REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 911 OF 2022
(@ SLP (C) NO. 29096 OF 2019)

Income Tax Officer **…Appellant(s)**

Versus

Vikram Sujitkumar Bhatia **…Respondent(s)**

With

CIVIL APPEAL NO. 912 OF 2022
(@ SLP (C) NO. 29109 OF 2019)

CIVIL APPEAL NO. 913 OF 2022
(@ SLP (C) NO. 29115 OF 2019)

CIVIL APPEAL NO. 914 OF 2022
(@ SLP (C) NO. 29116 OF 2019)

CIVIL APPEAL NO. 915 OF 2022
(@ SLP (C) NO. 29118 OF 2019)

CIVIL APPEAL NO. 916 OF 2022
(@ SLP (C) NO. 29119 OF 2019)

CIVIL APPEAL NO. 917 OF 2022
(@ SLP (C) NO. 29120 OF 2019)

CIVIL APPEAL NO. 918 OF 2022
(@ SLP (C) NO. 29121 OF 2019)

CIVIL APPEAL NO. 919 OF 2022
(@ SLP (C) NO. 29122 OF 2019)

CIVIL APPEAL NO. 920 OF 2022
(@ SLP (C) NO. 29123 OF 2019)

CIVIL APPEAL NO. 921 OF 2022
(@ SLP (C) NO. 29124 OF 2019)

CIVIL APPEAL NO. 922 OF 2022
(@ SLP (C) NO. 29126 OF 2019)

CIVIL APPEAL NO. 923 OF 2022
(@ SLP (C) NO. 29128 OF 2019)

CIVIL APPEAL NO. 924 OF 2022
(@ SLP (C) NO. 29129 OF 2019)

CIVIL APPEAL NO. 925 OF 2022
(@ SLP (C) NO. 29130 OF 2019)

CIVIL APPEAL NO. 926 OF 2022
(@ SLP (C) NO. 29131 OF 2019)

CIVIL APPEAL NO. 927 OF 2022
(@ SLP (C) NO. 29132 OF 2019)

CIVIL APPEAL NO. 928 OF 2022
(@ SLP (C) NO. 29133 OF 2019)

CIVIL APPEAL NO. 929 OF 2022
(@ SLP (C) NO. 29134 OF 2019)

CIVIL APPEAL NO. 930 OF 2022
(@ SLP (C) NO. 29879 OF 2019)

CIVIL APPEAL NO. 931 OF 2022
(@ SLP (C) NO. 29880 OF 2019)

CIVIL APPEAL NO. 932 OF 2022
(@ SLP (C) NO. 29881 OF 2019)

CIVIL APPEAL NO. 933 OF 2022
(@ SLP (C) NO. 29882 OF 2019)

CIVIL APPEAL NO. 934 OF 2022
(@ SLP (C) NO. 29883 OF 2019)

CIVIL APPEAL NO. 935 OF 2022
(@ SLP (C) NO. 30535 OF 2019)

CIVIL APPEAL NO. 936 OF 2022
(@ SLP (C) NO. 30539 OF 2019)

CIVIL APPEAL NO. 937 OF 2022
(@ SLP (C) NO. 30542 OF 2019)

CIVIL APPEAL NO. 938 OF 2022
(@ SLP (C) NO. 30548 OF 2019)

CIVIL APPEAL NO. 939 OF 2022
(@ SLP (C) NO. 30549 OF 2019)

CIVIL APPEAL NO. 940 OF 2022
(@ SLP (C) NO. 30550 OF 2019)

CIVIL APPEAL NO. 941 OF 2022
(@ SLP (C) NO. 30551 OF 2019)

CIVIL APPEAL NO. 942 OF 2022
(@ SLP (C) NO. 486 OF 2020)

CIVIL APPEAL NO. 943 OF 2022
(@ SLP (C) NO. 492 OF 2020)

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(@ SLP (C) NO. 496 OF 2020)

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(@ SLP (C) NO. 499 OF 2020)

CIVIL APPEAL NO. 947 OF 2022
(@ SLP (C) NO. 504 OF 2020)

CIVIL APPEAL NO. 948 OF 2022
(@ SLP (C) NO. 505 OF 2020)

CIVIL APPEAL NO. 949 OF 2022
(@ SLP (C) NO. 526 OF 2020)

CIVIL APPEAL NO. 950 OF 2022
(@ SLP (C) NO. 527 OF 2020)

CIVIL APPEAL NO. 951 OF 2022
(@ SLP (C) NO. 528 OF 2020)

CIVIL APPEAL NO. 952 OF 2022
(@ SLP (C) NO. 529 OF 2020)

CIVIL APPEAL NO. 953 OF 2022
(@ SLP (C) NO. 530 OF 2020)

CIVIL APPEAL NO. 954 OF 2022
(@ SLP (C) NO. 531 OF 2020)

CIVIL APPEAL NO. 955 OF 2022
(@ SLP (C) NO. 536 OF 2020)

CIVIL APPEAL NO. 956 OF 2022
(@ SLP (C) NO. 537 OF 2020)

CIVIL APPEAL NO. 957 OF 2022
(@ SLP (C) NO. 538 OF 2020)

CIVIL APPEAL NO. 958 OF 2022
(@ SLP (C) NO. 618 OF 2020)

CIVIL APPEAL NO. 959 OF 2022
(@ SLP (C) NO. 621 OF 2020)

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(@ SLP (C) NO. 622 OF 2020)

CIVIL APPEAL NO. 961 OF 2022
(@ SLP (C) NO. 624 OF 2020)

CIVIL APPEAL NO. 962 OF 2022
(@ SLP (C) NO. 689 OF 2020)

