R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2024

PRESENT

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

WRIT APPEAL NO.830 OF 2022 (T-IT)

CONNECTED WITH

WRIT APPEAL NO.831 OF 2022 (T-IT)

WRIT APPEAL NO.832 OF 2022 (T-IT)

WRIT APPEAL NO.833 OF 2022 (T-IT)

WRIT APPEAL NO.834 OF 2022 (T-IT)

IN W.A.NO.830/2022

BETWEEN:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1(4), CENTRAL REVENUE BUILDING
QUEENS ROAD
BENGALURU – 560 001.

2. THE COMMISSIONER OF INCOME TAX
(APPEALS)-11
ROOM NO. 322, 3RD FLOOR
CENTRAL REVENUE BUILDING
QUEEN'S ROAD
BENGALURU – 560 001.

...APPELLANTS

(BY SRI. BALBIR SINGH – THE THEN ASG;
SRI. Y V RAVIRAJ - ADVOCATE)

AND:

SUNIL KUMAR SHARMA
S/O SRI D P SHARMA
AGED ABOUT 45 YEARS
NO.328, TIPPU SULTHAN PALACE ROAD
KALASIPALYAM
BENGALURU – 560 002.

...RESPONDENT

(BY SRI KIRAN S JAVALI – SR. COUNSEL FOR
SRI. SREEHARI KUTSA – ADVOCATE FOR C/RESPONDENT)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.9939/2022 (T-IT) DATED 12.08.2022.

IN W.A.NO.831/2022

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
(APPEALS)-11, BENGALURU
OFFICE OF THE COMMISSIONER OF
INCOME TAX (APPEALS)-11
ROOM NO. 322, 3RD FLOOR
CENTRAL REVENUE BUILDING
QUEEN'S ROAD
BENGALURU – 560 001.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1(4)
C R BUILDING, QUEENS ROAD
BENGALURU – 560 001.

3. THE JOINT / ADDITIONAL COMMISSIONER

OF INCOME TAX, CENTRAL RANGE-1
C R BUILDING, QUEENS ROAD
BENGALURU – 560 001.

4. THE PR. COMMISSIONEKR OF INCOME TAX
(CENTRAL), C R BUILDING
QUEENS ROAD, BENGALURU – 560 001.

5. THE DIRECTOR GENERAL OF INCOME TAX(INV.1)
C R BUILDING, QUEENS ROAD
BENGALURU – 560 001.

...APPELLANTS

(BY SRI. BALBIR SINGH – THE THEN ASG;
SRI. Y V RAVIRAJ - ADVOCATE)

AND:

SUNIL KUMAR SHARMA
S/O SRI D P SHARMA
AGED ABOUT 45 YEARS
NO.328, TIPPU SULTHAN PALACE ROAD
KALASIPALYAM
BENGALURU – 560 002.

...RESPONDENT

(BY SRI KIRAN S JAVALI – SR. COUNSEL FOR
SRI. SREEHARI KUTSA – ADVOCATE FOR C/RESPONDENT)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.9945/2022 (T-IT) DATED 12.08.2022.

IN W.A.NO.832/2022

BETWEEN:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1(4), CENTRAL REVENUE BUILDING
QUEENS ROAD
BENGALURU – 560 001.

2. THE COMMISSIONER OF INCOME TAX
(APPEALS)-11
ROOM NO. 322, 3RD FLOOR
CENTRAL REVENUE BUILDING
QUEEN'S ROAD
BENGALURU – 560 001.

...APPELLANTS

(BY SRI. BALBIR SINGH – THE THEN ASG;
SRI. Y V RAVIRAJ - ADVOCATE)

AND:

SUNIL KUMAR SHARMA
S/O SRI D P SHARMA
AGED ABOUT 45 YEARS
NO.328, TIPPU SULTHAN PALACE ROAD
KALASIPALYAM
BENGALURU – 560 002.

...RESPONDENT

(BY SRI KIRAN S JAVALI – SR. COUNSEL FOR
SRI. SREEHARI KUTSA – ADVOCATE FOR C/RESPONDENT)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.9938/2022 (T-IT) DATED 12.08.2022.

IN W.A.NO.833/2022

BETWEEN:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1(4), CENTRAL REVENUE BUILDING
QUEENS ROAD
BENGALURU – 560 001.

2. THE COMMISSIONER OF INCOME TAX
(APPEALS)-11
ROOM NO. 322, 3RD FLOOR
CENTRAL REVENUE BUILDING
QUEEN'S ROAD
BENGALURU – 560 001.

...APPELLANTS

(BY SRI. BALBIR SINGH – THE THEN ASG;
SRI. Y V RAVIRAJ - ADVOCATE)

AND:

SUNIL KUMAR SHARMA
S/O SRI D P SHARMA
AGED ABOUT 45 YEARS
NO.328, TIPPU SULTHAN PALACE ROAD
KALASIPALYAM
BENGALURU – 560 002.

...RESPONDENT

(BY SRI KIRAN S JAVALI – SR. COUNSEL FOR
SRI. SREEHARI KUTSA – ADVOCATE FOR C/R)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.9937/2022 (T-IT) DATED 12.08.2022.

IN W.A.NO.834/2022

BETWEEN:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1(4), CENTRAL REVENUE BUILDING
QUEENS ROAD
BENGALURU – 560 001.

2. THE COMMISSIONER OF INCOME TAX
(APPEALS)-11
ROOM NO. 322, 3RD FLOOR
CENTRAL REVENUE BUILDING
QUEEN'S ROAD
BENGALURU – 560 001.

...APPELLANTS

(BY SRI. Y V RAVIRAJ - ADVOCATE)

AND:

SRI KANDASWAMY RAJENDRA
S/O LATE KANDASWAMY
AGED ABOUT 76 YEARS
R/AT NO.8B, 1ST FLOOR
DDA MIH FLAT, SARAI JULENA
SUKDHEV VIHAR
NEW DELHI – 110 025.

...RESPONDENT

(BY SRI A MAHESH CHOWDHARY – ADVOCATE)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.9946/2022 (T-IT) DATED 12.08.2022.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.12.2023 COMING ON FOR PRONOUNCEMENT THIS DAY, **K. SOMASHEKAR J**., DELIVERED THE FOLLOWING:

J U D G M E N T

These appeals have been preferred by the Deputy Commissioner of Income Tax, Circle 1(4) (for short 'Revenue'), challenging the common order dated 12.08.2022 passed by a learned Single Judge of this Court in W.P.No.9937/2022 and connected matters. All these appeals are directed against one Shri Sunil Kumar Sharma who is the respondent in W.A.Nos.830/2022, 831/2022, 832/2022 and 833/2022 and one Shri Kandaswamy Rajendran who is the respondent in W.A.No.834/2022. The respondents shall hereinafter be referred to as 'the assessee' for brevity.

2. Since all these appeals which have been preferred by the Revenue arise out of a common order dated 12.08.2022 rendered by a learned Single Judge in W.P.No.9937/2022 and connected petitions, they are heard together and are disposed of by this common order.

3. Heard the arguments advanced by the then learned Addl. Solicitor General Shri Balbir Singh as well as the present learned counsel Sri Y V Raviraj who is on record for appellants in WA.Nos.830/2022, 831/2022, 832/2022, 833/2022 and 834/2022. We have also heard the arguments advanced by the learned Senior counsel Sri Kiran S Javali for the respondent in W.A.Nos.830/2022, 831/2022, 832/2022 and 833/2022. Further, we have heard the arguments of the learned counsel Sri A. Mahesh Chowdary for the respondent in W.A.No.834/2022 and have perused the materials on record including the impugned order.

