IN THE INCOME TAX APPELLATE TRIBUNAL
SPECIAL BENCH : MUMBAI

BEFORE HON'BLE PRESIDENT SHRI G.E. VEERABHADRAPPA,

SHRI D.K AGARWAL, JUDICIAL MEMBER AND

SHRI K.G. BANSAL, ACCOUNTANT MEMBER

I.T.A Nos. 5018 to 5022 & 5059/M/10,

Asstt. Years 2004-05 to 2009-10

M/s. All Cargo Global Logistics Ltd.	Vs.	DCIT,
5th Floor, Diamond Square,		Central Circle-44,
C.S.T. Road, Kalina,		Aayakar Bhavan,
Santacruz (E),		M.K. Road,
Mumbai – 400 098.		Mumbai – 400 020.
(Appellant)		(Respondent)

Appellant by : S/Shri S.E. Dastur, Sr. Advocate, B.V. Jhaveri, Advocate, Madhur Agarwal and Ms. Manju Sisodia

Respondent by : Shri Girish Dave, Standing Counsel and Shri G.S.Rao, CIT (DR)

Date of hearing : 23-05-2012

Date of pronouncement : 06-07-2012

Interveners	
ITA No. 1042-1044/Del/10	National Industrial Corpn. Ltd.
ITA No. 2087/Del/10	National Industrial Corpn. Ltd.
ITA No. 2197-2202/M/08	M/s. Pratibha Industries Ltd.
CO No. 117 & 121/M/08	M/s. Pratibha Industries LTd.
ITA No. 3906/Del/06	M/s. NIIT Ltd.
CO No. 267/Del/10	M/s. NIIT Ltd.
ITA No. 3960/Del/10	Container Corporation of India Ltd.
ITA No. 4667/Del/10	Container Corporation of India Ltd.
ITA No. 5652-5674/M/10	Sriram Group
ITA No. 4946-4953/M/10	Sriram Group
ITA No. 4920-4926/M/10	Sriram Group
ITA No. 4934-4941/M/10	Sriram Group
ITA No. 2220,3773/M/11	Shri Haresh Majethia
ITA No. 191,3771/M/11	Shri Haresh Majethia
ITA No. 192,3772/M/11	Shri Haresh Majethia
For Interveners	Shri S. Krishnan, Advocate, Shri Reepal Tralshawala, Advocate, Shri Ajay Vohra, Advocate, and Ms. Ritika Agarwal, CA.

ORDER

PER BENCH :

These appeals involving certain common grounds regarding interpretation of section 153A of the Income Tax Act, 1961, and claimed for deduction under section 80IA (4) of the Act. The same are being discussed by us with reference to the facts of the case for assessment year 2004-2005 in the case of Allcargo Global Logistics Ltd. The grounds taken by the assessee in this appeal are as under :-

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the order passed by the Assessing Officer is without jurisdiction and bad in law as the jurisdiction u/s 153A is vitiated.*
2. *The Commissioner (Appeals) erred in confirming the disallowance of deduction of Rs.1,25,77,637/- u/s 80IA(4) of the Act.*
3. *The CIT(A) erred in relying on the decision of the Appellate Triubnal in the case of Container Corporation of India Ltd. vs. ACIT [30 SOT 284 (Del.)], without appreciating that the facts in the present case are different from that of the aforesaid case.*
4. *The Commissioner (Appeals) failed to appreciate that the appellant is covered by the definition of the term "infrastructure facility" given in Explanation to section 80IA(4)(i) of the Act as "Ports".*
5. *The Commissioner (Appeals) erred in not following circular No. 793 dated 23rd June, 2000 and clarification dated 16th December, 2005 issued by the CBDT which is binding on the Income Tax Authorities.*
6. *The Commissioner (Appeals) failed to appreciate that sub-clause (aa) of section 7 of the Customs Act, 1962 clarifies that the Customs Ports are the places which are identified and demarcated for the unloading of imported cargo and the loading of exported cargo*

and, therefore, the Container Freight Stations would be Customs Ports with reference to the Customs Law and, therefore, it would be qualified for the benefit of section 80-IA(4)(i) of the Act.

7. *In the alternative and without prejudice, the Commissioner (Appeals) failed to appreciate that the Container Freight Station is an Inland Port and therefore, it is an infrastructure facility within the meaning of section 80-IA(4) of the Act.*

8. *The order of the Commissioner (Appeals) is bad in law and without jurisdiction.*

2. These appeals were posted before the Division Bench. After hearing both the sides and having considered several decisions which were available at that point of time, the Division Bench opined that a reference is necessary under section 255(3) of the Act to Hon'ble President, Income Tax Appellate Tribunal, for constitution of Special Bench. Accordingly, a reference dated 19-12-2011 was made. The operative part of the reference reads as under :

4.1 *Having heard both the sides and perused the relevant material on record, it is noticed that the assessment years under consideration are 2004-05 to 2009-10. The Delhi Bench of the Tribunal in Container Corporation of India Ltd. (supra) also considered assessment years 2003-04 to 2005-06. Some of the arguments raised by the Ld. Sr. A.R., in the proceedings before us, were also raised, considered and rejected by the Tribunal. At the same time, it is also true that there is no reference to certain relevant material in the Delhi Bench order, such as Notification S.O.744(E) dated 1.9.1998 (copy placed at page 118 of the paper book), letter of Director, CBDT, to all Chief Commissioners of Income-tax dated 16.12.2005 (copy placed at page 120 of the paper book) etc., which may have some bearing on the issue.*

5. Under such circumstances, we propose the following two questions :

1. Whether, on the facts and in law, the scope of assessment u/s 153A encompasses additions, not based on any incriminating material found during the course of search"?

2. Whether, on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was justified in upholding the disallowance of deduction u/s 80IA(4) of the Act, on merits?

3. The matter came up before the Hon'ble President, who agreed with the reference made to him by the Division Bench and constituted the Special Bench to decide the questions which were suggested therein.

4. When the matter was posted for hearing, the learned Senior Counsel for the Revenue submitted at the outset that ground No.1 of the appeal (supra) was not taken-up by the assessee before the Assessing Officer or the learned CIT(A) and therefore, the Tribunal should not entertain this ground at this stage without following the procedure laid down for admission of an additional ground. The rival parties addressed detailed arguments in this regard and wanted us to pass an interim order before proceeding further. The Special Bench accepted Revenue's preliminary objection and passed an interim order on 25-1-2012 treating the aforesaid ground No.1 as an additional ground. Therefore, our interim order dated 21-5-2012 should be read as part and parcel of this order. With these preliminary observations, we proceed to the questions which are referred to us by the Hon'ble President, Income Tax Appellate Tribunal.

5. The appeals involved assessment years 2004-05 to 2009-10. The facts are summarised here. In the previous years relevant to assessment years 2004-05 to 2008-09, the assessee had been operating the CFS at Jawahar Lal Nehru Port Trust. Such CFS was also operated at Chennai in the previous year relevant to assessment year 2009-10. The facts for assessment year 2004-05 to 2006-07 are somewhat similar. Original assessment for assessment year 2004-05 was competed on 30.12.2006 u/s 143(3) of the Act. The return for assessment year 2005-06 was processed on 21.9.2006 u/s 143(1). Return for assessment Year 2006-07 was also processed on 27.11.2007 u/s 143(1). Thus no proceeding was pending for these years on 10.7.2009 when search was conducted u/s 132(1). In the original proceedings for assessment year 2004-05, the claim of the assessee u/s 80I(4) was scrutinized by issuing a questionnaire dated 25.5.2006. Information and clarification were sought and vide point No. 20(a), the assessee was required to furnish a note on the unit with reference to its commissioning and capital work in progress shown in the balance sheet. This point was specifically responded to in letter dated 6.8.2006, in which it was submitted that the CFS activity commenced from 7.4.2003. A notification had been received from the Commissioner of Customs (Import), Jawahar Custom House bearing No. 03/2003 dated 28.2.2003, classifying the area of 3282 sq meters as "customs area" for the purpose of storage, stuffing / destuffing and clearance of export / import-cargo. Subsequently the Commissioner has notified the same area as "customs area" for export cargo and the assessee has been certified as a

custodian for cargo under Customs Act, 1962. Copies of relevant notifications were also enclosed.

6. A CFS is common user facility offering services in handling and temporary storing of import / export laden empties / carried under customs control and supervision. It is also a bonded warehousing facility where customers can custom clear the cargo for export to various countries and importers can receive custom-cleared cargo for home consumption. The custom staff is posted in the CFS for such clearances.

7. The assessee had enclosed a certificate from the Chartered Accountant in form No. 10CCB as one of the pre-conditions for claiming the deduction. A certificate was also enclosed from JLN Port Trust certifying that the activities may be considered as extended activities of port related activities in accordance with Board Circular No. 793(b) dated 26.3.2000, read with circular No. 133/95 – cus. dated 22.12.95 of Central Board of Excise and Customs. It was also submitted that from Board Circular No. 10/2005 dated 16.12.2005, it is clear that from assessment Year 2002-03, structures at the port for storage, loading and unloading are be included in the definition of 'Port' for the purpose of section 10 (23G) and section 80IA. The AO considered the claim specifically in paragraph no. 5 of the assessment order. He allowed the deduction at Rs.1,21,97,347/- against the claim of Rs.1,25,77,637/-. The reduction is on account of disallowance of the deduction in respect of damages of Rs.3,80,290/-

8. It is argued by the learned Counsel of the assessee before us that an assessment u/s 153A is different from regular assessment. It is made only where a search is initiated u/s 132 or books of account, other documents or any assets are requisition u/s 132A after 31.5.2003. In the course of search, generally incriminating documents etc. or unaccounted assets are found. Thus, assessment u/s 153A can be made only when books of account, incriminating documents or unaccounted assets are found or seized. Therefore, this provision is inextricably linked with the provision contained in section 132(1), which means that existence of books of account , incriminating documents or unaccounted assets is or are sine qua non of making the assessment under this provision. Therefore, if nothing is found in the course of search, there will be no purpose served by making assessment or re-assessment u/s 153A.

9. The Id. Counsel explained the contents of the provision which starts with non-obstante clause with reference to sections 139, 147, 148, 149, 151 and 153. In case of a person who has been searched u/s 132(1) or in whose case books of account, other documents or any assets are requisitioned u/s 132A after 31.5.2003, the AO has to issue notice to him for filing the return in respect of each assessment year falling within six assessment years immediately proceeding the assessment year relevant to the previous year in which the search or the requisition is made. Thereafter, the AO has to assess or reassess the total income of the six assessment years. First proviso is reiteration of the provision containing

clause (b) of section 153A (1) that the AO shall assess or reassess the total income of each of the six assessment years as mentioned above. The second proviso contemplates that if any of the aforesaid six assessments is pending on the date of initiation of the search or requisition, the same shall abate. However, there is no provision that even the completed assessment of aforesaid six years shall abate. Therefore, the distinction has been made between a completed assessment and a pending assessment. Further under the provision contained in sub-section (2), the assessment or reassessment relating to any assessment year which has abated under the second proviso, if such an assessment is annulled in appeal or any other legal proceeding, then it shall stand revived w.e.f. the date of receipt of the order of such annulment by the Commissioner. Further such revival shall cease to have effect if the order of annulment is set aside. The case of the Ld. Counsel is that in so far as completed assessment are concerned, they do not abate and pending appeals etc. in respect thereof continue to exist notwithstanding the fact that the search has been made. Thus a completed assessment becomes final unless some incriminating material is found in the course of search. Taking any other view will empower the AO to undo what has already been completed and has become final. Therefore, no re-assessment in respect of completed assessment is contemplated under this provision in case no incriminating material is found in the search. The contrary view is unreasonable and it is likely to be set aside, therefore, such an interpretation should be avoided. The Ld. Counsel also referred to the provision contained in section 153C,

in respect of a person whose assets or documents are found in the course of search of another person. It is argued that even if nothing incriminating is found in the course of search, the literal interpretation would subject him to fresh assessments for six years. Therefore, finding incriminating material in the course of search is the essence of assessment or re-assessment to be made u/s 153A. Section 153D itself provides a safeguard that if an order of assessment or reassessment is to be made u/s 153A by an officer below the rank of Joint Commissioner, then previous approval of the Joint Commissioner is necessary. Therefore, the interpretation to be placed on the provision contained in section 153A has to take into account the safeguard so that the assessees are not put to harassment by subjecting them to reassessment in case of a completed assessment in respect of which no incriminating material has been found in the course of search. This restriction is inherent in the provision as there is no positive assertion of opposite, i.e., wider powers given to AO.

