

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 72 OF 2014

Commissioner of Income Tax,
Central-III,
R.No.109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Lavanya Land Pvt. Ltd.,
Dronagiri Hsg. Complex,
Building No.GH-10, Flat No. 2,
Gr. Floor, Sector 30,
Post Bokadvira Village,
Uran Taluka, Raigad District,
Navi Mumbai – 400 072. ... Respondent

WITH
INCOME TAX APPEAL NO. 114 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Krishna Land Realty Pvt. Ltd.
Raj Sparsh, Plot No. 21 & 22,
Sector 20, CBD Belapur,
Navi Mumbai – 400 614.
PAN: AADCK0178R ... Respondent

WITH
INCOME TAX APPEAL NO. 122 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Krutika Land Pvt. Ltd.,
102, Sagar Darshan,
C.T.S. No.:1023/4, Ramnath Road,
Alibaug – 402201
PAN: AADCK1508K ... Respondent

WITH
INCOME TAX APPEAL NO. 124 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Arpit Land Pvt. Ltd.,
101, Sagar Darshan,
C.T.S. No.:1023/4, Ramnath Road,
Alibaug-402201.
PAN: AACCN5784F ... Respondent

WITH
INCOME TAX APPEAL NO. 225 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Ganaraya Land Pvt. Ltd.,
Raj Sparsh, Plot No. 21 & 22,
Sector 20, CBD Belapur,
Navi Mumbai – 400614.
PAN: AACCG9821C ... Respondent

WITH
INCOME TAX APPEAL NO. 226 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

M/s. Hita Land Pvt. Ltd.,
101, Sagar Darshan,
CTS No.: 1023/4,
Ramnath Road, Alibaug,
Maharashtra-402201. ... Respondent

WITH
INCOME TAX APPEAL NO. 423 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

Dilip V. Derai,
10, Vivek, Plot No.: 67,
Tilak Road, Ghatkoper (E),
Mumbai – 400077.
PAN: AACPD8483A ... Respondent

WITH
INCOME TAX APPEAL NO. 425 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020. ... Appellant

Vs.

Dilip V. Derai,
10, Vivek, Plot No.: 67,
Tilak Road, Ghatkoper (E),
Mumbai – 400077.
PAN: AACPD8483A ... Respondent

WITH
INCOME TAX APPEAL NO. 426 OF 2014

Commissioner of Income Tax,
Central-III,
R. No. 109, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020.

... Appellant

Vs.

Dilip V. Derai,
10, Vivek, Plot No.: 67,
Tilak Road, Ghatkoper (E),
Mumbai – 400077.
PAN: AACPD8483A

... Respondent

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Mr. Anil Singh, Additional Solicitor General, a/w Mr. Ashok Kotangle, Ms. Geetika Gandhi, Ms. Padma Divakar and Mr. Arun Nagarjun for the Appellant in ITXA Nos. 72/2014, 114/2014, 122/2014, 124/2014, 225/2014 and 226/2014.

Mr. Ashok Kotangle a/w Ms. Padma Divakar and Mr. Arun Nagarjun for the Appellant in ITXA Nos. 423/2014, 425/2014 and 426/2014.

Mr. Nitesh Joshi a/w Mr. Raj Darak for the Respondents in ITXA Nos. 72/2014, 114/2014, 122/2014, 225/2014 and 226/2014.

Mr. R. Murlidharan a/w Mr. Raj Darak for the Respondent in ITXA Nos. 423/2014, 425/2014 and 426/2014.

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**CORAM : S. C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

RESERVED ON : APRIL 27, 2017.

PRONOUNCED ON : JUNE 23, 2017.

PER COURT :

1. These Appeals by the Revenue challenge the order passed by

the Income Tax Appellate Tribunal, Mumbai in Income Tax Appeal No. 8228/Mum/2011.

2. Income Tax Appeal No. 72 of 2014 concerns the Assessment Year 2009-2010.

3. Mr. Anil Singh, Learned Additional Solicitor General appearing on behalf of the Revenue in support of these Appeals, would submit that the questions proposed by the Revenue at page nos. 6 to 9 of the paper book of Income Tax Appeal No. 72 of 2014 are substantial questions of law and hence, the Appeal deserves to be admitted.

