *vide* impugned Order dated 30.08.2024 itwas recorded by the ITAT that the Assessing Officer asked the Assessee to furnish a signed copy of 'Consent Waiver Form' to enable the Revenue

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Signing Date:18.11.2026 19:37:56

to seek details from the Swiss Authorities of the HSBC Bank Account allegedly found to be maintained by the Assessee. It was recorded that the Assessee did not cooperate with the Assessing Officer in the second round and no verification report could be received by the Assessing Officer owing to the failure of the Assessee to provide 'Waiver' to secure the bank particulars of the Assessee from the Swiss authorities. It was also held that since jurisdiction of Assessing Authority under Section 153A was already upheld in the first round of adjudication, the second round was only limited to verification of documents. The question of jurisdiction was therefore held to be outside the purview of adjudication as it would lead to ITAT reviewing and re-ascertaining the view already expressed by the ITAT in the first round of proceedings which was otherwise impermissible in such remand proceeding. The relevant paragraphs of the ITAT Order read as under:-

> *14. On perusal of the order of the Co-ordinate Bench previously passed under Section 254(1) of the Act in the first round of proceedings, it is manifest that similar grievance towards lack of jurisdiction to assess the undisclosed income attributable to Foreign Bank Account within the ambit of Section 153A were raised before the Tribunal. The ITAT, on appraisal of facts and circumstances of the case, clearly held that 7 pages document in possession of the Revenue constituted incriminating material for the purposes of assessment. Therefore where on facts, it was found by the Tribunal that incriminating material was existing in the present case and the ingredients for assumption of jurisdiction to assess the income of the assessee under s. 153A stood satisfied, the jurisdictional issue raised yet again in the second round of proceedings are non longer available to the assessee. The review of jurisdictional issue*

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Signing Date:18.11.2026 19:37:56

already decided earlier, is outside the mandate of the ITAT. It is not open to the Tribunal to review and re-ascertain the view already expressed by the Tribunal in the first round of proceedings. The jurisdictional question thus being not maintainable is answered against the assessee and in favour of the Revenue.

xxx xxxxxx

19. At this juncture, it would be equally pertinent to address the key argument raised on behalf of the Assessee. It is the main contention of the assessee that he cannot be compelled to sign the consent waiver form as it might end up incriminating him despite he not maintaining a bank account with the HSBC Bank or other foreign bank account as alleged. We are unable to visualize any rationale in such line of plea. It does not stand to reasons as to how signature of an innocent assessee on a consent waiver form meant for ascertainment of correct factual position, would criminalize a signatory unless the culpability is established. A person not holding such undisclosed bank account has no reason to fear any adverse consequences. The defense raised thus is far cry and devoid of any ring of truth. The refusal to sign the Waiver itself vouches for culpability. We simultaneously observe that the Hon'ble Delhi High Court in the case of Shyam Sunder Jindal (supra) opined in favour of the assessee on the premise that material relied upon by the Revenue was not of a quality which could persuade the Court to hold that assessee did maintain the account with HSBC bank Geneva. In the instant case, however, the facts are materially different. The Revenue is in possession of cogent material which indicated the details of bank account maintained in the name of the assessee including the date of opening of bank account (06.10.1998) and date of closure (25.01.2006). The authenticated copy of such bank account could be obtained only with the consent and concurrence of the assessee, i.e., bank account holder, owing to limitations fastened by the stated policy, protocols and regulations of Swiss Govt. The question of self incrimination by signing the consent waiver form would arise only in the case of a finding of any offence committed. Where the assessee has

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Signing Date:18.11.2026 19:37:56

not maintained any bank account, the existence of 'offence' would not arise. Besides, a person who is called upon to assist the deptt. in the course of enquiry and investigation of facts is not an 'accused' per se. Hence self incrimination plea is a damp squib. This view is supported by the judgment rendered in the case of Ramesh Chandra Mehta vs. State of West Bengal AIR 170 SC 940. Therefore, in the context of income tax proceedings, providing consent waiver form on non existent bank account, in our view , would not tantamount to testamentary compulsion violative of Article 20(3) of the Constitution. We thus see no substance in justification advanced for refusal to provide consent waiver form.

