HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Income Tax Appeal No. 43/2019

Superb Infotech Pvt. Ltd., Shop No.4/36, DDA Market, Dakshinpuri Extension, New Delhi.

----Appellant

Versus

Deputy Commissioner of Income Tax, Central Circle, Faridabad.

----Respondent

For Appellant(s)	:	Mr. R.B. Mathur, Sr. Adv. assisted by Ms. Rubal Bansal Maini, Mr. Satvik Sareen & Mr. Yug Singh & Mr. Falak Mathur
For Respondent(s)	:	Mr. Siddharth Bapna Mr. Sarvesh Jain (through V.C.) Ms. Tanushka Saxena

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HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SANGEETA SHARMA

JUDGMENT

Date of conclusion of arguments : 11.02.2026

Date on which judgment was reserved : 11.02.2026

Whether the full judgment or only the operative part is pronounced : Full Judgment

Date of pronouncement : 13th.04.2026

REPORTABLE

(Per Hon'ble The Acting Chief Justice)

Facts And Legal Questions

1. The present Income Tax Appeal has been filed under Section 260A(1) of the Income Tax Act, 1961 (hereinafter referred to as "Act of 1961") against the order dated 06.12.2018 passed by the Income Tax Appellate Tribunal, Jaipur Bench (hereinafter referred to as "ITAT") whereby, the ITAT rejected the appeal of the

appellant company for the assessment year (hereinafter referred to as "A.Y.") 2007-08 and upheld the action of the respondent in issuing notice under Section 153C of the Act of 1961 by the Assessing Officer (hereinafter referred to as "AO") and rejecting the objections *vide* his order dated 21.07.2010, as also the order dated 27.02.2013 passed by the Commissioner of the Income Tax (Appeals) (Central), Jaipur rejecting the appeal preferred by the appellant. Thus, all three orders are under challenge before this Court.

2. The Division Bench of this Court on 26.08.2019 admitted the present appeal on the following questions of law:

> *"1. Did the ITAT fall into error in holding that the block assessment could be completed having regard to the circumstances of this case and the nature of documents seized under Section 153C of the Income Tax Act;*
>
> *2. Did the ITAT fall into error in holding that the income derived from the property sold could be taxed having regard to the fact that capital asset which was an agricultural fall into the description of Section 2(14)(iii) of the Act."*

3. The case of the appellant company is that it had filed its return of income for the A.Y. 2007-08 under Section 139(1) of the Act of 1961, declaring the income as Rs.2,31,210/- on 29.10.2007.

3.1 A search operation was conducted on 17.09.2008 in Kamdhenu Group of cases. However, no search was conducted on the appellant or its offices. Proceedings under Section 153C of the Act of 1961 were initiated against the

appellant company and in pursuance to the said notice under Section 153C of the Act of 1961, the AO had made assessment on 28.12.2010 and came to tax a sum of Rs.18,63,34,965/-, holding that the sale of agricultural land by the assessee was an adventure in the nature of trade and profit, amounting to income of assessee from the business.

4. The appeal challenging the said order of assessment dated 28.12.2010 as well as the notice dated 10.05.2010, came to be rejected.

5. On directing for submission of reply, the respondent (Revenue) averted that no reply is required, therefore, the case was heard on merits.

Contentions

6. Mr. R.B. Mathur, learned Senior Counsel appearing on behalf of the appellant company has vehemently argued that the case of the appellant is akin to the judgment passed by the High Court of Punjab & Haryana at Chandigarh in the case of **Misty Meadows Private Limited Vs. Union of India and Others**[1].

7. Learned Senior Counsel submitted that the notice under Section 153C of the Act of 1961, ought not have been issued, as there was no incriminating material found during the search. There was neither any incriminating document nor any addition was made on the basis of the documents, nor were those documents related to the year under consideration. Although, the documents which were found, were affecting the A.Y. 2008-2009 (abating year), but they too were not incriminating.