10. In this context, reliance is placed on the decision of the Apex Court in the case of CIT vs. JH Gotla (1985) 156 ITR 323. The question referred to the High Court in this case was – whether, on the facts and in the circumstances of the case, the assessee would be entitled to carry forward and set off the losses against the share income of the assessee's wife and minor children in respect of the assessment year 1959-60 u/s 24(2) of the Income Tax Act, 1922 ? The High Court had held that for an assessee to be entitled to carry forward of the loss to

the following year and to claim set off, three conditions must be fulfilled – i) the loss must be in a business (ii) the business in which loss was sustained must be continued to be carried on by the assessee in the year of set off, and (iii) the business against the profits of which set off is claimed must be carried on by the assessee in that year. The Ld. Counsel drew our attention to page No. 338 of the report where the contentions of the revenue have been summarised. It was submitted that set off for the carried forward loss is permitted u/s 24(2) only. There must be lliteral construction of this provision, and in view of the provision of section 24 (2) (ii), which stipulates that losses to be carried forward must be sustained by the assessee in any other business and it shall be set off against the profits and gains, if any, of any business carried on by him in that year; provided that the business in which the loss was originally sustained continues to be carried on by him in that year. Therefore, it is required that the business against profits of which the set off is claimed must be carried on by the assessee in that year. The court mentioned that the problem here is that the business out of whose share income of the wife and minor child accrued is no longer carried on by the assessee himself in the subsequent year in which set off is claimed. The case of the revenue is that this condition has to be strictly enforced and this requirement continues irrespective of the clarification of Board of Revenue in the circular of 1944 and inspite of addition of Explanation 2 in section 64 (2) by Amending Act of 1979, w.e.f. 1-4-1980. On the other hand, the assessee has contended that this would often result in extreme hardship. Thereafter the court

considered its own decision in the case of KP Varghese vs. ITO 131 ITR 597, in which it was emphasized that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It has been further mentioned that where the literal interpretation of a statutory provision leads to a manifestly unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. It is also mentioned that the language is an imperfect instrument for the expression of human intention. It is well to remember the warning that one should not make a fortress out of dictionary and that Statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. The case of the Ld. Counsel is that the true intention should be found out from reading of the provision as a whole and by harmonious interpretation of provisions contained in first and second proviso to section 153A(1).

11. Further, reliance has been placed on the decision of the Apex Court in the case of Additional Commissioner of Income vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1. The decision is that the test which has to be applied to understand the meaning of the term "charitable purpose" is whether the predominant object of the activity in carrying out the object of general public utility is to serve the charitable purpose or to earn profit. Where the

predominant object of the activity, the purpose of which is an object of general public utility is to earn profit, it would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose character of a charitable purpose merely because some profit arises from the activity. Therefore, it has been argued before us that the dominant object of the provision contained in section 153A has to be found out for placing proper interpretation in respect of the powers of the AO in dealing with completed assessment and assessments in respect of which proceedings are pending .

12. Reliance has also been placed in the case of CWT vs. N.A. Mayanna. (1991)191 ITR 535. The question before the Karnataka High Court was – whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the partition is deemed to have taken place under Explanation I to section 6 of Hindu Succession Act and the half share of the deceased which has devolved on the heirs cannot be included in the net wealth of Hindu undivided family ? On page 544 of the report, it is mentioned that while interpreting the provisions of the law, not only the scheme of the particular legislation should be seen but also constitutional background in which legislation is enacted will have to be considered. If a particular interpretation is likely to render the law ultra-vires for any reason, while the other as intra-vires, the interpretative process to keep alive the law as valid.

13. The Ld. Counsel canvassed five propositions in the matter regarding interpretation to be placed on section 153A. The first one is that a completed assessment does not abate. This is because the second proviso explicitly states that assessment or reassessment pending on the date of initiation of search etc. shall abate. It does not provide that a completed assessment will also abate. In this connection, the decision in the case of CIT vs. Smt. Shaila Aggarwal 204 taxman 276 (All.), Meghmani Organics Ltd. vs. DCIT 129 TTJ 255 (Ahd), Charchit Aggarwal vs. Asstt. Commissioner of Income Tax 129 TTJ 438 (Del), and Helios Food Additives Pvt. Ltd. vs. DCIT in ITA No. 3900, and 3901/2009 have been relied upon. (a) In the case of Shaila Aggarwal, on page 283 of the report in paragraph Nos. 19 & 20, it is mentioned that the second proviso refers to abatement of pending assessment or reassessment proceeding. The word "pending" is not amenable to the interpretation that where-ever the appeal against the assessment or reassessment is pending, the same alongwith assessment or reassessment proceedings also abate. The principles of interpretation of taxation do not permit the court to interpret the second proviso in a manner that where the assessment or reassessment proceedings are complete, and the matter is pending in appeal in Tribunal, the proceedings will abate. The abatement of any proceeding has serious causes and effects as it takes away all the consequences that arise thereafter. In this case, after detecting bogus gifts in the regular assessment proceedings, penalty proceedings u/s 271 (1) (c) of the Act were initiated. The material found in the search may be a

ground for notice and assessment u/s 153A but that would not efface all the consequences which have arisen out of regular assessment or reassessment resulting in the demand and proceedings of penalty. Therefore, it has been argued the principle of literal construction is not enough. Consequently, the other rules of harmonious construction, etc. will have to be taken into consideration. It has also been further argued that it is possible to reconcile the contents of two proviso by restricting the meaning of the term "assessed or reassessed" appearing in the first proviso by holding that the total income of the assessee is to be recomputed on the basis of undisclosed income unearthed during search and the same is to be added to the regular income assessed u/s 143(3) or u/s 143(1) for each of the six proceeding assessment years.

(b) In the case of Charchit Aggarwal, It is held that the provisions are directed to assess or reassess income for 6 assessment years based on search proceedings and hence the assessment proceedings u/s 153A are beneficial to the revenue. In other words, the proceedings are initiated to asses or reassess the undisclosed income. Referring to the decision in the case of CIT Vs. Sun Engineers works Pvt. Ld. (1992) 198 ITR 297 (SC), it is further mentioned that section 147 is for the benefit of the revenue and not the assessee, therefore, the assessee cannot be permitted to convert reassessment proceedings into an appeal or revision and seek relief in respect of items earlier rejected or claim relief in respect in respect of items not claimed in the original assessment. It has been held that in such

proceedings, the assessee could not have filed return of earlier years revising the valuation of closing stock as assessment had already been finalized and the provision u/s 153A is for the benefit of the revenue.

(c) In the case of Hellios Foods, no incriminating material or evidence was found in the course of search. The AO accepted the income declared by the assessee. In the returns filed in response to notice u/s 153A, the assessee had declared the same income as declared in the original returns. The AO made partial disallowance in respect of deduction claimed by the assessee u/s 80IA / 80IB. The reason given for this disallowance was that while making assessment for assessment year 2003-04 u/s 143 (3), the similar disallowance was made and the same was accepted by the assessee. It has been mentioned that two important questions have to be considered – (i) whether any assessment is pending on the date of search, and (ii) whether there is justification for partial withdrawal of deduction claimed by the assessee u/s 80IA / 80IB ? It has been held that as per law applicable to the assessee, if the notice u/s 143(2) is not issued and served on the assessee within 12 months after the month in which return has been furnished, no assessment can be completed u/s 143(3) and the income declared by the assessee attains finality unless proceedings are initiated u/s 147, 263 etc. As per section 153A, second proviso thereto, the assessment or reassessment pending on the date of initiation of search abates. Since assessments for these two years were not pending as aforesaid, there is no

question of applying the second proviso. Further there is also no justification for making partial disallowance of the deduction claimed u/s 80IA / 80IB as no material or evidence was found during the course of search and also that it was not a new claim made by the assessee.

14. The second proposition canvassed by the Ld. Counsel is that even if an intimation has been made u/s 143(i)(a), the assessment is not pending and it does not abate. In this connection, reliance is placed on the decision in the case of Suncity Alloys Pvt. Ltd. vs. ACIT 124 TTJ 674 (Jd) and Helios Foods Addives Pvt. Ltd. (supra).

In the case of Suncity, the facts are that assessee filed return in response to notices u/s 153A and claimed deduction of sales – tax incentives on the ground that they are granted with the object of promoting industrial growth or expansion. The Tribunal mentioned that the expression "assessment or reassessment " used in section 153A connotes determination of total income in respect to the return required to be filed where a search has been initiated. This expression has to be construed in the context of section 153A alone. The word "assessment" is comprehensive in its content and it takes within its ambit the whole proceeding of ascertaining and imposing tax liability. This has been clarified by the Apex Court in the case of C.A. Abraham Vs. ITO (1961) 41 ITR 425. On page 429 of the report, it has been held that the word "assessment" has to be understood in each section with reference to the context in which it has

been used. Thus, this expression in the context of section 153A, signifies computation of undisclosed income. The second proviso suspends the pending assessment by using the word "abate". The Tribunal took into account the dictionary meaning of the word as well as the meaning assigned to this word in Blacks Law Dictionary. The judicial interpretation of the word "pending" has also been taken into account. Finally, it has been held that the termination of pending assessment before the Assessing authority is to avoid two parallel proceedings of assessment of one assessment year in the case of the same person, i.e. the regular assessment and assessment u/s 153A. It appears that the purpose of calling returns for all six years is to dispense with the requirement of recording reasons for reopening the assessment and also to avoid any controversy about the correct year of assessability of such income. Therefore, undisclosed income which forms part of the total income would have to be necessarily determined after deducting all expenses incurred for earning such income. This goes to show that the assessment or reassessment made in pursuance of a notice u/s 153A is not de-novo assessment, therefore, there is no merit in the appeal to make a new claim of deduction or allowance where admittedly regular assessment had been completed prior to initiation of search. We find that this decision does not deal with a case where the return has been processed u/s 143(1) (a) only prior to initiation of search. Undoubtedly in the case of Helios Foods, it has been mentioned in para No. 10 which we have adverted to earlier that if the notice u/s 143(2) is not served within the prescribed period, then no assessment can be

completed u/s 143(3) and, therefore, the income declared in the return attains finality unless proceedings are initiated u/s 147 or 263.

15. The third line of the argument of the Ld. Counsel is based on the premise that in proceedings u/s 153A, the assessee cannot raise a new or fresh claim. In this connection, reliance Is placed on the decision in the case of Suncity Alloys Pvt. Ltd. and Charchit Aggarwal (supra). We have seen that the finding in the case of Suncity Alloys is that proceedings u/s 153A do not constitute de-novo assessment. The assessee is precluded from raising any fresh claim after expiration of the time allowed to file revised return u/s 139 (5). Therefore, no such fresh or revised claim can be raised in assessments made u/s 153A. Similar finding has been rendered in the case of Charchit Aggarwal where the assessee was not allowed to change the method of valuation of closing stock in the course of proceedings u/s 153A. On the basis of these decisions, the case of Ld. Counsel obviously is that if the assessee is precluded from raising new and fresh claims in assessment u/s 153A, by implications the revenue will also not be permitted to raise new and fresh grounds for making additions in assessment u/s 153A.