4. The factual matrix of the cases as revealed from the pleadings, are as under:

It transpires that the Appellants / Revenue, had conducted search action under Section 132(1) of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act') on 02nd August, 2017 at the premises of the Sri D K Shivakumar and similar search also took place at premises of one Sri K Rajendran/Assessee at New Delhi. It is the case of the

Appellants/Revenue that, during the search at the premises of the Assessee, certain diaries and entries relating to the affairs of the Respondent / Sri Sunil Kumar and Sri D K Shivakumar were recovered and statements of both the Respondent and that of Sri K. Rajendran, came to be recorded. It is further stated in the writ petitions that the Appellant/Revenue claims that the case of the Respondent was centralized to the jurisdiction of Appellant/revenue as per Order dated 07th March, 2018 under Section 127 of the Act. Respondents herein further contended that the Appellant/Revenue has neither issued any notice nor informed regarding centralization of their case to the jurisdiction of Appellant/Revenue and it is further contended in the writ appeals that Appellant/Revenue ought to have provided an opportunity to the Respondents as required under Section 127 of the Act.

5. After the transfer of jurisdiction under Section 127 of the IT Act, the Assessing Officer, after due compliance of the conditions contemplated, issued notice dated 21.08.2019 under Section 153C of the IT Act requesting the assessee to file return of income and in compliance of the said notice, the assessee filed

his return of income as on 05.09.2019. On 06.09.2019, the Assessing Officer issued notice to the assessee under Section 143(2) of the IT Act. After granting sufficient opportunity of hearing to the assessee and after considering the incriminating material and other material gathered post search investigation, the Assessing Officer concluded the assessment by its order dated 31.12.2019. The assessee challenged the said order by preferring an appeal as on 30.01.2020 before the Commissioner of Income Tax, Appeals, which appeal is pending consideration. In view of the fact that the said appeal was still pending consideration, the assessee is said to have preferred writ petitions as on 23.05.2022 challenging the notice and the order of assessment.

6. Respondents / Assessee, while urging the aforementioned aspects, questioned the impugned notices calling upon Assessee herein to submit his returns of income for the Assessment Year 2015-2016, as without jurisdiction. The main grievance of the respondents is that impugned notices under Section 153C of the Act is to be issued on "other person" and the respondents being "searched person", the impugned notice under Section 153C of

the Act is not maintainable. Hence, the impugned order by the Commissioner of Income Tax in the CIT(A) was challenged through Writ Petition No. 9937/2022 & connected matters before a learned Single Judge of this High Court. Further, aggrieved by the common order of the learned Single Judge of this High Court, the Appellant/Revenue has come before this Division Bench challenging the order of the learned Single Judge as non-est and contrary to law.

7. The learned Single Judge, by its order dated 12.08.2022, has allowed all the writ petitions and has quashed the respective impugned notices issued including the further proceedings and has thereafter remanded the matter to the Revenue to re-consider the issue afresh. It is this order which is under challenge in these petitions by urging various grounds.

8. The then Learned Addl. Solicitor General appearing for the appellants / Revenue has contended that the writ petitions were preferred by the assessee as on 23.05.2022 and the matters were listed before a learned Single Judge of this Court as on 24.05.2022 on which day, the petitioner was permitted to serve

the Standing Counsel for the Revenue. It is contended that the papers were served late in the night as on that day and since the Standing Counsel could not seek instructions, the matter was listed consecutively on 25.05.2022 and on 26.05.2022. The revenue requested for time to file statement of objections. The matter was treated as part heard and was adjourned to 14.06.2022. On the said day, it was adjourned to 15.7.2022 and again to 04.08.2022 and thereafter to 10.08.2022. When the learned ASG appeared for the Revenue, the learned Single Judge had indicated him that the issue raised by the assessee is regarding the applicability of the judgments of the Hon'ble Supreme Court in the case of V.C. SHUKLA and COMMON CAUSE and asked him to answer those issues. Hence, it is contended that the Revenue was constrained to address their arguments only as regards the above issue as indicated by the learned Single Judge. However, it is contended that the judgment dated 12.08.2022 rendered by the learned Single Judge refers to consideration of various issues either not being addressed by the assessee after appearance of the revenue, or in the presence of the revenue or as indicated by the learned Single Judge. It is

contended that the learned Single Judge, after considering various aspects, proceeded to set-aside the initiation of proceedings by setting aside the notice issued to the assessee under Section 153C of the IT Act and consequently has set aside the order of assessment as well as the demand notice. The learned Single Judge though has remanded the matter for de novo enquiry, in view of setting aside the notice under Section 153C of the IT Act, the result is that there are no proceedings pending before the Assessing Officer and in view of the same, the order of remand cannot be given effect to and it would only remain a futile exercise. Being aggrieved by the same, it is contended that the Revenue has preferred the appeals on various grounds.

9. The then learned ASG contends that after the appearance of the Revenue, no arguments were addressed on behalf of the Assessee. Since the learned Single Judge had indicated that the Revenue was to argue regarding the order of assessment being passed without considering the law laid down by the Hon'ble Supreme Court in the case of CBI vs. V.C. SHUKLA ((1998 3 SCC 410)) and COMMON CAUSE vs. UNION OF INDIA ((2017) 11 SCC

731)), the arguments were addressed by the Revenue only on the said issue. However, the learned Single Judge has proceeded to address various other issues raised in the writ petitions which were not at all argued, without considering the Statement of objections filed by the Revenue in response to the contentions raised in the writ petitions. Hence, it is contended that the order of the learned Single Judge is in violation of the principles of natural justice and is liable to be set aside.

10. It is contended that neither the revenue nor the assessee had argued before the learned Single Judge regarding the transfer of jurisdiction under Section 127 of the IT Act, maintainability of the writ petition, correctness of initiation of proceedings under Section 153C of the IT Act as to whether the assessee should be treated as a "Searched Person" or "Other Person".

11. It is the further contention on behalf of the Revenue that as regards the order of assessment passed on 31.12.2019, the assessee has preferred an appeal as provided under Section 246A of the IT Act before the CIT (A) and the same is pending

consideration. In view of the assessee having invoked the remedy of an efficacious statutory appeal, during the pendency of the said statutory appeal, the writ petitions preferred before the learned Single Judge were not maintainable, and hence the learned Single Judge had committed an error in entertaining the writ petitions which were not maintainable. It is further to be noticed that the statutory remedy was invoked as on 30.01.2020 by preferring an appeal before the CIT (A) whereas the writ petitions were filed during 2022, after a lapse of 2 ½ years. Hence, it is contended that the writ petitions were not maintainable on the ground of limitation as well.

12. It is further contended that the learned Single Judge has held that the transfer of jurisdiction under Section 127 of the IT Act without granting an opportunity of hearing to the assessee is incorrect. However, the learned Single Judge has failed to take into consideration the statement of objections filed by the Revenue, which contention was answered by specifically referring to Section 127(3) of the IT Act mandating that no opportunity of hearing while transfer of jurisdiction under Section 127 of the IT

Act when the transfer is within the same city. In this regard, it is relevant to refer to Section 127(3) of the IT Act, which reads thus:

> *"3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place."*

Thus, it is contended by the then learned Addl. ASG that since the assessee prior to transfer of jurisdiction under Section 127 of the IT Act was assessed in Bangalore and after transfer of jurisdiction under Section 127 of the IT Act also, the assessee jurisdiction remains in Bangalore only. Hence, the order of the learned Single Judge is without proper appreciation of the facts aspects, which is liable to be set aside.

13. It is further pointed out that the objection filed by the assessee dated 18.11.2019 for issuance of notice under Section 153C of the IT Act was disposed of on 28.11.2019. Subsequently,

the assessee participated in the assessment proceedings and the same came to be concluded by order dated 31.12.2019. It is contended that in view of Section 124(3)(c) of the IT Act, the assessee is not entitled to question the jurisdiction of the Assessing Officer, after expiry of one month from the date of notice or assessment order, whichever is earlier. Though specific contention has been raised on this issue, the learned Single Judge has not recorded any finding on this aspect. Hence, it is contended that the order of the learned Single Judge without consideration of the various contentions raised in the Statement of objection, is liable to be set aside.

14. The then learned Addl ASJ specifically contended that, satisfaction as required under Section 132 of the IT Act was recorded in respect of Shri D.K. Shivakumar and in view of suspicion that the books of accounts, other documents, money, bullion, jewellery or other valuable articles or things were kept in the premises of the assessee, the said premises of the assessee was searched. The warrant of search was in fact, in the name of Shri D.K. Shivakumar and not in the name of the assessee.