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1 *CWP No.5139 of 2024 (O&M), decided on 13.05.2024*

8. Learned Senior Counsel has invited our attention to the provisions of Section 153C of the Act of 1961 and the judgment passed by the Hon'ble Supreme Court in the case of **DY. Commissioner of Income Tax Central Circle 20 vs. M/S U.K. Paints (Overseas) Ltd.**[2] in support of his submissions that no assessment under Section 153C of the Act of 1961 could be initiated without incriminating material. He further submits that the impugned order passed by the AO on the basis of the notice under Section 153C of the Act of 1961, does not make any mention of the material found during search and on the basis of which, notice under Section 153C of the Act of 1961 was issued. The incriminating material which is spoken of would have to be identified with respect to the A.Y. to which it relates or may be likely to impact before initiation of proceedings under Section 153C of the Act of 1961. He also relies on the judgment passed by the Hon'ble Supreme Court in the case of **Principal Commissioner of Income Tax Central-3 vs. Abhisar Buildwell Private Limited**[3] and followed in the case of **Misty Meadows Private Limited** (supra), which was delivered by one of us (*Sanjeev Prakash Sharma, J.*) on 13.05.2024 in Punjab and Haryana High Court. A Special Leave Petition[4] (hereinafter referred to as "SLP") preferred against the same was also dismissed on 15.01.2025 by the Supreme Court.

9. Learned Senior Counsel has also invited our attention to the notice dated 10.05.2010 to submit that there was no satisfaction

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2 *Civil Appeal No.6634 of 2021, dated 25.04.2023*
3 *(2024) 2 SCC 433*
4 *Special Leave Petition (Civil) Diary No.55770/2024*

arrived at on the basis of any material for reopening of the concluded assessments. All the documents which were seized during search were belonging to the person searched under Section 132(4A) of the Act of 1961 and nothing incriminating was found in the documents. Merely mentioning that there is a Partnership Deed and Dissolution Deed, cannot be said to be an incriminating document to allege that any income has been concealed. He also points out that the Tribunal while dismissing the appeal, made an observation that the AO has not referred to any material to indicate that the assessee is the owner of those seized documents. He also relied on the judgment passed in the case of **Commissioner of Income Tax-III, Pune vs. Sinhgad Technical Education Society**[5] to submit that the satisfaction note qua year-wise was essential, but which has not been done.

10. Learned Senior Counsel submits that the purchase of land, which was rural agricultural land and situated beyond 8 kilometres from the municipal limits, was being used for agricultural operations. It cannot be said to be a stock-in-trade and would be held as a fixed asset and, therefore, does not qualify as a capital asset as per Section 2(14) of the Act of 1961.

11. Learned Senior Counsel has submitted that AO could not have treated the sale of agricultural land as an adventure in the nature of trade and has wrongly added the same as taxable income under business income. It is submitted that the AO was having full knowledge of the said sale of land even earlier at the

5 *(2018) 11 SCC 490*

time of original assessment and invocation of Section 153C of the Act of 1961 was wholly unwarranted.

12. Learned Senior Counsel has invited our attention that under Section 145(3) of the Act of 1961, by adding the said sale and that the best judgment assessment was wholly unjustified. He further submits that the ITAT had ignored the additional grounds of appeal. It did not adjudicate the jurisdictional defects raised under Section 153C of the Act of 1961 and the order was wholly perverse when it gave a finding as under:

> *"We may clarify that since the land in question was no more an agricultural land, therefore, even if the income is not treated as business income, the same is liable to tax as capital gain. Accordingly, we modify the orders of authorities below and direct the AO to assess the income as capital gain."*

13. Learned Senior Counsel submits that the judgment cited by the ITAT, i.e., **Assistant Commissioner of Income Tax, Circle-3, Jaipur vs. Sunil Bansal**[6] was not applicable, as there was no frequent sale/purchase transaction of agricultural land, and therefore, it could not have been treated in the nature of business.

14. The pre-conditions of Section 2(14) of the Act of 1961 were duly satisfied and exemption was required to be given.

15. Learned Senior Counsel also relied on the judgment passed in the case of **Principal Commissioner of Income Tax Central Jaipur vs. M/S Focal Point Builders and Promoters Pvt Ltd.**[7] which has been upheld by the Supreme Court[8].

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6 *2018 SCC OnLine ITAT 1097, dated 06.11.2018*
7 *D.B. Income Tax Appeal No.229/2016, decided by this Court on 20.12.2016*
8 *Diary No.42427/2017, decided on 24.09.2018*

16. Learned Senior Counsel has further relied on **Kikabhai Premchand KT vs. Commissioner of Income Tax (Central), Bombay**[9], wherein it was held that:

> *"……...as he derived no immediate pecuniary gain the State cannot tax them, for under the Income Tax Act the State has no power to tax a potential future advantage. All it can tax is income, profits and gains made in the relevant accounting year."*

17. Learned Senior Counsel has relied on following judgments:

(i)**Principal Commissioner of Income Tax 19 Mumbai vs. M/S Jogani and Dialani Land Developers and Builders**[10]

(ii)**Commissioner of Income-tax vs. Nitish Rameshchandra Chordia (and connected appeals)**[11]

18. On the other hand, while no written submissions were filed by the respondent (Revenue), the learned counsel appearing for the respondent has reiterated the submissions based on the orders passed by the AO, CIT and ITAT to submit that the orders passed do not warrant any interference. On the question of law, learned counsel submits that no substantial questions of law can be said to be made to be considered by this Court.