16. The fourth preposition canvassed by the Ld. Counsel is that if no incriminating material is found in the course of search in respect of an issue, then no addition in respect of any issue can be made in assessment u/s 153A or 153C. To support the aforesaid preposition, the Ld. Counsel has relied on the decision in the case of LMJ International Ltd. vs. DCIT, 119 TTJ 214 (Kol), Charchit Agarwal,

Hellios Foods Additives Pvt. Ltd., ACIT vs. SRJ Peety Steels Pvt. Ltd. (2011), 53 DTR (Pune) 347, and Saraya Industries Ltd,. vs. Union of India, 171 Taxman 194 (Del).

(a) In the case of LMJ International, in paragraph 13, it is mentioned that the total income of the assessee is to be recomputed on the basis of the undisclosed income unearthed during search and the same is to be added to regular income assessed u/s 143(3) or computed u/s 143 (1). In paragraph No. 14, it is mentioned that the department seeks to place interpretation on the provisions, which if accepted, would lead to serious hardship, inconvenience, injustice, absurdity & anomaly. Finally, it has been mentioned that the Board Circular No. 7 of 2003, dated 15.9.2003, clearly indicates that the appeal, revision etc arising out of earlier assessment shall not abate, which means that there is no merger of earlier assessments with the assessment made under the new scheme.

(b) The basic finding in the case of Charchit Aggarwal is that assessments u/s 153A are for the benefit of the revenue, and, therefore, the assessee cannot raise any new claim or deduction in these assessments. It has also been mentioned in paragraph No. 11 that the proceedings are meant to assess or reassess undisclosed income. However, we do not find any specific finding that the revenue cannot raise any new ground for addition. As mentioned

earlier, such conclusion is based on the reverse logic that what is not permitted to the assessee is also not permitted to the revenue.

(c) In the case of SRJ Peety Steels, in paragraph No. 33, it has been mentioned that the additions made in assessment years 2000-01 to 2005-06 are not based on seized material found during the course of search. The returns were filed prior to initiation of search. The returns had been accepted and, therefore, no assessment can be said to be pending on the date of initiation of search, which would abate in the light of provisions contained in section 153A.

(d) The question in the case of Sarya Industries Ltd. was quite different and the grievance of the petitioner was with regard to constitutional validity of section 153C read with section 153A of the Act. Section 153A applies to a person in whose case a search has been initiated u/s 132 or whose books etc. have been requisitioned. Section 153C applies in the case of a person whose books or valuables etc. have been seized from the premises of another person in the course of search. The court held that the procedure in respect of both of them overlap, but that is hardly of any consequence , since both have to be treated in accordance with principles of natural justice.

17. The 5th & final line of argument is that only undisclosed income can be assessed u/s 153A or 153C. In this connection, reliance is placed on the

decision in the case of Abhay Kumar Shroff, Suncity Alloys Pvt. Ltd. and Charchit Aggarwal.

(a) In the case of Abhay Kumar Shroff, the Hon'ble High Court mentioned at page 126 of the report that the Board Circular dated 5.9.2003 clearly shows that after 31.5. 2003, the earlier provision of block assessment in search cases shall not apply. Instead there shall be assessment of undisclosed income of six years preceding the date on which search has been conducted. For this purpose, the AO shall issue notice to the searched person requiring him to furnish return of six years. It is further mentioned that second proviso to section 153A contemplates abatement of assessments pending on the date of initiation of search which means that the AO shall not proceed with such assessment any further but make assessment or reassessment u/s 153A. Thus it will be seen that the decision does speak of "undisclosed income". It may however be mentioned by us that the Board circular does not use the word "undisclosed" anywhere while dealing with the new provision of sections 153A to 153C.

(b) We have also seen that in the case of Suncity Alloys, in paragraph No. 17, it is mentioned that the word "assessment " in section 153A signifies computation of undisclosed income that shall form part of

the total income within the meaning of section 2(45) in respect of each year, which is required to be aggregated with income already assessed in the completed assessment, more so when section 132 contemplates the search a person who is in possession of undisclosed income.

(c) In the case of Charchit Aggarwal, the issue was in respect of a fresh claim made by the assessee in proceedings u/s 153A. The Tribunal mentioned in paragraph No. 11 that these proceedings are beneficial to the revenue, and are initiated to assess or reassess the undisclosed income. The provisions of section 147 and the decision of Hon'ble Supreme Court in the case of sun Engineering Works Pvt. Ltd. have been considered for coming to this conclusion.

18. Ld. Counsel fairly submitted that to his knowledge four decisions of the Tribunal are in favour of the revenue in this matter. In the case of Shivnath Rai Harnarain (India) Pvt. Ltd. Ld. Vs. DCIT, (2008) 304 ITR (AT) 271 (Del), it has been held that there is no requirement that an assessment u/s 153A should be based on any material seized in the course of search. Further, under proviso to section 153A pending assessment or reassessment proceedings in relation to any assessment year falling within the period of six assessment years referred to in section 153A(b) of the Act come to an end , which means that the AO gets jurisdiction on such assessment years for making an assessment or reassessment.

In the case of Ms Shyam Lata Kaushik vs. ACIT, 306 ITR (AT) 117 (Delhi), it has been reiterated that there is no requirement under the Act that an assessment made u/s 153A should be based on material seized in the course of search. It has also been mentioned that in accordance with the second proviso, pending assessments or reassessments abate with the result that the AO has jurisdiction to make assessment or re-assessments u/s 153A. The Ld. Counsel, referring to these cases, submitted that on the facts there is no commonality of issues between original assessments and assessments u/s 153A. Therefore, the fact of these cases are distinguishable . In the case of Harvey Heart Hospitals Ltd. vs. ACIT, (2010) 130 TTJ (Channai) 700, it has been held that it will not be correct to interpolate that no regular assessment or reassessment can take place under these provisions. There is no reference to incriminating search material as it was there u/s 158B(b) and 158BC. Finally, in the case of Dr. Mansukh Kanjibhai Shah vs. ACIT, (2011) 129 ITD 376, it has been held that once the warrant of authorisation is issued, the search is conducted and panchnama is drawn, the assessment of 7 years including the instant year has to be completed u/s 153A. This means that the assessments which are completed before the date of search get reopened and the proceedings which are pending at the time of search abate. The case of the ld. counsel is that findings in regard to section 153A etc. in this case are merely in the nature of observations as neither any warrant of authorisation was issued nor any search was conducted. The decision in the case of Gopal Lal Bhadruka vs. DCIT 2012-TIOL–397-HC-IT has been distinguished on

the facts by submitting that "on money" in respect of 8 plots of land was found in the course of search, but no evidence was found in respect of other 24 plots. Since incriminating material was found in respect of 8 plots, Hon'ble Court held that the AO can estimate "on money" in respect of all 32 plots . The fact is that incriminating material was found and, therefore, the facts are distinguishable.

19. In reply, the Ld. Standing Counsel referred to the submissions made by the Ld. Counsel. Further, he referred to the provisions contained in section 153A and in particular the provisions contained in its first and second provisos. He also referred to the decision in the case of JH Gotla, on the basis of which it has been argued that the provision contained in first proviso should be read down so as to avoid any conflict with the second proviso and to avoid the charge of the provisions being ultra-vires. It is argued that none of these submissions carry any weight as there is no contradiction in the provisions or unconstitutionality in them.

20. On facts, it is submitted that the search was conducted at various premises against the group companies and Directors. In such a situation the recovery of material or valuables etc. pertaining to one person can spill over a number of persons and premises. In such a situation, the relevant material in respect of a person seized from different premises or persons can be considered to make assessments or re-assessments. In this connection, our attention has been drawn towards note No. 10 made in the return of income and placed in the paper book

on page No. 27. This return pertains to assessment year 2004-05. The disclosure of ` 3.50 lakhs has been made to cover any error, omission, discrepancy etc. It is argued that such error etc. can only be in the books of account. In such a situation, it cannot be said that no material was found in the course of search, for the simple reason that as per self incriminatory statement of the Managing Director, the discripencies exist in the books of account. In such a situation, the AO cannot restrict himself to the amount of ` 3.50 lacs only. It is his right as well as duty to examine the whole assessment with a view to work out the total income of the relevant year. Further, such offers have been made in every year and therefore the submissions made above in respect of assessment year 2004-05 are applicable to all the years.

21. The Ld Standing Counsel referred to paragraph No. 15 of the decision in the case of Padmasundara Rao (Decd.) v. State of Tamil Nadu [2002] 255 ITR 147 (SC) in which the Hon'ble Court mentioned that two principles of construction, one relating to *casus omissus* and the other in regard to reading the statute as a whole; appear to be well settled. A *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be

put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. The intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. Where literal construction would defeat the obvious intention of the legislation and produce a wholly unreasonable results, the court must do some violence to the words so as to achieve the obvious intention and to produce a rational construction. The case of the Ld. Standing Counsel is that the statutory language is clear and on its literal construction it does not produce any absurd or anomalous results. Therefore the provision should be read as it exists on the statute.

22. Further, he relied on the decision in the case of Electronics Corporation of India Ltd. and Others vs. Secretary Revenue Department, Government of Andhra Pradesh and Others, (1999) 4 Supreme Court cases 458. In paragraph No. 22, the submissions of Mr. Dholakia have been summarized that Article 285 is intended to protect public revenues. The shares of the appellant companies are fully owned by the Central Government. Their funds are public revenues. Therefore it is necessary to read down the provision of section 2(j) and section 12 of Andhra Pradesh Non-Agriculture Lands Assessment Act, 1963, to exclude there from all but private owners and lessees of land . The Hon'ble Court held that the question of reading down comes in if it is found that these provisions are ultra-vires as

they stand. On the basis of this decision, it is argued that there is no need to read down the provisions contained in section 153A as it has been held in the case of Saraya Industries Ltd. that the provisions are intra-vires.

23. The ld. Standing Counsel also relied on the decision in the case of Prakash Nath Khanna vs. CIT (2004) 266 ITR 1 (SC), in which it has been held that the first and foremost rule of construction is that the intention has to be found from the words used by the legislature itself. The courts interpret the law and do not legislate the law. If a provision has been misused or is absurd, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative *casus omissus* cannot be supplied by judicial interpretative process. Thus it is argued that the provisions should be read as a whole and as they exist, and there is no necessity of reading them down or providing any *casus omissus.*

24. In the light of the aforesaid position of law in respect of interpretation of the statutes, the ld. Standing Counsel proceeded to analyse the provisions contained in section 153A. The provision contains non obstante clause in respect of sections 139, 147,148, 149, 151 and 153, and deals with cases where search has been initiated or requisition has been made after 31.5.2003. In such a case, it is provided that the AO shall issue notice directing the person concerned to file return of income in respect of 6 assessment years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made. It is stressed that the AO has no option but to issue notice calling for

return of all six assessment years. Thereafter, the first proviso casts a duty on him to assess or reassess the total income in respect of each assessment year. In this respect also he has no choice but to make 6 assessments. In order to obviate a necessity of making two assessments in respect of the year for which proceedings are pending, the second proviso provides that pending assessments shall abate, which means that only one assessment u/s 153A shall be made in respect of assessments which have abated because of this provision. Both the first and second provisos direct the AO to assess total income, which has to be computed in accordance with section 5 of the Act. Therefore, in respect of all six assessments, AO has to make assessment or reassessment of total income and in doing so there is no fetter on his powers, i.e. he is not restricted to the consideration of only incriminating materials or undisclosed valuables. Accordingly it is argued that there is no disconnect between proviso 1 and proviso 2. The pending assessments are intended to be abated for the simple reason of avoiding multiplicity of proceedings and that is what has been explained in the Board Circular that erstwhile provision regarding search assessment under chapter XIV B led to parallel proceedings, being regular assessment proceedings and computation of undisclosed income. This caused excessive litigation and therefore the scheme of search assessments has been modified. It is argued that the literal construction as aforesaid of the provisions is clear and it does not produce any absurd results. The provisions are also not

unconstitutional. Therefore the literal construction as aforesaid should be followed. He also discussed some other cases regarding interpretation of statutes.