Hence, it is contended that Shri D.K. Shivakumar is the searched person and the assessee cannot be considered as searched person. Though no arguments were addressed on this issue, the learned Single Judge has proceeded to conclude that the petitioner in the writ petition is a searched person. It is the vehement contention of the Revenue that the said finding of the learned Single Judge is contrary to the law laid down by the Hon'ble Supreme Court and other Hon'ble High Courts wherein it is held that the search is person specific and not place specific.

15. It is further contended that in the case on hand, satisfaction as required under Section 132(1)(a)(b)(c) was recorded in respect of Shri D.K. Shivakumar and 'reason to suspect' as contemplated under Section 132(1)(i) of the IT Act was recorded in respect of the building occupied by the assessee.

Section 132(1) (i) reads thus:

> ***"132.*** *(1) (i) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;"*

16. It is further contended that the learned Single Judge failed to consider Section 2(12A) of the IT Act which defines "books or books of account". When a specific definition has been provided for the purposes of the Act, the learned Single Judge was not right in referring to Section 34 of the Evidence Act and then to hold that diaries / loose sheets cannot be considered as an evidence. The learned single judge has failed to appreciate one more aspect that Section 132 of the Act refers to not only books of accounts, and also to other documents. Even if it is to be assumed for the sake of arguments that the loose sheets would not fall within the ambit of books of accounts, undoubtedly the same would fall within the ambit of documents. Hence the finding of the learned single judge that the diary / loose sheets will not fall within the ambit of books of accounts is incorrect.

17. Without prejudice to the above contention it is further submitted that in terms of the law laid down by the Hon'ble Supreme Court which has been relied on by the learned single judge, in the case of VC Shukla and Common Cause, the seized diary would fall within the ambit of books of accounts and holding the diary as not admissible evidence is contrary to the law laid

down by the Hon'ble Supreme Court. On all these grounds, learned counsel for the appellant / Revenue prayed to allow the appeals and thereby to set aside the order of the learned Single Judge.

18. The Respondents in this Writ Appeal entered appearance and vehemently contended that the Appellant / Revenue Authorities have concluded that the income that has escaped assessment and notice under Section 153C of the Income Tax Act,1961 are solely issued on "loose sheets" and are termed as "Dairies" during the search, which does not come under the ambit of "book of entry" or as evidence under the Indian Evidence Act, 1872. Hence, it is contended that the said evidence is not corroborative to show that such loose sheets found are connected to the petitioner or to the occupation of the petitioners. The Panchanama further vouches for such lack of evidence. In this regard, they have further relied on the Apex court decisions in the case of CBI v. VC Shukla (1998) 3 SCC 410, and Common cause v. Union of India (2017) 11 SCC 731, wherein it is stated that,

"Loose sheets" cannot be admissible under Section 34 of the Indian Evidence Act without corroborating with other evidence.

19. The Respondents further rebutted that the Centralization as provided under Section 127 of the Income Tax Act, 1961 empowers transfer of cases, upon providing a reasonable opportunity to object to the notice. For that, it is contended that the respondent herein have not been provided with the Notice. Further the Respondent being a resident of Delhi, the Assessment order and Notice were issued by the Income Tax Authorities in Bengaluru, which is absolutely against the procedure under section 127 of the IT Act. In support of the said argument, the respondent has relied on the case in *M/S AJANTHA INDUSTRIES & AMP; ORS V. CENTRAL BOARD OF DIRECT TAXES, NEW DELHI & ORS ((1976) 1 SCC 1001)),* and in the case of *DARSHAN JITENDRA JHAVERI V. COMMISSIONER OF INCOME-TAX (INTERNATIONAL) ((2022) 134 TAXMAN.COM 43 (BOMBAY)).*

20. The counsel for Respondents finally contended as regards non-applicability of Section 153C of the Income Tax Act, 1961. It is contended that quintessential conditions to invoke

Section 153-C of the Income Tax Act are that, the search must not be conducted on the person to whom Section 153C notice is issued; a primary person on whom search is to be conducted must exist; there must be discovery of documents found in the custody of the 'searched person' relating to the 'other person'; such documents found must be incriminating material to invoke proceedings against the 'other person'; no search is sine qua non for issuance of proceedings under Section 153C of the IT Act. The Searched person in the instant case is the Petitioner as the search was conducted on his premises which was established by the Panchanama. In support of these arguments, the learned counsel has relied upon by the following Judgements namely, PCIT V. ASSOCIATE MINING CO. 417 ITR 420 (KAR) which lays down the essential conditions to comply before serving the Notice under Section 153C of Income-tax Act, 1961, and in the judgment of SUPER MALLS (P.) LTD V. PCIT 8, NEW DELHI (2020) 115 TAXMAN.COM 105(SC).

21. Both the Appellant-Revenue and Respondent-Assessee entered appearance and submitted their arguments extensively.

On hearing the learned counsel for both the parties, this Court finds it relevant to examine the following questions that arises for consideration in these writ appeals, which are as under:

1) Whether 'Loose Sheets' and 'Diary' have any evidentiary value?

2) Whether Centralization is in violation of Section 127 of the Income Tax Act, 1961, is valid?

3) Whether the Notice under Section 153C of the Income Tax Act, 1961 is valid herein?

As regards Question No.1:

Upon reading the material provided and the order of the learned Single Judge delivered on 12.08.2022, it is evident that the income that has escaped assessment and notices under Section 153C of the Income Tax Act, 1961, were solely issued based on loose sheets and documents which are termed as 'diaries' found during the search.

The applicability of Section 69A of the Act arises only when the principles laid down under Section 68 of the Act are satisfied. Section 68 states that there must be books of accounts or any books with credit entry. The said Act reads thus:

> *"Section 68: Where any sum is found credited in the books of an assessee maintained for any previous years and the assessee offers no explanations about nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."*

The language of the Law is vague and subjective, thus making us rely on an Apex court decision in the case of CBI vs. V.C. Shukla ((1998) 3 SCC 410), wherein the relevant portion reads thus:

> "Collection of sheet fastened or bound together so as to form material whole. Loose sheets or scraps of paper cannot be termed as books."

In this regard, it is relevant to extract Section 69A of the Act, which reads thus:

> *"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.".*

The lack of corroborative evidence to show how the loose sheets found at the house of Sri K Rajandran are connected to the Respondents herein, or their occupation, is evident from the panchanama provided by the Assessing officer.

22. The entire allegation is made out on the basis of loose sheets of documents, which does not come under the ambit and scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of CBI Vs. VC SHUKLA (MANU/SC/0168/1998), at paragraphs 16 to 18 of the judgment, it is observed thus:

> *"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:- "34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such*

statements shall not alone be sufficient evidence to charge any person with liability."

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or

printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:- " In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book…I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."

24. The aforesaid approach is in accordance with good reasoning and we are in full agreement with it. Applying the above tests, it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91)."

25. The Hon'ble Supreme Court in the case of COMMON CAUSE AND OTHERS v. UNION OF INDIA, reported in (2017) 11 SCC 731, at paragraphs 278 to 282 of the judgment, has observed thus:

> *"278. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla case has dealt with the matter though at the stage of discharge when investigation had been completed by same is relevant for the purpose of decision of this case also. This court has considered the entries in Jain Hawala Diaries, note books and file containing loose sheets of papers not in the form of "books of accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible*

under Section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in V.C. Shukla case as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in V.C. Shukla that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-27, paras 14 and 20) "14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words: "70. ….an account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of

the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arised to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in he course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown in abreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to." 20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance

'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

281. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus: (SCC p.433, para 37) "37. In Beni Vs. Bisan

Dayal [A. I. R 1925 Nagpur 445] it was observed tat entries in book s of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate an din absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal Vs. Ram Rakha [A. I. R. 1953 Pepsu 113] the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been prove, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business re relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon

those entries to prove that the were in accordance with facts.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court."

