

## Note on Search Assessment

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S.no.	Name of case	Forum	Citation	Date of order & Appeal No.	Ratio in brief
1.	P. Koteswar Rao	Vizag ITAT		O/d- 12.08.2016 & ITA no. 251/Vizag/2012	Refer Note-1
2.	Gyarsi Lal Vijay	Hon'ble Rajasthan High Court, Jaipur		O/d- 24.08.2016 & ITA no. 7/2008	Refer Note-2
3.	D. Prasad	Vizag ITAT		O/d- 10.06.2016 & ITA no. 51/Vizag/2016	Refer Note-3
4.	Surya Prakash Bagla	ITAT Kolkata		O/d- 05.10.2016 & ITA no. 857/Kol/2014	Refer Note-4
5.	M/s Balaji Yarn Ltd.	Hon'ble Bombay High Court		O/d- 22.08.2016 & ITA no. 230/2014	Refer Note-5
6.	Dr. Gautam Sen	Hon'ble Bombay High Court		O/d- 14.09.2016 & W.P. 1344/2000	Refer Note-6
7.	Smt. Umlesh Goel	Hon'ble Rajasthan	387 ITR 575	O/d- 31.08.2016 & ITA no.	Refer Note-7

		High Court, Jaipur		153/2003	
8.	Smt. S. Jayalakshmi Ammal	Hon'ble Madras High Court		O/d- 01/08/2016 & Tax case appeal no. 488/2016	Refer Note-8
9.	Pillala Ramakrishna Rao	Vizag ITAT		O/d- 26.08.2016 & ITA no. 81/Vizag/2016	Refer Note-9
10.	Hansat Maneklal Savani	ITAT Mumbai		O/d- 20.12.2013 & ITA no. 2339/Mum/2012	Refer Note-10
11.	CBDT Instruction no. 11/2016	Ministry of Finance		Dated: 13.10.2016	Refer Note-11
12.	Shri Satnam Singh	ITAT Chandigarh		O/d- 26.09.2016 & ITA no. 144/Chd./2016	Refer Note-12
13.	Shri Bimal Suri	ITAT Chandigarh		O/d- 20.09.2016 & ITA no. 664/Chd/2011	Refer Note-13
14.	Babita Lila & anr.	Hon'ble Supreme Court of India	387 ITR 305 (SC)	O/d- 31.08.2016 & Criminal Appeal no. 824/2016	Refer Note-14
15.	Veerprabhu	Hon'ble		O/d- 04.08.2016	Refer

	Maketing Limited	High Court of Calcutta		& ITA 661/2008	Note-15
16.	Shreemati Devi	Hon'ble High Court of Allahabad		O/d- 14.09.2016 & Writ Tax no. 805/2013	Refer Note-16
17.	Sushila Devi	Hon'ble High Court of Delhi		O/d- 21.10.2016 & W.P.(C) 7620/2011	Refer Note-17
18.	Circular no. 24/2015	CBDT			Refer Note-18
19.	IBC Knowledge Park	Hon'ble Karnataka High Court	385 ITR 346	O/d- 28.04.2016	Refer Note-19
20.	Mechmen	Hon'ble Madhya Pradesh High Court	380 ITR 591	O/d- 10.07.2015	Refer Note-19
21.	RRJ Securities	Hon'ble Delhi High Court	380 ITR 512	O/d- 30.10.2015	Refer Note-19
22.	Singhad Technical Education Society	Jurisdictional Bombay High Court	378 ITR 74		Refer Note-19
23.	Nirmala Keshwani	Hon'ble Allahabad	380 ITR 566		Refer Note-19

		High Court			
24.	Manish Maheshwari	Hon'ble Supreme Court of India	289 ITR 341		Refer Note-19
25.	Calcutta Knitwears	Hon'ble Supreme Court of India	362 ITR 673		Refer Note-19
26.	M/s Omni Info World Pvt. Ltd.	Hon'ble Delhi High Court		O/d- 29.07.2016 & ITA 364/2016	Refer Note-26
27.	Ramprastha Builders Pvt. Ltd.	Delhi ITAT		O/d- 16.02.2016 & ITA no. 3238/Del/2013	Refer Note-27
28.	M/s Inland Road Transport Pvt. Ltd.	ITAT Kolkata		O/d- 29.06.2016 & ITA no. 1179/Kol/2012	Refer Note-27
29.	M/s Sree Gopalakrishna Fabrics	ITAT Chennai		O/d- 27.11.2015 & ITA no. 788/Mds/2015	Refer Note-27
30.	M/s Best Infrastructure (India) Pvt. Ltd.	ITAT Delhi		O/d- 31.05.2016 & 1698/Del/2014	Refer Note-27
31.	M/s Thakkar Popatlal Velji	Hon'ble Bombay		O/d- 29.03.2016 & ITA no.	Refer Note-31