4. He would submit that the Tribunal has noted that Jai Corp group is a partner in 'Mumbai Special Economic Zone' and 'Navi Mumbai Special Economic Zone' projects of India. This group has floated various companies to purchase large chunks of land in the vicinity of Special Economic Zones. The group's real estate operations were being handled by Viredra Jain, Gaurav Jain and Dilip Dherai. Dilip Dherai was also managing land deals outside

Mumbai Special Economic Zone. The assessee in Income Tax Appeal No. 72 of 2014 is one of the companies floated by this group to purchase land outside Mumbai Special Economic Zone.

5. On 5th March, 2009, a search action under Section 132 of the Income Tax Act, 1961 (for short, "the IT Act") was carried out in the case of this group, its employees and close associates. They were involved in the process of acquiring land. During search of Dilip Dherai's residence, certain incriminating documents were seized and his statement was recorded.

6. Our attention is invited by Mr. Singh to an answer given to question 24 by the said Dilip Dherai. Mr. Singh would submit that this answer is an admission of the fact that there were amounts disbursed for purchase of lands. The said Dilip Dherai also stated that an amount of Rs.38.45 crores was received by him in cash to purchase lands. It may be that Dilip Dherai retracted his statement after 2½ months on 14th May, 2009. Then Mr. Singh invited our attention to the notice under Section 153C of the IT Act issued for those years preceding the relevant Assessment Year, requiring the

assessee to file return of income within 10 days of receipt of the notice. This notice under Section 153C was issued on 9th September, 2010 and prior thereto, a notice was issued under Section 143(2) for the Assessment Year 2009-10. Mr. Singh also submits that on 28th September, 2010, the notices under Sections 143(2) and 142(1) were issued and served alongwith questionnaire for all the Assessment Years. On 7th December, 2010, a show cause notice was issued to the assessee informing that Rs.38.45 crores, which is a sum reflected from the documents seized from Dilip Dherai's residence, and Rs.4 crores in addition, which is evidenced by loose documents in the form of cash receipts, were found during search and seizure proceedings. The assessee was called upon to explain and show cause as to how these amounts should not be treated as 'unexplained expenditure' under Section 69C of the IT Act, since the assessee did not provide any explanation with regard to the documents seized under Section 132 of the said Act for the Assessment Years from 2003 to 2009 and for 2009-10. The Assessment Order was passed and additions were made. The amount of unexplained expenditure was apportioned to all the land companies floated by Jai Corp Group

who had purchased land in these villages in ratio of the cost of land purchased up to 28th November, 2008. This Assessment Order was passed on 29th December, 2010 and was upheld by the Commissioner of Income Tax (Appeals) on 28th October, 2011. He held that the Assessing Officer had rightly issued notice under Section 153C of the IT Act for these years preceding the current Assessment Year and made additions under Section 69C of the said Act as unexplained expenditure. The Income Tax Appellate Tribunal set aside the order of the Commissioner of Income Tax (Appeals) pertaining to the Assessment Year 2008-09 holding that the action under Section 153C of the IT Act was bad in law.

7. It is this conclusion of the Income Tax Appellate Tribunal which is assailed in this Appeal by the Revenue. Mr. Singh would submit that right from the beginning, the facts were clear. If the Income Tax Appellate Tribunal proceeded on an erroneous assumption that the Revenue is not disputing the position as pointed out by the assessee, then, that foundation for the ultimate conclusion is bad in law and on the face of it. There is no question of any consent or 'no objection' by the Revenue when the facts

were clear. If the conclusion is *de hors* the facts, it denotes complete error of jurisdiction. It is in these circumstances that relying upon the findings in the order of the Assessing Officer and the Commissioner of Income Tax (Appeals), Mr. Singh would submit that the grounds raised by the Revenue in the present Appeal should be entertained and appropriate orders to subserve the larger interest of justice be passed.

8. On the other hand, Mr. Joshi appearing on behalf of the assesseees in all these Appeals would rely upon the order passed by the Division Bench of this Court on 7th February, 2017 in Income Tax Appeal No. 83 of 2014 and Income Tax Appeal No. 150 of 2014. Mr. Joshi would submit that a common impugned order was passed disposing of 67 appeals pertaining to 52 different assesseees. The Revenue picked up only two assesseees, namely, M/s. Arpit Land Private Limited and M/s. Ambit Reality Private Limited and challenged the orders in their appeals relating to Assessment Years 2007-08 and 2008-09 respectively. Mr. Joshi heavily relied upon the findings of fact which are relied by the Division Bench of this Court in these Appeals to submit that the present Appeals are no

different. The very grievance based on the statement of Dilip Dherai was raised in those Appeals. It is in these circumstances that he would submit that the Division Bench's order rejecting the Appeals of the Revenue would bind it in the present matters. Hence, there is no substantial question of law which arises for consideration in these Appeals. The Appeals deserve to be dismissed.