26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent / Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under Section 153C of the Act, based on the loose

sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal.

27. As regards the further question as to,

2) Whether Centralization is in violation of Section 127 of the Income Tax Act, 1961, is valid:

On a perusal of the writ papers, it indicates that the Appellant / Revenue conducted a search at the premises of one Sri Rajendran at New Delhi and recovered certain diaries/loose sheets, which purportedly consisted certain entries relating to the affairs/transactions of the assessee. Based on the statement of the said Sri Rajendran (Petitioner in Writ petition No.9946 of 2022) recorded during the investigation, Appellant/Revenue initiated action against the assessee / Sunil Kumar Sharma. In this regard, the Appellant/Revenue, by exercising power under Section 127 of the Act, transferred the case to the Commissioner of Income Tax by virtue of Section 127 of the Act which provides for power to transfer cases. Relevant provision is Section 127(1) of the Act and same is extracted below:

> *"Section 127(1): The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him."*

28. On reading the Section 127 of the Act, it connotes providing reasonable opportunity to the assessee and passing Assessment Order based on reasons. Perusal of the material provided and the arguments of learned Counsel appearing for the respondent-Revenue do not satisfy the ingredients of "fair play" as embodied under Section 127(1) of the Act {this is evident from PUNJAB NATIONAL BANK LTD. v. ALL INDIA PUNJAB NATIONAL BANK EMPLOYEES FEDERATION (1960(1) SCR 806)}. Further it's also noticed that the observation made in impugned Order of Assessment and the impugned notices. Concluding part at

paragraph 7.7 of Assessment Order dated 31st December, 2019 passed under section 153C and Section 143(3) read with 153D of the Act, reads as under:

> *"To summarise, the diaries and loose sheets that has been seized from the premise of Mr. Rajendran contain entries with lower denomination rupee notes. The entries also contain details of names of persons with their mobile phone numbers. That the transactions have been carried out on the directions of Mr. Sunil Kumar Sharma is backed by the fact that Mr. Sunil Kumar Sharma has sent text messages to Mr. Rajendran which has been perused and analysed. Therefore, it is once again reiterated that the entries in the diaries seized from the premise of Mr. Rajendran contain details of hawala transactions from the directions of Mr. Sunil Kumar Sharma.*
>
> *Therefore, quantification of unexplained to be taxed under Section 69A of the Act as per discussions above is Rs.40 lakh for AY-2015-16."*

(emphasis supplied)

29. As per section 127 of the IT Act, before transferring the cases, a reasonable opportunity must be provided to the

Assessee, which is evaded as per the papers provided herein, furthermore officer of Bangalore Judicature should not have sent Notice and Assessment order to the respondent who is a resident of Delhi which is in total violation of section 127 of the Act. These points are transpired from the following Judgments:

i) M/S AJANTHA INDUSTRIES & ORS VS CENTRAL BOARD OF DIRECT TAXES, NEW DELHI & ORS ((1976) 1 SCC 1001)):

> *"Once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. (Para 9)*
>
> *Under Section 127(1) the reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even the Supreme Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala*

fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such writ or special leave application ultimately fails is not relevant for a decision of the question.(Para 10)

So the requirement of recording reasons under Section 127(1) is mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee. Recording of reasons and discourse thereof is not a mere formality.(Para 11&13)

ii) DARSHAN JITENDRA JHAVERI VS COMMISSIONER OF INCOME TAX (INTERNATIONAL) (2022) TAXMANN.COM 43 (BOMBAY) 134:

"Section 127 of the Income-tax Act, 1961 - Income-tax authorities - Power to transfer cases - (General) - A search & seizure action under section 132 was conducted in case of a group, and these cases were proposed to be centralized with ACIT, Goa - As assessee was connected to this group, assessee's case had been identified for centralization Assessee filed a reply stating that his only transaction with said group was purchase of iron ore during period before

2012, and it had stopped dealing with said group in or about June-July 2012 and his assessment had been completed until assessment year 2018-19- Commissioner passed order in exercise of powers conferred by section 127 without giving personal hearing though assessee had requested for same - In intimation notice apart from stating that assessee was connected to this group, there was no other detail as to how assessee was connected to said group - Moreover, show cause notice had been issued by Income Tax Officer and not by Commissioner, who was exercising his power - Whether, on facts, said order was to be quashed and set aside - Held, yes [Paras 5-8] [In favour of the assessee]"

30. As regards the further question as to

3) Whether the Notice under Section 153C of the Income Tax Act, 1961 is valid herein:

In this regard, it is relevant to refer to Section 153C of the IT Act, which reads thus:

Assessment of income of any other person.

153C. *(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149,*

section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided *that in case of such other person, the reference to the date of initiation of the search under*

section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

***Provided further** that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.*

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or

requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

Thus, it transpires that the essential conditions to invoke Section 153C of the Income Tax Act, 1961 are:

i) There must exist primary person on whom search must be conducted.

ii) There must be discovery of documents found in the custody of the 'searched person' relating to the 'other person'

iii) Such documents found must be incriminating material to invoke proceedings against the ‘other person’

As the title enunciates, “Assessment of income of any other person”, no search is *sine qua non* for issuance of proceedings under Section 153C of the Income Tax Act, 1961. The searched person in the instant case is the petitioner, as the search was conducted in his premises, which is evident from the Panchanama. The distinction between ‘searched person’ and ‘other person’ is misinterpreted in the case advanced by the Appellant-Revenue, as the premises of the Respondent was searched and documents pertaining to him were seized, thereby making him the searched person.

The stipulated conditions have not been satisfied in the instant case.

31. It is relevant to refer to a judgment in the case of *SUPER MALLS (P.) LTD VS PRINCIPAL COMMISSIONER OF INCOME TAX 8, (MANU/SC/0724/2020)*, wherein the Apex court has dealt with the proposition in detail, which reads thus:

> *"5. We have heard the learned Counsel for the respective parties at length. 5.1. As observed hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of Section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings Under Section 153C of the Act have been satisfied or not? 6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice Under Section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd. (supra). As held, before issuing notice Under Section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the*

Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment Under Section 158BD of the Act and the other provisions of Chapter XIV-B shall apply. 6.1. It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the

documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap (supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings Under Section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of the

searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person."

32. Be that as it may, it is relevant to once again refer to the facts in these appeals relating to challenging the impugned order passed by the learned Single Judge W.P.No.9937/2022 and connected matters dated 12.08.2022. The question of law in the petitions pertained to the challenge made to the impugned notices issued by the Income Tax Authority under Section 153C of the IT Act and further action thereof. In writ petitions No.9937, 9938, 9939 and 9945 of 2022, Petitioner had questioned the Notice dated 21st August, 2019; Order of Assessment dated 31st December, 2019; and also sought for quashing the Notice of Demand dated 31st December, 2019 issued by respondent No.1. In writ petition No.9945 of 2022, the petitioner had also challenged the order dated 03rd May, 2022 passed in Appeal No.CIT(A)-11/ BNG/10701/2019-20, dismissing the appeal. In Writ Petition No.9946 of 2022, the petitioner had challenged the Notice issued under Section 153C of the Income Tax Act, 1961,

for Assessment Years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 all dated 22nd August, 2019 vide Annexure-A to A5; and also had sought for quashing the Assessment orders dated 30th December, 2019 for Assessment Years 2015-16, 2016-17, 2017-18 and 2018-19 vide Annexure-B to B3 and further prayed for quashing demand notices dated 30th December, 2019 vide Annexure-C to C3 for the aforementioned Assessment Years.

33. The Revenue had conducted search action under Section 132 of the Income Tax Act, 1961 on 02nd August, 2017 at the premises of the respondent / Sunil Kumar Sharma and similar search also took place at the premises of one Sri K. Rajendran at New Delhi. During the search at the premises of Sri K. Rajendran / respondent in W.A.No.834/2022, certain diaries and entries relating to the affairs of Sunil Kumar Sharma were recovered and statements of both of them came to be recorded. The main grievance of the petitioners in the writ petitions was that impugned notices under Section 153C of the IT Act ought to be issued on "other person" and the petitioners being "searched person", the impugned notice under Section 153C of the Act is not

maintainable. Hence, petitioners had filed those writ petitions challenging the action of the Revenue as non-est and contrary to law.