19. Learned counsel for the respondent submits that a satisfaction note had been placed on record which reflects that there is an application of mind by the AO for initiating proceedings under Section 153C of the Act of 1961. The objections were examined and the AO has rightly found that so far as the period of

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9 *(1953) 2 SCC 341*
10 Special Leave Petition (Civil) *Diary No. 40693/2019*
11 *2015 SCC OnLine Bom 8441*

limitation for bringing assessment or reassessment in case of other persons referred to under Section 153C of the Act of 1961 is concerned, the same would be governed by Section 153B(1)(ii) of the Act of 1961 and he further submits that the AO is not prevented from initiating proceedings under Section 153C of the Act of 1961, if it has any books of account or documents or assets seized which belong to the person other than the person referred to Section 153C of the Act of 1961 and it holds jurisdiction over such person.

Analysis

20. We have considered the above submissions.

21. Before discussing the case, it would be apposite to quote the following relevant statutory provisions:

(a) Section 2(14)(iii) of the Act of 1961 defines "agricultural land" as under:

"[(iii)agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand [***]; or

[(b) in any area within the distance, measured aerially,-

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or

cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) which has a population of more than ten lakh.

Explanation.- For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]]"

(b) The above definition also defines the following as a "capital asset":

"(14) ["capital asset" means-

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

[(c) any unit linked insurance policy to which an exemption under Clause (10D) of section 10 does not apply [on account of the applicability of the fourth and fifth provisos thereof],]

but does not include-

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)]], consumable stores or raw materials held for the purposes of his business or profession ;

[(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes-

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation.- For the purposes of sub-clause, "jewellery" includes-

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel ;]

……..

[(iv) 6½ per cent Gold Bonds, 1977, [or 7 per cent Gold Bonds, 1980,] [or National Defence Gold Bonds, 1980,] issued by the Central Government;]

[(v) Special Bearer Bonds, 1991, issued by the Central Government ;]

[(vi) Gold Deposits Bonds issued under the Gold Deposit Scheme, 1999 [or deposit certificates issued under the Gold Monetisation Scheme, 2015] notified by the Central Government.]

[[Explanation 1.]- For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including a rights of management or control or any other rights whatsoever.]

[Explanation 2.]- For the purposes of this clause-

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to Section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 [42 of 1956);]"

(c) Section 153C of the Act of 1961 provides as under:

*"**Section 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.]

[(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account,

other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.]"

22. As have come on record, the proceedings under Section 153C of the Act of 1961 were initiated based on a satisfaction note which stated as under:

*"**Satisfaction note**:*

M/s Superb Infotech Pvt. Ltd.

On going through the document seized as per page no. 44 to 69 of annexure B-2 of Panchnama dated 17.09.2008 drawn during the search at C-13. Shushant Lok-1. Gurgaon, Haryana in the case of M3M India Ltd., Sh. Basant Bansal, Roop Bansal, Sh. Lal Chand Bansal, M/s Bench Mark Infotech Pvt. Ltd., M/s Mangalan Multi Plex Pvt. Ltd., M/s Good Luck Buildcon Pvt. Ltd., M/s Marigold Merchandise Pvt. Ltd., M/s Martial Buildcon Pvt. Ltd., M/s Misty Meadows Pvt. Ltd., M/s Focal Point Builders & Promoters Pvt. Ltd., it is seen that these documents are Partnership Deed, Dissolution Deed and miscellaneous papers which belong to M/s Superb Infotech Pvt. Ltd.4119/6, 1st Floor, Naya Bazar, Delhi. On going through these documents I am satisfied that to find any tax implication on the basis of these documents it would be better to examine these documents by Initiating assessment proceedings in the case of M/s Supreb Infotech Pvt. Ltd. to whom these documents pertains to rather than in the case of persons as mentioned above in whose case the search u/s 132 of the Act, has been conducted at C-13, Shushant Lok-1, Gurgaon, Haryana. There was no warrant of authorization u/s 132 of the Income-tax Act, 1961 and Rule 112(1) of the income-tax Rules in the case of M/s Superb Infotech Pvt. Ltd., therefore its case is not covered u/d 153A of the Act. In view of it, I am satisfied that the documents mentioned above belong to a person other than the person referred to in section 153A i.e. M/s Superb Infotech Pvt. Ltd. Accordingly, the case of M/s Superb Infotech Pvt. Ltd., is covered u/s 153C of the Act. As such notices being issued to M/s Superb

Infotech Pvt. Ltd., in accordance with the provisions of section 153A as laid down u/s 153C.