9. With the assistance of the learned counsel appearing for both sides, we have perused the memo of Appeals and the common order of the Tribunal. From the questions proposed, it is clear that the essential argument of the Revenue is that it was justified in making the additions under Section 69C of the IT Act. By the present Appeals, an attempt was made to challenge the common order dated 22nd March, 2013. When these Appeals were placed before a Division Bench of this Court on 27th June, 2016, the Division Bench passed the following order :

“1. These Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the common order dated 22nd March, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal).

2. We find that the common impugned order disposed of the appeals in favour of the respondent- assessee (who were Appellants before it) on the following two grounds:

(a) The Assessing Officer does not have jurisdiction to pass the assessment order in view of Section 153C of the Act not being satisfied; and

(b) There is no warrant to add the alleged cash payment to the Respondent – assessee's income in terms of Section 69C of the Act as unexplained expenditure.

3. These appeals have been filed on the following identical questions of law for our consideration :

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in quashing the order made under Section 143(3) of the Act by holding that Shri Dilip Dherai is an unrelated person to the assessee when the evidences discovered in the course of search operation and statements recorded under Section 132 (4) of the Act and other facts marshaled, as brought out in the assessment order and appellate order or the Ld. CIT (A) clearly show that Shri Dilip Dherai was actually working for and on behalf of the assessee as part of a larger common group with a common agenda?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the additions made under Section 69C of the Act both on merits and point of law?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in making incorrect observation that the Revenue has not brought on record a single statement of the vendors of land and sellers, and have not examined to substantiate the claim of extra cash actually changing hands, where as the independent evidences gathered and statements recorded in respect of M/s. Pathik Constructions, Shri Ajit Thumar, Shri Chaturbhai Thumar and Shri Sunil

Gulati confirmed unaccounted receipts in cash towards land acquisition?

(iv) Whether on the facts and in circumstances of the case and in law, the Tribunal was justified in not adjudicating the ground of appeal no.4 of the assessee, before the Tribunal relating to evidences of Pathik Construction and Sunil Gulati, which independently confirmed unaccounted cash transactions, evidenced by seized material, admitted in statements under Section 132(4) of the Act and co-relation of materials seized/impounded from different places/persons on one hand and co-relation of material seized/impounded with the books of account on the other hand?

(v) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not following the decision of the Apex Court in the case of Sumati Dayal (214 ITR 801), rendered in the context of degree of evidences relating to unaccounted cash transactions, and failing to lift the corporate veil in the present case and see the facts in their proper perspective?"

There is no specific question raised with regard to the impugned order being wrong/incorrect in holding that the Assessing Officer did not have jurisdiction to proceed under Section 153C of the Act. Moreover we also notice that no ground is urged in the memo of appeal with regard to the issue of jurisdiction.

4. In view of the fact that no specific grievance had been made by the revenue with regard to the finding of the Tribunal on applicability of Section 153C of the Act, the other questions raised and urged before us becomes academic. However, we are not certain that the revenue has taken an informed decision to not challenge the finding in the impugned order of the Tribunal with regard to Section 153C of the Act. The counsel for the Revenue was also not certain, when specifically asked. If the decision not to challenge the issues of jurisdiction was informed we are unable to understand why all these appeals were filed to raise academic issues.

