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

\+ **WRIT PETITION (CIVIL) NO. 823/2013**

Reserved on: 24th October, 2013

% **Date of Decision: 20th December, 2013**

M/s MDLR RESORTS PVT. LTD. ....Petitioner
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 693/2013

M/S ALANKAR SAPHIRE DEVELOPERS PVT. LTD. … PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 995/2013

M/S NAGESHWAR REALTORS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1010/2013

MR. JWALA PRASAD AGGARWAL …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1229/2013

GOPAL KANDA & SONS HUF . …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 697/2013

M/S WITNESS CONSTRUCTION PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 964/2013

M/S MDLR ESTATES PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ANR …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 971/2013

LKG BUILDERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 996/2013

BELIEVE CONSTRUCTION PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1002/2013

M/S PEGASUS SOFTECH PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1195/2013

BHUDEVA COMMODITIES LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1205/2013

NAGESHWAR BUILDER PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 963/2013

BHUDEVA ESTATES PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 966/2013

AKDANT BUILDCON PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 968/2013

GPBIND KANDA AND SONS HUF …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with

Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 978/2013

M/S GEE GEE BUILDTEK PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1005/2013

SHIV GANESH BUILDCON PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1040/2013

VEENA GUPTA …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 976/2013

GOBIND KUMAR …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 997/2013

RAJEEV KUMAR PRASHAR …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1001/2013

M/S BELIEVE DEVELOPERS & PROMOTERS PVT.LTD ..PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1006/2013

M/S OMSHIV BUILDTECH PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1009/2013

M/S KAIRAV NONWOVEN PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1199/2013

PRADEEP AGARWAL …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1201/2013

M/S WITNESS BUILDERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 962/2013

GAURAV GUABA …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with

Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 970/2013

M/S MDLR CARGO PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 975/2013

SHIV NANDAN BUILDCON PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1003/2013

M/S MDLR HOTELS PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1198/2013

SARASWATI GOYAL …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 984/2013

M/S LAKSHYA CONSULTANTS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 985/2013

M/S KARTIKEYA BUILDCON PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 994/2013

M/S W AND W MARBLES PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,

Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate

WRIT PETITION (CIVIL) No. 998/2013

M/S MDLR INFRASTRUCTURE PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1206/2013

M/S MM BUILDCON PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1207/2013

KANDA AGRICULTURE PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 977/2013

M/S MDLR TOUR & TRAVELS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1072/2013

M/S MDLR BUILDER PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1200/2013

GOPAL GUABA …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1202/2013

WINMAN ESTATES PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1212/2013

GOPAL KUMAR GOYAL …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 960/2013

WORLDWIDE REALTORS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 969/2013

ASHUTOSH VILLAS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1118/2013

M/S SHIVGORI BUILDERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1121/2013

VIRENDER KUMAR GUPTA …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1126/2013

M/S SHINESTAR BUILDCON PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1131/2013

ELITE BUILDWELL PVT. LTD. …PETITIONER

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni, Sr. Standing Counsel, Mr. Ruchesh Sinha, Jr. Standing Counsel, Mr. Ashish Virmani, Advocate and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1127/2013

MDLR DEVELOPERS & PROMOTERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1128/2013

SARITA GOYAL …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1123/2013

M/S ASHUTOSH DEVELOPERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1129/2013

MRS. KANTA RANI GUABA …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1133/2013

M/S SHIV GANESH BUILDERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1134/2013

KING BUILDCON PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ORS. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1122/2013

MDLR AIRLINES PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1124/2013

WITNESS DEVELOPERS & PROMOTERS PVT. LTD. …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.

Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

WRIT PETITION (CIVIL) No. 1352/2013

RAJEEV VERMA . …PETITIONER
Through Mr. Parag P. Tripathi, Sr. Advocate with
Mr. Salil Kapoor and Mr. Vikas Jain, Advocates.
Versus

COMISSIONER OF INCOME TAX & ANR. …RESPONDENTS
Through Mr. Rajeeve Mehra, ASG with Mr. N.P. Sahni,
Sr. Standing Counsel, Mr. Ruchesh Sinha,
Jr. Standing Counsel, Mr. Ashish Virmani, Advocate
and Mr. Ashok Gautam, Assessing Officer.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J.

