THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA

Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member

I.T.A. No. 778/KOL/2024
Assessment Year: 2014-2015

Arati Ray,……Appellant
11/1, Dishari Bhawan, B.T. Road,
Belghoria, Kolkata-700056
[PAN:ADOPR8465R]

-Vs.-
Deputy Commissioner of Income Tax,……..Respondent
Central Circle-3(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, 5th Floor,
Kolkata-700107

&

I.T.A. No. 779/KOL/2024
Assessment Year: 2014-2015

Mallika Roy,……Appellant
11/1, Dishari Bhawan, B.T. Road,
Belghoria, Kolkata-700056
[PAN:ACGPR7888F]

-Vs.-
Deputy Commissioner of Income Tax,……..Respondent
Central Circle-3(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, 5th Floor,
Kolkata-700107

&

I.T.A. No. 780/KOL/2024
Assessment Year: 2014-2015

Samit Ray,……Appellant
11/1, Dishari Bhawan, B.T. Road,
Belghoria, Kolkata-700056
[PAN:ADKPR7815H]

-Vs.-
Deputy Commissioner of Income Tax,……..Respondent
Central Circle-3(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, 5th Floor,
Kolkata-700107

Appearances by:

Shri S.K. Tulsiyan, Advocate and Puja Somani, C.A., appeared on behalf of the assessee

Shri S. Datta, CIT (D.R.), appeared on behalf of the Revenue

Date of concluding the hearing : July 08, 2024
Date of pronouncing the order : July 11, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present three appeals are directed against the separate orders of ld. Principal Commissioner of Income Tax (Central), Kolkata-2 dated 22nd March, 2024 passed under section 263 of the Income Tax Act in assessment year 2014-15 in the case of each assessee.

2. All the three assessees have taken four grounds of appeal. However, their grievances revolve around a single issue, namely-

"Whether the action of ld. Pr. CIT in taking cognizance under section 263 of the Income Tax Act in setting aside the assessment orders dated 14th September, 2021 (in the case of Arati Ray), 21st September, 2021 (in the case of Mallika Roy) and 30th September, 2021 (in the case of Samit Ray) for passing a *de novo* assessment in each case is in accordance with law or not.

3. We take note of the facts from each appeal.

ITA No. 778/KOL/2024

The assessee is an individual. She has filed her return of income on 27th September, 2014 declaring total income at Rs.22,65,411/-. A search was conducted upon the assessee and consequent to that, a notice under section 153A of the Income Tax Act was issued on 25.06.2021. The ld. Assessing Officer has passed an assessment order under section 153A read with section 144 of the Income Tax Act. It is a very brief order running into one & half page, but the substantial paragraph no. 3 reads as under:-

"3. After verification of seized materials and as no adverse findings is mentioned in appraisal report, and as the case is getting barred by limitation on 30.09.2021, the assessment is concluded as per section 144 of the Income Tax Act, 1961 accepting the return income filed by the assessee u/s 139(1).

Computation of Income:

Returned income u/s 139(1) dt. 27.09.2014	*Rs.22,65,411/-*
Assessed Income	*Rs.22,65,411/-*

This order is passed with the prior approval of JCIT (Central), Range-3, Kolkata u/s 153D of the I.T. Act, 1961".

4. **ITA No. 779/KOL/2024**

The assessee has filed her return of income on 27th September, 2014 declaring total income at Rs.26,46,276/-. She was also covered under search and ultimately a notice under section 153A was issued to the assessee on 28.06.2021. The ld. Assessing Officer thereafter passed an *ex parte* assessment order. He has accepted the return of income declared by the assessee vide her return filed under section 139(1). The discussion made in paragraph no. 3 is the relevant discussion in this brief assessment order of one page, which reads as under:-

"3. After verification of seized materials and as no adverse findings is mentioned in appraisal report, and as the case is getting barred by limitation on 30.09.2021, the assessment is concluded as per section 144 of the Income Tax Act, 1961 accepting the return income filed by the assessee u/s 139(1).

Computation of Income:

Income as per 139(1)	*Rs.26,46,276/-*
Return Income/Assessed Income	*Rs.26,46,276/-*

This order is passed with the prior approval of JCIT (Central), Range-3, Kolkata u/s 153D of the I.T. Act, 1961".

5. **ITA No. 780/KOL/2024**

The assessee has filed his return of income on 27th September, 2014 declaring total income at Rs.80,28,734/-. He was also covered under the search operation and ultimately a notice under section 153A was issued and served upon him. The ld.