5. *It may be pointed out that after the appeal was argued for sometime and we were about to dictate this order, Mr. Kotangale, learned counsel for the Revenue did point out that challenge to the impugned order of Tribunal in respect of Section 153C of the Act has to be inferred from the fact that question as framed challenges the quashing of the order of the Assessing Officer under Section 143(3) of the Act by the Tribunal. Similarly he relies upon the challenge to the deletion of the addition made under Section 69C of the Act on merits and on point of law. The aforesaid questions do not bring out the challenge to the issue of jurisdiction. Nor is there any ground in support of the same.*

6. *We expect the Commissioner of Income Tax to examine this issue and put a record how this has happened and the corrective measures being taken by them to ensure that a considered view is taken in respect of the orders of the Tribunal which are being challenged before this Court. This casual attitude in filing of appeals leads to uncalled for harassment of the assessee and undue encroachment on scarce judicial time in the context of the large number of pending appeals.*

7. *The Registry is directed to forward a copy of this order to the Principal Chief Commissioner of Income Tax.*

8. *These appeals are at the request of the Revenue adjourned to 11th July, 2016.”*

10. Then these Appeals were placed on 1st August, 2016. On 1st August, 2016, after hearing both sides, this Court made the following order :

“1. On the last date, Mr. Kotangle, learned Counsel appearing for the revenue informed us that all appeals raise identical questions. On hearing the revenue it appeared to us prima facie that the common impugned order dated 22nd March, 2013 has not been challenged to the extent it held that the Assessing Officer did not have jurisdiction as section 53C of

the Income Tax Act (the Act) was not satisfied. We adjourned the hearing to enable the Commissioner of Income Tax to put on record, whether the non-challenge to the issue of jurisdiction was an informed decision or not. This was so as it appeared to us that in the absence of challenge to the issue of jurisdiction, the other issues become academic.

2. Mr. Kotangle, learned Counsel for the revenue tenders an affidavit of Mr. D.B. Semwal, Principal Commissioner of Income Tax, (Central)-III dated 25th July, 2016. The affidavit as filed does not address the issue raised by us in our order dated 23rd June, 2016.

3. Mr. Kotangle has also tendered a copy of the file noting date 23rd July, 2013 maintained by the Income Tax Department containing record of the notes of Income Tax Officers leading to the filing of the present appeal. Both affidavit dated 25th July, 2016 as well as the file notes dated 23rd July, 2013 tendered by Mr. Kotangle are taken on record.

4. The Revenue is directed to file a detailed affidavit addressing the issues raised in our order dated 27th June, 2016 duly supported by evidence.

5. These appeals are adjourned to 9th August, 2016.”

11. The matter was then placed on 11th and 25th August, 2016 on which date the learned Additional Solicitor General was requested to appear.

12. On 14th September, 2016, the Revenue's Advocate sought adjournment. However, the Division Bench was most unhappy with the manner in which the Revenue was proceeding with the

Appeals and was constrained to pass the following order on 14th September, 2016:

“ Mr. Kotangle, learned Counsel appearing for the Appellant-Revenue seeks one more adjournment. This time the adjournment is sought so as to enable the Revenue to file further affidavit in support of its appeals.

2 *These appeals were first heard on 27 June 2016. At that time, the Court had noticed that the appeals as preferred had not specifically raised any question with regard to finding of the Tribunal that the proceedings under Section 153C of the Income Tax Act, 1961 (“the Act”) are without jurisdiction. Therefore, the further questions raised on merits of the assessment appeared to be academic. In the above view, the appeals were adjourned so as to enable the Revenue to bring on record whether the decision to not challenge the finding of the Tribunal with regard to applicability of Section 153C of the Act, was an informed decision or not. Further, if it was an informed decision, then why challenge the other issues when the lack of jurisdiction has been accepted. We had also directed the Registry to forward a copy of the order to the Principal Chief Commissioner of the Income Tax.*

3 *Thereafter appeals reached hearing on 25th July 2016 for admission. At that time, the Revenue again sought time and appeals were adjourned to 1 August 2016. On 1 August 2016, an affidavit dated 25th July 2016 by Principal Commissioner of Income-Tax (Central)-III was tendered. However, the Court found that the affidavit dated 25 July 2016 of the Principal Commissioner of Income Tax did not address the issues raised in its order dated 27 June 2016. Thus all the appeals adjourned to 9 August 2016 with direction to the Revenue to file a detailed affidavit addressing the issues raised in order dated 27 June 2016.*

4 *The appeals thereafter reached hearing on 11 August 2016. At that time, Mr. Kontagle, the learned Counsel for the Revenue, again sought time. At his request the appeals were adjourned to 25 August 2016. On 25 August 2016, the appeals were again adjourned at the request of Additional*

Solicitor General to 13 September 2016. Today, when the appeals reached hearing, Mr. Kotangle, learned Counsel for the Appellant sought time. This time on the ground that, the Revenue desire to file a detailed affidavit.