This common judgment will dispose of the aforesaid writ petitions. The petitioners for the sake of convenience can be and have been in the judgment at places described as MDLR Group. The factual matrices in these cases, which can be divided into two sets, are elucidated in brief to avoid prolixity and repetition.

2. The respondents claim that search and seizure operation against the petitioners were initiated and conducted under Section 132 of the Income Tax Act, 1961 (Act, for short) on 31st January, 2008. The petitioners have accepted and not disputed the search and seizure operations in the writ petitions but the contention raised is that against 22 petitioners detailed below, no panchnamas were drawn/issued and

thus proceedings under section 153A of the Act are void and bad for want of jurisdiction. It is also submitted in the rejoinder affidavit to the counter affidavit that these petitioners were not subjected to search and their names have been subsequently interpolated and mentioned in the warrants of search. Details of these 22 petitioners along with their writ petition numbers is as under:-

S.No.	Name of the Assessee	Writ Petition No.	Assessment years
1.	M/s Alankar Saphire Developers P. Ltd.	693/2013	2002-03 to 2008-09
2.	M/s Ashutosh Developes Pvt. Ltd.	1123/2013	2004-05 to 2008-09
3.	M/s Gopal Kanda & Sons HUF	1229/2013	2002-03 to 2008-09
4.	M/s Kartikeya Buildcon Pvt. Ltd.	985/2013	2006-07 to 2008-09
5.	M/s Kairav Nonwoven Pvt. Ltd.	1009/13	2006-07 to 2008-09
6.	M/s King Buildcon P. Ltd.	1134/2013	2005-06 to 2008-09
7.	M/s Kanda Agriculture P. Ltd.	1207/2013	2007-08 to 2008-09
8.	M/s Lakshya Consultant P. Ltd.	989/2013	2003-04 to 2008-09
9.	M/s LKG Builders Pvt. Ltd.	971/2013	2003-04 to 2008-09
10.	M/s MDLR Estate P. Ltd.	964/2013	2006-07 to 2008-09
11.	M/s MDLR Cargo P. Ltd.	970/2013	2007-08 to 2008-09
12.	M/s MDLR Infrastructure P. Ltd.	998/2013	2006-07
13.	M/s MDLR Hotels Pvt. Ltd.	1003/2013	2006-07 to 2008-09
14.	M/s MDLR Developers & Promoters P. Ltd.	1127/2013	2005-06 to 2008-09
15.	M/s MDLR Tour & Travel Pvt. Ltd.	977/2013	2008-09
16.	Rajeev Verma	1352/2013	2002-03 to 2008-09
17.	M/s Shivgori Builders Pvt. Ltd.	1118/13	2007-08 to 2008-09
18.	M/s Vinman Estates P. Ltd.	1202/2013	2205-06 to 2008-09
19.	M/s witness Construction Pvt. Ltd.	697/2013	2005-06 to 2008-09
20.	M/s Witness Developers & Promoters Pvt. Ltd.	1124/2013	2005-06 to 2008-09
21.	M/s Witness Builders P.Ltd	1201/2013	2005-06 to 2008-09
22.	Worldwide Realtors P. Ltd.	960/2013	2002-03 to 2008-09

3. The facts of the lead case i.e. Writ Petition (Civil) No. 823/2013 filed by MDLR Resorts Pvt. Ltd., are as follows:-

a) On 31st January, 2008, search and seizure operation under Section 132 of the Act was carried out in the case of the petitioner, a member of the MDLR group.

b) On 19th June, 2009, notice under Section 153A of the Act was issued to the petitioner to file returns for the assessment years 2006-07 to 2007-08. Notice under Section 143(2) was issued for the assessment year 2008-09.

c) On 29th December, 2009, the Assessing Officer passed assessment orders in respect of three assessment years making various additions. Income for the assessment years 2006-07, 2007-08 and 2008-09 was assessed at Rs.79,16,326/-, Rs.2,81,67,482/- and Rs.23,97,18,215/-, respectively.

d) The petitioner did not file appeals but revision petitions under Section 264 of the Act were filed. Revision petitions were decided by order dated 16th March, 2012 with an order of remand, for fresh assessments.

e) Subsequent to the order of the Commissioner under Section 264 of the Act, dated 16th March, 2012, vide assessment orders dated 8th March, 2013, the income of the MDLR Resorts Pvt. Ltd. has been assessed for the assessment years 2006-07, 2007-08 and 2008-09 at Rs.1,66,326/-, Rs.3,59,03,210/- and 23,97,18,215/-, respectively.