CIVIL APPEAL NO. 963 OF 2022
(@ SLP (C) NO. 819 OF 2020)

CIVIL APPEAL NO. 964 OF 2022
(@ SLP (C) NO. 884 OF 2020)

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(@ SLP (C) NO. 897 OF 2020)

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(@ SLP (C) NO. 898 OF 2020)

CIVIL APPEAL NO. 969 OF 2022
(@ SLP (C) NO. 899 OF 2020)

CIVIL APPEAL NO. 970 OF 2022
(@ SLP (C) NO. 900 OF 2020)

CIVIL APPEAL NO. 971 OF 2022
(@ SLP (C) NO. 1038 OF 2020)

CIVIL APPEAL NO. 972 OF 2022
(@ SLP (C) NO. 2006 OF 2020)

CIVIL APPEAL NO. 973 OF 2022
(@ SLP (C) NO. 2007 OF 2020)

CIVIL APPEAL NO. 974 OF 2022
(@ SLP (C) NO. 2009 OF 2020)

CIVIL APPEAL NO. 975 OF 2022
(@ SLP (C) NO. 2010 OF 2020)

CIVIL APPEAL NO. 976 OF 2022
(@ SLP (C) NO. 2012 OF 2020)

CIVIL APPEAL NO. 977 OF 2022
(@ SLP (C) NO. 2652 OF 2020)

CIVIL APPEAL NO. 978 OF 2022
(@ SLP (C) NO. 2653 OF 2020)

CIVIL APPEAL NO. 979 OF 2022
(@ SLP (C) NO. 2669 OF 2020)

CIVIL APPEAL NO. 980 OF 2022
(@ SLP (C) NO. 3002 OF 2020)

CIVIL APPEAL NO. 981 OF 2022
(@ SLP (C) NO. 3443 OF 2020)

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CIVIL APPEAL NO. 986 OF 2022
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CIVIL APPEAL NO. 987 OF 2022
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(@ SLP (C) NO. 4295 OF 2020)

CIVIL APPEAL NO. 995 OF 2022
(@ SLP (C) NO. 4368 OF 2020)

CIVIL APPEAL NO. 996 OF 2022
(@ SLP (C) NO. 4380 OF 2020)

CIVIL APPEAL NO. 997 OF 2022
(@ SLP (C) NO. 4580 OF 2020)

CIVIL APPEAL NO. 998 OF 2022
(@ SLP (C) NO. 4633 OF 2020)

CIVIL APPEAL NO. 999 OF 2022
(@ SLP (C) NO. 4634 OF 2020)

CIVIL APPEAL NO. 1000 OF 2022
(@ SLP (C) NO. 4637 OF 2020)

CIVIL APPEAL NO. 1001 OF 2022
(@ SLP (C) NO. 4642 OF 2020)

CIVIL APPEAL NO. 1002 OF 2022
(@ SLP (C) NO. 4939 OF 2020)

CIVIL APPEAL NO. 1003 OF 2022
(@ SLP (C) NO. 5113 OF 2020)

CIVIL APPEAL NO. 1004 OF 2022
(@ SLP (C) NO. 5141 OF 2020)

CIVIL APPEAL NO. 1005 OF 2022
(@ SLP (C) NO. 5310 OF 2020)

CIVIL APPEAL NO. 1006 OF 2022
(@ SLP (C) NO. 5311 OF 2020)

CIVIL APPEAL NO. 1007 OF 2022
(@ SLP (C) NO. 6531 OF 2020)

CIVIL APPEAL NO. 1008 OF 2022
(@ SLP (C) NO. 6670 OF 2020)

CIVIL APPEAL NO. 1009 OF 2022
(@ SLP (C) NO. 6880 OF 2020)

CIVIL APPEAL NO. 1010 OF 2022
(@ SLP (C) NO. 7080 OF 2020)

CIVIL APPEAL NO. 1011 OF 2022
(@ SLP (C) NO. 7776 OF 2020)

CIVIL APPEAL NO. 1012 OF 2022
(@ SLP (C) NO. 7777 OF 2020)

CIVIL APPEAL NO. 1013 OF 2022
(@ SLP (C) NO. 7778 OF 2020)

CIVIL APPEAL NO. 1014 OF 2022
(@ SLP (C) NO. 7892 OF 2020)

CIVIL APPEAL NO. 1015 OF 2022
(@ SLP (C) NO. 7893 OF 2020)

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(@ SLP (C) NO. 7894 OF 2020)

CIVIL APPEAL NO. 1017 OF 2022
(@ SLP (C) NO. 7895 OF 2020)

CIVIL APPEAL NO. 1018 OF 2022
(@ SLP (C) NO. 12286 OF 2020)

CIVIL APPEAL NO. 1019 OF 2022
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CIVIL APPEAL NO. 1020 OF 2022
(@ SLP (C) NO. 12296 OF 2020)

CIVIL APPEAL NO. 1021 OF 2022
(@ SLP (C) NO. 12304 OF 2020)

CIVIL APPEAL NO. 1022 OF 2022
(@ SLP (C) NO. 14049 OF 2020)

CIVIL APPEAL NO. 1023 OF 2022
(@ SLP (C) NO. 15107 OF 2020)

CIVIL APPEAL NO. 1024 OF 2022
(@ SLP (C) NO. 15108 OF 2020)

CIVIL APPEAL NO. 1025 OF 2022
(@ SLP (C) NO. 15109 OF 2020)

AND

CIVIL APPEAL NO. 1026 OF 2022
(@ SLP (C) NO. 15568 OF 2020)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 02.04.2019 passed by the High Court of Gujarat in Special Civil Application No. 18777 of 2018 and other connected matters, as well as the impugned judgment(s) and order(s) passed by the High Court of Gujarat in other special civil applications relying upon its earlier decision in the aforesaid case, whereby the High Court has quashed the notice under Section 153C of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") issued to the

respondent – assessee - respondents herein and set aside consequent Assessment Orders (where assessment stood completed) by holding that Section 153C of the Act, 1961 (as amended by Finance Act, 2015) would not apply to searches under Section 132 of the Act, 1961 initiated before the date of amendment, the Revenue has preferred the present appeals.