25. In the case of Kalyan Udyog vs. ITO (1979) 117 ITR 431 (MP) regarding carry forward and set off of the losses of a registered firm u/s 75 (1), in paragraph No. 6, it is mentioned that the court is unable to accept the contention that the liberal construction should be placed on the provision. Doing so, will cause violence to the language of the section. It is well known method of construction of a taxation statute that literal construction is the only safeguard. A number of decisions have thereafter been quoted from various courts which have taken a similar view.

26. Same view is taken in the case of Shankaranarayana Construction Co. and Ors vs. State of Karnataka and ANR (2004) 276 ITR 56(Kar.), in which it has been held that nothing is to be added and nothing is to be taken away from the statute unless there are adequate grounds for doing so. The court should not so interpret a statute as to create casus Omissus when there is really none. A matter which should have been provided but has not provided in the statute cannot be provided by the courts. Therefore, the general rule of literal constructing should be followed.

27. In the case of K.G. Ashok & Others vs. Kerala Public Service Commission & Others, (2001) 5 Supreme Court case 419, it has been held that the provision containing restriction regarding rejection of application by candidates for

recruitment to Public Sector Corporations, should not be read down in favour of the candidates who contravene the restrictions. The restriction in that case was regarding appearance in the examination only in one district. In paragraph 20, the court mentioned that its earlier decision to the effect that the question of reading down comes in if it is found that the provisions are ultra virus as they stand. The provisions are not ultra vires and therefore the question of reading down the provisions does not arise.

28. In the case of Calcutta Gujrati Education Society vs Calcutta Municipal Corporation and others (2003) 10 Supreme Court cases 533, it has been held that mere non service of public or written notices individually to all tenants, sub-tenants, occupants does not invalidate the consolidated rate determined and apportioned in absence of any serious prejudice to the aggrieved persons. In paragraph No. 35, the court referred to its earlier decision to the effect that at first the attempt should be made by the courts to uphold the charged provision and not invalidate it because one of the possible interpretations leads to absurd results. Thus in case where there are two interpretations possible, the one validating the statute should be adopted. For this purpose, the court may have to give restrictive or expansive meaning keeping in view the nature of legislation. The golden rule in this behalf is that wisdom of the legislature should be respected and that it would have never intended to pass an invalid legislation. Similarly a provision may have to be read down for achieving the aforesaid

purpose. However, it should be so done only when plain words are in clear defiance of the Constitution. The principle of reading down will be available only where plain and literal meaning shows that it confers arbitrary, uncanalised or unbriddled power.

29. In case of C B Gautam vs. Union of India and Others, (1993) 1SCC 78, it has been held that chapter XX does not confer any unfettered power on the appropriate authority for pre-emptive purchase of property, when it has been agreed to be sold by the assessee for a consideration significantly lower than the fair market value.

30. In the case of CIT vs. National Taj Traders (1980) 121 ITR 535 (SC), it has been held that a literal construction placed on section 33B (2) (b) would lead to manifestly absurd and anomalous results which were not intended by the legislature. This consideration compels one to construe the words as applicable to suo moto order of CIT(A) in revision and not to order made by him pursuant to a direction or order passed by the Tribunal under sub-section (4) or by any other higher authority. Such a view will be in consonance with the principle that all parts of the section should be construed together and every clause thereof should be construed with reference to the context and other clauses thereof so that the construction put on that particular provision makes a consistent enactment of the whole statute.

31. In the case of Mahendra Saree Emporium vs. G.V. Srinivasa Murthy, (2005) Supreme Court cases 481, it has been mentioned in paragraph No. 13 that abatement kills the right to sue and has the effect of unceremoniously terminating pending legal proceedings without any merits. It has to be strictly construed and applied only to such cases to which its applicability is undoubtedly attracted, excepting where an otherwise legislative intention is expressly or by necessary implication deductible. A provision for abatement of pending proceedings shall abate only such proceedings as were pending on that day and at that stage and not the original proceedings which had already stood concluded but were reopened by a superior forum for the purpose of examining legality and propriety thereof.

32. The case of the Ld. Standing Counsel is that provisions in section 153A, 153B and 153C were introduced in place of the provisions contained in Chapter XIV B. The intention of the legislature admittedly was to avoid litigation which proliferated on the issue of "undisclosed income ". If the same controversy is raised under the new provision, by arguing that no reassessment can be made in respect of completed assessment where no incriminating material is found, the avowed purpose of bringing new provisions will be forfeited and the litigation will proliferate on the question as what constitutes incriminating material in respect of such assessments. There is no need to go into any interpretation except following the literal construction. If that is done, the provision of first and

second proviso are found to be in harmony and there is no contradiction between them. In fact the whole scheme of assessment or reassessment is clear on literal interpretation. In case of search after the specified date, the AO has to issue notice for requisitioning return of 6 years . Thereafter assessments or reassessments have to be made. The pending assessments abate, which means that the assessments have now to be made u/s 153A. In these assessments, the AO can look into all matters as what he has to do is to compute the "total income" in these assessments, as understood in section 5 of the Act.

33. In the case of ACIT vs. Chaten Dass Lachman Dass, (2010) 36 SOT 417(Del), it has been held that for framing assessment u/s 153A what is relevant is that a search is initiated u/s 132 and also conducted. In this case, certain materials were found at the residential premises of the partners of the assessee firm relating to the firm. It was not the case of the assessee that only material found during the survey is used against it for framing the assessment. Although the search had not been conducted in the name of the assessee, the AO was justified in assuming jurisdiction for framing assessment u/s 153A.

34. The Ld. Standing Counsel also distinguished the cases relied upon by the Ld. Counsel.

35. Ld. Standing Counsel made a reference to the decision in the case of LMJ International Limited, where a contention was raised by the assessee that the concluded assessments cannot be disturbed by the AO under the new scheme as

only undisclosed income detected in the course of search can be added and charged to tax. It was held that where the words of statute are clear, plain or unambiguous, the court should give effect to the meaning irrespective of consequences. The language of section 153A is ambiguous and susceptible to more than one meanings. In such a circumstance, the literal construction is of no help and therefore recourse to other guiding rules will have to be taken. It is argued that this finding is not correct as the words are clear and unambiguous. In the case of Sarya Industries Ltd., it has been held by the Hon'ble Delhi High Court that the provisions are intra virus the Constitution. Therefore, there is no need to read down the provisions. In the case of Ramballabh Gupta vs. ACIT 288 ITR 347 (MP) (2007), it has been held that the only fetters on the powers of the AO in taking recourse to section 148 is that it cannot be issued for those six years which are covered u/s 153A. This is because the provision contains non-obstante clause. For all other years, recourse can be taken to section 148 if requisite conditions are satisfied. It was also mentioned that these provisions operate in different fields. Such a question might have arisen only if a notice u/s 148 is issued in respect of any of the 6 years , in respect of which assessment / reassessment is to be made by the AO by issuing notice u/s 153A. On the basis of this finding, it is argued that assessment / reassessment has to be done for 6 years covered u/s 153A. In the case of S S P Aviation Ltd. vs. DCIT, (2012) 20 taxman.com 214 (Delhi), the counsel for the assessee had expressed an apprehension that there is grave danger that even disclosed transaction / income

are likely to undergo a further scrutiny causing harassment to those persons whose assets or valuable articles or books of account or documents etc. are found in a search conducted in the case of another person. The court is of the view that such apprehension may be justified to a limited extent, if facing an inquiry can be justifiably described as harassment. There can be some inconvenience in a case where the income had already been disclosed by the other person who has not been searched, However, there is no cause for any apprehension that the income-tax authorities will exploit the situation to harass the assesees where requisite evidence is adduced by them to show and establish that the income depicted by the valuable articles etc. has been disclosed by them. Even if the authority acts unreasonably or with undue enthusiasm there are adequate safeguards which can be availed of by such persons. Therefore, the apprehension is unfounded. On the basis of this decision, the case of the Ld. Standing Counsel is that if concluded assessments can be looked into in the case of a person who has not been searched but whose books etc. are found in the search of another person, there is greater reason to come to the conclusion that assessment / reassessment has to be made in respect of all 6 years as provided in the first proviso with a view to determine the "total income".

36. The Ld. Standing Counsel was questioned at this stage that all reassessments such as under sections 147, 263 etc. have to be made within well defined limits subject to satisfaction of pre-conditions and, therefore, similar

limitation may have to be read in the instant provision. His case is that reassessments are made within the ambit of relevant provision, and, therefore, the pre-conditions mentioned in the respective provision have to be satisfied. Therefore, assessments u/s 153A have to be made in accordance with the provisions contained therein. The surest way is to interpret it in literal sense as there is no ambiguity. Coming to the apprehension of the Ld. Counsel that same addition, which was made in original assessment and deleted by the higher forum, may be made in reassessment u/s 153A, it is clarified that such an apprehension is unfounded as the AO will have to follow the decision of the higher forum as a matter of judicial discipline. If that is not done, taking a cue from the decision in the case of SPS Aviation Ltd., it is argued that there are enough safeguards by way of appeals etc. to correct such misplaced addition.

37. In the rejoinder reply, Ld. Counsel referred to the decision in the case of Sarya Industries Ltd., in which it was argued that the two persons situated differently are being treated similarly. In paragraph no. 5 of the report on page 197, it is mentioned that Section 153A applies to a person in whose case search has been initiated, etc. while section 153C applies in a case where assets or documents of a person are found in the course of search of another person. The procedure of assessment of both such persons are similar, but that is hardly of any consequences, since both of them have to be treated in accordance with principle of natural justice. There is nothing arbitrary in the procedure to be

followed. It is further mentioned that essentially both such persons are in similar situation because their valuables or books etc. are seized or requisitioned although from different locations. Further, the seizure or requisition must be of such material that can persuade the AO to reopen a closed assessment. In this sense there is no hostile discrimination between the two persons. The ld. Counsel laid great stress on the words that seizure or requisition must be of such a character as to persuade the AO to reopen a closed assessment. It is pointed that these words support the case of the assessee. It is further submitted that in the case of SPS Aviation Ltd., undisclosed income was found in the course of search by way of a document showing that the assessee had sold development rights in land, the profit from which was assessable in assessment year 2007-08. Till the date of issuance of notice u/s 153A, the transaction was not known to the revenue. Subsequently, the assessee filed audited accounts for assessment year 2009-10, in which the transaction was shown. Even this disclosure was contrary to the contents of the evidence found in the course of search according to which the income was assessable in assessment year 2007-08 and not 2009-10. Therefore the facts of this case are distinguishable. In the case of Ramballabh Gupta, the question really was regarding issuance of notice for a year which is not covered in the aforesaid six years. Therefore, it was quite unnecessary for the court to go into the provisions of section 153A in detail.

38. In conclusion it is argued that the assessee is not seeking the reading down of the provision but proper reading of the provision. The provision deals with search cases, therefore, the concept of undisclosed income u/s 132(1)(c) will come into picture. The provision is also intended to avoid two assessments for the same year. Therefore, proper construction would be that in respect of completed assessments, the assessment shall be made only if incriminating documents etc. are found. In this connection, the term "assess and reassess" means that assessment shall be made in case of pending assessments and reassessments shall be made in respect of completed assessments where incriminating material is found. Such a construction would be in consonance with the principle that each clause should be read in conjunction with all other clauses and in the relevant context, so as to make enactment or consistent law.