f) This indicates that income for MDLR Resorts Pvt. Ltd. for the assessment year 2008-09 has been assessed at the same figure as had been assessed in the first order. Income for the assessment years 2006-07 stands reduced by Rs.77,50,000/-,

but income of assessment Year 2007-08 stands increased by a figure of Rs.77,35,728/-.

g) For the sake of record, we mention that addition of Rs.77.50 lakhs made in the first/original order for the assessment year 2006-07 has been treated as income for assessment year 2007-08. In the assessment year 2007-08, addition of Rs.2.45 crores on account of payment to ABG Management was enhanced to Rs.3.25 crores in the second round.

Contentions and Submissions

4. Following are the contentions raised by the petitioners, MDLR Group and their reply/response by Revenue/respondents:-

i. Assessment proceedings under section 153A of the Act are invalid as no panchnamas were drawn in the names of 22 petitioners. Another aspect of the said contention relating to validity of proceedings under Section 153A of the Act has been also raised.

ii. Second contention which has neither been raised in the writ petition nor in the amended writ petition but in the rejoinder affidavit to the amended writ petition, is to the effect that probably and possibly no warrant for search under Section 132 of the Act was issued against these 22 petitioners and, therefore, their names do not appear in the panchnamas.

ia/iia. The respondents have contested the first and second contentions of the petitioner on three grounds. There was an error or mistake in the panchnamas as a consequence thereof,

names of 22 petitioners did not feature in the panchnamas, though the said petitioners were subjected to search and seizure. Error or mistake cannot vitiate proceedings under section 153A of the Act. Secondly, there was obstruction and the officers were prevented from carrying out search at MDLR House, SCO 1, 2 and 3, Sector 15, Gurgaon and 436/16 Civil Lines, Gurgaon and due to resultant confusion, names of the said 22 petitioners were not mentioned in the panchnamas. Lastly, the proceedings under Section 153A are valid and do not falter on the ground of lack of jurisdiction as the search was initiated and duly conducted against the aforesaid 22 petitioners. In re, the contention regarding warrant of search, the respondents rely upon the original records including relevant search warrants namely D.N. 0194, D.N. 0195 and D.N. 0191 to affirm that search and seizure operation was also directed against the said 22 petitioners.

iii. The third contention raised by the petitioners pertains to the scope of the order of remand passed by the Commissioner of Income Tax on the revision petitions under Section 264 of the Act decided by orders dated 16th March, 2012. It is submitted that the assessing Officer while passing the fresh assessment orders has gone beyond and has in some cases made additions in excess of the additions made in the original assessments which violates the mandate of Section 264 of the Act.

iiia. Per contra, the contention of the respondents is that the Commissioner in his order under Section 264 of the Act, had set aside the original assessment under Section 153A and had

directed the Assessing Officer to pass a fresh order after hearing and considering the evidence and material placed on record by the petitioners. The Commissioner had observed that the petitioners were prevented and could not in the first round produce relevant documents and material. Various issues were not properly investigated and in light of the various contentions, legal, technical, factual and in the interest of natural justice and fair play, the matter was restored to the Assessing Officer for fresh assessment. Assessing Officer's jurisdiction at the time of fresh assessment was as extensive and broad as at the time of the original assessment. It was not a case of limited remand.

iv. The last and the fourth contention of the petitioners is that the Assessing Officer had invoked Section 144A and had sought the opinion of the Joint Commissioner before passing the assessment order. It is submitted that the Joint Commissioner had expressed an opinion, which was prejudicial to the petitioners, without opportunity of being heard. This violates the mandate of Section 144A of the Act.

iva. In response, the respondents submit that explanation to Section 144A was applicable and no prejudicial directions were issued to the assessee. Petitioners had also invoked said provision. No prejudice has been caused. Lastly, the respondents submit that the fresh assessment orders under Section 153A have been made subject matter of appeals on all grounds or issues, and therefore, contentions on merits i.e.

contentions Nos. (iii) and (iv) cannot be raised and should not be permitted to be raised in these writ petitions.