2. At the outset, it is required to be noted that the question of law that arises for the consideration of this Court is :-

> Whether amendment brought to Section 153C of the Income Tax Act, 1961 *vide* Finance Act, 2015 would be applicable to searches conducted under Section 132 of the Act, 1961 before 01.06.2015, i.e., the date of amendment?

3. For the sake of convenience, the Civil Appeal arising out of the impugned judgment and order passed by the High Court in Special Civil Application No. 12825 of 2018 is considered and treated as the lead matter and the facts in the said writ petition are narrated, which in nutshell are as under:-

3.1 The original writ petitioner, an individual filed his Return of Income for the Assessment Year (A.Y.) 2012-13 on 11.09.2012 declaring total income of Rs. 44,73,820/- as business income from a partnership firm and other income. A search came to be conducted on various premises of H.N. Safal Group on 04.09.2013. A panchnama came to be prepared on 07.09.2013. On the basis of the seized material, the Assessing Officer initiated proceedings against the assessee under Section 153C of the Act, 1961 by issuing a notice dated 08.02.2018.

3.2 The assessee filed his reply dated 01.05.2018 and also submitted his return of income. *Vide* letter dated 14.5.2018, the Assessing Officer furnished the satisfaction note recorded by him and also attached therewith the satisfaction of the Assessing Officer of the searched person. From the satisfaction recorded, though it was found that no document belonging to the original writ petitioner - assessee was found during the course of search, however, a hard-disk was seized, which contained an excel sheet with the data of the computer of the searched person, wherein there were references to the petitioner's name. On receiving the details, the original

writ petitioner raised objections to the proceedings under Section 153C of the Act, 1961 contending, *inter alia*, that on the basis of the excel sheet data of the computer of the searched person wherein there were only references to the original writ petitioner's name, the Assessing Officer could not have initiated proceedings against him under Section 153C of the Act, 1961, inasmuch as the condition precedent for invoking Section 153C of the Act as it stood on the date of the search, namely, that the Assessing Officer should be satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned "belongs or belong to" the person other than the searched person, was not satisfied. It was also contended that for the purpose of initiating action under Section 153C of the Act, 1961, independent satisfaction has to be recorded, by the Assessing Officer of the searched person as well as by the Assessing Officer of the person other than the searched person. It was submitted that, however, on a perusal of the satisfaction note recorded by the Assessing Officer of the original writ petitioner, it was evident that the Assessing Officer had merely reproduced the satisfaction of the Assessing Officer of the searched person and had

not recorded the requisite satisfaction as contemplated under Section 153C of the Act, 1961.

3.3 The Assessing Officer by an order dated 23.07.2018 rejected the objections. Feeling aggrieved and dissatisfied with the rejection of the objections against initiation of proceedings under Section 153C of the Act, 1961, the original writ petitioner filed the present writ petition before the High Court.

3.4 Similar notices under Section 153C of the Act, 1961 were challenged by other persons – persons other than the searched persons by way of different writ petitions. In the cases of some of the writ petitioners, on the basis of the proceedings under Section 153C of the Act, 1961, the assessments were completed, which were also permitted to be challenged as the question involved was common.

3.5 By the impugned judgment and order though the High Court has observed that Section 153C of the Act, 1961 is a machinery provision for assessment of income of a person other than the person searched; Section 153C of the Act as amended w.e.f. 01.06.2015 by Finance Act, 2015 shall not be made applicable with respect to the searches conducted prior to 01.06.2015. The High Court

has further observed that by amendment brought in Section 153C of the Act, 1961 by Finance, Act, 2015 w.e.f. 01.06.2015, a new class of assesses are sought to be brought within the sweep of Section 153C of the Act, which affects the substantive rights of the assessees and, therefore, cannot be said to be a mere change in the procedure. The High Court has also observed that since the amendment expands the scope of Section 153C of the Act, 1961 by bringing in an assessee if books of account or documents pertaining to him or containing information relating to him have been seized during the course of search, within the fold of that section, this question assumes significance, inasmuch as in the facts of the present case, as on the date of search, it was only if such material belonged to a person other than the searched person, that the Assessing Officer of the searched person could record such satisfaction and forward the material to the Assessing Officer of such other person. However, subsequent to the date of search, the amendment has been brought into force and based on the amendment, the petitioners who were not included within the ambit of Section 153C of the Act, 1961 as on the date of the search, are now sought to be brought within its fold on the ground that the satisfaction note and notice under Section

153C of the Act, 1961 have been issued after the amendment came into force. Therefore, by observing that the amended Section 153C of the Act, 1961, shall not be made applicable retrospectively and therefore, no notice could have been issued under Section 153C of the Act, 1961 post-amendment with respect to the searches conducted prior to 01.06.2015, by the impugned common judgment and order, the High Court has allowed the writ petitions and set aside the notice as well as the respective assessment orders. The impugned common judgment and order passed by the High Court is the subject matter of present appeals.