20. The Hon'ble Bombay High Court in the case of Soignee R Kothari vs. DCIT 386 ITR 466 (Bom), in identical facts, observed that the conduct of the assessee is not forthcoming and opposed to normal human conduct. The Hon'ble Court declined to turn a blind eye to the fact of refusal to sign consent waiver form to support absence of any undisclosed foreign bank account. The remedy sought by way of Writ challenging reopening action was thus not entertained.

21. Notwithstanding, an undertaking of voluntary nature by the assessee addressed to DDIT (Inv.) post search filed by the assessee is entitled to due weight. Such undertaking, in the light of specific bank particulars of overseas bank confronted to the assessee, is a good evidence to draw adverse inference even if not conclusive.

22. Judged by any parameter, the second issue on merits also deserves to be answered against the assessee and in favour of the Revenue.

23. In the result, the appeal of the assessee is dismissed."

xii. The said Order dated 26.02.2018 as well as the Order dated 30.08.2024 are the subject matter of challenge in the present Appeals being ITA 740/2018 and ITA 22/2025 respectively.

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Signing Date:18.11.2026 19:37:56

4. Learned Counsel for the Appellant contends that notice under Section 153A of the Income Tax Act can be initiated only if there is certain incriminating material found during the search conducted under Section 132 of the Income Tax Act. He states that without any material or books of accounts unearthed during the search, a notice under Section 153A cannot be issued. Therefore reliance upon any document received from anywhere else is untenable for the purpose of Section 153A. He therefore states that in the instant case since no material was found during the search and the department was already in possession of certain documents which they allegedly received under Double Taxation Avoidance Agreement (DTAA), notice under Section 153A could not have been issued to the Appellant herein.

5. He states that on the basis of certain documents, the Department had initiated a search but did not find any material during the search and therefore entire proceedings stand vitiated. He therefore states that the Order dated 26.02.2018 passed by the ITAT in ITA No.5499/Del/2017 by which the matter was remanded back only for the purposes of verification of the document was not correct, meaning thereby, all further orders pursuant to the said remand lose their credence.

6. Reliance is placed on the Judgment passed by the Apex Court in CIT v. Abhisar Buildwell (P) Ltd., **(2024) 2 SCC 433** and the Judgment passed by a Coordinate Bench of this Court in CIT v. Kabul Chawla, **(2016) 380 ITR 573**.

7. *Per contra*, learned Counsel for the Revenue contends that it is not necessary that the documents are only to be found during search proceedings. He contends that there was material in the hands of the

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Signing Date:18.11.2026 19:37:56

Department relating to a search, evasive answers were given by the Assessee and the matter was remanded back. The Assessee even during the second round refused to cooperate with the authorities to enable the Revenue to get requisite information from the HSBC Bank at Switzerland and therefore no interference is required. He further states that the Assessee had himself agreed to pay tax on the deposits in the said foreign account but retracted after nine months.

8. Heard learned Counsel for the parties and perused the material on record.

9. *Vide* Order dated 30.09.2019, the following questions of law were framed in ITA 740/2018:

> "*(i) Whether the IT AT was right in upholding the assessment made under Section 153 A of the Act ?*
>
> *(ii) Whether on the facts and circumstances of the case, jurisdictional pre-conditions to make addition of undisclosed income in HSBC bank in the assessment made under Section 153A of the Act were met?"*

10. On hearing the parties, an additional question of law was framed vide Order dated 04.02.2026 in ITA 740/2018 and the same reads as under:

> "*(i) When the document containing entries in the name of the appellant in HSBC hank account was not found and seized during the search proceedings and the same was only shown to the petitioner during search proceeding, shall the assessment for the Assessment Year 2006-07 not abate, particularly when no addition was made qua the material which was seized?"*