Assessing Officer has passed the assessment order under section 153A on 30.09.2021. The paragraph no. 3 of this order also deserves to be noted, which reads as under:-

> *"3. After verification of seized materials and as no adverse findings is mentioned in appraisal report, and as the case is getting barred by limitation on 30.09.2021, the assessment is concluded as per section 144 of the Income Tax Act, 1961 accepting the return income filed by the assessee u/s 139(1).*
>
> *Computation of Income:*
>
Income as per 139(1)	*Rs.80,28,734/-*
Return Income/Assessed Income	*Rs.80,28,734/-*
>
> *This order is passed with the prior approval of JCIT (Central), Range-3, Kolkata u/s 153D of the I.T. Act, 1961".*

6. The ld. Pr. Commissioner perused the records of all these three assessments and found that all these three assesses have sold lands, which has resulted into earning of long-term capital gains. The ld. Pr. CIT took note of specific details, namely in the case of Arati Ray. She has sold a land for a consideration of Rs.1,13,04,724/-. The ld. Pr. CIT noted down that Stamp Duty Valuation Authority has determined the value of the property at Rs.1,35,19,972/-. Therefore, according to him, as per section 50C of the Income Tax Act, full sale value for the purpose of computing the long-term capital gain under section 48 of the Income Tax Act ought to be deemed equivalent to the amount on which stamp duty was paid. In other words, this valuation of the Stamp Duty Authority amounting to Rs.1,35,19,972/- ought to be deemed as full sale consideration for the purpose of computing long-term capital gain. Therefore, in his opinion, the assessment order is

erroneous, which has caused prejudice to the interest of revenue and which deserves to be set aside for passing a *de novo* assessment on this issue. The ld. Pr. CIT has worked out the alleged escaped long-term capital gain at Rs.22,15,248/-.

7. In the case of Mallika Roy (ITA No. 779/KOL/2024), ld. Pr. CIT observed that the assessee sold a land for a consideration of Rs.76,82,294/-, whereas the stamp duty value of this land was Rs.1,78,86,222/-. The ld. Pr. CIT was of the view that value determined by the Stamp Duty Valuation Authority for charging the stamp ought to be deemed full sale consideration of the land sold by the assessee. The ld. CIT worked out the alleged under-valuation of long-term capital gain at Rs.1,02,03,928/-.

8. In the case of Samit Ray (ITA No. 780/KOL/2024), ld. Pr. CIT found that the assessee sold land of different Mouza villages for a consideration of Rs.1,49,36,614/-, whereas for the purpose of stamp duty payment, the value determined by the Stamp Duty Valuation Authority was Rs.2,77,55,112/-. On the analogy of discussion made in the case of Arati Ray, he recorded that as per section 50C of the Income Tax Act, the full sale value ought to be considered equivalent to the amount on which stamp duty was paid by the vendee. Thus, in his opinion, the assessee has undervalued the long-term capital gain by Rs.1,28,18,498/-. The ld. Pr. CIT was of the view that ld. Assessing Officer has committed an error by not examining these issues and, therefore, his order is prejudicial to the interest of revenue.

9. The ld. Pr. CIT confronted of all these three years and, thereafter set aside the assessment order for examining these issues in the case of each assessee.

10. The ld. Counsel for the assessee submitted that all these assesses have filed their regular returns of income within due date under section 139(1) of the Income Tax Act. They have disclosed the complete details and computed the long-term capital gain assessable in their hands. If the computation made by the assesses was not in accordance with law, then their cases ought to have been selected for scrutiny assessment by issuance of a notice under section 143(2) of the Income Tax Act, but no such notices were issued meaning thereby the assessments have attained finality, which were passed under section 143(1) vide which returns of the assessees have been accepted.

11. The ld. Pr. Commissioner pointing out error in the assessment order and observed that the assessment orders passed under section 153A read with section 144 have caused a prejudice to the interest of revenue in each case of the assessee. This assumption of the ld. Pr. Commissioner is not tenable in view of the judgment of the Hon'ble Supreme Court in the case of Pr. CIT, Central -3 -vs.- Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC). He placed on record copy of this decision. The ld. Counsel for the assessee drew our attention towards paragraph no. 11 of this judgment. He further submitted that Hon'ble Supreme Court

has upheld the judgment of the Hon'ble Delhi High Court in the case of CIT -vs.- Kabul Chawala [2015] 61 taxmann.com 412 (Delhi). In this judgment, Hon'ble Delhi High Court has propounded that processment of the return under section 143(1) is to be construed as completion of the assessment. This judgment of the Hon'ble Delhi High Court has been upheld by the Hon'ble Supreme Court. The ld. Counsel for the assessee thereafter drew our attention towards judgment of the Hon'ble Punjab & Haryana High Court in the case of Vipin Khanna -vs- CIT reported in {2002] 255 ITR 220 (P&H), wherein it was held that –