5 *We find attitude of the Revenue in the present appeals is most casual. These appeals had first reached admission on 27th June 2016 when certain directions were given only in view of the manner in which the appeal had been filed. The affidavit dated 25 July 2016 of the Principal Commissioner of Income Tax did not address the issues raised. Thereafter, the Revenue has been seeking time on one pretext or other. We grant adjournment of the appeals subject to costs of Rs.25,000/- being paid by the Appellant – Commissioner of Income Tax to the Tata Memorial Cancer Hospital on or before 30 September 2016.*

6 *Appeals are now kept for hearing on 5th October 2016 at the request of the Counsel. It is made clear that on the next occasion, the appeals would be heard only on condition precedent of paying costs of Rs.25,000/- being satisfied. Further it is made clear that no adjournment would be granted on the next occasion and appeals would be heard on the basis of available record.*

7 *Stand over to 5 October, 2016.”*

13. Thereafter, the Appeals were placed on 20th October, 2016

and the Division Bench was pleased to pass the following order:

“1. On 14th September, 2016, we (Coram : M. S. Sanklecha & S. C. Gupte, JJ.) have passed the following order :

“ Mr. Kotangle, learned Counsel appearing for the Appellant-Revenue seeks one more adjournment. This time the adjournment is sought so as to enable the Revenue to file further affidavit in support of its appeals.

2 These appeals were first heard on 27 June 2016. At that time, the Court had noticed that the appeals as preferred had not specifically raised any question with regard to finding of the Tribunal that the proceedings under Section 153C of the Income Tax Act, 1961 (“the Act”) are without jurisdiction. Therefore, the further questions raised on merits of the assessment appeared to be academic. In the above view, the appeals were adjourned so as to enable the Revenue to bring on record whether the decision to not challenge the finding of the Tribunal with regard to applicability of Section 153C of the Act, was an informed decision or not. Further, if it was an informed decision, then why challenge the other issues when the lack of jurisdiction has been accepted. We had also directed the Registry to forward a copy of the order to the Principal Chief Commissioner of the Income Tax.

3 Thereafter appeals reached hearing on 25th July 2016 for admission. At that time, the Revenue again sought time and appeals were adjourned to 1 August 2016. On 1 August 2016, an affidavit dated 25th July 2016 by Principal Commissioner of Income-Tax (Central)-III was tendered. However, the Court found that the affidavit dated 25 July 2016 of the Principal Commissioner of Income Tax did not address the issues raised in its order dated 27 June 2016. Thus all the appeals adjourned to 9 August 2016 with direction to the Revenue to file a detailed affidavit addressing the issues raised in order dated 27 June 2016.

4 The appeals thereafter reached hearing on 11 August 2016. At that time, Mr. Kontagle, the learned Counsel for the Revenue, again sought time. At his request the appeals were adjourned to 25 August 2016. On 25 August 2016, the appeals were again adjourned at the request of Additional Solicitor General to 13 September 2016. Today, when the appeals reached hearing, Mr. Kotangle, learned Counsel for the Appellant sought time. This time on the ground that, the Revenue desire to file a detailed affidavit.

5 We find attitude of the Revenue in the present appeals is most casual. These appeals had first reached admission on 27th June 2016 when certain directions were given only in view of the manner in which the appeal had been filed. The affidavit dated 25 July 2016 of the Principal Commissioner of Income Tax did not address the issues raised. Thereafter, the Revenue has been seeking time on one pretext or other. We grant adjournment of the appeals subject to costs of Rs.25,000/- being paid by the Appellant – Commissioner of Income Tax to the Tata Memorial Cancer Hospital on or before 30 September 2016.

6 Appeals are now kept for hearing on 5th October 2016 at the request of the Counsel. It is made clear that on the next occasion, the appeals would be heard only on condition precedent of paying costs of Rs.25,000/- being satisfied. Further it is made clear that no adjournment would be granted on the next occasion and appeals would be heard on the basis of available record.

7 Stand over to 5 October, 2016.”

2. Consequent to the above, the Appellant-Revenue has complied with the aforesaid order and paid the cost of Rs.25,000/- to the Tata Memorial Cancer Hospital by 30th September, 2016.

