

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”, DELHI**

**BEFORE SH. YOGESH KUMAR US, JUDICIAL MEMBER
AND
SH. MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.7106/DEL/2025 (AY 2022-23)

RAMESH ZALPURI, HOUSE NO. D-119, SECTOR- 122, NOIDA, NEPZ POST OFFICE SO NEPZ, GAUTAM BUDH NAGAR-201305 UTTAR PRADESH (PAN: AACPZ1530A)	Vs.	DCIT/ACIT, CENTRAL CIRCLE-II, 2ND FLOOR, NOIDA, UTTAR PRADESH -201301
(APPELLANT)		(RESPONDENT)

ITA No.398/DEL/2026 (AY 2022-23)

HARVINDER SINGH MATHARU, FLAT NO. E-601, PLOT NO. E-8, KRISHNA APRA RESIDENCY, SECTOR-61, GAUTAM BUDH NAGAR, NOIDA -201301 (PAN: AIBPM6357R)	Vs.	DCIT/ACIT, CENTRAL CIRCLE-II, 2ND FLOOR, NOIDA, UTTAR PRADESH -201301
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rohit Kapoor, Adv. & Sh. Vir Sain Aggarwal, ITP
Respondent by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of hearing:	19/03/2026
Date of Pronouncement:	20/05/2026

ORDER

PER MANISH AGARWAL, AM :

These two appeals are filed by the different assesses are directed against the separate orders of the Ld. Commissioner of Income Tax(Appeals-3), Noida [hereinafter referred to as “NFAC”] arising out the separate assessment orders u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”) pertaining to A.Y. 2022-23. Since common issues are involved in both the captioned appeals, hence, the appeals

were heard together and disposed of by this common order for the sake of convenience by dealing with the facts of ITA No. 398/Del/2026 (AY 2022-23) being the lead case.

2. The grounds raised in ITA No.398/Del/ 2026 (Harvinder Singh Matharu) read as under:-

1. That the Ld. CIT(A) has erred in sustaining addition of Rs. 30,95,000/- u/s 69A on account of cash received from MEPL based upon certain incriminating material found from MEPL.
2. That the Ld. CIT(A) has erred in law and on facts in upholding the impugned assessment, despite the appellant not being an employee of M/s MEPL and in the absence of any seized or incriminating material.
3. That without prejudice to above grounds of appeal the Ld. CIT(A) has erred both in law and on facts in confirming the addition u/s 69A on account of cash received from MEPL, pursuant to the assessment completed under section 143(3) of the Income-tax Act, 1961. The CIT(A) failed to appreciate that the assessment in the present case was required to be framed under section 147, and consequently, the addition made under section 143(3) is without jurisdiction and bad in law, in view of Explanation 2(iv) to section 148 of the Act.
4. That Id. CIT (A) erred in upholding the assessment despite the fact that the Ld.AO has further erred in relying on documents seized during a search conducted on another person for making additions in the hands of the assessee, without obtaining the prior approval of the Principal Commissioner of Income Tax (PCIT), thereby rendering the assessment illegal, void ab initio, and without jurisdiction.

5. That the Ld. CIT(A) erred in law in upholding the assessment, which is bad in law for want of mandatory approval under section 148B of the Income-tax Act, 1961 and as such proceedings are vitiated.

6. That the Ld. CIT(A) has erred in law and on facts in upholding the addition based on a misreading and misinterpretation of the statement of Shri Manoj Khandpal, which itself contains material discrepancies.

7. That the appellant craves leave to add, amend, or modify the grounds of appeal as may be necessary during the course of the proceedings.

3. The grounds raised in ITA No. 7106/Del/ 2025 (Ramesh Zalpuri) read as under:-

1. That CIT(A), vide order u/s 250(6) has erred in confirming the addition amounting to Rs. 33,96,000/- made by AO on account of Salary difference not declared in the Return of Income.

2. That the CIT(A) erred in law in upholding the assessment completed under section 143(3), ignoring that the AO wrongly relied on material seized from a searched party without invoking section 147, thereby bypassing the mandatory statutory procedure.

3. That the CIT(A) erred in upholding the assessment under section 143(3) without appreciating that the mandatory procedure under Explanation 2 to clause (iv) of Section 148 was not followed, as the AO failed to record independent satisfaction and no valid approval was obtained from the PCIT, rendering the reassessment void ab initio.

4. That the CIT(A) erred in upholding the assessment of a person other than the person searched based on material seized from the searched party, without obtaining mandatory approval under section 148B, thereby vitiating the entire proceedings.