39. Shri G.N. Gupta, the Ld. Authorised Representative for the **intervener in the case of National Industrial Corporation Ltd.** filed written submissions dt. 26-04-2012 which are reproduced as under:

> *"2.1 It is submitted that the issue arising for determination by the Hon'ble Special Bench is not res-integra. The issue first came up before the Hon'ble ITAT Calcutta Bench-E in the case of LMJ International Ltd., V. DCIT which is reported in 2008 (119 TTJ) page 214. For detailed reasons, the Hon'ble ITAT Bench-E, held that no addition can be made in an assessment framed u/s. 153A/153C of the Act which is not based on the seized material. A similar view was taken by Hon'ble ITAT Bench-A, Ahmedabad in the case of Meghmani Organics Ltd., V. DCIT in ITA No. 2909-2913/Ahd-2008. However, a different view was taken by ITAT, Delhi Bench in the case of Shivnath Rai Harnarain (India) Ltd., V. DCIT reported in (2008) 304 ITR (AT) 271 (Delhi) and*

in the case of Ms. Shyam lata Kaushik V. ACIT reported in (2008) 114 ITD 305 (Delhi). It is submitted that in none of these two cases, the decisions in the case of LMJ International Ltd., and Meghmani Organics Ltd. were noticed. Subsequently, the issue came up for consideration before ITAT Delhi Bench-B in the case of Anil Kumar Bhatia V. ACIT in ITA No. 2660-2665/Del-2009. Hon'ble ITAT Bench-B rendered their decision on 01.01.2010 holding that no addition can be made in an assessment u/s. 153A of the Act which is not based on the seized material after noticing the earlier decisions in the case of LMJ International Ltd. and Meghmani Organics Ltd., and after distinguishing the decision of ITAT Delhi in the case of Ms. Shyam lata Kaushik V. ACIT reported in (2008) 114 ITD 305 (Delhi) and Shivnath Rai Harnarain (India) Ltd V. DCIT reported in (2008) 304 ITR (AT) 271 (Delhi). It is respectfully submitted that it is evident that the decision of Shivnath Rai Harnarain (India) Ltd V. DCIT was rendered by ITAT Delhi per incuriam in as much as they were rendered without noticing the earlier decisions rendered by ITAT Calcutta and ITAT Ahmedabad.

2.2.1 It is next submitted that the provisions of section 153A/153C of the Act were inserted by the Finance Act, 2003 w.e.f. 01.06.2003. These provisions have been explained in the Memorandum Explaining the provisions in the Finance Bill, 2003 at pages 219-221 of 260 ITR(ST). A perusal of the above would indicate that the problem with the old procedure was not only that it postulated two assessments for the same year, but also involved a concept of 'normal income' and 'undisclosed income'. Despite the concept of 'normal income' on one hand and 'undisclosed income' on the other hand, the provisions of section 153A/153C of the Act have not clarified that 'normal income' as contradistinguished from 'undisclosed income' can be brought to tax in an assessment framed u/s. 153A/153C of the Act.

2.2.2 It is further submitted that a somewhat similar problem arose in the context of section 147 of the Act. One view held by several High Courts was that where an assessment was opened under the provisions of section 147 in respect of an income which has escaped assessment say X, in an assessment framed u/s. 147, it was open to the AO not only to add X but also other items detected under the reassessment proceedings. However, some other High Courts had taken the opposite view that this cannot be done and in an

assessment opened u/s. 147 of the Act, the AO can proceed to tax only X but not any other income. To resolve this controversy, the legislature stepped in and added Explanation 3 to section 147 by Finance Bill No.2 of 2009 w.r.e.f. 01.04.1989. As submitted earlier, by 2009. The problem under the consideration of the Special Bench had arisen namely, whether an assessment framed u/s. 153A/153C, and addition can be made which is not based on the seized material. However, no amendment was carried out under the provisions of section 153A/153C in 2009. This clearly shows that it was not the intention of the legislature to bring to tax any income not relatable to the documents seized.

2.2.3 It is an established law in selecting out of different interpretations "the Court will adopt that which is just reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". In this connection, reference is kindly invited to page No. 132 of the 12th edition – 2010 of Principles of Statutory Interpretation by Justice G.P. Singh. Now, in the case of M/s. National Industrial Corporation Ltd., for Assessment Year 2003-2004, the original assessment u/s. 143(3) was framed on 20.03.2006 by disallowing a sum of Rs.18,72,920/- claimed as deduction under the provisions of section 801B of the Act. (Paper Book pages 1-3 refers). Being aggrieved, the appellant filed an appeal before CIT(A)-XVI, New Delhi, who has allowed full relief under section 80IB of the Act as per his order dated 15.11.2006, a copy of which is placed in the Paper Book at pages 4-12. However, the learned AO has, inter alia, again disallowed a sum of Rs.18,72,920/- in assessment order dated 28.12.2007 framed u/s. 153C read with section 153A of the Act by relying on the interpretation that in an assessment framed u/s. 153A/153C of the Act, he is free to make additions which are not based on the seized material. This interpretation has thus led to the absurdity of an AO making an addition which has already been deleted by CIT(A). The interpretation placed by the AO thus clearly flouts the elementary principles of judicial discipline where any authority has to follow the orders of higher appellate authority.

2.2.4 In this connection, it is also submitted that the 3rd & 4th provisions to section 153B(1) were inserted by Finance Act, 2007 w.e.f. 01.06.2007 to provide for extra limitation where a reference is to be made u/s. 92CA of the Act.

2.2.4.1 In this context, let it be assumed

ii) That the original assessment proceedings for A.Y. 2006-2007 required a reference to TPO u/s. 92 CA and were completed by A.O. in conformity with TPO's Order dated 25.09.2007 u/s. 143(3);

iii) That the appeal filed by the A.O. was disposed off by CIT(A) on 03.03.2008;

iv) That the second appeals were disposed off by ITAT on 30.06.2009;

v) That a search took place to-day on 08.09.2011 on assessee.

vi) A.O. issued a notice u/s. 153(1)(a), inter-alia, for A.Y. 2006-2007.

2.2.4.2 The Revenue's contention is that in this reassessment proceeding, it is entitled to make additions which are not relatable to seized records. If this contention is correct, A.O. will again have to make a reference to TPO under section 92 CA. Now, the TPO can

i) either follow his predecessor's order flouting the order of ITAT, may be by relying on subsequent case law which really may or may not be applicable. This would be a blatant case of judicial indiscipline or

ii) follow ITAT's order without taking into account subsequent case law making the reference academic.

2.2.4.3 The same problem will be faced by DRP when considering assessee's objections against the draft order of A.O. The same problem will finally be faced by ITAT in disposing off the appeal filed under section 253(1)(d).

2.2.4.4 Surely, the law cannot postulate such an absurd, anomalous & inconvenient situation.

3. It is lastly submitted that it is settled law that where two interpretations are possible, Courts should give an interpretation which is in

favour of the appellant. Accordingly, the Hon'ble Special Bench may kindly hold that in an assessment framed u/s. 153A/153C of the Act, no addition can be made unless it is based on the seized material".

40. Shri Reepal Tralshawala, representing for the **intervener M/s Pratibha Industries Ltd.** relied on the submissions made prior to him on behalf of the assessee on the issue as to whether in the absence of any incriminating material found during the course of search action, any addition/disallowance can be made while making assessment/s 153A of the Act. In this regard he referred to the objects and purpose of section 132 of the Act. According to him, section 132 provides to unearth the hidden or undisclosed income or property and bring it to the assessment and for this proposition the reliance was also placed on the decision of Hon'ble Mysore High Court in C. Venkata Reddy and Another vs. ITO (1967) 66 ITR 212 (Mys) at pages 222, 227, 234-235 and 237 of the report. The reliance was also placed on the decision in L.R. Gupta and Others v. UOI (1992) 194 ITR 32 (Del) at page 34-35 of the report. He further referred to para 71 of the Budget Speech reported in (1995) 212 ITR 69 at page 87 (Statute) wherein the Finance Minister has proposed a new scheme under which undisclosed income detected as a result of search shall be assessed separately at a flat rate of 60%. An appeal against the order can be filed directly before the Tribunal. A reference was also made to clause 32 of Notes on Clauses of Finance Bill, 1995 appearing at page 306 of the same ITR. He has also drawn our attention at page 219 of the Memorandum explaining the provisions in the Finance Bill, 2003

relating to assessment of search cases – abolition of the special procedure in Chapter XIV-B and introduction of new provisions u/s 153A reported in (2003) 260 ITR 191 (Statute). He also referred to the Circular of the Central Board of Direct Taxes dtd. March 10, 2003 with regard to the confession of additional income during the course of search and seizure and survey operation reproduced in CIT v. S. Khadar Khan Son (2008) 300 ITR 157 (Mad.) at page 165. A reference was also made to the paras 65 to 65.12 of circular No. 7 of 2003 dtd. 5-9-2003 on the Finance Act, 2003 – Explanatory Notes on provisions relating to direct taxes reported in (2003) 263 ITR 62 (Statute). He further submitted that section 153-A refers to search initiated u/s 132. Hence, purpose and object of section 132 has to be considered while making assessment u/s 153A. Thus, assessment/reassessment u/s 153A ought to be restricted to evidence/material found in search/requisition leading to undisclosed income except in cases of pending assessment/reassessment, which abates in view of second proviso to section 153A. He further submitted that literal interpretation that leads to absurdity, unjust result or mischief has to be avoided and for this proposition the reliance was also placed in K.P. Varghese v. ITO (1981) 131 ITR 597 (SC) at pages 598-599, 604, 605, 606, 610-612, 617 and 618. He further submitted that section 153-A merely lays down the manner/procedure for making assessment/reassessment and also the maximum number of years for which assessment/reassessment can be made. However, assessment/reassessment are made in pursuance to search action and, therefore, scope of

assessment/reassessment confined to undisclosed income as enumerated in section 132 and does not give sweeping powers to re-compute regular income by conducting search action. He further submitted that if cash credits considered and accepted in original assessment, same cannot be once again re-considered in 153A assessment except if some evidence or material is found in respect of such cash credits leading to interference of undisclosed income and for this proposition reliance was also placed in SSP Aviation Ltd. V. DCIT (2012) 20 Taxmann.com 214 (Del) wherein it has been held that if income reflected in document found in search has been accounted, proceedings have to be closed thereby suggesting that addition can be made only on the basis of material found in search action. He further submitted that in issues decided cannot be re-adjudicated in 153A assessment unless fresh material found in search. Finality of orders cannot be disturbed. Reliance was also placed in Guruprerna Ent. Vs. ACIT (2011) 57 DTR 465 (Mum) (Trib) at para 19, 21 to 23 and ACIT vs. Uttara Shorewala (2011) 48 SOT 6 (Mum) (URO) at para 15 to 19. He therefore submitted that since no material was found during the course of search, no addition can be made u/s 153A of the Act and therefore the addition made by the A.O. and sustained by the ld. CIT(A) be deleted.

41. Mr. Ajay Vohra, learned Counsel for the **intervener in the case of M/s. NIIT Ltd.,** in addition to what has been submitted by his predecessors referred to:

(i) Relevant extract from Finance Bill, 2003: Notes on Clauses: 260 ITR (St.) 164 (Pg. 1-2 of Paper Book),

(ii) Relevant extract from memorandum explaining provisions in the Finance Bill, 2003 260 ITR (St.) 219 (Pg. 3-4 of Paper Book),

(iii) Relevant extract from the CBDT Circular No. 7 of 2003 dated 5th September 2003: Explanatory notes on provisions relating to direct taxes in Finance Act, (2003) 263 ITR (St.) 106 (Pg. 5-6 of Paper Book), and

(iv) Filed a scenario explaining the provisions of Section 153 A in the table form as under:

	Scenario	**Scope for Section 153A**	**Remarks/ Decisions**
I	No return of income is filed by the Assessee (whether or not time limit to file return of income has expired)	Since no return has been filed, the entire income shall be regarded as undisclosed income. Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment under section 143(3). No requirement to restrict to documents found during the course of search.	

