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

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Date of Decision: 23.04.2025

+ **W.P.(C) 1056/2023 & CM APPL. 4165/2023 (Stay)**

RAKESH BABBAR

.....Petitioner

Through: Mr. Ruchesh Sinha, Ms. Monalisa
Maity, Ms. Shilpa Choudhary and Mr.
Aakash Saini, Advs.

Versus

ACIT CENTRAL CIRCLE-16 NEW DELHI & ANR.....Respondents

Through: Mr. Sanjay Kumar, Ms. Monica
Benjamin & Ms. Easha Kadian, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

Introduction

1. The petitioner [Assessee] has filed the present petition, *inter alia*, impugning a notice dated 24.08.2021 [impugned notice] issued under Section 153C of the Income Tax Act, 1961 [Act] in respect of Assessment Year [AY] 2018-19. The Assessee also impugns the assessment order dated 27.12.2022 [impugned assessment order] passed under Section 153C read with Section 143(3) of the Act for AY 2018-19. Additionally, the Assessee impugns the consequent demand raised pursuant to the impugned



assessment order.

2. The Assessee has assailed the impugned notice principally on the ground that it was issued by the Assessing Officer [AO] without being in possession of any incriminating material having a bearing on the income of the Assessee for the previous year relevant to AY 2018-19. The Assessee also contends that the impugned assessment order is based purportedly on a statement of one Mr. Rakesh Jain, which was recorded under Section 132(4) of the Act during the course of the search conducted under Section 132 of the Act. However, the Assessee was afforded an opportunity to cross-examine Mr. Rakesh Jain. Apart from the other grounds, the Assessee also disputes the additions made in the impugned assessment order on merits.

3. Concededly, the Assessee has an efficacious remedy of statutory appeal against the impugned assessment order and therefore Mr. Sinha, the learned counsel appearing for the Assessee has confined the present petition assailing the impugned notice on the solitary ground that it is without jurisdiction as it was issued without any incriminating material being found during the search conducted under Section 132 of the Act.

Factual Context

4. The Assessee is a consultant / facilitator for setting up the amusement parks, indoor entertainment centres, malls and other entertainment and amusement venues. It is stated that two persons namely Mr. Sanjeev Aeren and Mr. Rakesh Jain, promoters of a company named M/s Celebration City Projects Pvt. Ltd. [CCPL], had developed a mall named 'RED' located in



Ghaziabad.

5. On 02.11.2017, a search was conducted on the premises of Sh. Rakesh Jain and other related persons [**Rakesh Jain Group**]. It is stated that during the search, certain material was seized which pertained to the Assessee. Accordingly, the AO having jurisdiction in respect of Mr. Rakesh Jain and persons constituting the Rakesh Jain Group, who were subjected to search and seizure operation under Section 132 of the Act [**searched persons**] recorded a satisfaction note to the effect that during the search certain pages were found from the premises of one Mr. Prahlad Kumar Aggarwal (who was one of the searched persons). The said pages established that part of the consideration for sale of certain shops was received in cash and the same were not accounted for in the books of accounts of CCPL. The documents found also included an excel sheet [**the excel sheet**] which according to the AO indicated that certain money was received from customers to whom shops/spaces had been sold. Mr. Rakesh Jain had made a statement that the shops in question had been sold through the Assessee. On the basis of the said statement made by Mr. Rakesh Jain read with the excel sheet that was found during the search, the AO of the searched persons concluded that the Assessee had made an investment of ₹43,85,50,300/- in cash in RED Mall which was being developed by CCPL at the material time. It was assumed that the excel sheet contained data pertaining to AY 2018-19 and thus would have a bearing on the determination of income of the Assessee.

6. The AO having jurisdiction of the searched persons also exercised



jurisdiction in the case of the Assessee and therefore recorded a separate note, as the AO having jurisdiction of a person other than the one searched [other person], to the effect that the documents and material found during the search conducted under Section 132 of the Act in respect of Rakesh Jain Group, which were received, had a bearing on determining the income of the Assessee chargeable to tax in AY 2018-19.

7. Thereafter, on 24.08.2021, the AO issued the impugned notice. The reassessment proceedings culminated in the impugned assessment order whereby the AO made an addition of ₹43,85,50,300/- under Section 69A of the Act and accordingly issued a notice of demand under Section 156 of the Act raising the demand of ₹61,90,78,037/-.

Analysis and Conclusion

8. It is contended on behalf of the Assessee that the impugned assessment order is higher-pitched on the unfounded assumption that the Assessee is an investor in RED Mall. He contends that the statement of Mr. Rakesh Jain, which forms the basis of the impugned assessment order is to the effect that the shops / spaces had been sold through the Assessee and not that the Assessee was an investor in the real estate project. It is contended that there was no material with the AO, which even remotely suggested that the Assessee is an investor in RED Mall.