4. Shri K.M. Nataraj, learned ASG appearing on behalf of the Revenue has vehemently submitted that while passing the impugned common judgment and order and quashing and setting aside the notice under Section 153C of the Act, 1961 issued against the original writ petitioners – the persons other than the searched persons, the High Court has not properly appreciated and considered the object and purpose, which necessitated the amendment in Section 153C of the Act, 1961. He has taken us to the Section 153C of the Act, 1961 as it stood before the amendment *vide* Finance Act, 2015 and Section 153C

after being amended by the Finance Act, 2015, which read as under:-

> "Section 153C as it stood before the amendment vide Finance Act, 2015 read as:-
>
> **153-C. Assessment of income of any other person.—**(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in Section 153-A, then, the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A,
>
> Provided that in case of such other person, the reference to the date of initiation of the search under Section

132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section

132-A and in respect of such assessment year—

(a) no return of income has been furnished by such other person but no notice under sub-section (2) of Section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of Section 143 has been served and limitation of serving the notice under sub-section (2) of Section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in Section 153-A."

Section 153C of the act after being amended by Finance Act, 2015 reads thus:-

153-C. Assessment of income of any other person.—(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that,—

> (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
>
> (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in Section 153-A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of Section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six

assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of Section 153-A:

Provided that in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of

Section 153-A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section 132-A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of Section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of Section 143 has been served and limitation of serving the notice under sub-section (2) of Section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

> before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in Section 153-A."

4.1 It is submitted by Shri Nataraj, learned ASG that the amendment in Section 153C was necessitated in view of the observation of the Delhi High Court in the case of **Pepsico India Holdings Private Limited Vs. Assistant Commissioner of Income Tax, 2014 SCC OnLine Del 4155** whereby the High Court has observed that the words "belongs or belong to" should not be confused with the words 'relates to or refers to,' the former being much narrower than the latter. It is submitted that it was held that therefore, the provision could not have been invoked unless the documents / material 'belong to' the third party (other than the searched person). That in such a situation, where though incriminating material pertaining to a third party was found during search proceedings under Section 132, the Revenue could not proceed against such third party in view of the observations of the

Delhi High Court. Therefore, as such, the said observation of the Delhi High Court was coming in the way of suppressing the very mischief which the legislature intended to suppress. That therefore, *vide* Finance Act, 2015, w.e.f. 01.06.2015, Section 153C has been amended by way of substitution to replace the words "belongs or belong to" with the words "pertains or pertain to" insofar as books of account and documents are concerned.

4.2 It is further submitted that there is a difference between the words or phrases "belongs or belong to" and "pertains or pertain to". It is submitted that the words "pertains or pertain to" are of much wider import than "belongs or belong to". That, therefore, the legislature has expanded the scope of operation of Section 153C to include the situation where during search proceedings under Section 132 of the Act, 1961, if incriminating documents / materials pertaining to a third party are found, the Revenue can proceed against such third party.

4.3 It is next submitted by Shri Nataraj, learned ASG appearing on behalf of the Revenue that while interpreting the amendment to Section 153C by Finance Act, 2015, the following principles / tests need to be kept in mind:-

(i) effect of amendment by substitution;

(ii) legislative intent;

(iii) Section 153C of the Act, 1961 is a machinery provision;

(iv) interpretation which makes the statute or a part of it a “dead letter” to be avoided;

(v) power to legislate includes power to legislate retrospectively.

4.4 Elaborating the above, it is submitted that so far as the effect of amendment to Section 153C is concerned, Section 153C has been amended by way of “substitution”, *vide* Finance Act, 2015, w.e.f. 01.06.2015 whereby the words "belongs or belong to" have been substituted by "pertains or pertain to". That it is a well settled principle of interpretation that any amendment made by way of substitution relates back to the date of the Parent Act. Reliance is placed on the decision of this Court in the case of **Shamrao V. Parulekar Vs. District Magistrate**, **(1952) 2 SCC 1 : 1952 SCR 683**. That in the said decision, it is observed and held that an amendment by substitution has the effect of wiping out the earlier provision from the statute book and replacing it with the amended provision as if the unamended provision never existed. Therefore, the statute, which in this case is

Section 153C of the Act, 1961 would have to be read as if the amended provision existed from the very inception. Shri Nataraj, learned ASG has also placed reliance on the decision of this Court in the case of **Zile Singh Vs. State of Haryana, (2004) 8 SCC 1** (paras 24 and 25).

4.5 It is contended that even while interpreting the amendment to Section 153C by Finance Act, 2015, the legislative intent behind the amendment is required to be considered. That while interpreting a statute the Court must bear in mind the intention with which the legislation was passed and the mischief it sought to suppress. That the interpretation which best expresses the intention of the legislature should be preferred. That in the present case, the intention of the legislature was to bring within the scope of Section 153C those persons against whom incriminating material is found at another person's premises during the search proceedings under Section 132. That, however, the narrow scope given to the words "belongs or belong to" frustrated this purpose and, therefore, the amendment was necessitated. It is submitted that bearing the said legislative intent and the mischief sought to be suppressed in mind, any interpretation other than that the amended Section 153C will apply to all pending and future proceedings,

irrespective of whether the search under Section 132 of the Act, 1961 was before or after the amendment, would fail to advance the object of the legislation. In support of the above submission, Shri Nataraj, learned ASG has relied upon the decisions of this Court in the cases of **Zile Singh (supra)** (paras 14, 15, 18 and 20) and **Girdhari Lal & Sons Vs. Balbir Nath Mathur, (1986) 2 SCC 237**.

4.6 Relying upon above two decisions, it is contended that the object and purpose of the amendment to remove the mischief and defect for which the amendment was necessitated is required to be considered and borne in mind. That as observed and held that once the Parliament's intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the Court to give the statute a purposeful or a functional interpretation.

4.7 It is further contended by Shri Nataraj, learned ASG that Section 153C of the Act, 1961 is a machinery provision. He submitted that the High Court in the impugned judgment and order has also observed that Section 153C is a machinery provisions. While interpreting a machinery provision of a taxing statute, it is the duty of the Court to give effect to its manifest purpose.