3. Further an affidavit dated 04th October, 2016 of Mr. D.P. Semwal, Principal Commissioner of Income Tax (Central)-3, Mumbai-21, has been filed. In the affidavit, it is stated that the Appeals relating to the a Assessment Years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 do raise a jurisdictional issue as regards applicability of Section 153C of the Act. However, as regards the Appeals relating to Assessment Year 2009-10, no such jurisdictional issue is urged in the Appeals as it does not fall within the period of six years, as envisaged in Section 153C of the Act. It is, however, stated that the Revenue has now realized that the impugned order of the Tribunal has disposed of all the Appeals relating to the Assessment Year 2009-2010 alongwith the other Assessment Years on the basis that the Section 153C of

the Act, would apply. Therefore, the Revenue ought to have raised the issue with regard to Tribunal being incorrect in holding that Section 153C of the Act applies to the Assessment Year 2009-2010.

4. In view of the above, the learned Additional Solicitor General seeks to add following additional question of law in all Appeals relating to Assessment Year 2009-10 i.e. Income Tax Appeal Nos. 72/2014; 114/2014; 122/2014; 124/2014, 225/2014 and 226/2014 for our consideration:

Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, Mumbai was right in holding that the action taken u/s. 153 C was bad in law, also for the 7th year/current year of the search i.e. A.Y. 2009-10 even when it does not fall under the ambit of provisions of section 153C of the IT Act, 1961?.

5. The Respondents-Assessee contests the claim made by the Revenue. In particular, it is pointed out that in all these Appeals relating to the Assessment Year 2009-10, the Commissioner of Income Tax (Appeals) has held that the provision of Section 153C of the Act applies to the Appeals relating to the Assessment Year 2009-2010. The Revenue has accepted the above finding of the Commissioner of Income Tax (Appeals) and has preferred no appeal on the above issue. Even before the Tribunal, at the time of the hearing, the departmental representative stated to the Tribunal that all these appeals before the Tribunal including the appeals relating to the Assessment Year 2009-10, raised a common question which be disposed of by a common order. Thus it is an admitted position that the Tribunal proceeded on the basis that Section 153C of the Act applies even in respect of Assessment Year 2009-2010. In view of the above, it is the contention of the Respondents that the aforesaid issue which is now being sought to be raised, does not arise out of the order of the Tribunal and it should not be entertained.

6. In fact we may also record the fact that on 27th June, 2016, when these appeals reached hearing, the Revenue referred to the question raised in the Income Tax Appeal No. 72 of 2014 as being common question in all appeals.

7. *On the other hand the learned Additional Solicitor General states that he will be able to satisfy the court that when a question raised is pure a question of law, it is open to the party to raise that question in appeal before the High Court. This, he submits even if it was not urged before the Tribunal. However, time is sought by him to address us on the above issue.*

8. *In any event, the question is whether in an appeal from the order of the Tribunal could the appellant raise a question before the High Court when it was not urged/raised before the Tribunal. This question would be decided by us while considering the question as now formulated. Therefore, at this stage, we permit the Revenue to amend the Appeal Memos with additional question as raised herein and serve the amended copy upon the Respondent-Assessee on or before 15.11.2016.*

9. *In view of the above, at the request of the Revenue all these Appeals are adjourned to 22.11.2016.”*

14. Thereafter, for some reason or the other, the present Appeals could not be taken up. Adjournments were sought on 24th November, 2016, 5th December, 2016, 19th December, 2016, 21st December, 2016 and thereafter on 23rd January, 2017, 6th February, 2017 and 7th February, 2017.

15. On 7th February, 2017, this Court was informed that the Revenue desires to move the Income Tax Appellate Tribunal under Section 254(2) of the IT Act. That is obviously a power vested in the Tribunal so as to correct the errors in its orders. Rather, that is

a jurisdiction vesting in the Tribunal enabling it to rectify any mistake apparent from the record if that is brought to its notice by the assessee or the Assessing Officer.

16. It is apparent that this jurisdiction of the Tribunal can be exercised by it, now, within 6 months from the end of the month in which the order was passed, but prior to such insertion by Finance Act, 2016 w.e.f. 1st June, 2016, it could have been corrected within four years from the date of the order.