9. There is no cavil that the only document, which was found during the course of the search, which the AO of the searched person considers to be incriminating document is the excel sheet containing certain information. It



is material to note that the said excel sheet does mention certain figures in the columns under the heading “Dx” and “Cx” as well as names of few persons. According to the AO, the heading “Dx” concerns the amounts received in cheque through banking channels and heading “Cx” concerns the amount received by CCPL/Rakesh Jain Group in cash. The excel sheet neither contains any reference to the Assessee nor indicates that the Assessee is concerned with any of the data as recorded in the excel sheet. Undisputedly, on a standalone basis the said document – the excel sheet – cannot be considered as an incriminating material. However, during the search, the statement of Mr. Rakesh Jain was recorded under Section 132(4) of the Act and he had stated that the term ‘RED’ as mentioned in the excel sheet related to money received from customers to whom shops had been sold through the Assessee. It is on the basis of this statement that the said excel sheet is considered as an incriminating material.

10. At this stage, we consider it relevant to extract the said excel sheet and the relevant extract of the statement recorded under Section 132(4) of the Act which is relevant to the present case. The same is set out below:

The excel sheet

“

Capital Premium +	DX	CX	Total
Ved Goswami with Jointly Kavita Goswami	289,127,994		289,127,994
Others	538,571,990.00		538,571,990.00
Loans	303,930,757.53		303,930,757.53
GDA	1,137,691,132.00		1,137,691,132.00



Creditors +statutory	70,877,813,75		70,877,813,75
Advanced Recd. Agt space			
GP (after security of Rs. 26 Crore)	415,284,426.00		415,284,426.00
Deepak Agrwal	126,044,706.00	298,803,990.00	424,848,696.00
Red	739,934,742.78	438,550,300.00	1,178,485,042.78
SJA	294,128,324.00	490,440,850.78	784,569,174.78
Ajay Choudhary	121,047,364.00	159,394,200.00	280,441,546.00
Lakhotia	126,027,828.00	273,274,479.22	399,302,307.22
Ved Goswami	1,000,000.00	104,000,000.00	105,000,000.00
Somani +AEZ	137,800,000.00		137,800,000.00
Shahi Realators	204,218,914.00		204,218,914.00
	4,505,685,992.00	1,764,463,820.00	6,270,149,812.06
Assets			
	DX	CX	Totals
Fixed Assets	6,511,115,64		6,511,115,64
WIP	2,192,523,619,24	1,764,463,820.00	3,956,987,439.24
Land	2,071,546,872.00		2,071,546,872.00
Stocks Jagadhary	98,132,000.00		98,132,000.00
Others	136,972,385.18		136,972,385.18
	4,505,685,992.06	1,764,463,820.00	6,270,149,812.06"

The relevant extract of Mr Jain's Statement

Ans: I acknowledge and admit that the above shown documents is found from the whatsapp record of my mobile phone which I received from Shri Prahlad Agarwal on 17.03.2017 and forwarded the same.

*Page 2: Statement of Rakesh Jain U/s 132 (4) of the Income Tax Act. to Shri Devendra Kumar Gupta. **This Documents is the latest balance Sheet of M/s Celebration City Projects Pvt. Ltd. as on 17.03.2017. The term 'Dx' represent the figures as it appears in books of accounts and term 'Cx' represents the figures of cash received from the customers/investors which has not been recorded in the books of accounts.***

In the above sheets the abbreviated terms represent the following:



1. **RED:** *It represents money received from the customers to which shop/space has been sold through Mr. Rakesh Babbar or Rakesh Babbar himself.*
2. **GP:** *It represent to money received from myself and my group of companies. GP stands from Green Park.*
3. **Deepak Agrawal:** *The figures mentioned against Shri Deepak Agrawal represent the amounts he spent in constructing this mall.*
4. **SJA:** *It stands for Sanjeev J Aeren. The figure mentioned against Shri Sanjeev J Aeren represent money received from the customers to which shop/space has been sold through Sanjeev J Aeren.*
5. **Ajay Choudhary:** *It represents either money received from the customers to which shop/space has been sold through Shri Ajay Choudhary or Ajay Choudhary himself.*
6. **Lakhotia:** *The figure mentioned against shri Lakhotia represent money received from the customers which shop/space has been sold through Shri Lakhotia or shri Lakhotia himself.*
7. **Ved Goswami:** *The figure mentioned against Shri Ved Goswami represent money received from the Shri Ved Goswami.*
8. **Somani +AEZ:** *The figure mentioned against Somani +AEZ represent money received from the customers to which shop/space has been sold through Shri Sanjeev J Aeren. I am not aware of what somani represents.*
9. **Shahi Realators:** *The figure mentioned against Shahi Realators represent money received from the Shahi Realtors.*
10. **Jagadhary:** *This is a piece of land in a colony developed by Mr. Kailash J Aeren.”*