The interpretation that defeats the purpose of the statute should be avoided. That despite the observation by the High Court that Section 153C of the Act, 1961 is a machinery provision, the High Court has failed to give effect to the object behind it. Reliance is placed on the decision of this Court in the case of **Commissioner of Income Tax - III Vs. Calcutta Knitwears, Ludhiana (2014) 6 SCC 444** (paras 32 and 34).

4.8 It is next submitted by Shri Nataraj, learned ASG that as per the settled position of law, the statute must be read as a whole and any interpretation which makes the statute or a part of it a “dead letter” has to be avoided. That the construction adopted shall be in consonance with other provisions of the statute. That as per the settled law, the courts should endeavour to harmonise statutes in conflict. One provision cannot be used to defeat the object and purpose of another. It is submitted that in this background, a perusal of Section 153C would show that if the contention of the respondents that the amended Section 153C would not be applicable to searches conducted before the amendment is accepted, then the purpose behind the words "if that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the

determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A" would be defeated. That it is always presumed that the legislature would not take away with one hand what it gives with the other. In support of the above, reliance is placed on the decision of this Court in the case of **Commissioner of Income Tax Vs. Hindustan Bulk Carriers, (2003) 3 SCC 57** (paras 17 to 21).

4.9 It is submitted that even otherwise the power to legislate includes the power to legislate retrospectively. That it is well settled that the legislature is well competent to legislate retrospectively. That though, retrospectivity of an enactment may not be presumed, the same can be done through express enactment or by necessary implication. Therefore, if the legislature is competent and the intention of the legislature to expand the scope of the statute can be gathered, whether expressly or by necessary implication, the same shall be given effect to. In support of the above submission, reliance is placed on the decision of this Court in the case of **Government of**

Andhra Pradesh Vs. Hindustan Machine Tools Ltd., (1975) 2 SCC 274 (para 10) and **Lily Thomas Vs. Union of India (2013) 7 SCC 653** (para 21).

4.10 It is further submitted by Shri Nataraj, learned ASG that the High Court has erred in holding that the respondents have a "vested right" and the amendment to Section 153C of the Act, 1961 affects such vested substantive right of the respondents. That no such substantive rights are vested in the respondents. Once the conditions enumerated in Section 153C are satisfied, no liability is fastened *ipso facto*. It is submitted that the authorities issued a show cause notice and thereafter proceedings were initiated in accordance with law. Therefore, the High Court has erred in quashing the proceedings at the initial stage of show cause notice by holding that substantive rights of the respondents are affected.

4.11 Making above submissions, it is vehemently submitted that the High Court has committed a grave error in holding that Section 153C as amended by the Finance Act, 2015 w.e.f. 01.06.2015, though a machinery provision, will only apply to search proceedings initiated after the amendment in Section 153C.

4.12 Making above submissions, it is prayed that the present appeals be allowed and the impugned common judgment and order passed by the High Court be quashed and set aside.

5. While opposing the present appeals, the counsel appearing on behalf of the respective assessees have vehemently submitted that the controversy in the present group of appeals is with respect to the point of applicability of the extant law in search cases, i.e., whether Section 153C of the Act, 1961 as amended with effect from 01.06.2015 would be applicable to cases where search is initiated prior to that date.

5.1 It is submitted that the issue has arisen because with effect from 01.06.2015, i.e., after the date of the search, but before the issuance of Section 153C notice, the law has been amended *vide* the Finance Act, 2015 to expand the scope of third parties covered by the search to include a new set of assessees. It is submitted that on the basis of this amendment, notices under Section 153C of the Act, 1961 were issued to assessees, who were not included within the scope of the provision as it stood on the date of the search.

5.2 It is further submitted on behalf of the respective assessees that it is the case on behalf of the Department that as Section 153C of the Act, 1961 is a procedural and machinery provision, the amendment, though made with effect from 01.06.2015, is retrospective and, thus, applicable to the cases where search was conducted prior to amendment but the notices under Section 153C of the Act, 1961 have been issued after the amendment. It is also submitted on behalf of the Department that the amendment does not take away vested rights, and hence can be applied retrospectively. It is further contended on behalf of the Department that the date of the search is not relevant to Section 153C of the Act, 1961 and the amended provision would apply as both the satisfaction note and assumption of jurisdiction were post 01.06.2015. In relation to the aforesaid contentions of the Department, it is submitted on behalf of the respective assessees that a machinery provision that affects substantive rights cannot be held to be retrospective. That though Section 153C of the Act, 1961 is a machinery provision, the amendment cannot be held to be retrospective.

5.3 It is next submitted that as rightly observed by the High Court though the provisions are machinery

provisions, the amendment brings into its fold persons not otherwise covered and hence affects the substantive rights and, therefore, cannot be made applicable retrospectively. In support of their submission that the amendment to Section 153C by Finance Act, 2015 shall not be made applicable retrospectively and with respect to the search carried out prior to 01.06.2015, reliance is placed on the decision of this Court in the case of **Controller of Estate Duty Vs. M.A. Merchant, 1989 Supp (1) SCC 499**. It is submitted that in the said decision, this Court had refused to interfere with the vested rights by allowing reopening of an assessment completed prior to the date w.e.f. which the new section in the Estate Duty Act came into force.

5.4 It is contended that in the present case, the amendment to Section 153C by Finance Act, 2015 brings into the fold of Section 153C of the Act, 1961, assessees, who were not so far covered by it, i.e., persons to whom books of account/documents pertain or relate to, and not just persons to whom it belong. That this widening, thus, affects substantive rights, as new assessees may now be proceeded against and hence the decision of this Court in the case of **M.A. Merchant (supra)** has rightly been applied by the High Court.