5. We would like to first deal with the second contention stated above and raised only in the rejoinder to the amended writ petition and that too vaguely. This contention has neither been raised in the writ petition which was filed in January, 2013 nor in the amended writ petition which was filed pursuant to the order dated 22nd May, 2013. Even in the rejoinder affidavit, the petitioners have stated that copy of some search warrants were shown to them for the first time on 21st March, 2013, though a request was made vide letter dated 13th March, 2010. The contention was based primarily on apprehension and suspicion. This was accepted during arguments but with the assertion that the petitioners do not have access to files of the respondents and are handicapped from making affirmative statement in the absence of examination/scrutiny of records.

6. Search file was produced before us. MDLR Group as a whole was subjected to search following a detailed note prepared for approval and issue of warrant of search. The note was available on the confidential files produced before us. Names of companies, concerns etc. belonging to MDLR group were mentioned and recorded in the file/proceeding recorded. Names of 22 petitioners are included in the said list. We have also examined the warrants for search. Details of persons to be subjected to search were duly recorded in the search warrant but due to want of space in the printed proforma, details of some of the persons to be subjected to search have been recorded at the bottom of the page and top of the next page. This was for want of space in the printed performa of the

warrant of search at the relevant place as the warrant was against several persons. After minute and arduous examination of the confidential files, with the purpose and intention to rule-out foul play or interpolation, we are satisfied that the apprehension of the petitioners is ill-founded and without merit. Search warrants were signed by the witnesses and also persons to whom they were shown when the raiding team had entered the premises, subjected to seach. Delay in raising this contention specially when the 22 petitioners had the requisite copy of the panchnamas and were aware that their names did not figure in the panchnamas, is indicative of the fact that the stand/stance was an after-thought. We are satisfied that the search warrants were issued against the petitioners including the 22 petitioners mentioned above. Thus the said contention is to be rejected.

7. After the judgment was reserved vide order dated 24th October, 2013, an application for directions was filed by the petitioner in Writ Petition (Civil) No. 823/2013. We will treat the said application as filed on behalf of the said 22 petitioners. The application makes reference to copy of 14 search warrants and the panchnamas, which were made available to the counsel as per order dated 24th October, 2013.

8. With reference to the search warrants and panchnamas, it is alleged:

(a) 22 asseessees, whose names do not figure in the panchnamas, were indicated or recorded in the search warrants after an (*) mark.

(b) In the case of 14 petitioners, the addresses mentioned in search warrant were different from their actual addresses. The following chart is relied:-

Name Appeared in Warrant	**Warrant Address**	**Actual Address**
Alankar Saphire Developers P. Ltd.	Flat No. 4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30	C-12, B.M. Rohtagi Apartment, 1, Ram Kishore Road, Civil Lines, Delhi-110054
Gopal Kumar Kanda & Sons HUF	436/16, Civil Lines Gurgaon	House No. 21, Ward No. 1, Gali Khazanchian Sirsa
Kanda Agriculture P. Ltd.	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30	C-12, B.M. Rohtagi Apartment, 1, Ram Kishore Road, Civil Lines, Delhi-110054
King Buildcon P. Ltd.	MDLR House, S.C.O. 2, 3,4, OJC Jharsa Road, Gurgaon	W.Z. 34-A Raj Nagar-1st DADA Chttriwala Marg, Palam Colony, New Delhi-110045
Lakshya Consultant Pvt. Ltd.	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30	C-12, B.M. Rohtagi Apartment, 1, Ram Kishore Road, Civil Lines, Delhi-110054
MDLR Developes & Promoters P. Ltd.	MDLR House, S.C.O. 2, 3,4, OJC Jharsa Road, Gurgaon	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30
MDLR Hotels P. Ltd.	Gali Khazanchian Wali, Bhadra Bazar, Sirsa MDLR House, S.C.O. 2, 3,4, OJC	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30

	Jharsa Road, Gurgaon Tara Baba Ki Kutiya, Sirsa	
Shivgori Builders Pv. Ltd.	436/16, Civil Lines Gurgaon Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30	C-12, B.M. Rohtagi Apartment, 1, Ram Kishore Road, Civil Lines, Delhi-110054
Vinman Estate P. Ltd.	MDLR House, S.C.O. 2, 3,4, OJC Jharsa Road, Gurgaon	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30
Witness Builders Pvt. Ltd.	436/16, Civil Lines Gurgaon	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30
Witness Construction Pvt. Ltd.	436/16, Civil Lines Gurgaon	W.Z. 34-A Raj Nagar-1st DADA Chttriwala Marg, Palam Colony, New Delhi-110045
Witness Developers & Promoters Pvt. Ltd.	436/16, Civil Lines Gurgaon	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30
Worldwide Realtors P. Ltd.	436/16, Civil Lines Gurgaon	Flat no. -4, RR Apartments, 3&4, Manglapuri, Mehrauli, New Delhi-30
Rajeev Verma	MDLR House, S.C.O. 2, 3,4, OJC Jharsa Road, Gurgaon	228/1, Nai Abadi, Rewari-123401

Thus the addresses mentioned in the warrants in these cases were incorrect. This was indicative of interpolation and subsequent addition of names.