[Emphasis added]

11. As noted above, the only material found during the search conducted in the case of Rakesh Jain Group, which is stated to have a bearing as far as the Assessee is concerned, is the excel sheet as extracted



above. As observed earlier, the same cannot be considered as incriminating material on the basis of which a notice under Section 153C of the Act could be issued to the Assessee. However, the excel sheet has been considered as an incriminating material solely on the basis of the statement of Mr. Rakesh Jain, which was recorded under Section 132(4) of the Act. Thus, one of the issues that arises is whether the statement recorded under Section 132(4) of the Act is required to be taken into account for considering whether the excel sheet is an incriminating material. However, it is not necessary to address this issue for the reason that even if the statement of Mr. Rakesh Jain is taken into account, we find that the AO did not have any incriminating material for issuance of the impugned notice for AY 2018-19. This is for the reason that the statement of Mr. Rakesh Jain had explained that the document in question (the excel sheet) was the latest balance sheet of CCPL as on 17.03.2017. Thus, any amount reflected in the said document pertains to FY 2016-17, which is relevant to the AY 2017-18. Since the AO had proceeded on accepting the explanation of Mr. Rakesh Jain in respect of the excel sheet, the same could not in any event be considered as incriminating material having a bearing on the assessment of the Assessee's income for the previous year relevant to AY 2018-19.

12. In *Commissioner of Income-tax v. Kabul Chawla: 2015 SCC OnLine Del 11555*, the Division Bench of this court (to which One of us – Vibhu Bakhru, J. is a member) had considered the question whether proceedings under Section 153A of the Act could be instituted in absence of any incriminating material unearthed during the search and had summarized



the law as under:

“Summary of the legal position

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

(i) Once a search takes place under Section 132 of the Act, notice under Section 153-A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

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

(iii) The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the “total income” of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs ‘in which both the disclosed and the undisclosed income would be brought to tax’.

(iv) Although Section 153-A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment ‘can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.’

(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word “assess” in Section 153-A is relatable to abated proceedings (i.e. those pending on the date of search) and the word “reassess” to completed



assessment proceedings.

(vi) Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153-A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

(vii) Completed assessments can be interfered with by the AO while making the assessment under Section 153-A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

13. In *Principal Commissioner of Income-tax v. Saumya Construction (P) Ltd.: (2016) 387 ITR 529*, a Division Bench of the Gujarat High Court had referred to the decision of this court in *Commissioner of Income-tax v. Kabul Chawla (supra)* and concurred with the said view.

14. In *Commissioner of Income-tax v. Abhisar Buildwell (P) Ltd.: (2024) 2 SCC 433*, the Supreme Court had considered the following question:

“Whether the jurisdiction of the AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132-A or not i.e. whether any 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 or not.”

And, after referring to various decisions answered the said question in the affirmative.



15. The Supreme Court had also affirmed the view expressed by this court in *Commissioner of Income-tax v. Kabul Chawla* (*supra*) as well as of the Gujarat High Court in *Principal Commissioner of Income-tax v. Saumya Construction (P) Ltd.* (*supra*). We consider it apposite to refer to the following extract of the said decision. The same is set out below:

“28. For the reasons stated herein below, we are in complete agreement with the view taken by the Delhi High Court in *Kabul Chawla* and the Gujarat High Court in *Saumya Construction (P) Ltd.*, taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

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 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 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.

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 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.

37. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

16. The aforesaid decision was rendered in the context of Section 153A of the Act. However, the said decision would be equally applicable to initiation of assessment / reassessment under Section 153C of the Act. In *Commissioner of Income-tax v. Sinhgad Technical Education Society:*



(2017) 397 ITR 344, the Supreme Court accepted that the AO would have no jurisdiction to initiate proceedings under Section 153C of the Act absent any incriminating material found in case of a search conducted under Section 132 of the Act or requisition made under Section 132A of the Act. The relevant extract of the said decision is set out below:

“17. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153-C of the Act, incriminating material which was seized had to pertain to the assessment years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. Since this requirement under Section 153-C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153-C of the Act. Para 9 of the order of the ITAT reveals that ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, the learned Senior Counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time-barred.

18. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of Assessment Years 2000-01 and 2001-02 was time-barred. However, in view of our aforementioned findings, it is not necessary to enter into this



controversy.”