	Sales Ltd.	High Court		2266/2013	
32.	M/s Delco India Pvt. Ltd.	Hon'ble Delhi High Court		O/d- 10.02.2016 & ITA no. 116/2016	Refer Note-32
33.	Smt. Manisha M. Shah	Hon'ble Bombay High Court		O/d- 27.06.2016 & ITA no. 2432/2013	Refer Note-33
34.	M/s Harish Textile Engrs. Ltd.	Hon'ble Bombay High Court		O/d- 30.10.2015 & ITA no. 1398/2000	Refer Note-34
35.	Sarvmangalam Builders & Developers	Hon'ble Delhi High Court		O/d- 11.12.2015 & ITA no. 943/2015	Refer Note-35
36.	Biaora Constructions (P.) Ltd.	Hon'ble Madhya Pradesh High Court	281 ITR 247 (MP)		Refer Note-36
37.	M/s Spacewood Furnishers Pvt. Ltd. & ors.	Hon'ble Supreme Court of India	374 ITR 595		Refer Note-37
38.	Amrapali Grand	Hon'ble Delhi High Court		O/d- 31.05.2016 & ITA no. 323/2016	Refer Note-38
39.	Vatika LandbasePvt.	Hon'ble Delhi High	383 ITR 320	O/d- 26.02.2016 & ITA no.	Refer Note-39

	Ltd.	Court		670/2014	
40.	M/s T. Lakhamshi Ladha & Co.	Hon'ble Bombay High Court	386 ITR 233	O/d- 07.07.2016 & ITA no. 1380/2000	Refer Note-40

## NOTES

**NOTE 1:** Without independent evidence of exchange of extra sale consideration over and above sale deed value, on basis of: Statement given by purchaser of property(which is not tested under cross examination and remained uncorroborated), and merely on basis of loose sheets found in premises of MVV Builders, held insufficient for making any addition. Cases relied upon: a) 148 TTJ 157; b) 294 ITR49 etc.

**NOTE 2:** Once deemed income addition u/s 68 is made character of said addition will not remain as loan or deposit u/s 269 SS, for purposes of penalty u/s 271D.

**NOTE 3:** Survey on builder where development agreement was found resulted in service of notice u/s 148 on assessee (Land Owner) on 20/07/2012 before which assessee filed revised return on 16/07/2012, held it is a voluntarily disclosure and cannot result in concealment of income penalty. Case relied:

- a) 218 Taxmann 473 (Ahb.)
- b) 339 ITR 373;
- c) 223 Taxmann 263 (Bombay)

**NOTE 4:** Para 10.6.1 and 10.6.2 is important. (Section 292C is explained). “It is not legally correct to hold that an adverse inference against the assessee unless the assessee explained the contents of the documents. In our opinion, even after presumption applied to the facts u/s 292C of the act, there is no adequate material to conclude that the transaction in the seized documents are the transactions of the assessee which remained undisclosed.”

**NOTE 5:** On basis of Orissa High Court (**336 ITR 112**) held notice u/s 153A is not possible on basis of survey u/s 133A (also held 292BB cannot justify invalid notice issuance).

**NOTE 6:** On basis of mistaken identity, Search assessment notice u/s 158 BC cannot be issued when justified by appraisal report; no incriminating documents were found (Importance of appraisal report & Hon’ble Supreme Court decision in **374 ITR 595** highlighted).

- NOTE 7:**
- a) Search and Seizure provisions are drastic.
  - b) Search and Seizure should be based on sufficient material.
  - c) Search 132(1) is person specific.
  - d) Warrant copy (Form 45) must be supplied to the assessee.
  - e) Search is a serious invasion of privacy right of the assessee.