(Rajesh Kumar)
Assistant Commissioner of Income Tax
Central Circle, Alwar"

23. In the order of assessment, we find that there is no mention of any Partnership Deed, Dissolution Deed or miscellaneous papers. On the other hand, the AO passed an order under Section 143(3) read with Section 153A of the Act of 1961 on 28.12.2010, mentioning as under:

"3. After examination of the return of income, accompanying documents and the details/documents/evidences filed during the course of assessment proceedings, the following issues have emerged which lead to following additions/disallowances.

3.1 ***Profit on sale of agriculture land:***

During the year under consideration, the assessee has declared profit on sale of agriculture land amounting to Rs.18,63,34,965/- which the assessee has claimed exempt while computing its taxable income. The assessee has been in the business of sale and purchase of land. The company has been incorporated during the year 2004-05 relevant to A.Y. 2005-06. It has been seen during the assessment proceedings for A.Y. 2005-06 to 2009-10 that the assessee company has solely indulged in purchase & sale of agricultural land around Gurgaon. Therefore, purchase & sale of land by the assessee company is its business. In view of the fact that the assessee is in the business of purchase and sale of land and developing land projects, it was asked vide notice u/s 142(1) dated 16.11.2010 that why the profit on sale of agriculture land amounting to Rs.18,63,34,965/- which it has claimed exempt, should not be considered to be its business income and taxed accordingly.

> *3.2 The assessee had replied vide its letter dated 08.10.2010 that the land under consideration is agricultural land which is not a capital asset within the meaning of the definition of section 2(14) of the Income-tax Act, 1961. The land is situated beyond 10 kilometers of the Municipal limits of Gurgaon…….”*

24. It appears the AO reexamined the matter while considering the notice and proceeded to hold that it was an adventure of business in the nature of trade and it was held that the profit earned on sale of agricultural land would be an income from business.

25. In the case of **Union of India & Ors. vs. Misty Meadows Private Limited**[12], the Hon’ble Supreme Court upheld the order passed in the case of **Misty Meadows** (supra), where the provisions of Section 153C of the Act of 1961 were examined and after considering the law, it was held as under:

> *“30. Thus, we find that a particular procedure has been prescribed, as above. Following the salutary principles of law as laid down in **Nazir Ahmad** and followed in **Rao Shiv Bahadur Singh** and **Singhara Singh’s** cases (supra), we find that the respondents were obliged to compulsorily follow the procedure for reassessment of the petitioner company in the manner as prescribed under Section 153C(1) alone and in no other manner. However, we find that the respondents have invoked and initiated proceedings under Section 153A of the Act, although neither there is any search initiated under Section 132 of the Act as against the petitioner nor it can be said that the search was conducted at its premises. Similar view has been taken by Gujarat High Court in **Hitesh Ashok Vaswani** and **Subhash Khattar**’s cases (supra). Thus, the proceedings initiated under Section 153A are found to be vitiated.”*

12 Special Leave Petition (Civil) Diary No.55770/2024

26. In the case of **Abhisar Buildwell** (supra), the Hon'ble Supreme Court had held as under:

> *"12. It is submitted that prior to the new scheme, when a search gets initiated or a requisition happens, the normal assessment/reassessment was allowed to be carried on without any interference and a block assessment of undisclosed income was allowed to be made independently. However, the new scheme brought w.e.f. 1-6-2003 has dismantled this structure and Section 153-A conceives the following sequence:*
>
> > *(a) The jurisdictional exercise of power to initiate proceedings under Section 153-A would commence only upon initiation of a search under Section 132 or a requisition under Section 132-A and not before that.*
> >
> > *(b) Once a search gets initiated or a requisition is made, the assessment process under every other provision of the Income Tax Act would abate.*
> >
> > *(c) This is clear by virtue of the expression employed in Section 153-A(1) "Notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153." Being a non obstante provision, Section 153-A overrides all these provisions.*
> >
> > ……
>
> *28. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in Kabul Chawla and the Gujarat High Court in Saumya Construction (P), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.*
>
> *…….*
>
> *34. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two*

assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153-A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

……...