5.5 It is further contended that it is well settled that even procedural laws grant substantive rights and amendments affecting such rights have been held to be prospective. That reopening has been held to be a question of power and not procedure as observed and held by this Court in the case of **State of Tamil Nadu Vs. Star Tobacco Co., (1974) 3 SCC 249.**

5.6 It is next contended that the amendment to Section 153C of the Act, 1961 has added a new class of assessees and not merely changed the procedure for the existing assessees, hence it cannot be given retrospective effect. That the High Court has specifically observed and held that the amendment to Section 153C of the Act, 1961 is not merely a change in procedure provision affecting the assessees already covered. A new class of assessees are sought to be brought under Section 153C of the Act, 1961, which affects the substantive rights of the assessees. Subsequent to the date of the search, the assessees, who were not included within the ambit of Section 153C of the Act, 1961 as on the date of the search are now sought to be brought within its fold.

5.7 It is submitted that before 01.06.2015, the Assessing Officer could have only recorded satisfaction as to whether the seized material belongs to the other person. That in the present case, since the hard disk, which was found from the searched persons, did not belong to the respondents, on the date of the search, therefore, the jurisdiction under Section 153C of the Act did not exist. It is submitted that as rightly observed by the High Court that if on the date of the search in 2013, the material were forwarded by the Assessing Officer of the searched person on the basis that it belongs to the respondents - assessees, challenge against issue of notice under Section 153C of the Act, 1961 would have been successful, as the material does not actually 'belong' to the respondent. That moreover, having once formed a satisfaction and forwarded the material, there is no question of the Assessing Officer of the searched person once again forming a satisfaction on the basis of the amended provision. Thus, Section 153C of the Act, 1961 as it stood then, did not permit any action against the respondent, as admittedly the hard disk belonged to the searched person. Hence, the Assessing Officer could not have invoked Section 153C of the Act, 1961 at all.

5.8 It is further submitted that the amended Section 153C of the Act, 1961 deals with both procedural and substantive rights, therefore, the prospective rule of construction shall be applicable. That as observed and held by this Court in the case of **Zile Singh (supra)**, it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. The rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. It is submitted that unless there are words in the statute, which are sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only. That the date of search is the relevant date, which has to be taken into consideration for applying the amendment. The same is supported by the CBDT Circular No. 2/2018 dated 15.02.2018 wherein Section 153A was amended with effect from 01.04.2017. That Para 80.5 of the Circular clearly states that the amended provisions of Section 153A shall apply where search under Section 132 of the Act, 1961 is initiated or requisition under Section 132A has been made on or after 01.04.2017. It is submitted that while Section 153A was introduced by Finance Act, 2003,

the legislature considered the dates of search and specified that the provision is applicable to search actions conducted after 31.05.2003. Therefore, Sections 153A and 153C are to be read together and the relevant date ought to be the date of search as clarified by Finance Act, 2003.

5.9 It is further submitted on behalf of the assessees that even the satisfaction has not been recorded immediately. That the searched person had filed application before the Settlement Commission on 30.01.2015 and accepted receipt of money on the basis of hard disk from petitioners. The copy of the settlement application is required to be given to Assessing Officer. Accordingly, Assessing Officer of the searched person would have information regarding alleged money payment by petitioners on 30.01.2015, if not before, whereas, documents were transferred on 25.04.2017. Hence, the documents were transferred after 2 years and 3 months after the knowledge about facts, on the basis of which Section 153C proceedings are initiated. It is submitted that the same is not permissible considering the decision of this Court in the case of **Calcutta Knitwears, Ludhiana (supra)**.

5.10 Learned counsel appearing on behalf of the assesses in Civil Appeal Nos. 1019, 997, 1016, 1021 and 1023 of 2022 has in addition to the above, further submitted that before the High Court, the respondents – original writ petitioners had raised various grounds for holding that the notices issued under Section 153C were bad and illegal. That, however, the High Court has followed the decision in Special Civil Application No. 12825 of 2018 and others and has allowed the writ petitions by deciding only one question in favour of the petitioners and the remaining issues are left undecided. It is submitted that, therefore, if this Hon'ble Court is to allow the appeals by the Revenue, the matters may be sent back to the High Court for deciding the validity of the notices and other issues that were originally left undecided.

5.11 Making the above submissions, it is prayed by the learned counsel appearing on behalf of the respective original writ petitioners – assessees that the present appeals be dismissed.

6. We have heard the learned counsel appearing on behalf of the respective parties at length.

7. The question of law that arises for consideration of this Court is:-

> "Whether the amendment brought to Section 153C of the Income Tax Act, 1961 *vide* Finance Act, 2015 would be applicable to searches conducted under Section 132 of the Act, 1961 before 01.06.2015, i.e., the date of amendment?"

8. While considering the aforesaid question and the submissions made on behalf of the respective parties, a few facts, which are necessary for determination of the question are required to be referred to, which are as under:-

(i) That a search under Section 132 of the Act, 1961 was conducted at the various premises of one H.N. Safal Group on 04.09.2013. When the search came to be conducted, Section 153C as it stood then (pre amendment 2015) was applicable.