II	Return of Income filed by the Assessee – Return yet to be processed under section 143(1)	Since return filed is even pending to be processed, the return would be treated as pending before the assessing officer. Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment under section 143(3).	
III	Return of Income filed by the Assessee – Return processed and Intimation issued under section 143(1) – Time limit for issue of notice under section 143(2) not expired.	Since intimation is not akin to assessment and time limit for notice u/s. 143(2) has not expired, even though return has been processed, it will be case where return has not attained finality. Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment under section 143(3).	
IV	Return of Income filed by the Assessee Intimation passed or not passed under section 143(1) and time limit for issue of notice under section 143(2) has expired	Return of income of the assessee shall be treated as having been accepted and attained finality. AO loses jurisdiction to verify the return of income. Since, no assessment would be pending there	Refer: -Vipan Khanna v. CIT: 255 ITR 220 (P&H) -Kailash Auto Finance Ltd., v. CIT: (2009) 32 SOT 80 (Luck.):-

		would be no abatement of any proceedings. Accordingly, the scope of assessment under section 153A would be restricted to incriminating material found during the course of search.	Held that by processing the return and by issuing acknowledgment as token of accepting the return, the proceedings initiated by filing the return are terminated and no proceedings, therefore, remain pending.
V	Notice under section 143(2) issued and assessment pending under section 143(3)	Pending regular assessment proceedings would abate and would converge/merge in proceedings under section 153A. Accordingly, the scope of assessment under section 153A would cover the pending return filed as well and would not be restricted to incriminating material found during the course of search.	
VI	Assessment under section 143(3) completed	Since regular assessment proceedings have been completed and are not pending, there would be no abatement of proceedings. AO loses jurisdiction to review the completed assessment.	Interpretation canvassed by the Revenue would result in defeating the scheme of the I.T. Act and would wipe out the finality attached to the completed assessment. Proceedings under section 153A is

		Accordingly, the scope of assessment under section 153A would be restricted to incriminating material found during the course of search.	not intended to give another innings to the assessing officer to make assessment under section 143(3).
VII	Proceedings under section 147 pending where:- (a) Assessment originally completed under section 143(3); or (b) No assessment earlier completed under section 143(3)	Pending assessment/reassessment proceedings under section 147 would abate and would converge/merge in proceedings under section 153A. Accordingly, the powers of the assessing officer, in both the cases, shall extent to: (a) assess income that could validly be assessed in the pending proceedings under section 147, and (b) income to be assessed on the basis of incriminating material found in the course of search.	Interpretation canvassed by the Revenue would completely efface the fetters placed on the powers of the assessing officer, like: (a) jurisdictional conditions of forming reasonable belief; (b) assessment u/s. 147 being restricted to escaped incomes; (c) no authority to assess based on change of opinion; (d) reopening beyond 4 years, etc.

42. He also relied on the following cases:

(a) ACIT vs. Mr. Raj Kumar Shorewala: order dated 31.03.2011 in ITA No. 5508, 5509/Mum/2009 (Mum) (Pg. 203-208 of Paper Book),

(b) Parashuram Pottery works Co. Ltd., vs. ITO: 106 ITR 57 (SC),

(c) M. Sharma vs. ITO: 254 ITR 772(SC) at Pg. 237

(d) Kailash Auto Finance ltd., vs. ACIT: (2009) 32 SOT 80 (Luck) at paras 17, 19 and 36,

(e) L R Gupta & Ors vs. Union of India & Ors : 194 ITR 32 (P&H),

(f) Ramesh Chander & ors vs. CIT : 93 ITR 244 (P&H),

(g) Om Prakash Jindal vs. Union of India & Ors : 104 ITR 389 (P&H),

(h) Oil India Ltd. vs. CIT : 138 ITR 836 (Cal),

(i) Smt. Sujata Grover vs. Dy. CIT : (2002) 74 TTJ 347 (Del),

(k) CIT vs. PNB Finance & Industries Ltd., : 340 ITR 50 (Del),

(l) Smt. Mahesh Kumari Batra Vs. JCIT (2005) 95 ITD 152 (ASR) (SB) (para 23) and

(m) SSP Aviation Ltd. Vs. DCIT (WPC No. 309/2011 dt. 29-03-2012) (Del HC).

43. He therefore submitted that since in this case, no incriminating material was found, therefore the addition made by the AO and sustained by the learned CIT(A) u/s. 153 A is without jurisdiction and the same be deleted.

44.. Mr. Krishnan, the Ld. Counsel for the **intervener in the case of M/s. Container Corporation of India Ltd.,** at the outset, submitted that the decision of the division bench in Container Corporation of India Ltd. V. ACIT, [2009] 30 SOT 284(Del) dated 27.02.2009 stands specifically overruled by the Hon'ble High Court of Delhi, vide their judgement dated on 11.05.2012, in ITA No. 1411/2009 & others wherein Their Lordships have been pleased to hold that the INTERVENER, i.e., CONTAINER CORPORATION OF INDIA LTD., is entitled to the benefit of the incentive under section 80-1A of the Income-Tax Act, 1961. He also placed on record the copy of the said judgment. Therefore, the precedent as relied upon by the Revenue authorities in respect of the Intervener's appeals as are now before the Hon'ble Special Bench, in denying the claim under section 80-1A of the Act, is now non-est, and therefore, following the view taken by the Hon'ble High Court of Delhi, the second question as before the Special Bench should be decided in favour of the Assessee.

45. Ms. Ritika Agarwal, the ld. Counsel for the **Intervener of M/s Shriram Group and Shri Haresh Majethea**, in addition to what has been submitted by her predecessor counsels referred to clause 30 of the Notes on Clauses of the Finance Bill, 1964 reported in (1964) 51 ITR 39 (Statutes). Referring to para No. 2.9 on search and seizure appearing at page 39 of Approach to Tax Reform of Chapter –I of Consultation Paper – Task Force on Direct Tax reported in (2002) 258 ITR 23 (Statutes) and CBDT Circular No. 286/2/2003-IT (Inv) dated 10-3-2003

[CLARI] with regard to the Confession of Additional income during the course of search and seizure and survey operation appearing at page 2980 of Currently Relevant Direct Taxes Circulars, she stated that the assessment procedure has been provided u/s 143, 144, 147 and 153A r.w.s. 132 of the Act. The ld. Counsel for the assessee while relying on the decision of Hon'ble Supreme Court in Manish Maheshwari v. Asst. CIT and Another (2007) 289 ITR 341 (SC) and the decision of the Hon'ble Delhi High Court in Saraya Industries Ltd. Vs. Union of India and Others (2008) 306 ITR 189 (Delhi) further submitted that since in the present cases no incriminating/seized material was found during the course of search, therefore, the A.O. was not justified in making addition u/s 153A of the Act and therefore the same be deleted.

46. We have considered the facts, submissions and precedents cited before us. Before deciding the two questions referred to us by the Hon'ble President. Let us consider the provision contained in section 153A, in so far as it is useful for us which reads as under :-

> *"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall –*
>
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment*

year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this {sub-section} 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.

(2) 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 :

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation – For the removal of doubts, it is hereby declared that –

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section :

(ii) *in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.*

47. We may also consider the provision contained in section 132(1), under which the empowered officer can direct the conducting of a search if any of the following conditions are satisfied :-

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income tax Act , 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to , any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or

thing represents either wholly or partly income or property [which has not been , or would not be, disclosed"] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property)

48. The provision under section 153A is applicable where a search or requisition is initiated after 31.5.2003. In such a case the AO is obliged to issue notice u/s 153A in respect of 6 preceding years, preceding the year in which search etc. has been initiated. Thereafter he has to assess or reassess the total income of these six years. It is obligatory on the part of the AO to assess or reassess total income of the six years as provided in section 153A(1)(b) and reiterated in the 1st proviso to this section. The second proviso states that the assessment or reassessment pending on the date of initiation of the search or requisition shall abate. We find that there is no divergence of views in so far as the provision contained in section 153A till the 1st proviso. The divergence starts from the second proviso which states that pending assessment or reassessment on the date of initiation of search shall abate. This means that an assessment or reassessment pending on the date of initiation of search shall cease to exist and no further action shall be taken thereon. The assessment shall now be made u/s 153A. The case of Ld. Counsel for the assessee is that necessary corollary to this provision is that completed assessment shall not abate. These assessments become final except in so far and to the extent as undisclosed income is found in

the course of search. On the other hand, it has been argued by the Ld. Standing Counsel that abatement of pending assessment is only for the purpose of avoiding two assessments for the same year, one being regular assessment and the other being assessment u/s 153A. In other words these two assessments coalesce into one assessment. The second proviso does not contain any word or words to the effect that no reassessment shall be made in respect of a completed assessment. The language is clear in this behalf and therefore literal interpretation should be followed. Such interpretation does not produce manifestly absurd or unjust results as section 153A (i)(b) and the first proviso clearly provide for assessment or reassessment of all six years. It may cause hardship to some assesses where one or more of such assessments has or have been completed before the date of initiation of search. This is hardly of any relevance in view of clear and unambiguous words used by the legislature. This interpretation does not cause any absurd etc. results. There is no *casus omissus* and supplying any would be against the legislative intent and against the very rule in this behalf that it should be supplied for the purpose of achieving legislative intent. The submissions of the Ld. Counsels are manifold, the foremost being that the provision u/s 153A should be read in conjunction with the provision contained in section 132(1), the reason being that the latter deals with search and seizure and the former deals with assessment in case of search etc, thus, the two are inextricably linked with each other.

49. Before proceeding further, we may now examine the provision contained in sub-section (2) of section 153, which has been dealt with by Ld. Counsel. It provides that if any assessment made under sub-section (1) in annulled in appeal etc., then the abated assessment revives. However, if such annulment is further nullified, the assessment again abates. The case of the Ld. Counsel is that this provision further shows that completed assessments stand on a different footing from the pending assessments because appeals etc. proceedings continue to remain in force in case of completed assessments and their fate depends upon subsequent orders in appeal. On consideration of the provision and the submissions, we find that this provision also makes it clear that the abatement of pending proceedings is not of such permanent nature that they cease to exist for all times to come. The interpretation of the Ld. Counsel, though not specifically stated, would be that on annulment of the assessment made u/s 153(1), the AO gets the jurisdiction to assess the total income which was vested in him earlier independent of the search and which came to an end due to initiation of the search.

50. The provision contained in section 132 (1) empowers the officer to issue a warrant of search of the premises of a person where any one or more of conditions mentioned therein is or are satisfied, i.e. – a) summons or notice has been issued to produce books of account or other documents but such books of account or documents have not been produced, b) summons or notice has been

or might be issued, he will not produce the books of account or other documents mentioned therein, or c) he is in possession of any money or bullion etc. which represents wholly or partly the income or property which has not been and which would not be disclosed for the purpose of assessment, called as undisclosed income or property. We find that the provision in section 132 (1) does not use the word "incriminating document". Clauses (a) and (b) of section 132(1) employ the words "books of account or other documents". For harmonious interpretation of this provision with provision contained in section 153A, all the three conditions on satisfaction of which a warrant of search can be issued will have to be taken into account. 51. Having held so, an assessment or reassessment u/s 153A arises only when a search has been initiated and conducted. Therefore, such an assessment has a vital link with the initiation and conduct of the search. We have mentioned that a search can be authorised on satisfaction of one of the three conditions enumerated earlier. Therefore, while interpreting the provision contained in section 153A, all these conditions will have to be taken into account. With this, we proceed to literally interpret to provision in 153A as it exists and read it alongside the provision contained in section 132(1).

52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years

immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter. The assessment has now to be made u/s 153A (1)(b) and the first proviso. It also means that only one assessment will be made under the aforesaid provisions as the two proceedings i.e. assessment or reassessment proceedings and proceedings under this provision merge into one. If assessment made under sub-section (1) is annulled in appeal or other legal proceedings, then the abated assessment or reassessment shall revive. This means that the assessment or reassessment, which had abated, shall be made, for which extension of time has been provided under section 153B.