(c) In the case of MDLR Estate Pvt Ltd and Shivgori Builders Private Limited, search warrants were issued for three different locations but their names do not find mention in any of the panchnamas for 2/3 locations. It was improbable that the same mistake could have been repeated.

(d) King Buildcon Private Limited, MDLR Developers and Promoters Private Limited, Vinman Estate Private Limited and Rajeev Verma had no connection with or were not operating from MDLR house, S.C.O., 2, 3 and 4, OJC, Jharsa Road, Gurgaon and from the said premises actually and only LKG Builders Private Limited was functioning.

9. We have considered the said submissions but do not find any merit in the same. As recorded above, we had asked for the original files and we are satisfied that the search warrants were also issued against the 22 petitioners whose names do not figure in the panchnamas. We find that documentation, papers etc. relating to these 22 assessees were seized and were duly mentioned in the annexures to the panchnamas. Seizure of the said documents is not challenged. Thus material and papers relating to 22 petitioners were seized as per the annexures to the panchnamas.

10. For clarity, we would like to elaborate, what has been briefly referred to above. Search warrants (i.e. Form No. 45) were printed documents in which requisite blanks i.e. names and details have been

filled by hand. Due to paucity of space in the column, the authority issuing the search warrant had put an, (*) mark and thereafter mentioned other names in respect of whom the search warrant had been issued.

11. Names of parties to be subjected to search have been mentioned at two separate places on the first page of search warrants Form No. 45. The first point or place refers to preconditions mentioned in Section 132(1)(a) and (b) and the second point or place refers to the preconditions stipulated in Section 132(1)(c). Second page of the form requires mentioning the address where the suspected books of accounts, other documents, money, bullion, jewellery, valuable articles etc. were kept, by the persons who were being subjected to search.

12. In the panchnamas relating to MDLR Estate Private Limited, MDLR Hotels Private Limited and Shivgori Builders Private Limited, it was noticed that their names were not included in the names of the persons mentioned in the column relating to clauses (a) and (b) of Section 132(1) of the Act. However, their names were mentioned in the column relating to Section 132(1)(c) of the Act. In these circumstances, suspicion of the petitioners is not affirmed. It does not impel us to form and decide the contention in favour of the petitioners.

13. The contention with regard to their addresses being different, is misconceived and mere *ipse dixit*. Address of a company will normally mean its registered office, head office etc. A person can operate from or keep documents, money etc. at different places and

not necessarily from the registered office etc. or from where business is conducted. The address mentioned in the warrant and the panchnama need not be the registered office or the head office but it has be the place where the search was to be conducted and was conducted. The address at which search could be conducted would be the place or location, where books of accounts, documents, jewellery, unaccounted assets etc. could be located/found.

14. In the application, the petitioners have placed reliance on the judgment of the tribunal, Mumbai Bench in ***J.M. Trading Corporation versus Assistant Commissioner of Income Tax***. In the said case, search and seizure operations were carried out in respect of a group. The respondent-assessee therein was a partnership firm and had claimed that they had no relation or business connection with the group subjected to search. The panchnamas did not articulate the name of the respondent-assessee. In the appellate proceedings, copy of warrant obtained from the office of Director General (Investigation) revealed name of the respondent-assessee. After examining the factual matrix, the tribunal came to the conclusion that though search was initiated by issue of warrant, but no search was actually conducted in the case of the respondent-assessee. It was further recorded that the premises where the assessee was functioning/found, was not searched. Bombay High Court dismissed Revenue's appeal in view of the finding of fact that no search was conducted against the assessee as the premises occupied by the assessee were not entered upon and searched by the authorized officer. It was observed that no substantial question of law arose. Special Leave to Appeal against the said decision was dismissed.

The said decision does not further the case asserted by the petitioners herein.