11. When the matter came up for hearing on 04.02.2026, the

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Signing Date:18.11.2026 19:37:56

following questions of law were framed in ITA 22/2025:-

> *"(i) Whether the ITAT was right in upholding the assessment made under Section 153A of the Act?*
>
> *(ii) Whether on the facts and circumstances of the case, jurisdictional pre-conditions to make addition of undisclosed income in HSBC bank in theassessment made under Section 153A of the Act were met?"*
>
> *(iii) When the document containing entries in the name of the appellant in HSBC bank account was not found and seized during the search proceedings and the same was only shown to the petitioner during search proceeding, shall the assessment for the Assessment Year 2006-07 not abate, particularly when no addition was made qua the material which was seized?"*

12. Section 132, 132A and 153A of the Income Tax Act, the scope of which is subject matter of the present appeals read as under:-

> *"132. Search and seizure.—(1) [Where the [Principal Director General or Director General] or Director or the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] or Additional Director or Additional Commissioner], [or Joint Director or Joint Commissioner] in consequence of information in his possession, has reason to believe that—*
>
> *(a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 142 of this Act was issued to produce, or*

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Signing Date:18.11.2026 19:37:56

cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then,—

(A) the [Principal Director General or Director General] or Director or the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], as the case may be, may authorise any [Additional Director or Additional Commissioner or] Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer, or

(B) such [Additional Director or Additional Commissioner or] Joint Director or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer,

(the officer so authorised in all cases being

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Signing Date:18.11.2026 19:37:56

hereinafter referred to as the authorised officer) to—

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(ii-a) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

[(ii-b) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of Section 2 of the Information Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the

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Signing Date:18.11.2026 19:37:56

business.]

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], but such [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised

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Signing Date:18.11.2026 19:37:56

officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):
[Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business.]

[Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.]

[Explanation.— For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]

(1-A) Where any [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the [Principal Director General or Director General] or Director or any other [Principal Chief Commissioner or Chief Commissioner] or [[Principal Commissioner or Commissioner] or Additional Director or Additional Commissioner][or Joint Director or Joint Commissioner]to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or

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Signing Date:18.11.2026 19:37:56

Commissioner] may, notwithstanding anything contained in Section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

[Explanation.— For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]

[(2) The authorised officer may requisition the services of,—

(i) any police officer or of any officer of the Central Government, or of both; or

(ii) any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,
to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1-A) and it shall be the duty of every such officer or person or entity to comply with such requisition.]

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

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Signing Date:18.11.2026 19:37:56

Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

(4-A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

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Signing Date:18.11.2026 19:37:56

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document, stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

[* *]*
(8) The books of account or other documents seized under sub-section (1) or sub-section (1-A) shall not be retained by the authorised officer for a period exceeding [one month from the end of the quarter in which the order of assessment or reassessment or recomputation is made] [under sub-section (3) of Section 143 or Section 144 or Section 147 or] [Section 153-A or clause (c) of Section 158-BC]] unless the reasons for retaining the same are recorded by him in writing and the approval of the [[Principal Chief Commissioner or Chief Commissioner], [Principal Commissioner or Commissioner], [Principal Director General or Director General] or Director] for such retention is obtained:

Provided that the [[Principal Chief Commissioner or Chief Commissioner], [Principal Commissioner or Commissioner], [Principal Director General or Director General] or Director] shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income Tax Act, 1922 (11 of 1922), or this Act in respect of the

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Signing Date:18.11.2026 19:37:56

years for which the books of account or other documents are relevant are completed.

[(8-A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order :]

Provided that the [[Principal Director or Director] or, as the case may be, [Principal Commissioner or Commissioner]] shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceedings under this Act in respect of the years for which the books of account, other documents, money, bullion, jewellery or other valuable articles or things are relevant.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1-A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

[(9-A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in Sections 132-A and 132-B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the

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Signing Date:18.11.2026 19:37:56

authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.]

[(9-B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, mutatis mutandis, apply.