34. In the aforesaid writ petitions, the respondent / Revenue entered appearance and filed objection, and contended that proceedings have been initiated against the petitioners under Section 153C of the Act, based on the material found and seized by the Enforcement Directorate. Further, the writ petition was not maintainable as the impugned order passed in the writ petition is appealable before the Commissioner of Income Tax-Appeals, which is an efficacious remedy for the petitioners. Hence, the Revenue sought to dismiss the writ petitions as premature. It was further contended that the officer authorised under Section 132 of the IT Act, is empowered to enter and search any building, place, vessel, vehicle or Aircraft where he has reason to suspect such books of account, other documents, money, etc. Further that Section 132 of the Act, empowers seizure or books of account/document not only relatable to searched person, however, in relation to other person also. The Assessing Officer,

after compliance of the pre-conditions of recording statement after satisfaction, issued notice under Section 153C of the Act, and therefore, sought for dismissal of Writ Petitions. It was further clarified that Section 132(1) of the Act, provides for "person specific and not premises specific" and therefore, the determinative factor is the person against whom the warrant of search is issued under Section 132 of the Act. It was further contended by the Revenue that Section 34 of the Evidence Act, 1872 is applicable to the proceedings under Income Tax Act, as the Income tax Act, is itself a Code and accordingly, sought for dismissal of writ petitions.

35. Contrary to his submissions, Sri Kiran S. Javali, learned Senior Counsel invited the attention of the court to the impugned Order of Assessment and notice passed under Section 153C of the Act for the Assessment Year 2015-2016 and argued that the conclusion arrived at by the respondent-Revenue initiating action against the petitioners based on the diaries and loose sheets, is contrary to law. He further contended that the petitioner, being a "searched person", issuance of the notice under Section 153C of

the Act is not maintainable. In this regard, learned Senior Counsel placed reliance on the judgment of this court in Writ Petition No.36004 of 2018 connected with Writ Petition No.36005 of 2018 disposed of on 24th January, 2019. Emphasizing on these aspects, Sri Kiran S Javali, argued that the Revenue failed to appreciate the law on the issue that, to invoke Section 153C of the Act, it is necessary to make out a case that material found in the case of "searched person" belongs to "other person" and as the search has been conducted on the residence of the petitioner at Bengaluru and material has been seized as per panchanama making him as the "searched person" and not "other person". Hence it was submitted that the impugned notice issued under Section 153C of the Act is bad in law. It was further argued that the respondent No.1 failed to examine whether the papers or loose note sheets found during the course of search in the premises of Sri Rajendran are documents having evidentiary value to prove the fact of transaction. In this regard, he referred to Section 34 of Indian Evidence Act, 1872 to contend that the search action did not lead to discovery of unaccounted money, bullion, jewellery or valuable article and no books of account

revealed undisclosed transactions of the assessee and the entire impugned proceedings revolved around scribbling of loose sheets seized from premises of another person (Sri Rajendran) and therefore, learned Senior Counsel argued that the action taken by respondent No.1 is contrary to the law declared by the Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION v. V.C. SHUKLA AND OTHERS, reported in (1998)3 SCC 410 and in the case of COMMON CAUSE AND OTHERS v. UNION OF INDIA, reported in (2017)11 SCC 731 and accordingly, sought for quashing of impugned notices.

36. Further, learned Senior Counsel argued that satisfaction note is required under Section 153C of the Act for each Assessment Year and in the impugned proceedings, consolidated satisfaction note has been recorded for different Assessment Years which vitiates entire assessment proceedings. In this regard, he placed reliance on the judgment of the Hon'ble Apex Court in the case of L K VERMA v. HMT AND ANOTHER, reported in (2006)2 SCC 269 and in the case of JEANS KNIT PVT LTD v. COMMISSIONER OF INCOME TAX, reported in (2017)390 ITR 10

(SC) and argued that this Court is having jurisdiction to interfere with the impugned notices issued by the Revenue as the same is without jurisdiction and hence sought for interference of this court in those writ petitions.

37. As regards Writ Petition No.9945 of 2022 is concerned, Sri Kiran S. Javali, learned Senior Counsel had argued that the petitioner therein has preferred appeal under Section 250 of the Act and the respondent No.1, by order dated 03rd May, 2022, dismissed the appeal without considering the factual aspects of the case in the right perspective. The learned Senior Counsel further contended that since the initiation of proceedings under Section 143 of the Act itself is without jurisdiction, the Revenue ought to have allowed the appeal filed by the petitioner seeking to set aside the Order dated 22nd December, 2021 under Section 143(1) of the Act. In respect of alternative remedy and delay in filing the writ petitions, it was contended that, since the impugned notices under Section 153C of the Act itself is contrary to the judgment of the Apex Court therefore, this Court, while exercising writ jurisdiction, is empowered to quash those impugned notices.

38. On the contrary, Sri Balbir Singh, learned Additional Solicitor General of India who appeared on behalf of Sri K.V. Aravind, learned Counsel for the respondent-Revenue in the writ petitions, sought to justify the impugned Notices and Orders of Assessment passed by the respondent-Revenue. He invited the attention of the Court to Section 2(12A) of the IT Act which provides for definition of Books or Books of Account. Learned Additional Solicitor General also invited the attention of the Court to Section 132 of the Act and argued that the respondent-Revenue is empowered to make search and seizure, to unearth defaultees under the IT Act and such power be exercised by the respondent-Revenue, in consequence of information, having reason to believe/suspect about the transactions made by such defaultees. He had particularly invited the attention of the Court to the Sections 132(4) and (4A) of the Act and vehemently argued that in view of the language employed in the aforementioned provisions, the respondent- Revenue are empowered to look into the books of account or any other articles, found in possession or control of any person in the course of the search and the same is to be presumed in the custody of such defaultees. The learned

Additional Solicitor General then drew the attention of the Court to Section 278D of the Act which provided for presumption as to assets, books of account etc. in certain cases and further argued that, as the Respondent-Revenue found incriminating material at the time of search and seizure made at the residence at Delhi, whereby the involvement of the petitioner was forthcoming in the note sheet/diaries and therefore, learned Additional Solicitor General contended that the judgments referred to by the learned Senior Counsel appearing for the petitioner, viz. V.C. SHUKLA (supra) and in the case of COMMON CAUSE AND OTHERS (supra) are not applicable to the facts of the present case. Emphasizing on these aspects, he referred to the judgment of the Apex Court in the case of V.C. SHUKLA (supra) and argued that the factual aspects in the said case is quite different from the present case and accordingly, it was argued that Section 34 of the Indian Evidence Act, 1872 is not applicable to the facts of the present case.

39. Shri Balbir Singh, learned Additional Solicitor General, further argued that Section 132 of the Act is a Code in itself which

provides for search and seizure by the respondent-Revenue as the authorities, based on the incriminating material, have reason to believe in the custody of defaultee. In this regard, learned Additional Solicitor General had referred to the judgment of the Hon'ble Apex Court in the case of P.R. METRANI v. COMMISSIONER OF INCOME TAX, BANGALORE reported in (2007)1 SCC 789 and particularly referred to paragraph 17 of the judgment. Further, the learned Additional Solicitor General argued that the constitutional validity of Section 132 of the IT Act has been upheld by the Hon'ble Apex Court in the case of POORAN MAL v. DIRECTOR OF INSPECTION reported in (1974)93 ITR 505 (SC). The learned ASG had also placed reliance on the judgment of the Hon'ble Supreme Court in the case of CHUHAMAL v. COMMISSIONER OF INCOME TAX reported in (1988)38 TAXMAN 190 (SC) and argued that presence of the unaccounted money found in the residence of the defaultee at the time of search and seizure, would pave way for initiating action against the petitioners and therefore, he sought for dismissal of petitions. Lastly, the learned Additional Solicitor General contended that writ petitions were not maintainable in law as the writ Court had no

jurisdiction to interfere with the decision of the respondent-Revenue, except the decision making process, if it is contrary to law and as such, the learned Additional Solicitor General argued for dismissal of writ petitions.