15. In order to decide/determine the first contention relating to validity of notice under Section 153A, we would like to reproduce the provisions of Section 153A:-

> "**Assessment in case of search or requisition.**
>
> **153A.** [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day 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 forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
>
> (*b*) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :
>
> **Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:
>
> **Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

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

[(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 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

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

16. Section 153A is a non obstante provision which is invoked in case of a person where the search is initiated against him under Section 132 of the Act or books of accounts or other documents or any other assets which are requisitioned under Section 132A after 31st May, 2003. The section requires the Assessing Officer to issue notice under Section 153A of the Act, requiring the assessee in whose case

search was initiated to file return of income for six assessment years in the prescribed form and thereupon the Assessing Officer is required to assess or reassess the total income of the said six years. Pending proceedings for regular or reassessment proceedings in respect of the six assessment years abate subject to sub-section (2).

17. What is noticeable that the mandate and language Section 153A(1) does not make any reference to panchnama or the date of panchnama. It does not state that the panchnama is a pre-condition for invoking the said Section. The words used by the Legislature are "search is initiated under Section 132 ……" The word 'initiate' means to commence or start. The section is invoked and applicable when the search is 'initiated'. In other words, the section ticks of and comes into play when the search commences or is undertaken against a person. The expression 'initiate' had come up for interpretation before the Karnataka High Court in ***Commissioner of Income Tax vs. WIPRO Finance Ltd.*** (2010) 323 ITR 467 in relation to Sections 158BC, 158BD etc., and it was observed that as per the dictionary meaning, the said word refers to beginning, commencement or start of proceedings. Reference was made to the decision of the Supreme Court in ***Om Prakash Jaiswal vs. G.K. Mittal*** AIR 2000 SC 1136, wherein expression 'initiate any proceedings for contempt' in Section 20 of the Contempt of Courts Act 1971, was interpreted. It was held that the word 'initiate' means introductory steps or action or first move. Black's Law Dictionary was referred to and it was observed that 'initiation of contempt proceedings' takes place when the court applies its mind to allegation and decides to direct the alleged contemnor under Section 17 to show-cause as to why he should not

be punished. Thereafter, reference was made to different factual situations. In ***Wipro Finance's case (supra)***, it was accordingly observed:-

> "24. It is the settled principle that while assigning meaning to any expression in any provision of a statute, the context under which the particular expression is used has to be borne in mind. Therefore, bearing in mind the context in which the expression 'search initiated' has been used under various sections of IT Act including ss. 158BA(1), 158BC, 158BD, 158BE(1)(a) and (b) and 253A(1)(a) and (b) and also in the light of examining the dictionary meaning of the word 'initiate' as extracted by the High Court of Rajasthan at para No. 34 of its judgment in the case of Rajasthan Udyog referred to supra and also in the light of the above observations of the Hon'ble Supreme Court in the case of Omprakash Jaiswal (supra) we may safely assign to the expression 'search initiated'; the meaning 'search taken' or 'search commenced' or 'making beginning of the search'. If this is meant by expression 'search initiated' it cannot be held that the only signing of the authorizations by the Director of IT, Bangalore, on 30th Dec., 1996 to make a search in the premises of the respective assessees would amount to 'initiation of search'. The signing of the authorizations' would at best amount to 'taking of the decision by the said authority to initiate search' in the premises of respective assessees but not initiation of search itself."

18. In view of the aforesaid position, referring to Section 246A, it was held that the assessee (respondents therein) aggrieved by the block assessment order should have filed an appeal before the Commissioner (Appeals) and not before the tribunal.

19. Learned counsel for the petitioners relied upon Section 153B and submitted that the said section prescribes time limits for completing assessments under section 153A etc. Adjudication order under section 153A of the Act has to be passed within 2 years from the end of financial year in which last of the authorization for search

under Section 132 or 132A was executed. Section 153B(2) states that the authorization is deemed to have been executed in case of search, on conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case, warrant of authorization was executed. Thus, the time limit for completion of the assessment is reckoned and has to be counted for "search" under Section 132 from the date as recorded in the last panchnama drawn in relation to any person. The contention is that Section 153B(1) & (2), refers to panchnama and when there is no panchnama, proceeding in respect of 22 petitioners cannot be validly initiated under section 153A of the Act.

20. We have examined Section 153A(1) above and now examine whether in the facts of the present case failure to mention names, affects validity of the notices issued under Section 153A of the Act?