17. We are surprised that the Revenue was advised to move the Tribunal to seek rectification of the alleged mistake appearing on the face of the record in its final order. However, prior to that, it was maintained by the Revenue before the Division Bench of this Court that no such application is necessary and even if any ground which was not raised by it before the Tribunal can now be raised in this Court for the first time if that is raising a pure question of law. We do not see any reason for the shift in this stand and we are, therefore, not surprised when the Division Bench of this Court passed the following order on 27th March, 2017:

“ Mr. Kotangle, learned Counsel appearing for the Appellant-Revenue, seeks an adjournment of these Appeals to 1st Week of May, 2017. This on the ground that the Appellant-Revenue has, on 6th March, 2017, filed a Miscellaneous Application for rectification under Section 254(2) of the Income Tax Act, 1961 before the Tribunal, seeking to rectify the common impugned order dated 22nd March, 2013.

2 On 7th February, 2017, we passed the following order:-

“ The learned Additional Solicitor General appearing on behalf of the Appellant-Revenue, on instructions, seeks adjournment for a period of six weeks from today to enable the Revenue to move the Income Tax Appellate Tribunal under Section 254(2) of the Income Tax Act, 1961.

At his request, appeals are adjourned to 27th March, 2017.”

3 We note that in spite of the fact that appeals were adjourned on 7th February, 2017, the Revenue did not file any application for rectification till 6th March, 2017. If the Revenue is seriously interested in prosecuting rectification application, they ought to have expedited the filing of the application before the Tribunal, with a request to it for early hearing. This is particularly so, as the impugned order on which rectification is sought, is dated 22nd March, 2013. Moreover, these appeals are pending for hearing since 2014 before us and have been adjourned from time to time since 27th June, 2016, when it first reached hearing.

4 In the above view, we do not accept Mr. Kotangle's request that the appeals be adjourned to 1st week of May, 2017. We adjourn the consideration of these appeals to 17th April, 2017. We expect the Revenue to atleast now expedite the hearing of its application for rectification, and obtain orders from the Tribunal, before the next date.”

18. When the Appeal was placed thereafter, this Court was repeatedly informed that the rectification application will be heard by the Tribunal and appropriate orders will be passed. Therefore, the hearing of these Appeals be adjourned. We refused such an adjournment on 27th April, 2017. That is how we have heard both sides at some length.

19. We are not impressed by the arguments of the learned Additional Solicitor General. The Tribunal has decided, as is apparent from the record, the Appeals of the assessee pertaining to the Assessment Years 2007-08, 2008-09 and 2009-10. These Appeals were directed against the order of the learned Commissioner of Income Tax (Appeals) dated 27th October, 2011. The representatives of both sides, by consent, stated that there are 67 appeals pertaining to 52 different assessee, including the one before the Tribunal, which have been decided on identical facts. The issues are also common. That is how the Tribunal clubbed all the appeals together for the convenience sake.

20. The Tribunal noted the grounds of Appeal. It also noted the

facts pertaining to the search and seizure action under Section 132 and the statement of Dilip Dherai. The Tribunal noted the fact that the entire land acquisition was looked after by Central Leadership Team of which Mr. Dilip Dherai, Mr. Anand Jain, Mr. Sanjay Punkhia and Mr. Ajit Warthy are key members. The Tribunal also referred to the seized documents. The Tribunal then referred to the order passed by the Commissioner of Income Tax (Appeals). Then the Tribunal noted the arguments of both sides. These arguments were noted in great details. Then, the Tribunal, in paragraph 18 and 19, held as under :

“18. Thus it is clear that before issuing notice u/s. 153C, the primary condition has to be fulfilled and which is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken u/s. 153C of the Act. The seized documents marked as page 1 & 2 or our order do not belong to the assessee but were seized from the residential premises of Shri Dilip Dherai. It is not the case of the Revenue that the impugned documents are in the handwriting of the assessee. At this stage, it would be fair to the Revenue that it cannot be in the handwriting of the assessee since the assessee is a legal person, so to extend our observation, the seized documents are not even in the handwriting of any person related with the assessee because Shri Dilip Dherai is neither a Director nor a shareholder/member nor even an employee of the assessee company. We may mention at this stage that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the Income Tax Act, but the broad principles of law of evidence do apply to such proceedings. Further an entry in the books of account maintained in the regular course of business is relevant for the purpose of considering the nature