17. It is also relevant to refer the recent decision of this court in ***Saksham Commodities Ltd. v. Commissioner of Income-tax:(2024) 464 ITR 1*** wherein this court had observed as under:

“49. That takes us to the principal question and which pertains to the nature of the incriminating material that may be obtained and the years forming part of the block which would merit being thrown open. Regard must be had to the fact that while section 153C enables and empowers the jurisdictional Assessing Officer to commence assessment or reassessment for a block of six assessment years or the “relevant assessment year”, that action is founded on satisfaction being reached that the books of account, documents or assets seized “have a bearing on the determination of the total income of such other person”. We in this regard bear in mind the well settled distinction which the law recognizes between the existence of power and the exercise thereof. Section 153C enables and empowers the jurisdictional Assessing Officer to assess or reassess the six assessment years or the “relevant assessment year”. The Act thus sanctions and confers an authority upon the Assessing Officer to exercise the power placed in his hands for up to a maximum of ten assessment years. Despite the conferral of that power, the question which would remain is whether the facts and circumstances of a particular case warrant or justify the invocation of that power. It is the aforesaid aspect which bids us to reiterate the distinction between the existence and exercise of power.

50. What we seek to emphasise is that merely because section 153C confers jurisdiction upon the Assessing Officer to commence an exercise of assessment or reassessment for the block of years which are mentioned in that provision, the same alone would not be sufficient to justify steps in that direction being taken, unless the incriminating material so found is likely to have an impact on the total income of a particular assessment year forming part of the six assessment years immediately preceding the assessment year pertaining to the search year or for the “relevant assessment year”.

51. Ultimately section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have



the potential to impact or have a bearing on an assessment which may be undergoing or which may have been completed. The words “have a bearing on the determination of the total income of such other person” as appearing in section 153C would necessarily have to be conferred pre-eminence. Therefore, and unless the Assessing Officer is satisfied that the material gathered could potentially impact the determination of total income, it would be unjustified in mechanically reopening or assessing all over again all the ten assessment years that could possibly form part of the block of ten years.

52. The decisions which hold that an assessment is liable to be revised only if incriminating material be found, even if rendered in the context of section 153A, would clearly govern the question that stands posited even in the context of section 153C. It would be relevant to recall that the Division Bench in *Kabul Chawla* had observed that in the absence of any incriminating material, a completed assessment may be reiterated and the abated assessment or reassessment be concluded. The importance of incriminating material was further underlined in *Kabul Chawla* with the court observing that completed assessments could be interfered with, only if some incriminating material were unearthed. This aspect came to be reiterated in *RRJ Securities* when the court held that it would be impermissible to either reopen or reassess a completed assessment which may not be impacted by the material gathered in the course of the search and which may have no plausible nexus. The aforesaid position also comes to the fore when one reads para 17 of *ARN Infrastructure* and which annulled an action aimed at reopening assessments for years to which the incriminating document which was found did not relate.

54. In any case, *Abhisar Buildwell*, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that in the absence of incriminating material, the Assessing Officer would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under section 153C. Here too, the



Assessing Officer would have to firstly identify the assessment years to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of assessment years falling within the block of six assessment years or for that matter all years forming part of the block of ten assessment years, appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to section 153A as well as section 153C *ex abundanti cautela*. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated by the respondents.”

18. The question whether a notice under Section 153C of the Act can be issued in respect of an assessment year in respect of which no incriminating material is found is no longer *res integra*. The AO does not have any jurisdiction to issue a notice under Section 153C of the Act if the search on which the said notice is premised, has not yielded any incriminating material having a bearing on the assessment of income of the assessee. The jurisdiction of the AO to issue a notice under Section 153C of the Act is predicated on the search under Section 132 of the Act or a requisition under Section 132A of the Act, yielding any incriminating material and the AO of the searched person being satisfied that the assets so unearthed, documents, books of accounts or other material found during the search conducted under Section 132 of the Act or pursuant to a requisition made under Section 132A of the Act, belongs to or pertains to the assessee (other than the searched



person) or contains any information relating to the assessee. Once this condition is satisfied, the AO can assume jurisdiction subject to being satisfied that the material has a bearing on the income of the assessee. In the present case, the said jurisdictional condition is not satisfied as the search has not yielded any incriminating material, which could confer jurisdiction to the AO to issue a notice under Section 153C of the Act in respect of AY 2018-19.

19. Since no incriminating material whatsoever was found in respect of Assessee's income for FY 2017-18 relevant to AY 2018-19, the impugned notice as well as the impugned assessment order are set aside.

20. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 23, 2025

'gsr'

Click here to check corrigendum, if any