> *"Therefore, in a case where a return is filed and is processed u/s 143(1)(a) of the Act and no notice under sub-section 2 of section 143 thereafter is served on the assessee within the stipulated period of 12 months, the assessment proceeding u/s 143 come to an end and the matter becomes final. Thus, although technically no assessment is framed in such a case, yet the proceedings for assessment stand terminated".*

12.. The ld. Counsel for the assessee further contended that since no incriminating material was discovered during the course of search, therefore, ld. Assessing Officer has rightly not made any addition to the income of the assessee, which could only be made on the basis of incriminating material found during the course of search. In this situation, the assessment order cannot be termed as erroneous, which has caused a prejudice to the interest of revenue. He relied upon the judgment of the Hon'ble Supreme Court in the case of PCIT -vs.- Jay Ambey Aromatics [2023] 156 taxmann.com 691 (SC). In this judgment, it was held by the Hon'ble Supreme Court that assessment of the assessee had attained finality prior to the date of search and no incriminating

document or material had been found and seized at the time of search. No addition could be made under section 153A as the case of assessee was of non-abated assessment. Ld. Counsel for the assessee has filed a written submission running into nine pages in each case of the assessees.

13. The ld. CIT(DR), on the other hand, relied upon the orders of ld. Pr. CIT in all these cases.

14. We have duly considered the rival contentions and gone through the record carefully. Before we embark upon an enquiry on the facts and issues agitated before us to find out whether the action u/s 263 of the Act, deserves to be taken against the assessee or not, it is pertinent to take note of this section. It reads as under:-

> *"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*
>
> *[Explanation.- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income Tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) "record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

15. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned

Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order.

16. A perusal of sub-clause (c) of the above would contemplate that if any order, which is subject matter for revision under section 263 is challenged in appeal, then, on the items which are subject matter of appeal, no power under section 263 could be exercised by the ld. Commissioner. We may elaborate further, for example- an assessment order was passed, it contains five issues, which were challenged before the ld. CIT(A), but ld. Assessing Officer failed to look into few issues, which may arise from the record, then inspite of the assessment order being challenged before the ld. CIT(A), the ld. Commissioner would have jurisdiction on such items,

which are not subject matter of appeal in that assessment order.

17. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. If cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in

accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

18. In the light of above, let us examine the facts and circumstances of the appeals before us. There is no dispute to the fact that all these assessees have filed their returns within due date provided under section 139(1) of the Income Tax Act. They have disclosed the long-term capital gain assessable in their hands. Those returns have been accepted under section 143(1) of the Income Tax Act. The assessments have attained finality. No notice under section 143(2) for scrutinizing the returns have been

issued upon the assessee before the search carried out. Even the time limit for issuance of such notice have already been expired before the search. During the course of search, no incriminating material was found which can authorize the ld. Assessing Officer to assess the income under section 153A of the Income Tax Act. To buttress this observation, we have taken note of the relevant part of the assessment orders in the case of each assessee in the earlier part of this order. The Hon'ble Delhi High Court has considered the scope of section 153A in the case of CIT -vs.- Kabul Chawala (supra). The assessment years involved therein were A.Ys. 2001-02, 2005-06 and 2006-07. In all these assessment orders, return was processed under section 143(1) and there was no scrutiny assessment. Thereafter search was carried out under section 132 of the Income Tax Act on 15.11.2007. The revenue sought to make addition on account of deemed dividend under section 2(22)(e) of the Income Tax Act.

19. The Hon'ble Delhi High Court after considering host of decisions propounded following propositions in the concluding paragraph of the judgment, which read as under:-

> *"Summary of the legal position*
>
> *37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
>
> > *i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding*

the previous year relevant to the AY in which the search takes place.

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

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

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

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

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

> *vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*
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> *Conclusion*
>
> *38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.*
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> *39. The question framed by the Court is answered in favour of the Assessee and against the Revenue.*
>
> *40. The appeals are accordingly dismissed but in the circumstances no orders as to costs".*

20. This judgment and other judgments on this school of thought have fallen for consideration of the Hon'ble Supreme Court, who concurred with the Hon'ble Delhi High Court as well as Hon'ble Gujrat High Court. The relevant part of the finding of the Hon'ble Supreme Court in this aspect reads as under:-

> *"11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made*

under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub- section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. 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 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A 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 153A, 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, second proviso to section 153A and sub- section (2) of Section 153A would be redundant and/or re- writing the said provisions, which is not permissible under the law.