(ii) Section 153C as it stood then provided that "Notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents

seized or requisitioned "**belongs or belong to"** a person other than the person referred to in Section 153-A, then, the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A. It also further provided that in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

(iii) During the course of search, various incriminating material / documents were found and seized. Upon verification of such seized material, it was noticed that certain documents pertained / related to the respondent herein, who is other than the searched person. Accordingly, satisfaction to that extent was recorded by the Assessing Officer of the searched person with respect

to the respondents – assessees (other than the searched person) on 25.04.2017. That the said satisfaction note alongwith the incriminating material was forwarded to the Assessing Officer of the non-searched person on 25.04.2017. That, thereafter, the Assessing Officer of the respondents – assessees (non-searched persons) after verifying the seized material, found certain incriminating material against them and the cash entries, which were not declared in the original return filed. Accordingly, the Assessing Officer of the respondents recorded his independent satisfaction and issued notice under Section 153C on 04.05.2018.

(iv) At this stage, it is required to be noted that in the meantime, Section 153C came to be amended by Finance Act, 2015 w.e.f. 01.06.2015 and the words “belongs or belong to” came to be substituted by the words “pertains or pertain to”.

(v) Thus, at the time when the satisfaction note came to be recorded by the Assessing Officer of the searched person on 25.04.2017 as well as by the Assessing Officer of the respondents – assessees (non-searched persons) on 04.05.2018, Section 153C (as amended by Finance Act, 2015 w.e.f. 01.06.2015) became applicable. The

notice under Section 153C against the non-searched persons on the basis of the material seized during the search conducted at the various premises of H.N. Safal Group (searched person) and the assessment orders were the subject matter of appeal before the High Court.

9. In light of the aforesaid facts, the question of law, which arises for consideration of this Court is, "Whether amendment brought to Section 153C of the Income Tax Act, 1961 *vide* Finance Act, 2015 would be applicable to searches conducted under Section 132 of the Act, 1961 before 01.06.2015, i.e., the date of amendment", is required to be considered.

10. While considering the aforesaid question, the reason and the object and purpose of the amendment to Section 153C introduced *vide* Finance Act, 2015 w.e.f. 01.06.2015 is required to be considered.

10.1 As observed hereinabove, in the pre-amended Section 153C, the words used were "belongs or belong to" a person other than the searched person. In the case of **Pepsico India Holdings Private Limited (supra)**, the Delhi High Court interpreted the expression "belong to" and observed and held that there is a difference and

distinction between “belong to” and “pertain to”. It was observed and held that on the basis of the registered sale deed seized from the premises of the searched person, it cannot be said that it “belongs to” the vendor. Therefore, the High Court view gave a very narrow and restrictive meaning to the expression / word “belongs to” and held that the ingredients of Section 153C have not been satisfied. To remove the basis of the observation made by the Delhi High Court in the case of **Pepsico India Holdings Private Limited (supra)**, now, Section 153C came to be amended w.e.f. 01.06.2015 by substituting the words “belongs or belong to” with the words “pertains or pertain to” insofar as the books of account and documents are concerned. Thus, having found that the observation made by the Delhi High Court in the case of **Pepsico India Holdings Private Limited (supra)** led to a situation where, though incriminating material pertaining to third party was found during the search proceedings under Section 132, the Revenue could not proceed against the third parties, it was observed that the said observation made by the Delhi High Court in the aforesaid decision was coming in the way of suppressing the very mischief which the legislature intended to suppress, which

necessitated the amendment in Section 153C. Thus, it is a case of substitution of the words by way of amendment.

10.2 At this stage, the first proviso to Section 153C of the Act, 1961 is required to be referred to. The first proviso to Section 153C of the Act, 1961 came to be inserted *vide* Finance Act, 2005 with retrospective effect from 01.06.2003, which provides that the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as a reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. Proviso to Section 153C as inserted *vide* Finance Act, 2005 reads as under:-

> "Provided that in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."

10.3 Thus, as per the proviso to Section 153C as inserted *vide* Finance Act, 2005, and the effect of the said proviso is that it creates a deeming fiction wherein any reference made to the date of initiation of search is deemed to be a reference made to the date when the Assessing Officer of the non-searched person receives the books of account or documents or assets seized etc. Thus, in the present case, even though the search under Section 132 was initiated prior to the amendment to Section 153C w.e.f. 01.06.2015, the books of account or documents or assets were seized by the Assessing Officer of the non-searched person only on 25.04.2017, which is subsequent to the amendment, therefore, when the notice under Section 153C was issued on 04.05.2018, the provision of the law existing as on that date, i.e., the amended Section 153C shall be applicable.

10.4 As observed hereinabove, Section 153C has been amended by way of substitution whereby the words "belongs or belong to" have been substituted by the words "pertains or pertain to". As observed and held by this Court in the case of **Shamrao V. Parulekar (supra)** that amendment by substitution has the effect of wiping the earlier provision from the statute book and replacing it with the amended provision as if the unamended provision

never existed. In the subsequent decision in the case of **Zile Singh (supra)**, it is observed in paras 24 and 25 as under:-

> "**24.** The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.
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> **25.** Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P. [(2002) 2 SCC 645] , State of Rajasthan v. Mangilal Pindwal [(1996) 5 SCC 60] , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. [(1969) 1 SCC 255] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael [AIR 1963 SC 933] . In West U.P. Sugar Mills Assn. case [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the

> substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

10.5 In the said decision, in paragraphs 14, 15, 18 and 20 with respect to the presumption against retrospective operation, it is observed and held as under:-

> "**14.** The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious

omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested

as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

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18. In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [(2003) 5 SCC 23] it has been held

> that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it

runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

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20. In Bengal Immunity Co. Ltd. v. State of Bihar [(1955) 2 SCR 603 : AIR 1955 SC 661] , Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] was cited with approval. Their Lordships have said: (SCR pp. 632-33)

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] was decided that —

'… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true

> intent of the makers of the Act, pro bono publico.' "