40. On a perusal of the writ petition and also the arguments advanced on both sides, the learned Single Judge held that the respondent / Revenue did not satisfy the ingredients of "fair play" as embodied under Section 127(1) of the IT Act {see PUNJAB NATIONAL BANK LTD. v. ALL INDIA PUNJAB NATIONAL BANK EMPLOYEES FEDERATION (1960(1) SCR 806)}. On carefully noticing the observation made in impugned Order of Assessment and the impugned notices, the concluding part at paragraph 7.7 of the Assessment Order dated 31st December, 2019 (Annexure-D1) passed under Section 153C and Section 143(3) read with 153D of the Act, reads as under:

> "*To summarise, <u>the diaries and loose sheets that</u> has been seized from the premise of Mr. Rajendran contain entries with lower denomination rupee notes. The entries also contain details of names of persons with their mobile phone numbers. That the transactions have been carried*

out on the directions of Mr. Sunil Kumar Sharma is backed by the fact that Mr. Sunil Kumar Sharma has sent text messages to Mr. Rajendran which has been perused and analysed. Therefore, it is once again reiterated that the entries in the diaries seized from the premise of Mr. Rajendran contain details of hawala transactions from the directions of Mr. Sunil Kumar Sharma.

Therefore, quantification of unexplained to be taxed under Section 69A of the Act as per discussions above is Rs.40 lakh for AY-2015-16."

(emphasis supplied)

41. The learned Single Judge had also referred to the celebrated decision of the Hon'ble Apex Court in the case of TATA CELLULAR v. UNION OF INDIA reported in (1994)6 SCC 651. Though the matter pertained to the action of the Administrative Authority, it was held that the ratio laid down by the Hon'ble Apex Court in the said judgment is aptly applicable to the facts of the case on hand. The relevant Paragraphs 74 to 81 of the said judgment reads thus:

"*74. Judicial review is concerned with reviewing not the merits of the decision in support of which the*

application for judicial review is made, but the decision-making process itself.

75. In Chief Constable of the North Wales Police v. Evans23 Lord Brightman said :

> *"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."*

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms :

> *"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and 22 1986 AC 240, 251: (1986) 1 All ER 199 23 (1982) 3 All ER 141, 154 discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."*

In R. v. Panel on Takeovers and Mergers, ex p Datafin plc24, Sir John Donaldson, M.R. commented:

> *"An application for judicial review is not an appeal." In Lonrho plc v. Secretary of State for Trade and Industry, Lord Keith said: "Judicial review is a protection and not a weapon."*

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin, Re26, Lord Fraser observed that :

> *"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."*

76. In R. v. Panel on Take-overs and Mergers, ex p in Guinness plc27, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. *Whether a decision-making authority exceeded its powers?*

2. *Committed an error of law,*

3. Committed a breach of the rules of natural justice,

4. Reached a decision which no reasonable tribunal would have reached or,

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesday unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. SECRETARY OF STATE for the Home Department, ex Brind28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should,

"consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesday unreasonableness? Is it a magical formula? In R. v. Askew29, Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later :

> *"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."*

79. To quote again, Michael Supperstone and James Goudie; in their work Judicial Review (1992 Edn.) it is observed at pp. 119 to 121 as under :

> *"The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In Kruse v. Johnson3O a specially constituted divisional court had to consider the validity of a bye- law made by a local authority. In the leading judgment of Lord*

Russell of Killowen, C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell 28 (1991) 1 AC 696 29 (1768) 4 Burr 2186 : 98 ER 139 30 (1898) 2 QB 91: (1895-9) All ER Rep 105 emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in Short v. Poole Corpn.32, as an example of a 'frivolous and foolish reason') was, in another sense, taking into

consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.33 (Chapter 4, p. 73, supra). He summarised the principles as follows:

> *"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority had kept within the four comers of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.' This summary by Lord Greene has been applied in countless subsequent cases.*

"The modem statement of the principle is found in a passage in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service 'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.31) It applies to

a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.'"

80. At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849850, may be quoted :

> *"4. Wednesbury principle.- A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. 3 1, per Lord Greene, M.R.)"*

81. Two other facets of irrationality may be mentioned. (1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. Secretary of State for Environment34, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so,

set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. v. Bernet London Borough Council, ex p Johnson the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down."

Thus, the learned Single Judge had dwelled in detail the materials placed by the respondent / Revenue therein and rendered its judgment. The said materials have been referred to in the present appeal which is filed challenging the order passed by the learned Single Judge.

42. The learned Single Judge had also examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of VC SHUKLA (supra), at paragraphs 16 to 18 of the judgment, it is observed thus:

"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:-

> *"34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."*

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person

with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:-

> *" In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book…I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used*

> *collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."*

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91)."

(emphasis supplied)

43. Keeping in view the contentions taken by the Revenue and the assessee and also considering the arguments advanced by the counsel for both parties vehemently, the learned Single Judge opined that the impugned notices are liable to be set aside as sought for, which are arising out of wrong interpretation of Section 153C of the Act, and the entire case was remanded to the competent authority/ respondent-Revenue for fresh consideration and to pass appropriate orders in accordance with law, after affording reasonable opportunity to the petitioners in the writ

petitions. The learned Single Judge having gone through the entire material available on record had observed that the initiation of proceedings by the respondent-Revenue based on the diaries/loose sheets against the petitioners in the writ petitions is without jurisdiction and contrary to the law declared by the Hon’ble Apex Court and same cannot be touched upon while conducting *de novo* enquiry afresh.

44. As regards the last limb of arguments advanced by the learned counsel for the Revenue that the writ petitions before the learned Single were not maintainable on the ground of alternative remedy and delay and laches is concerned, taking into consideration the fact that the impugned notices and the orders passed by the Revenue are contrary to the law declared by the Hon'ble Apex Court referred to above, in that view of the matter, it is trite law that the acceptance of writ petitions, despite having alternative remedy, is a rule of practice and not of jurisdiction and in this regard, the Division Bench of this Court in the case of U.M. RAMESH RAO AND OTHERS v. UNION OF INDIA reported in

2021(3) AKR 345 at paragraphs 40 and 41 of the judgment has observed thus:

> *"40. The following judgments of the Hon'ble Supreme Court on the aspect of maintainability of a writ petition under Article 226 of the Constitution in the face of an alternative remedy are referred to as under:*
>
> *(a) In Veerappa Pillai vs. Raman and Raman Ltd.., [AIR 1952 SC 192], it was observed that where a particular statute provides a self-contained machinery for determination of questions arising under the Act, the remedy that is provided under the Act should be followed except in cases of acts, which are wholly without jurisdiction or in excess of jurisdiction, or in violation of principles of natural justice or refusal to exercise jurisdiction vested in them or there is an error on the face of the record and such act, omission, error or excess has resulted in manifest injustice.*
>
> *(b) Further, alternative remedy is no bar where a party comes to the Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void, vide Bengal Immunity Co. vs. State of Bihar [AIR 1955 SC 661].*
>
> *(c) Similarly, when a fundamental right is infringed, the bar for entertaining the writ petition and granting relief on the ground of alternative remedy would not apply, vide State of Bombay vs. United Motors Ltd. [AIR 1953 SC 252] and Himmat Lal vs. State of M.P. [AIR 1954 SC 403].*

(d) *The rule of alternate remedy being a bar to entertain a writ petition is a rule of practice and not of jurisdiction. In appropriate cases, High Court may entertain a petition even if the aggrieved party has not exhausted the remedies available under a statute before the departmental authorities, vide State of West Bengal vs. North Adjai Cool Company [1971 (1) SCC 309].*

(e) *Further, alternative remedy must be effective. An appeal in all cases cannot be said to have provided in all situations, where an appeal would be ineffective and writ petition in such a case is maintainable, vide Ram and Shyam Company vs. State of Harayana [AIR 1985 SC 1147].*

(f) *Where an authority has acted without jurisdiction, High Court should not refuse to exercise its jurisdiction under Article 226 on the ground of existence of alternative remedy vide Dr. Smt. Kuntesh Gupta vs. Management H.K. Mahavidyaya [AIR 1987 SC 2186]. Thus, an alternative remedy is not an absolute bar to the maintainability of a writ petition.*

41. On the issue of maintainability of the writ petition, learned counsel for the appellants relied upon the following decisions:

(a) *In Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others, [(1998) 8 SCC 1], (Whirlpool Corporation), at paragraph 15, it was observed that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But, the High Court has imposed*

upon itself certain restrictions, one of which is, if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But, the availability of an alternative remedy has been consistently held not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the said decision, reliance was also placed on Rashid Ahmad vs. Municipal Board, Kairana, [AIR 1950 SC 163], (Rashid Ahmad), to observe that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 of the Constitution could still be entertained in exceptional circumstances.