21. The aforesaid contention of the 22 petitioners has to fail in the present cases for several reasons. The said contention was not raised against the first order under Section 153A passed by the Assessing Officer which was made subject matter of challenge in a revision before the Commissioner under Section 264 of the Act. The Commissioner has set aside the first assessment orders under Section 153A of the Act and has passed an order of remand for fresh adjudication vide order dated 16th March, 2012. The petitioners have not questioned and challenged the orders dated 16th March, 2012 and have accepted the same. All panchnamas are dated 31st January, 2008. There are no subsequent or second set of panchnamas in the case of the search warrants against the 22 petitioners. 31st January, 2008 was the date of search as recorded in the warrants of search.

The petitioners, including 22 petitioners whose names do not feature in the panchnamas, have not denied that they were subjected to search on 31st January, 2008. It is also not repudiated or contested that several documents/papers relating to the 22 petitioners were seized and were included in the list of the seized documents/papers attached to the panchamas. Thus, there cannot be any dispute or debate regarding the question of time limit or limitation period for completion of assessment under Section 153A and indeed the said issue is foreclosed. In the facts of the present case, the contention should be and is rejected.

22. The expression 'panchnama' has not been defined in the Act. Section 132(13) makes provisions of Code of Criminal Procedure 1971 relating to search and seizure applicable to searches under the said section. Sub-section (5) to Section 100 of the said code states that search shall be made in presence of witnesses and list of things seized during the search shall be prepared by the officers or other persons and signed by such present witnesses. A copy of the said list prepared and duly signed by the witnesses shall be delivered to every occupant or person at the place searched, is mandated and required under sub-section (6) to Section 100 of the code. As per the manual prepared by the Revenue relating to search and seizure operations, at the end of search or when it is temporarily concluded, a panchnama is required to be prepared or drawn. It is evidently clear that this document has considerable evidentiary value and should be prepared with care and caution. The panchnama should be exhaustive, record of all events in the same sequence in which they have occurred and should specify details like name of person against whom warrant was

issued, time of temporary conclusion of search etc. Panchnama should be prepared even in cases where nothing is found or seized in the search.

23. There is certainly lapse and failure to comply with the requirements of search and seizure manual as the panchnama did not contain names of the 22 petitioners and does not record any suspension of search. Even the obstruction and presence of third persons were not mentioned in the panchnamas. But this would not affect the validity of the search. We only record that panchnamas in the present case to this extent are defective, but the search or initiation of search cannot be disputed. However, the respondents should take remedial steps and ensure that such lapses do not occur in future, otherwise similar allegations will get repeated, entailing litigation.

24. Panchnama is an important document because it informs the person from whose premises the articles are seized or the person searched as to the name of the person or the building etc. where the search was carried out and the officers who were authorized and had carried out the search and the articles, if any, seized. We are informed that copy of the warrant of search is only shown to the occupant or persons against whom it is issued and their signatures obtained but no copy is furnished to them. Any search and seizure operation invades constitutionally protected and cherished right of privacy. Administrative lapse even of minor nature when there is invasion of the said right does lead to criticism and allegations. It will be salutary and proper that a copy of the search warrant be furnished to the occupant or the person searched. This would curtail

any allegation of interpolation, addition of names etc. However, in the facts of the present case, we do not think that the lapse or failure in the panchnamas affects the validity of the search or nullifies notice under section 153A of the Act. It certainly would not affect initiation of search which is the starting point and precondition for invoking Section 153A of the Act. Panchama is drawn when the search stands concluded finally or temporarily. The effect of the said lapse on merits or to the value or degree of importance to be given to the material seized is a matter of appraisal and merits and not a question to be examined and answered in these writ petitions. The view, we have taken finds support from the decisions of the Supreme Court in ***I.T.O. vs. Seth Brothers & Ors.*** (1969) 74 ITR 836(SC) and ***Puran Mal vs. Director of Inspection*** (1973) 93 ITR 505 (SC). Reference can also be made to the decision of this court in ***Commissioner of Income Tax vs. S. K. Katyal*** (2009) 308 ITR 168 (Del.), wherein the expression 'panchnama' was elucidated and explained in the following words:-