53. The question now is - what is the scope of assessment or reassessment of total income u/s 153A (1) (b) and the first proviso ? We are of the view that for answering this question, guidance will have to be sought from section 132(1). If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and found in the course of search in our humble opinion such books of account or

other documents have to be taken into account while making assessment or reassessment of total income under the aforesaid provision. Similar position will obtain in a case where undisclosed income or undisclosed property has been found as a consequence of search. In other words, harmonious interpretation will produce the following results :-

a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the AO, (b) in respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search

54. It may be mentioned here that Ld. Counsel for All Cargo Global Logistics Ltd. was questioned about the scope of pending assessments as it was his contention that all six assessments are to be made, if necessary, on the basis of undisclosed income discovered in the course of search. He was specifically questioned about the jurisdiction of the AO to make original assessment along with assessment u/s 153A, merging into one. However he took an evasive view submitting that this question need not be decided in his case although the question of jurisdiction u/s 153A was vehemently pressed on account of which

ground No.1 in the appeal for assessment year 2004-05 was admitted as additional ground. He also wanted the additional ground to be retained in case of any future contingency.

55. We may now examine whether the construction placed by us on the provision of section 153A comes in conflict with cases cited by the rival parties regarding rules of construction :-

(a) In the case of JH Gotla, although rendered under totally different facts, the ratio is that when plain literal interpretation of the statutory provision produces a manifestly unjust results which could never have been intended, the court might modify the language so as to achieve the intention of the legislature and produce rational construction. In the case of K.P. Varghese, it has been held that a statutory provision must be so construed that if possible absurdity and mischief may be avoided. An assessment or reassessment u/s 153A is made in a case where search is initiated and conducted. Our finding inter-alia is that when books of account, other documents relevant to assessment, which were not produced before the AO in regular assessment proceedings , or undisclosed income or asset is found in search, the same can be used for making assessment or reassessment in pending and

completed assessments. Obviously a search is undertaken for discovering undisclosed income or asset. It is also undertaken to find books of account or other documents which had not been produced or which would not have been produced in the course of assessment. Therefore, taking into consideration all such books, documents, income or asset for making assessment u/s 153A does not produce in any manner absurd or irrational result. It also does not cause any mischief.

(b) The decision in the case of Surat Art Silk Manufacturer Association emphasized the ascertainment of predominant object while understanding the meaning of the term "charitable purpose". Any activity, howsoever carefully arranged will produce either surplus or deficit and in all cases of surplus it cannot be said that the activity was undertaken for profit. Thus, the legislative intent is found by ascertaining dominant intention behind the activity. Again our decision does not come in conflict in any manner with this decision as it is held that only such material which was not produced before the AO, undisclosed income or asset, if found in the course of search, has to be taken into account.

(c) In the case of NA Mayanna, it has been held that not only the scheme of the legislation but also constitutional background will have to be considered. We have seen that since search assessments have to be made after granting appropriate opportunity of being heard to the assessee, when assets or books of account found in the course of search of any person. These books or assets may belong to him or any other person, but in either case the principles of natural justice are met as held in the case of Sarya Industries Ltd. This case has dealt with the issue of vires from the point of view of natural justice. We have also seen that interpretation placed by us does not violate any principal of natural justice. Further, it does not produce irrational, absurd or wholly unjust results, rather it produces a very valid result that undisclosed income or asset, books of account or documents not produced in the course of regular assessment should be taken into account. Therefore, charge of ultra-vires will not arise out of such interpretation.

(d) In the case of Padmasundara Rao (Decd.) a note of caution has been made that while interpreting a Statute, casus ommissus should not be readily inferred. Instead all parts of a

statute or section must be construed together with reference to the context and other clauses so as to make it a consistent statute. We have read the provision of section 132 (1) and 153A together, which are in the nature of cause and effect and therefore in our humble opinion we have rightly read them together. Reading section 153A in isolation and as interpreted by the Ld. Standing Counsel would have the effect that in case of an assessment, which is not pending and where nothing is found, the same may be reopened. Such interpretation will produce a result that an assessment which has come to an end and for which there is no cause of reopening shall revive simple because a search has been conducted. According to us, this will not be harmonious interpretation of various provisions of sections 132(1) and 153A.

(e) In the case of Electronics Corporation of India, the Ld. Counsel wanted to obliterate the difference between the Government and a Government company which has been registered under the companies Act. It was held that such an interpretation can be made only when literal interpretation leads to the charge of ultra vires. The provisions of section

153A /153C have been held to be intra vires when tested on the principles of natural justice. Therefore, what is required is that we should ensure that our interpretation does not render any provision to the ultra-vires. In our interpretation, we are not reading down the provision but reading it along side the provision contained in section 132A(1) as a consequence of which these proceedings come into existence. A harmonious interpretation of the two provisions does not amount to reading down the instant provision.

(f) In the case of Prakash Nath Khanna, it has been held that the first and foremost rule is that intention has to be found from the words employed in the provision. The possible misuse of the provision or absurdity has to be taken care by the legislature, for which judicial interpretation is not the right forum. We have read the words employed in section 153A and 132 (1) as they exist, and harmonized the two provisions. This does not amount to supply of casus omissus. We have not supplied any words which are not there or omitted any words which are there. What we have done is only the reading of two sections together, which are inextricably linked with each other.

(g) In the case of C.B. Gautam, the finding was that provisions contained in chapter XX do not confer unfettered powers on the appropriate authorities for pre emptive purchase of a property, when it has been agreed to be sold by the assessee for a consideration significantly lower than the fair market value. We are of the view the provisions in section 153A also do not confer any arbitrary or unbridled power on the AO. However, that is not the real issue. The real issue is whether there is any sanctity of completed assessment in respect of which nothing has been found in search. When we look to any other provisions regarding reopening of assessment, we find that there are certain pre-conditions to be satisfied for doing so. The pre condition in this case is the initiation and conducting of the search. The avowed purposes of search have already been stated by us. In cases decided u/s 147 or 263, the scope of assessment is narrower than the scope of original assessment. This is because matters which has been discussed and debated in assessment, which has become final, and for which there is no reason to agitate again in the re-assessment, there is no reason to reopen them.. This consideration would be applicable in the re-assessment u/s

153A and guidelines can be clearly discerned in the provision contained in 132(1).

(h) in the case of Mahindra Saree Emporium, it has been held that abatement kills the right to sue and has the effect of unceremoniously terminating pending legal proceedings without any regard to merits. Such abatement takes place only in respect of a pending assessment. There is no word in the provision to the effect that even completed assessments abate. Therefore, sanctity of such assessment should be maintained except when something is found in search which go against such sanctity. We are of the view that the sanctity is violated not only on detection of undisclosed income or asset but also when books of account or other documents which should have been produced in original assessment as they were relevant to the assessment , and have not been produced, but found in the course of search.

(i) The decision in the case of Ramballabh Gupta leads to the conclusion that recourse to section 147 cannot be taken for the years which are covered under section 153A. There is other finding regarding reassessment of 6 years also, which is incidental to the aforesaid finding. We may add that we have

not held that the assessment can be made only for those years in respect of which books or assets etc. are found. We have come to the clear finding that assessment / reassessment for all six years will have to be made. The real question is the scope of re-assessment which is not pending, for which we have read provisions of section 132(1) and section 153A together. Thus the total income under reassessment may be the same as in the original assessment or may be higher than that , depending upon the materials which are uncovered in the course of search. We are also of the view that issue of notice for six years and computing reassessment for these years even if no material is found in the course of search for some years does not amount to harassment etc. and even if it does so, the same has to be ignored in view of the clear statutory provision.

56. Thus the interpretation placed by us takes in to account the principles of literal interpretation and reading the relevant provisions together. This interpretation does not in any manner give results which can be said to be ultra vires. It also does not give any absurd or unjust results.

57. The various Ld. Counsels for the intervening parties have listed or stated various scenarios regarding what constitutes pending assessment and what

constitutes completed assessment. We find that second proviso to section 153A uses the words "pending on the date of initiation of search" and provides that assessment so pending shall abate. The provision does not use the words "completed assessment". Further, the question which has been referred to us is in respect of scope of assessment u/s 153A and whether it encompasses additions , not based on incriminating material found in the course of search. The question uses the words "incriminating material" which again find no mention either in section 132(1) or 153A. Thus, analysis of various scenarios regarding completed assessments does not fall within the ambit of the question posed to us. Therefore, this question may have to decided by the Division Benches in the respective cases depending on the facts of the case. We may however consider the cases cited by other Ld. Counsels in the aforesaid matter :

(a) In the case of C Venkata Reddy And Another vs. ITO, (1967) 66 ITR 212, the question was regarding the legality of the search and whether it violates the fundamental rights guaranteed under the Constitution. It has been held that the provision u/s 132 is intended to achieve two objectives (a) to get hold of evidence having bearing on tax liability of a person which he is seeking to withhold from assessing authorities and (b) to get hold of assets representing income believed to be undisclosed income. We have taken note of

these objectives for harmoniously interpreting the provisions regarding search and search assessment.

(b) In the case of L.R. Gupta vs Union of India and Others, (1992) 194 ITR 32, the writ petition was filed to challenge the authorization of search. The court concluded that the satisfaction note recorded by the DIT (Investigation) does not show that there is any information in his possession which leads to formation of opinion that any money, valuables etc. are in possession of the searched person which represent income which he has not been disclosed or would not have disclosed. Therefore, it has been held that no reasonable person could have come to the conclusion that action u/s 132(I) was called for.

(c) In the case of CIT vs. S. Khader Khan son, (2008) 300 ITR 153 (Madras), the provisions contained in section 133A have been distinguished from the provisions contained in section 132, especially in regard to statements recorded in the course of operations. Board Circular dated 10.3.2003 has been highlighted that in such operations stress should be laid on discovering evidence of income which has not been disclosed or which is not likely to be disclosed rather than on recording confessions, The AOs have been directed to rely on the evidence / material gathered in such operations

(d) In Board Circular No. 7 of 2003 dated 5.9.2003, the AOs have been informed that they shall make assessment or reassessment of the total income of 6 years, and the pending assessments on the date of initiation of search shall abate. In this connection, it is clarified that the appeals ,review or rectification proceedings pending on the date of initiation of search or requisition shall not abate. This only means that the issues which stand concluded in assessments made earlier shall continue to remain intact subject to aforesaid jurisdictions. The other conclusion may be that in respect of matters debated and discussed in the assessments already made, no further action is required in re-assessments u/s 153A.

(e) In the case of Shaila Aggarwal decided by the Hon'ble Allahabad High Court, it has been held that only such assessments or reassessments which are pending on the date of initiation of search stand abated. However, an appeal before the Tribunal against the order of Ld. CIT(A) in respect of assessment is not a continuation of proceedings of assessment. Such proceedings do not abate, and if the appeal has been disposed off by the Tribunal before the date of initiation of search, the order shall hold. Abatement of any proceedings has serious effects in as much as the abatement takes away all the consequences that arise thereafter. Thus, regular assessment proceedings, which have become final, cannot be abated can not be set at naught by the Tribunal for making fresh assessment u/s 153A. The consequences of this decision has been taken into account in our finding while deciding the matter regarding scope of re-assessments u/s 153A.

(f) In the case of Parashuram Pottery works Co. Ltd. vs. ITO, it has been mentioned in the last paragraph of the judgment that the court has to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues

should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity. Our decision is in consonance with this observation.

(g) In the case of K.M.Sharma vs. ITO (2002) 254 ITR 773, It has been mentioned on page 777 of the report at placitum “D” that proceedings which have attained finality under the existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which have already been concluded and attained finality. The observations were made while deciding an issue regarding amendment to section 150(1), as to whether this amendment is prospective or retrospective in nature. The question was raised in an altogether different context and the decision is that a provision regarding limitation is generally prospective in nature. In the instant case the question of limitation is not involved, rather the question is as to whether restrictive or expansive meaning should be placed on the provisions contained in section 153A (1) (a) and the first proviso.