5. That the CIT(A) erred in confirming the addition made by the Assessing Officer without appreciating that the assessee was not afforded an opportunity for cross-examination, thereby violating the principles of natural justice.
 6. That the CIT(A) erred in upholding the addition based on an alleged discrepancy in salary, without appreciating that the salary declared in the return of income was 6.54 lakhs per month, as against R6.38 lakhs erroneously considered by the Assessing Officer.
4. The brief facts of the case are a search and seizure operation u/s. 132 of the Income Tax Act, 1961 was conducted on Uflex Montage Group on 21.2.2023. During the course of search several incriminating documents were found and seized that pertained to the assessee. In this light, notice under section 143(2) of the Act was issued and served on the assessee. Thereafter, AO completed the assessment proceedings u/s 143(3) of the Income Tax Act, 1961 by making the addition of Rs. 30,96,000/- on account of unexplained money u/s 69A of the Income Tax Act, 1961. The AO has observed that during the course of search in the case of U-Flex /Montage Group data extracted from the office system and e-mails of Sh. Abhijit Giri, HR Manager of Montage Enterprises Private Limited revealed that apart from regular salary paid to the assessee (being employee of Montage Enterprises Private Limited), cash was also paid to the top employees. The AO has reproduced the relevant document in the assessment order. Moreover, as per AO Sh. Manoj Kandpal AGM of the employer company has acknowledged in his statement recorded on 24.02.2023 that cash amount over and above regular salary was given to the employees which was called as "B" part of the salary. The AO treated the cash salary received of Rs. 2,58,000/- per month totaling to 30,96,000/- during the year as unexplained u/s 69A of the Act and added the same to the income of the assessee. Against the same, assessee preferred the appeal before the Ld. CIT(A), who vide his impugned order dated 7.1.2026 has dismissed the

appeal by noting that since observations of the AO have not been rebutted by the assessee, therefore, the addition made by the AO was upheld. Aggrieved, assessee is in appeal before us.

5. The assessee's ground no. 3 & 4 are relating to application of assessment u/s. 143(3) based on the documents found and seized during the search carried out in the name of 3rd person and therefore, the same should be completed u/s. 148 of the Act. Since these are legal grounds, thus taken first for consideration.

6. We have heard both the parties and perused the records. During the course of search which was carried out in the case of Montage Group on 21-02-2023 and from the possession of one of the employees namely Abhijit Giri, an excel sheet was retrieved evidencing certain salary payments in cash amounting to Rs. 2,58,000/- per month was paid to the assessee from M/s Montage Enterprises Pvt. Ltd., in addition to his regular salary. AO observed that this page is further corroborated with the Whatsapp messages of the Director of the Company. Accordingly, the AO made the addition of Rs. 30,96,000/- u/s. 69A as unexplained money received as salary received from Montage Enterprises Pvt. Ltd. The claim of the assessee was that he was employee of Montage Sales Pvt. Ltd. and not the employee of M/s Montage Enterprises Pvt Ltd. It was further submitted that the date of search in the Montage group was 21.2.2023 relating to assessment year 2023-24 and year under appeal is AY 2022-23. It was the further claim of the assessee that based on the documents found from the possession of the third party in terms of the mandated provisions of section 148 proceedings, it should have been initiated u/s. 148 of the Act and no addition could be made on such documents in the order passed u/s. 143(3) of the Act. For this, reliance is placed on judgments of the Coordinate Bench of the ITAT, Delhi and ITAT, Chandigarh.

7. On the other hand, Id. CIT(DR) supported the orders of the lower authorities and submitted that when the time is limited for issue of notice u/s.

143(2), there is no need to issue notice u/s. 148 of the Act. The assessment order under appeal is for AY 2022-23 for which the date of issue of notice u/s. 143(2) had not been expired. Therefore, he submitted that AO has rightly invoked the provisions of section 143(3) of the Act.

8. On careful consideration of the facts, it is observed that no addition is made on the basis of the documents found from the possession of the assessee. The Explanation 2 to section 148 as amended by Finance Act, 2021 has related to the issue of such assessment to be completed in respect of the search conducted u/s. 132 on or before 01.04.2021. Explanation 2 provides as under:-

“Explanation 2 – For the purpose of this section, where –

- (i) A search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) A survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) The AO is satisfied, with the approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) The Assessing Officer is satisfied, with the approval of the Principal Commissioner or Commissioner, that any books of account or

documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, related to the assessee, the Assessing officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the ‘three assessment years’ immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuables article or thing or books of account or documents are seized or requisitioned in case of any other person.”