and impact of a transaction, but noting on slip of papers or loose sheet of papers are required to be supported/ corroborated by other evidence. There is also a distinction between loose papers found from the possession of assessee and similar documents found from a third person. In the present case, impugned documents were not found from the possession of the assessee but was found from the possession of a third person i.e. Shri Dilip Dherai. Mere mention of the names of the villages where the companies may have purchased lands would not give any basis to assume/presume/surmise that the name of the companies are mentioned in the impugned documents. The very foundation of Sec. 153C has been shaken by not fulfilling the condition precedent for the issue of notice. It is the say of the Ld DR that in the present case there is no need for recording of the satisfaction. If this plea of the DR is accepted then the legislative intent of inserting sec. 153C in the Act would get defeated because the AO will get unstoppable powers to reopen assessments for 6 year in the case of the ' Other Person ' without recording any basis [satisfaction] for his action. Therefore this plea of the Ld DR cannot be accepted.

19. Considering the entire facts and circumstances in the light of the impugned seized documents, we have no hesitation to hold that action taken u/s. 153C of the Act is bad in law.”

21. Thereafter, in paragraph 20, the Tribunal considered the merits and once again, at great length. The particular argument revolving around the statement of Dilip Dherai and his answer to question No. 24 was also considered in paragraph 21 of the impugned order. Then, in paragraph 22, the Tribunal refers to the additions made under Section 69C. After reproducing Section 69C and adverting to the fact that Dilip Dherai has retracted his statement, the Tribunal arrived at the conclusion that merely on

the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made. The concurrent findings of fact would demonstrate that the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied. This is not a case of 'no explanation'. Rather, the Tribunal concluded that the allegations made by the authorities are not supported by actual cash passing hands. The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are transferred from one side to another. In that regard, the Tribunal found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands. It is in these circumstances that the Tribunal found that on both counts, namely, the legal issue, as also merits, the additions cannot be sustained. Eventually, the Tribunal held in paragraph 25 (page 188) as under:

“25. A perusal of the balance sheet of the assessee show that the authorized, issued and subscribed paid up capital is at Rs. One lakh and the assessee had not done any business during the year under consideration. With such a small corpus and no

business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of account. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee. In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s. 69C of the Act to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained.”

22. We do not think that this case is any different from the one considered by the Division Bench in the case of M/s. Arpit Land Pvt. Ltd. and M/s. Ambit Reality Pvt. Ltd. The Assessment Year in the case of M/s. Arpit Land Pvt. Ltd. was 2008-09 and in the case of M/s. Ambit Reality Pvt. Ltd., it was 2007-08. The controversy was identical. The Division Bench, having concluded that no substantial question of law arises for consideration in the Appeals by the Revenue in the case of identical land transactions of two assesseees involved in Income Tax Appeal Nos. 83 of 2014 and 150 of 2014, then, a different conclusion is not possible. We do not think that the shift in the stand of the Revenue carries its case any further. We are of the opinion that the Revenue has rightly been

faulted for its approach by the Tribunal. The above are pure findings of fact and consistent with the material placed on record. Thus, the jurisdiction and vesting in the Assessing Officer could have been exercised and the satisfaction in that regard was enough, are not matters which can be decided in the further appellate jurisdiction of this Court. It is not possible for us to re-appraise and re-appreciate the factual findings. The finding that Section 153C was not attracted and its invocation was bad in law is not based just on an interpretation of Section 153C but after holding that the ingredients of the same were not satisfied in the present case. That is an exercise carried out by the Tribunal as a last fact finding authority. Therefore, the finding is a mixed one. There is no substantial question of law arising from such an order and which alternatively considers the merits of the case as well.

23. As a result of the above conclusion, we cannot agree with the learned Additional Solicitor General that we can pass a different order and entertain these Appeals for the current year of the search, namely, the Assessment Year 2009-10. That was based on the argument that the action under Section 153C for this year is an

incorrect conclusion. All the earlier orders in these Appeals having being noted by us, we have no hesitation in concluding that despite sufficient opportunity being given to the Revenue, it has not been able to satisfy this Court that a different view can be taken.

24. As a result of the above discussion, and when it is conceded that all these Appeals involve identical issue and challenge, we proceed to dismiss them but without any orders as costs.

(PRAKASH D. NAIK, J.)

(S. C. DHARMADHIKARI, J.)