> "15. These provisions demonstrate that a search and seizure under the said Act has to be carried out in the presence of at least two respectable inhabitants of the locality where the search and seizure is conducted. These respectable inhabitants are witnesses to the search and seizure and are known as 'panchas'. The documentation of what they witness is known as the panchnama. The word 'nama', refers to a written document. Its type is usually determined by the word which is combined with it as a suffix. Examples being, nikah-nama (the written muslim marriage contract), hiba-nama (gift deed, the word hiba meaning – gift), wasiyat-nama (written will) and so on. So a panchnama is a written record of what the panch has witnessed. In Mohan Lal v. Emperor: AIR 1941 Bombay 149, it was observed that 'the panchnama is merely a record of what a panch sees'. Similarly, the Gujarat High Court in

> the case of Valibhai Omarji v. The State: AIR 1963 Guj 145 noted that 'a Panchanama is essentially a document recording certain things which occur in the presence of Panchas and which are seen and heard by them.' Again in The State of Maharashtra v. Kacharadas D. Bhalgar: (1978) 80 BomLR 396, a panchnama was stated to be 'a memorandum of what happens in the presence of the panchas as seen by them and of what they hear'.
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> 16. We have examined the meaning of the word panchnama in some detail because it is used in Explanation 2(a) to Section 158BE of the said Act although it has not been defined in the Act. A panchnama, as we have seen is nothing but a document recording what has happened in the presence of the witnesses (panchas). A panchnama may document the search proceedings, with or without any seizure. A panchnama may also document the return of the seized articles or the removal of seals. But, the panchnama that is mentioned in Explanation 2(a) to section 158BE is a panchnama which documents the conclusion of a search. Clearly, if a panchnama does not, from the facts recorded therein, reveal that a search was at all carried out on the day to which it relates, then it would not be a panchnama relating to a search and, consequently, it would not be a panchnama of the type which finds mention in the said Explanation 2(a) to section 158 BE."

25. Read in this manner, we do not think that the first contention of the petitioners has any merit and the same is rejected.

26. The third and the fourth contentions are not matters relating to initiation of proceedings or jurisdiction, but relate to alleged erroneous or wrong exercise within or while exercising jurisdiction i.e. the manner in which the proceedings were conducted by the Assessing Officer, after orders of the Commissioner under Section 264 were passed. They relate to merits of the assessment orders passed under Section 153A in the second round. These are aspects and issues which are to be and should be raised before the appropriate

appellate authorities under the statute. We have already noted the contention of the petitioners and respondents in this regard. We have also read the orders passed by the Commissioner under Section 264 of the Act, which the parties do not challenge and question. The interpretation which can and should be given to the said orders and whether or not there was violation of the requirements of Section 144A can be examined in the appellate proceedings.

27. Assessment orders under Section 153A cannot and should not be permitted to become a matter of writ proceedings as the first appellate forum. The first appellate statutory authority can deal with the questions and issues raised before us, whose jurisdiction indeed has been invoked with appeals being preferred by the petitioners. We do not think that the contentions and issues raised, merit or justify their examination and decision in writ petitions in exercise of extra ordinary jurisdiction. The first appellate authority should and under the Act, can examine the said contentions/issues and pass appropriate orders. The first appellate authority can also examine the question as to whether or not any prejudice has been caused to the petitioners because of alleged failure of the Joint Commissioner to hear the petitioners before passing an order under section 144A of the Act. The effect of the petitioners' filing their representations invoking Section 144A etc. is again an aspect which can be examined by the appellate authorities. The appellate authorities have the right and power to opine on the said subject matters. It would not be correct to bifurcate the objections against the assessment orders and hear a part of the objections in the writ proceedings, while the other objections relating to "merits" of the assessment order are permitted and allowed

to be raised in the pending appeals before the appellate authority. This bifurcation shall not serve the cause of justice and may result in ambiguous or even conflicting orders.

28. In view of the alternative remedy which is efficacious and provided by the statute itself, we do not want to delve into the said issues.

29. In view of the aforesaid discussion, we do not find any merit in the present writ petitions and the same are dismissed. We clarify that the observations made in the judgment are for the purpose of disposal of the writ petitions and the appeals against the assessment order under Section 153A of the Act on merits will be decided in accordance with law and the observations relating to merits of the addition made hereinabove will not be considered as binding. The petitioners will pay costs as per the Delhi High Court Rules to the respondents.

(SANJIV KHANNA)
JUDGE

(SANJEEV SACHDEVA)
JUDGE

December 20th, 2013
kkb