Reference was also made to State of U.P. vs. Mohd. Nooh, , [AIR 1958 SC 86], (Mohd. Nooh), wherein it was observed that the rule requiring the exhaustion of statutory remedies before the writ will be granted,

is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

Ultimately, in paragraph 20 of Whirlpool Corporation, the Hon'ble Supreme Court observed as under: "Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

In the said case (Whirlpool Corporation), it was also observed that the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction.

In the said case, the Registrar of Trade Marks issued to the appellant therein a notice under Section 56(4) of the Trade and Merchandise Marks Act, 1958 to

show cause against the proposed cancellation of appellants' Certificate of renewal. It was held that the issuance of such a notice by the Registrar was without authority and it was quashed by the High Court.

(b) *In State of H.P. and others vs. Gujarat Ambuja Cement Limited and Another, [(2005) 6SCC 499], (Gujarat Ambuja Cement Limited), a detailed discussion on the plea regarding alternative remedy was made. It was held that the principle of alternative remedy is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of the fact that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate, efficacious, alternative remedy. If somebody approaches the High Court without availing the alternative remedy, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or*

procedure required for decision has not been adopted. The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere.

However, there are well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is, when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. Also, that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained.

But, normally, the High Court should not entertain writ petitions unless it is shown that there is

something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. But, if the High Court had entertained a petition despite availability of an alternative remedy, it would not be justifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

In the said case, the question was liability to pay purchase tax on the royalty paid by the respondents, i.e., the holder of mining lease, where there was a price for removal of minerals and thus, attracted liability to pay purchase tax. The Hon'ble Supreme Court in the said decision rejected the plea that the High Court should not have entertained the writ petition. Thereafter, the question relating to liability to pay purchase tax on royalty paid was taken up for consideration by discussing on the meaning of the words "royalty", "dead rent", "mining lease". It was observed that royalty paid by the holder of a mining lease under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 was not the price for removal of minerals and hence, did not attract liability to pay purchase tax.

(c) *In Embassy Property Developments Private Limited vs. State of Karnataka, [2019 SCC Online SC 1542], (Embassy Property), one of the preliminary questions that arose was whether the High Court ought to interfere under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal (NCLT) in a proceeding under the Insolvency and Bankruptcy Code, 2016 (IBC), ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal (NCLAT) and if so, under what circumstances.*

In the said case, there is an exposition on the well recognised exceptions to the self-imposed restraint of the High Courts, namely, in cases where a statutory alternative remedy of appeal is available, or there is lack of jurisdiction on the part of the statutory/quasi-judicial authority against whose order judicial review is sought. It was observed that an "error of jurisdiction" was always distinguished from "in excess of jurisdiction", till the judgment of the House of Lords in Anisminic Ltd. Vs. Foreign Compensation Commission [(1969) 2 WLR 163] (Anisminic). In Anisminic, the real question was not, whether, an authority made a wrong decision but whether they enquired into and decided a matter on which they had no right to consider. It was observed by the Hon'ble Supreme Court that just four days

before the House of Lords delivered the judgment in Anisminic, an identical view was taken by a three judge Bench of the Hon'ble Supreme Court in West Bengal & Others vs. Sachindra Nath Chatterjee & Another, [(1969) 3 SCR 92], (Sachindra Nath Chatterjee) wherein the view taken by the Full Bench of Calcutta High Court in Hirday Nath Roy vs. Ramachandra Barna Sarma, [ILR LXVIII Calcutta 138], (Hirday Nath Roy) was approved. It was held therein that "before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for." This would mean that the jurisdiction must include (i) the power to hear and decide the questions at issue and (ii) the power to grant the relief asked for. Ultimately, in paragraph 24, it was observed as follows: "Therefore, insofar as the question of exercise of the power conferred by Article 226 of the Constitution, despite the availability of a statutory alternative remedy, is concerned, Anisminic cannot be relied upon." The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction should certainly be taken into account by High Courts, when Article 226 of the Constitution is sought to be invoked bypassing a statutory, alternative remedy provided by a special statute.

In the said case, the question was, as to, whether, the NCLT lacked the jurisdiction to issue a direction in relation to a matter covered by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Statutory Rules issued thereunder; or, there was mere wrongful exercise of a recognised jurisdiction, for instance, asking a wrong question or applying a wrong test or granting a wrong relief. On a detailed discussion, it was held that the NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since, NCLT chose to exercise jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice. In the instant case, the State of Karnataka had invoked the jurisdiction of the High Court under Article 226 of the Constitution without taking recourse to the appellate remedy under NCLAT. It was held that the judicial review was permissible and the High Court was justified in entertaining the writ petition assailing the order of the NCLT, directing execution of a supplemental lease deed for the extension of the mining lease.

(d) Learned Senior counsel appearing for the respondent in Writ Appeal No.538 of 2020 placed reliance on Authorised Officer, State Bank of Travancore and

another vs. Mathew K.C. [(2018) 3 SCC 85], (Mathew K.C.) wherein it was observed that SARFAESI Act is a complete Code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions. The remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 was adequately provided under the Act. Therefore, the High Court ought not to have entertained the writ petition in view of the adequate alternative statutory remedies available. In that case, an interim order granted by the High Court in exercise of jurisdiction under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the SARFAESI Act, on certain deposit to be made was questioned. It was observed that the writ petition ought not have been entertained and interim order granted for the mere asking without assigning special reasons, that too, without even granting opportunity to the other side to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. In the said case, it was also observed that the discretionary jurisdiction under Article 226 of the Constitution is not absolute but had to be exercised judiciously in the given facts of a case and in accordance with law.

The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, [(2014) 1 SCC 603], (Chhabil Dass Agarwal). In the latter decision, it has been held that the exceptions to the rule of non-interference when efficacious, alternative remedy is available are as under which are illustrative and non-exhaustive:

(i) where remedy available under statute is not effective but only mere formality with no substantial relief;

(ii) where statutory authority not acted in accordance with provisions of enactment in question, or;

(iii) where statutory authority acted in defiance of fundamental principles of judicial procedure, or;

(iv) where statutory authority resorted to invoke provisions which are repealed, or;

(v) where statutory authority passed an order in total violation of principles of natural justice.

(e) In United Bank of India vs. Satyawati Tondon and others, [(2010) 8 SCC 110], (Satyawati Tondon) it was observed that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is

difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective, alternative remedy by filing an application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

(f) Of course in ICICI Bank Limited vs Umakanta Mohapatra and others, [(2019) 13 SCC 497], (Umakanta Mohapatra), it was held, the writ petition was not maintainable and therefore, allowed the appeals.

(g) In Authorised Officer, State Bank of India vs. Allwyn Alloys Private Limited and others, [(2018) 8 SCC 120], the Hon'ble Supreme Court opined that Section 34 of the SARFAESI Act clearly bars filing of a civil suit. No civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under the Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."