9. From the perusal of the aforesaid provisions, it is observed that in case the documents found from the possession of the 3rd person, proceedings could be initiated u/s. 148 of the Act. This view is supported by the decision of the Coordinate Bench, ITAT, Delhi in the case of Ace Mega Structures Pvt. Ltd. vs. DCIT/ACIT, CC-1, Noida [2025] {12} TMI 652 wherein, it has been held as under:-

“Addition made on account of the entries found recorded in the documents found and seized from the possession of third person - AO has not followed the procedure as provided in clause (iv) of Explanation 2 to section 148 of the Act and simultaneously used the documents found from the possession of third person during pendency of reassessment proceedings initiated on the basis of the documents found during the course of search in the case of assessee itself. Since the cause of action of initiation of re-assessment proceedings is entirely different and therefore, we are in agreement with the view taken in the case of Homelife Buildcon (P.) Ltd. [2025 (7) TMI 1231 -

ITAT CHANDIGARH] and accordingly, held that no addition could be made on the basis of the documents found and seized from the possession of third person without following procedure as prescribed in clause (3) and (4) of Explanation (2) to section 148 and without obtaining mandatory approval from the prescribed authority to use such material against the assessee.”

10. Similarly, the Coordinate Bench of the Chandigarh Tribunal in the case of Homelife Buildcon P Ltd. vs. DCIT [2025] 176 taxmann.com 614 has expressed exactly similar view by observing as under:-

“Where Assessing Officer had relied upon material seized during searches conducted on other persons, it was mandatory for Assessing Officer to invoke provisions of section 147 and not to bypass statutory framework by proceeding under section 143(3). Furthermore, a plain reading of the Finance Act, 2021 and the Explanatory Memorandum to the Finance Bill clearly indicates that the legislative intent was to bring all searches conducted on or after 1-4-2021 within the ambit of the new reassessment regime under section 147. This new regime was introduced through significant amendments to section 147 and section 148, along with the insertion of Explanations 1 and 2, and the concept of 'information suggesting escapement of income' was explicitly defined. From the reading of Explanation 2 to section 147, it is evident that in cases where a search is initiated on or after 1-4-2021, the Assessing Officer shall be deemed to have information, which suggests that income chargeable to tax has escaped assessment for three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated, provided that books of account, documents, assets, bullion, jewellery, or other valuable articles are seized or requisitioned in the course of the search. This deeming provision is not limited only to the person searched, but also extends to 'other persons', provided that due procedure under the law - specifically, the recording of satisfaction that such seized material belongs to the assessee and obtaining prior approval from the PCIT - is followed. [Para 24] In the instant case, the AO did not issue a notice under section 148, nor did he follow the due process of law under the new reassessment framework, including recording of satisfaction and obtaining prior sanction from the PCIT. Therefore, the assessment framed under section 143(3), because of being based on third-party material without adhering to statutory safeguards, is bad in law. The AO was only

empowered to verify the return of income and restrict his scope of inquiry accordingly; he was not permitted to expand the assessment by importing and relying upon third-party seized material without following the mandatory procedure laid down under the law. [Para 28] Furthermore, there exists a mandatory statutory requirement that in all cases involving search-related assessments falling within the assessment year, immediately preceding the year of the search, the prior approval of the Joint Commissioner is required under section 148B. In the instant case, the Assessing Officer (AO) has proceeded without obtaining such approval, which is a clear violation of the procedural safeguards envisaged under the law and, as such, vitiates the assessment proceedings. In the instant case, approval has been granted for assessment framed under section 143(3) only. [Para 29]”

11. As the facts of the present case are identical to the aforesaid cases facts and further the Coordinate Bench of the Tribunal in the case of Ace Mega Structures Pvt. Ltd. (Supra) and Homelife Buildcon P Ltd. (Supra) has held that proceedings initiated under section 148 in case of assessment order is prior to the year of search where document found from the possession of the 3rd person were utilized for making the addition. Thus, respectfully following the aforesaid judgements, we hold that the order passed u/s. 143(3) is bad in law and invalid. Accordingly, the same is hereby quashed and resultantly, the ground no. 3 & 4 are allowed in the very terms. The other grounds have become academic thus need not be adjudicated.

12. As regards ITA No. 7106/del/2025 (AY 2022-23) [Ramesh Zalpuri], our aforesaid decision taken in ITA No. 398/Del/2026 (AY 2022-23) [Harvinder Singh Matharu], will apply *mutatis mutandis* to the ITA No. 7106/Del/2025 (AY 2022-23). Accordingly, this appeal is also allowed.

13. In the result, both the appeals filed by the different assesseees are allowed in the aforesaid manner.

Order pronounced in the open court 20.05.2026.

SD/-

SD/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

(MANISH AGARWAL)
ACCOUNTANT MEMBER

SR Bhatnagar

Date: 20.05.2026

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT DELHI