(9-C) Every provisional attachment made under sub-section (9-B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9-B).

[(9-D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to,—

(i) a Valuation Officer referred to in Section 142-A; or

(ii) any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

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Signing Date:18.11.2026 19:37:56

who shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.]]

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1-A) objects for any reason to the approval given by the [[Principal Chief Commissioner or Chief Commissioner], [Principal Commissioner or Commissioner], [Principal Director General or Director General] or Director] under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents [and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit].

[* *]*
(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1-A).

(14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

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Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

[Explanation 1.— For the purposes of sub-sections (9-A), (9-B) and (9-D), the last of [authorisations] for search shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under Section 132-A, on the actual receipt of the books of account or other documents or assets by the authorised officer.]

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income Tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

132-A. Powers to requisition books of account, etc.—(1) Where the [Principal Director General or Director General] or Director or the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income Tax

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Signing Date:18.11.2026 19:37:56

Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or

(b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the [Principal Director General or Director General] or Director or the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] may

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Signing Date:18.11.2026 19:37:56

authorise any [Additional Director, Additional Commissioner,] Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer (hereafter in this section and in sub-section (2) of Section 278-D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

[Explanation.— For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4-A) to (14) (both inclusive) of Section 132 and Section 132-B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of Section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section and as if for the words "the authorised officer" occurring in any of the aforesaid sub-

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Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

sections (4-A) to (14), the words "the requisitioning officer" were substituted.

xxx

[153-A. Assessment in case of search or requisition.—[(1)] Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;
(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and of the relevant assessment year or years]:

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

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

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

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

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

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

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

(c) the search under Section 132 is initiated or

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

requisition under Section 132-A is made on or after the 1st day of April, 2017.

Explanation 1.— For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.
Explanation 2.— For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]

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

Provided that such revival shall cease to have effect, if such order of annulment is set aside.]
Explanation.—For the removal of doubts, it is hereby declared that,—

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

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

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

13. A perusal of Section 153Aindicates that a notice is issued to a person in whose premises the search is initiated under Section 132 or books of accounts or other documents are requisitioned under Section 132A after 31.05.2003.

14. The present case arises out of a search. Admittedly, the search has only resulted in recovery of some jewellery and not the documents pertaining to any bank account in HSBC Bank in Switzerland. The question therefore is as to whether proceedings under Section 153A of the Income Tax Act could have been initiated against the Assessee on the basis of documents which were already in possession of the Revenue authorities even when no other document connecting the document already in possession of the investigating authorities had been recovered from the Assessee during the course of search. This Court is of the opinion that if Section 153A of the Income Tax Act is interpreted in a manner which permits notice to be given on the basis of a document which is neither found during the search nor is it a document which, although found during search, does not connect or corroborate the incriminating document already in possession of the authorities, then Section 153A is capable of being abused giving unbridled, unfettered power to the Revenue.

15. This Court is of the view that it is open for the Revenue to reopen assessment on the basis of any other provision in the Actplacing reliance onthe document which came to the possession of

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

the Revenue authorities but recourse to issuing notice under Section 153A cannot be resorted to in these matters.

16. The Apex Court in CIT v. Abhisar Buildwell Private Ltd., **(2024) 2 SCC 433**, has observed as under:-

> *"**29.** While considering the issue involved, one has to consider the object and purpose of insertion of Section 153-A in the 1961 Act and when there shall be a block assessment under Section 153-A of the 1961 Act.*
>
> ***30.** That prior to insertion of Section 153-A in the statute, the relevant provision for block assessment was under Section 158-BA of the 1961 Act. The erstwhile scheme of block assessment under Section 158-BA envisaged assessment of "undisclosed income" for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime i.e. : (i) block assessment under Section 158-BA to assess the "undisclosed income", and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the "undisclosed income" was chargeable to tax at a special rate of 60% under Section 113 whereas income other than "undisclosed income" was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, Section 153-A came to be inserted and brought on the statute. Under Section 153-A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the "undisclosed" income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153-A and in case of search, there shall be block assessment for six years. Search assessments/Block assessments under Section 153-A are triggered by conducting*