45. In the given facts and circumstances of the case and also issues involved between the Revenue and the assessee

respectively, normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. But, if the High Court had entertained a petition despite availability of an alternative remedy, it would not be justifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition. The learned Single Judge had referred to a plethora of decisions which were facilitated on behalf of the petitioners and respondent / Revenue and the same decisions have been referred to even in the present writ appeals.

46. In the backdrop of the said finding recorded, it is useful to cite the law declared by the Hon'ble Apex Court in the case of BRIGADIER NALIN KUMAR BHATIA v. UNION OF INDIA AND

OTHERS, reported in (2020)4 SCC 78, wherein at paragraph 22 of the said judgment, it is observed thus:

> *"22. There is no presumption that a decision taken by persons occupying high posts is valid. All power vested in the authorities has to be discharged in accordance with the principles laid down by the Constitution and the other Statutes or Rules/Regulations governing the field. The judicial scrutiny of a decision does not depend on the rank or position held by the decision maker. The Court is concerned with the legality and validity of the decision and the rank of the decision maker does not make any difference."*

47. The learned Single Judge had assessed the entire material available on record and so also closely scrutinized the materials as well as the contentious contentions taken by the learned Addl. Solicitor General on behalf of the respondent / Revenue and the reliances facilitated by the learned Senior Counsel Shri Kiran S. Javali for petitioners and thus had answered the points for determination in favour of the petitioners, who had initiated the writ petitions under Article 226 of the Constitution of India. Thus, the learned Single Judge had allowed the Writ Petitions No.9937, 9938 and 9939 of 2022 and quashed the

impugned Notices dated 21st August, 2019 and further proceedings thereof. The matter was remanded to the respondent-Revenue to reconsider the issue afresh in terms of the discussion made above; Further, Writ petition No.9945 of 2022 was allowed and order dated 03rd May, 2022 passed in Appeal No. CIT(A)-11/BNG-10701/2019-20 stood quashed. The Respondent No.1 was directed to reconsider the Appeal filed by the petitioner therein and to dispose of the same in accordance with law after providing an opportunity of hearing to both the sides. Further, the learned Single Judge had allowed Writ Petition No.9946 of 2022 and proceedings initiated under Section 153C of the Act culminating in issuance of Notice dated 22nd August, 2019 were quashed and further proceedings thereof were quashed by remanding the matter to the respondent-Revenue to reconsider the issue afresh in terms of the discussion made above.

48. In the given facts and circumstances of the matter, it is relevant to refer to the case of NISHANT CONSTRUCTION (P) LTD. Vs. ACIT (ITA NO.1502/AHD/2015), wherein it is held that, in the absence of any corroborative evidence, loose sheet can at the

most be termed as "dumb document" which did not contain full details about the dates, and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. Reliance can also be placed on the judgment of the Panaji Bench of ITAT in the case of ABHAY KUMAR BHARAMGOUDA PATIL vs. ASSTT. CIT ((2018) 96 taxmann.com 377)), wherein the judgment of the Apex Court was relied upon.

49. It is further relevant to refer to a Co-ordinate Bench decision of this Court rendered in the case of PRINCIPAL COMMISSIONER OF INCOME-TAX vs. SMT. G. LAKSHMI ARUNA ((2023) 150 taxmann.com 107 (Karnataka)) 31.03.2023, in which judgment, this Court has extensively addressed the scope of Sections 153C read with Section 153A of the Income Tax Act, 1961. The headnote of the said judgment reads thus:

> "Section 153C, read with section 153A, of the Income-tax Act, 1961 – Search and seizure – Assessment of any other person (Satisfaction note) – Assessment year 2011-12 – Whether assessment year relevant to financial year in which satisfaction note is recorded under section 153C, will be taken as year of search for purposes of clauses (a) and (b) of section 153A(1) by making reference

to first proviso to section 153C(1) – Held, yes – Whether period of 6 years stipulated in section 153C has to be construed with reference to date of handing over of documents to Assessing Officer of assessee and not year of search – Held, yes – Whether recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits records to other Assessing Officer who has jurisdiction over such other person under section 153C – Held, yes – On 25.10.2010, a search under Section 132 was carried in case of one 'R' and various documents belonging to assessee were found and seized – Consequently, Assessing Officer of searched person issued notice under section 153C against assessee for assessment years 2005-2006 to 2010-2011 and a notice under section 143(3) for assessment year 2011-12 – Assessments were concluded and income of assessee was assessed – Tribunal set aside assessment order and held that there was no satisfaction recorded by Assessing Officer of searched person, which is mandatorily required for issuing a notice under section 153C – Whether since satisfaction note was not recorded by Assessing Officer of searched person, Tribunal had rightly quashed assessment on account of lack of jurisdiction – Held, yes (paras 45 and 49) (in favour of assessee)"

50. In the instant case, the first issue raised by the Revenue is as regards the addition of income made by the Assessing Officer based on loose sheets found in the house of a third party.

However, we find that the Revenue has not established the said loose sheets to be considered as evidence in law by producing corroborative evidence supported by judgments and findings. Further, since the statement made by Shri K. Rajendran under Section 132 of the IT Act is later retracted by him by filing an affidavit, the statement given by him does not hold any evidentiary value.

51. The notice issued under Section 153C of the IT Act in respect of the Assessment year 2018-19 is not applicable, which is also supported by various judgments of the High Court. Further, the notice as regards the Assessment years 2015-16, 2016-17 and 2017-18 are also not applicable, as the total addition of income were made on the basis of loose sheets. Further, the panchanama or mahazar of all the loose sheets said to have been seized from the house of Shri Rajendran, are now unavailable and the learned counsel for the Revenue has no answer for the same. On these premise, the assessment order made for the Assessment years 2015-16, 2016-17, 2017-18 and 2018-19 requires to be quashed.

52. Insofar as the contention as regards cash of Rs.6.68 having been found in Premises No.B5/201, Safdarjang Enclave, New Delhi during search, as per Section 292C of the IT Act, the presumption in law is that the cash seized belongs to the owner of the house from where it was seized. However, as regards the said cash which was found, the respondent / assessee had filed his Income Tax Return including the said cash as advance tax, and the same was also accepted by the Income Tax Department. Even the cross-examination of all the parties involved also proves that clearly the cash found belonged to Shri Sunil Kumar Sharma.

53. Further, satisfaction note is required to be recorded under Section 153C of the IT Act for each Assessment Year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different Assessment Years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the appellant / Revenue.

54. The question as regards whether in an intra court appeal, a Division Bench could remit a writ petition in the matter

of moulding the relief, it is relevant to refer to an Apex Court decision dated 31.07.2018 rendered in the case of **ROMA SONKAR vs. MADHYA PRADESH STATE PUBLIC SERVICE COMMISSION & ANR. (CIVIL APPEAL Nos.7400-7401/2018).** The relevant paragraph 3 of the said order reads thus:

> *"3. We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the*

appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge."

55. In the totality of circumstances, and also on dwelling in detail with the materials, it reveals that the learned Single Judge has considered all the points and has gone through the reliances facilitated on both sides and has rendered the impugned order, which has been challenged by filing the present appeals. The grounds urged in the appeals preferred by the appellant / Revenue, do not have any substance and the impugned order rendered by the learned Single Judge do not suffer from any infirmity and further, no warranting circumstances arise for interference. Consequently, these appeals deserve to be rejected as being devoid of merits.

56. In the light of the above said Apex court Decisions and the Panchanama provided herein, it is deemed appropriate to conclude that the notice provided under Section 153C is bad in law.

We are therefore clearly of the opinion that the learned Single Judge is right in allowing the Writ petitions. Accordingly, we proceed to pass the following:

ORDER

The appeals preferred by the appellant / Revenue are hereby rejected. Consequently, the order passed by the learned Single Judge in W.P.Nos.9937/2022 C/w. W.P.Nos.9938/2022, 9939/2022, 9945/2022 and 9946/2022 is hereby confirmed.

Before parting with this judgment, this Court places on record its deep appreciation for the able research and assistance rendered by its Research Assistant-cum-Law Clerk, Mr.Pranav.K.B.

Sd/-
JUDGE

Sd/-
JUDGE

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