**NOTE 8:** “If mere statement u/s 132(4) of the act, without any corroborative material, has to be given credence, then it would lead to disastrous results.”

**NOTE 9:** Amendment in section 115BBE held to be prospective in nature (Finance Act 2016 Amendment with effect from A.Y. 2017-18 dealing with set off of loss).

**NOTE 10:** Applying Bombay and Madras High Court decisions in **27 ITR 658** and **20 ITR 579**, if an income falls under more than one head, assessee has option to choose beneficial head which keeps his shoulder lighter.

**NOTE 11:** Clarified Income Declaration Scheme do not apply to Search and Seizure conducted on or after 01/06/2016 and before making of declaration.

**NOTE 12:** “Since on the basis of unsigned agreement, no liability could be attached to the assessee and it is not admissible in evidence against the assessee, therefore, there is no valid reason recorded by the AO for the purpose of reopening of the assessment in the matter. There is also no basis for making addition on merit on the basis of photocopy of unsigned agreement.”

**NOTE 13:** Photocopies of documents have little evidential value in absence of original documents (Documents impounded from Third party and no enquiry having been made from them or any other party to agreement to sell), no addition is permissible.

**NOTE 14:** “The Deputy Director of Income Tax (Investigation) – Bhopal, (M.P.), in our unhesitant opinion, therefore cannot be construed to be an authority to whom appeal would ordinarily lie from the decision/ orders of the ITO;s involved in the search proceedings in the case in hand so as to empower him to lodge the complaint in view of the restrictive preconditions imposed by section – 195 of the code.”

**NOTE 15:** “We are in agreement with the views expressed by the Karnataka High Court that incriminating material is a pre-requisite before power could have been exercised u/s 153C read with section- 153A.”

**NOTE 16:** Release seized asset must once assessment and appellate proceedings are over.

**NOTE 17:** a) Stridhan nature explained.

b) Article 300A applied of Indian Constitution dealing with deprivation of property without authority of law.

c) Delhi High Court decision in Ashok Chadha (**20 Taxmann.com 387 Delhi**)

d) On deliberate harassment Rs. 30,000/- cost imposed on department.

**NOTE 18:** Section 153(C) mechanics explained on recording of satisfaction notes.

**NOTE 19: (FOR 19 to 25)**

Section- 153C ingredients explained in length.

a) Period covered (How to calculate) reference date: Handover date.

b) Incriminating material required for each year and each issue.

c) Two satisfaction notes must.

d) “Belongs to” word explained at length.

**NOTE 26:** Cash Flow Statement significance highlighted.

**NOTE 27: (FOR 27 to 30)**

Held statement u/s 132(4) cannot be treated at par with requisite incriminating material must for making addition u/s 153A/153C (held corroboration must.)

**NOTE 31:** Held even in pending assessments incriminating material required u/s 153 A in light of detailed law explained in All Cargo Global Logistics case (**374 ITR 645**) also held extrapolation impermissible u/s 153A.

**NOTE 32:** 292C presumption held to be rightly reverted when assessee denied the dealing with necessary affidavit and AO did not make requisite enquiries.

**NOTE 33:** The presumption u/s 292C cannot allow revenue to convert documents indicating estimate into documents of purchased. (When no corresponding asset was found under search), also held section 68 cannot be applied to Bank Passbook (Bombay High Court decision in **141 ITR 67** followed).

**NOTE 34:** Presumption u/s 292C is discretionary presumption and cannot apply to inchoate documents found during search.

**NOTE 35:** When no search u/s 132 conducted on assessee's premises and premises converted u/s 132 were not of assessee held 153A proceedings invalid.

**NOTE 36:** Applying Supreme Court decision in Vindhya Metal Corporation case that Seizure u/s 132 A cannot be without application of mind, where assessee has explained source of assets beyond reasonable doubt.

**NOTE 37:** (Para 9 is important) where principles for search u/s 132 listed and explained.

**NOTE 38:** Amendment in Section 153C by Finance Act 2015, held is applicable from 01/06/2015 and cannot apply retrospectively.

**NOTE 39: (383 ITR 320)** Loose documents evidentiary value explained.

**NOTE 40:** Statement u/s 132(4) revenue favoring decision.