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

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

36.2. All pending assessments/reassessments shall stand abated;

36.3. In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in

respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."

27. In view of the above-mentioned judgments of the Supreme Court, if we examine the present case as noticed above, there was no incriminating material which can be said to have been found during the search at the premises of another assessee. A satisfaction note merely mentions about documents of Partnership Deed, Dissolution Deed and miscellaneous papers belonging to the present assessee company. However, it nowhere states that the same were in relation to A.Y. 2007-08 or that there was any income which could have been *prima facie* found to have been concealed based on the said document.

28. The word "incriminating" must necessarily be understood to mean of such a nature which creates a *prima facie* doubt of involvement of the assessee conduct in concealment of income with reference to the Act of 1961 and for the purpose of Section 153C of the Act of 1961.

29. We also noticed that virtually, the AO has reassessed the income of the appellant for A.Y. 2007-08 based on the same agriculture transaction which was already in knowledge at the time of earlier assessment. Moreover, if in the earlier assessment, something escaped from notice, the remedy lies elsewhere. The recourse to Section 153C of the Act of 1961, is not available for

correction of the assessment without any new incriminating material.

30. Even if any document received is found belonging to another assessee during the search, that itself would not be a ground to initiate proceedings under Section 153C of the Act of 1961.

31. The contention that it was an adventure in the nature of trade is also found to be misconceived. It is not that the land was frequently sold and purchased and there is only a single transaction of agriculture land, out of which, certain profits have been received. The same would, therefore, not fall within the four corners of capital gain, as it is not derived on immediate pecuniary gain.

32. We also noticed that the assessee has not denied the belonging of the documents. Mere finding of the documents would, therefore, not create a conclusive opinion for holding that they are incriminating and that there has been a concealment of income. In **Pepsi Foods P. Ltd. vs. Assistant Commissioner of Income-tax**[13], the Delhi High Court noticed as under:

> "**12.** This being the position the very first step prior to the issuance of a notice under section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under section 153C are liable to be quashed. It is ordered accordingly. The writ petitions are allowed as above. There shall be no order as to costs."

The aforesaid judgment has been upheld by the Hon'ble Supreme Court by dismissing the SLP (No.4659/2015) on 04.12.2017.

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13 *(2014) 367 ITR 112*

33. We therefore, hold that mere possession of documents relating to another person would not establish that they did not belong to the searched person and, therefore, the question of invoking Section 153C of the Act of 1961 on such premise without any satisfaction of the documents being of incriminating nature does not arise. The satisfaction itself being vitiated, the entire proceedings initiated are also vitiated in law.

34. On the facts of the present case, we also notice that there has been gross perversity in assessing the agricultural income, which would not fall within the definition of 'capital gains' as provided under Section 2(14) of the Act of 1961.

35. In the case of **Principal Commissioner of Income Tax 19 Mumbai** (supra), the Hon'ble Supreme Court had dismissed the SLP and the Bombay High Court in their judgment in the case of **The Pr. Commissioner of Income Tax-19 vs. M/s. Jogani & Dialani Land**[14] had held as under:

> *"…….The submission made on behalf of the Appellant completely ignores the fact that, it is always open to an assessee to hold the same class of assets as investment and also as stock-in-trade. There is no bar in law for a person dealing in land to also have investment in land. Thus, there is no substance in the above submission."*

36. The land falling within the Municipal limits even though agriculture in nature would come within the ambit of Section 2(14) (iii) and would be liable to pay capital gains tax. But the same not coming within the four corners of the limit provided, was liable to be exempted and the respondent could not have added the said

14 *Income Tax Appeal No. 1720/2016*

income and it would fall within the definition of rural agriculture land. While considering the said aspect, it was necessary for the revenue to reach to a conclusion whether there was any other activity relating to the rural agriculture land. Subsequent uses of land for non-agriculture purposes would not in any manner be a reason to include capital gains for the seller.

37. Accordingly, both the questions of law are answered in favour of the appellant. The present Income Tax Appeal succeeds and all the three orders dated 21.07.2010, 27.02.2013 & 06.12.2018 are quashed and set-aside.

(SANGEETA SHARMA),J (SANJEEV PRAKASH SHARMA),ACTING CJ

AMIT/158