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

of a valid search under Section 132 of the 1961 Act. ***The very purpose of search, which is a prerequisite/trigger for invoking the provisions of Sections 153-A/153-C is detection of undisclosed income by undertaking extraordinary power of search and seizure i.e. the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153-A/153-C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.***

31. *On a plain reading of Section 153-A of the 1961 Act, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same.*

32. *Section 153-A of the Act reads as under:*

*"**153-A. Assessment in case of search or requisition**.—(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003, the assessing officer shall—*

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;

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

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

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

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

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

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

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

(ii) in an assessment or reassessment made in respect of an assessment year under this section,

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

the tax shall be chargeable at the rate or rates as applicable to such assessment year."

33. *As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, 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 153-A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate. As per sub-section (2) of Section 153-A, 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 reopen the completed/unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153-A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A and during the search any*

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. ***However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under Section 153-A 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.***

34*. 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 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act.* ***The object of Section 153-A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or***

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

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 153-A, 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, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.*

35. *For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in Kabul Chawla [CIT v. Kabul Chawla, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] and the Gujarat High Court in Saumya Construction [CIT v. Saumya Construction (P) Ltd., 2016 SCC OnLineGuj 9976 : (2016) 387 ITR 529] and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

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

36.1. *That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;*

36.2. *All pending assessments/reassessments shall*

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

stand abated;

36.3. *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*

36.4. 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 132-A of the 1961 Act. 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."

(emphasis supplied)

17. A Coordinate Bench of this Court in CIT v. Kabul Chawla, **(2016) 380 ITR 573,** also laid down parameters of Section 153A and has observed as under:-

*"**37**. On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

(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 assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.

(iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer 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 assessment years "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) ***Although section 153A 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 Assessing Officer 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 the seized material****.”*

(v) In the absence of any incriminating material, the completed assessment can be reiterated and

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

the abated assessment or reassessment can be made. The word "assess" in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to the completed assessment proceedings.

(vi) In so far as the 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 assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A 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.

Conclusion

***38**. The present appeals concern the assessment years 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.*

***39**. The question framed by the court is answered in favour of the assessee and against the Revenue."*

(emphasis supplied)

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

18. The contention of the learned Counsel for the Revenue is that on the date when the ITAT remanded the matter back in the first round, neither the Judgment of the Apex Court in Abhisar Buildwell (supra) nor the Judgment passed by a Coordinate Bench of this Court in Kabul Chawla (supra) were pronounced, and therefore, the remand cannot be found fault with on the basis of law as it stands. This Court is not in agreement with the said contention advanced on behalf of the Revenue for the simple reason that eventually the impugned Order dated 26.02.2018 was passed by the learned ITAT after the Judgment of Kabul Chawla (supra) was rendered on 28.08.2015. Moreover, it is well settled that the law laid down by Courts, that too, constitutional courts, are declaratory in nature and have retrospective effect.

19. The ITAT in the Order dated 26.02.2018 passed in ITA No.5499/Del/2017, therefore, erred in law in remanding the matter back for ascertaining the veracity of the document which, in the opinion of this Court could not have been done at all. The document was admittedly not found during search nor was any material found which could connect the document alleged to have been procured by the Revenue under the DTAA at the time of search.

20. Viewed in this light, the fact that the Appellant had agreed to pay tax on the deposits in the said foreign account but had later on retracted from his statement after nine months also does not favour the Revenue because if the notice under Section 153A is bad, then all proceedings pursuant to the said notice also stand vitiated. The questions, therefore, are answered in favour of the Assessee.

21. Resultantly, both the appeals are allowed. Pending application(s), if any, stand disposed of.

Signature Not Verified
Signed By:RAHUL SINGH
Signing Date:18.11.2026 19:37:56

22. The remand order is set aside. Since the remand is set aside, all consequent orders will necessarily have to be set aside.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

NOVEMBER 18, 2026
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