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material".

21. In view of the above position of law, a short question before us is, whether scope of assessment under section 153A could be enhanced to include re-computation of long-term capital gain *qua* those assessments, which are unabated. The assessments in each appellant's case have attained finality. It is pertinent to note that in paragraph no. 4.1 of the impugned order in the case of each assessee, ld. PCIT has observed that assessment orders under section 153A were passed without making necessary inquiry, verification, investigation on the issue. The ld. PCIT further observed that reliance placed by the assessees on the judgment of the Hon'ble Supreme Court in the case of PCIT -vs.- Abhisar Buildwell (P) Ltd. (supra) is misplaced. According to the ld. PCIT, the factum of the difference in sale consideration, vis-à-vis

valuation of the property for the purpose of stamp duty valuation ought to be considered as an incriminating aspect, which would not come to the light if search or consequential search assessment had not taken place. The ld. PCIT thereafter made reference to section 50C of the Income Tax Act. We have considered this finding of the ld. PCIT, but these findings are not in consonance with the proposition of law laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell (P) Ltd. Had the assessees have not disclosed long-term capital gain in their regular returns of income and then a discovery of this factum was unearthed during the course of search. The situation would be different. The ld. PCIT has not made reference to any seized material found during the course of search. He is of the view that the subject matter of a regular assessment, which would have taken under section 143(3) after issuance of a notice u/s 143(2) ought to have been considered in this search assessment under section 153A, but this proposition harbored by the ld. PCIT is contrary to the position of law laid down by the Hon'ble Supreme Court. It is pertinent to note that section 48 of the Income Tax Act contemplates mode of computation of long-term capital gain. It provides that from the full value of the consideration received or accrued to an assessee on transfer of capital assets, the cost of acquisition, cost of any improvement and any expenditure incurred in connection with the transfer are to be debited. This expression "full value of the consideration" is to be deemed equivalent to the amount on which stamp duty was paid. This deeming fiction is provided under section 50C of the Income Tax Act. Sub-clause (2) of section 50C further authorizes the ld.

Assessing Officer that in case, an assessee disputes about deeming of the full sale consideration equivalent to the amount on which stamp duty was paid, then, he would make a reference to the DVO for determining the fair market value. Now this exercise was required to be conducted in a regular assessment under section 143(3), but that assessment attained finality. The factum of transfer of capital asset was brought to the notice of the revenue by all these assessees, therefore, it is not a new discovery of fact during the course of search, which can authorize the ld. Assessing Officer to carry out the exercise contemplated in section 50C of the Income Tax Act. The ld. PCIT has misread and misconstrued the position of law laid down by the judgment of the Hon'ble Supreme Court. This issue does not fall within the ambit of assessment under section 153A of the Income Tax Act. For buttressing our finding, we have made reference to the assessment orders. The ld. Assessing Officer has duly observed that neither there was any incriminating material nor there is any adverse mentioned in the appraisal report for taking this action. The ld. Assessing Officer has recorded a categorical finding that no incriminating material was found during the course of search. Therefore, no addition could be made and if no addition could be made, how ld. Pr. CIT could enlarge the scope of assessment by exercising the powers under section 263 of the Income Tax Act. The issue in dispute is squarely covered by the decision of the Hon'ble Supreme Court in the case of PCIT -vs.- Abhisar Buildwell (P) Ltd. (supra) as well as PCIT -vs.- Jay Ambey Aromatics (Supra). Therefore, in view of the

above discussion, the orders of ld. Pr. CIT in each case of the appellant are not sustainable. They are quashed.

22. In the result, all the appeals of the assessees are allowed.

Order pronounced in the open Court on 11/07/2024.

Sd/- Sd/-

(Sanjay Awasthi) (Rajpal Yadav)
Accountant Member Vice-President (KZ)

Kolkata, the 11th day of July, 2024

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11/1, Dishari Bhawan, B.T. Road,
Belghoria, Kolkata-700056

(4) Deputy Commissioner of Income Tax,
Central Circle-3(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, 5th Floor, Kolkata-700107
(5) PCIT, (Central), Kolkata-2;
(6) The Departmental Representative;
(7) Guard File
TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.