(h) In the case of Kanhayammed and Others vs. State of Kerala, (2000) 245 ITR 360 (SC), it is mentioned on page number 379 of the report that this court held that the crucial date for determination whether or not the terms of Order XLVII Rule 1(1) Code of Civil Procedure, 1908, are satisfied is the date when application for the review is filed. It is pertinent for the court hearing the petition to dispose off that application on merits notwithstanding pendency of appeal, subject only to this, that if before the application for review is finally decided the appeal has been disposed off, the jurisdiction of the court hearing the review petition would come to an end. This means that review application abates if appeal against the order to be reviewed has

been finalized. This finding may have only a limited application on the facts of our case, i.e. the issues which have already been debated and in respect of which the appeal has been decided, such issues may not be taken up for making addition again in re-assessment u/s 153A unless further material is found in the course of search. However, it may be noted that review is different from re-assessment.

(i) In the case of Manish Meheshwari vs. Asstt. Commissioner of Income Tax, (2007) 289 ITR 341 (SC), the view taken by Gujarat High Court in the case of N. Khandubhai Vasanji Desai Vs. DCIT (1999) 236 ITR 73, has been referred to , in which it was held that where a search or requisition has been made, assessment has to be made under chapter XIV – B. If the AO comes to a conclusion that any undisclosed income belongs to person other than the person who has been searched etc. a note has to be recorded to this effect to be forwarded to the jurisdictional AO along with relevant material so that jurisdictional officer may proceed against that person u/s 158BC. It appears that Ld. Counsel wants to stress the words "undisclosed income" used in this decision. As a matter of fact this term has been defined under section 158B(b), but it cannot imported in to section 153A for supplying *casus ommisus.*

58. Thus, question No.1 before us is answered as under :

a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately ;

b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means – (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search.

59. Having come to this conclusion we need not go into various orders of the Tribunal cited by the rival parties. The decisions inconsistent with the aforesaid view/conclusion stand disapproved and the decisions consistent with this view/conclusion are approved.

60. The second question before us is - whether , on the facts and in the circumstances in the case, the Ld. CIT(A) was justified in upholding the disallowance of deduction u/s 80IA (4) of the Act on merits ?

61. The facts in the case of All Cargo Global Logistics Ltd. are that the assessee commenced CFS activities on 7.4.2003. In this connection a letter has been received from the Commissioner of Custom (Import), bearing No. 3 / 2003 dated 28.2.2003, classifying the area of 3282 square meters as customs area for the purpose of storage, stuffing / destuffing and clearance of export / import cargo.

Subsequently the assessee has been certified as a custodian of Cargo under Customs Act 1962, by notifying the area as "Customs area". It has been submitted that a CFS is common user facility offering services in handling and temporary storing of import / export laden empties carried under custom control and supervision. It is also a bonded ware house facility where customers can clear the cargo for export to various countries and receive customs - cleared cargo for home consumption. The staff of Customs Department is posted in the CFS for such clearances. The assessee enclosed a certificate from the Chartered Accountant in form No. 10CCB, which is a pre-condition for claiming the deduction u/s 80IA (4). A certificate from the port trust has also been enclosed to the effect that the activities may be considered as extended activities as of port related activities in accordance with the circular No. 793(b) dated 26.3.2000, read with circular No. 133/95 – Cus. Dated 22.12.1995 of the Board of Excise and Customs. The Central Board for Direct Taxes had also issued circular No. 10/2005 dated 16.12.2005 clarifying that the structures at the port for storage, loading and unloading constitute "port" for the purpose of section 10 (23G) and section 80IA.

62. Before us, Ld. Counsel for the Container Corporation of India submitted at the outset that the decision of Hon'ble Delhi High Court dated 11.5.2012 has now been received, a copy of which is placed in paper book on page Nos. 14 to 33. The decision was rendered in respect of three appeals filed by the assessee bearing ITA Nos. 1411/2009, 967/2011 and 968/2011. The assessment years

involved are 2003-04 to 2005-06. After going through the history of legislation, it is mentioned in paragraph No. 8 that assessment year 1999-2000 was first year in which inland ports were designated as "infrastructure facility" u/s 80IA. The object was to strengthen infrastructure in general and the transport infrastructure in particular. Thereafter it is mentioned in paragraph No. 9 that the question before the court is – whether, the income from the ICDs qualify for deduction u/s 80IA(4) (i) of the Act read with Explanation (d) thereto. The court referred to the facts of the case that the assessee operated 45 ICDs. All the ICDs except 2 were notified by the CBDT for the purpose of section 80IA(12)(ca) on 1.9.1998. However the power to notify "infrastructure facility" for the purpose of this section was taken away from the CBDT w.e.f. 1.4.2002. The court noted that wherever the word "port" is used, it carries with it maritime connection or connotation. It is for this reason that the section separately refers to airport as it does not have a maritime connection. The custom clearance takes place both at the airport and port. The ICDs are land locked and it is nobody's case that they are located in such a place where ships or vessels have direct access. The goods which are brought in or removed from the ICDs are brought or taken either by railway wagons or by container trucks, as the case may be. Finally, it has been held that although ICD may not be a port, but it is an inland port. The relevant portion of the decision is reproduced below :-

> "19. The Tribunal erred in holding that because of the change made by the Finance Act, 2001 with effect from 1st April, 2002 by dropping the

power of the CBDT to notify any other public facility of similar nature for the purpose of Section 80IA of the Act, the ICD cannot be considered as Inland Port. The error committed by the Tribunal is to overlook that both before and after the above amendment, Inland Ports were specifically mentioned as an infrastructure facility in the statutory provision and in the understanding of the CBEC, which administers the Customs Act, an Inland Container Depot was actually an Inland Port. There is also no dispute that even in 1983 amendments had been made to the Customs Act by treating the Inland Container Depots as part of the customs port for purpose of customs formalities and clearances. In these circumstances, the real question was not whether the CBDT notified the ICD as an Inland Port but whether the ICD can be considered to be an Inland Port. In our opinion having regard to the provisions of the Customs Act, the communications issued by the CBEC as well as the Ministry of Commerce and Industry, the object of including "inland port" as an infrastructure facility and also having regard to the fact that customs clearance also takes place in the ICD, the assessee's claim that the ICDs are Inland Ports under Explanation (d) of Section 80IA(4) requires to be upheld."

63. The submission of the Ld. Counsel in the case of All Cargo Global Logistics Ltd. is that the Hon'ble Delhi High Court has held that ICDs are landlocked and situated far off from the sea port such. The ICDs of the Container Corporation of India are located at places such as Jamshedpur, Jodhpur, Jaipur, etc. These have been held to be inland ports for the purpose of deduction u/s 80IA(4). The case of the assessee is better placed than the case of Container Corporation of India Ltd. in as much as it is situated 5 kms away from the port and it is a part of the port for carrying out activities mentioned earlier. Customs-clearance takes place

from assessee's CFS. Therefore, it is argued that the assessee is entitled to deduction u/s 80IA.

64. In reply, the Ld. Standing Counsel submitted that whenever the assessee claims an income to be exempt from tax or claims a deduction, the pre-conditions for exemption or deduction have to be strictly satisfied by him, as held in the case of M/s. Novopan India Ltd., Hyderabad vs. Collector of Central Excise and Customs, Hyderabad (1994)3SCC 606. In respect of this decision, he laid stress on the finding that liberal and strict construction of exempt provision are to be invoked at different stages of its interpretation. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exemption is to be considered strictly and against the subject but once the ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. In the light of this decision, he dealt with the claim of the assessee u/s 80(IA). It is submitted that in Board clarification dated 6.1.2011, in which circulars dated 16.12.2005 and 23.6.2000 were considered, it has been clarified that ICDs, and CFSs are not 'ports' located on any inland water way , river or canal and therefore they cannot be classified as "inland ports" for the purpose of section 80(IA)(4). It is further submitted that the certificate issued by Jawahar Lal Nehru Port Trust has been withdrawn by the Port Trust. It is also submitted that Inland Waterways Authority of India Act, 1985, provides the

definition of the term "infrastructure facilities", in its clauses (f), as the structures such as docks, wharves, jetties, stages, locks, buoys, inland ports, cargo handling equipments, road and rail access and cargo storage spaces and states that the expression "infrastructure facilities" shall be construed accordingly. In this Act, inland port is included as item, thus, this term has a distinct meaning, separate and apart from other terms. Therefore, ICDs and CFSs cannot be interpreted to be included in the term "inland port". It is also submitted that circular No. 74/97-cus. dated 30.12.97 of the Central Board of Excise and Customs makes a distinction between inland ports and ICDs /CFSs for grant of duty draw back benefit. It is also submitted that a study prepared by Transport and Tourism Division of Economic and Social Commission for Asia and pacific (a division of the United Nations) provides an insight in the concept of " inland port" vis. a vis. "sea port". It is mentioned there that access should be provided to inland ports through waterways from sea by developing them.

65. We have considered the facts of the cases and submissions made before us. It may be mentioned that one of the arguments advanced by the Ld. Counsel for the assessee is that the case of Container Corporation of India is not based on any of the circulars issued by the Port authorities, however, the CFS the assessee has been granted such certificate. The certificate mentions that the CFS carries on port related activities, and it may be considered as an extendable activity of the port related activities. It is clarified that the CFS has not been built

on BOT or BOLT Scheme and that it is situated on land which does not belong to the port. The letters written by port trust to the assessee also state that the matter has been referred to the Income Tax Department. The department has clarified that an ICD / CFS does not constitute an inland port. In the case of CIT Vs. ABG Heavy Industries Ltd., 189 Taxman 54, the Hon'ble Court has held that the assessee is entitled to deduction u/s 80IA. However there is a very salient difference in facts that structures were located at port and such structures had to be handed over to the Port Trust on expiry of the period of agreement. In the case at hand it is clear that the assets of the CFS are not to be handed over to the Port Trust at any point of time as it is not built on BOT & BOLT Scheme. The CFS is also not located at the Port. As against the aforesaid, the Ld. Standing Counsel has submitted that clarifications issued by other authorities including Central Board of Excise and Customs under the relevant Acts do not lay guidelines under the Income Tax Act and that the matter has to be decided under the Income Tax Act independently. For doing so, initially a strict interpretation has to be placed on the words "inland port" to examine that the assessee is entitled to the deduction. CBDT has furnished opinion that ICDs and CFSs are not entitled to such deduction as they do not constitute inland ports. Other Acts as well as study report lead to the conclusion that a port can be said to be an inland port only if it has an access to the sea via a water-way.

66. We find that the solitary decision in this case by any High Court is in the case of Container Corporation of India Ltd.. In this case it has been held that an ICD is not a port but it is an inland port. The case of CFS is similar situated in the sense that both carry out similar functions, i.e.,ware housing, customs clearance, and transport of goods from its location to the seaports and vice-versa by railway or by trucks in containers. Thus, the issue is no longer res-integra. Respectfully following this decision, it is held that a CFS is an inland port whose income is entitled to deduction u/s 80IA(4). Question No. 2 is answered accordingly.

67. Now the matters of the assessee will go before the Division Bench which shall dispose of the appeals in the light of this Order. In the case of intervenors, all the appeals will go back to the respective Division Benches who shall decide their grounds having regard to the facts of those cases and the findings given herein on the disputed issues to the extent the same are found relevant in the cases before them.

Order pronounced in the open Court on this the 06th day of July, 2012.

Sd/-	Sd/-	Sd/-
[D.K. AGARWAL]	**[G.E.VEERABHADRAPPA]**	**[K.G. BANSAL]**
JUDICIAL MEMBER	**HON'BLE PRESIDENT**	**ACCOUNTANT MEMBER**

Mumbai, Date 06th July, 2012.

Veena

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Deputy Registrar, ITAT