10.6 It is the case on behalf of the Revenue that Section 153C is a machinery provision, which has been inserted with the purpose of carrying out the assessment of persons other than the searched person under Section 132 of the Act, 1961. Even, in the impugned judgment and order, the High Court has, at paragraph 19.4 recorded that Section 153C of the Act is a machinery provision. As per the settled position of law, the Courts, while interpreting machinery provisions of a taxing statute, must give effect to its manifest purpose by construing it in such a manner so as to effectuate the object and purpose of the statute. In the case of **Calcutta Knitwears, Ludhiana (supra)**, while interpreting Section 158BD (which has been replaced by Section 153C), this Court has observed in paras 18, 32 and 34 as under:-

> "**18.** Sections 158-BC and 158-BD of the Act are machinery provisions. Section 158-BC of the Act provides the procedure for block assessment and Section 158-BD of the Act provides for assessments in the case of an undisclosed income of any other person. The said sections are relevant for the purpose of this case and, therefore, they are extracted. They read as under:

"**158-BC.Procedure for block assessment.**—Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under Section 132-A, in the case of any person, then—

(a) the assessing officer shall —

(i) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997 serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997 serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of Section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under Section 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b) the assessing officer shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158-BB and the provisions of Section 142, sub-sections (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply;

(c) the assessing officer, on determination of the undisclosed income of the block period in accordance with this Chapter,

shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

(d) the assets seized under Section 132 or requisitioned under Section 132-A shall be dealt with in accordance with the provisions of Section 132-B.

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158-BD.Undisclosed income of any other person.—Where the assessing officer is satisfied that any undisclosed income belongs to any person other than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were requisitioned under Section 132-A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed under Section 158-BC against such other person and the provisions of this Chapter shall apply accordingly."

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32. It is also trite that while interpreting a machinery provision, the courts would interpret a provision in such a way that it would give meaning to the charging provisions and that the machinery provisions are liberally construed by the courts. In Mahim Patram (P) Ltd. v. Union of India [(2007) 3 SCC 668] this Court has observed that: (SCC p. 680, paras 25-26)

> "**25.** A taxing statute indisputably is to be strictly construed. (See J. Srinivasa Rao v. State of A.P. [(2006) 12 SCC 607]) It is, however, also well settled that the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, it is well settled that the court would construe the statute in such a manner so as to make the machinery workable.
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> **26.** In J. Srinivasa Rao [(2006) 12 SCC 607] this Court noticed the decisions of this

Court in Gursahai Saigal v. CIT [(1963) 48 ITR 1 (SC)] and Ispat Industries Ltd. v. Commr. of Customs [(2006) 12 SCC 583].

> '17. In Gursahai Saigal [(1963) 48 ITR 1 (SC)] the question which fell for consideration before this Court was construction of the machinery provisions vis-à-vis the charging provisions. The Schedule appended to the Motor Vehicles Act is not machinery provision. It is a part of the charging provision.
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> 18. By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be

given an appropriate meaning.'"

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34. It is the duty of the court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose. Wherever the intention to impose liability is clear, the courts ought not be hesitant in espousing a commonsense interpretation to the machinery provisions so that the charge does not fail. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same (Whitney v. IRC [1926 AC 37 (HL)] , CIT v. Mahaliram Ramjidas [(1939-40) 67 IA 239 : (1940) 52 LW 234 : (1940) 8 ITR 442] , Indian United Mills Ltd. v. Commr. of Excess Profits Tax [(1955) 27 ITR 20 (SC)] and Gursahai Saigal v. CIT [(1963) 48 ITR 1 (SC)]; CWT v. Sharvan Kumar Swarup & Sons [(1994) 6 SCC 623]; CIT v. National Taj Traders [(1980) 1 SCC 370]; Associated Cement Co. Ltd. v. CTO [(1981) 4 SCC 578]). Francis Bennion in Bennion on Statutory Interpretation, 5th Edn., Lexis Nexis in support of the aforesaid proposition put forth as an illustration that since charge

> made by the legislator in procedural provisions is excepted to be for the general benefit of litigants and others, it is presumed that it applies to pending as well as future proceedings."

10.7 In the case of **Girdhari Lal & Sons (supra)**, it is observed and held by this Court that once the primary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the Court to give the statute a purposeful or a functional interpretation. It is further observed that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. It is further observed that the ascertainment of the legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though the construction, according to the plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities. On interpretation of the statute, it is observed in paras 17 to 21 in the case of **Hindustan Bulk Carriers**

(supra) as under:-

> "**17.** If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : AIR 1992 SC 1].
>
> **18.** The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.
>
> **19.** The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must

compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : AIR 1992 SC 81].) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

10.8 Insofar as the submission on behalf of the respective respondents – assessees that by way of amendment to Section 153C by Finance Act, 2015, it brings into its fold, the assessees – persons, who were not so far covered by it and, therefore, it affects the substantive rights of the assessees and, hence, it should not be made applicable retrospectively, is concerned, the submission seems to be attractive but deserves to be rejected. As observed hereinabove, even the unamended Section 153C pertains to the assessment of income of any other person. The object and purpose of Section 153C is to address the persons other than the searched person. Even as per the unamended Section 153C, the proceeding against other persons (other than the searched person) was on the basis of the seizure of books of account or documents seized or requisitioned "belongs or belong to" a person other than the searched person. However, it appears that as in the case of **Pepsico India Holdings Private Limited (supra)**, the Delhi High Court interpreted the words "belong to" restrictively and/or narrowly and which led to a situation where, though incriminating material pertaining to a third party / person was found during search proceedings under Section 132, the Revenue could not proceed

against such a third party, which necessitated the legislature / Parliament to clarify by substituting the words “belongs or belong to” to the words “pertains or pertain to” and to remedy the mischief that was noted pursuant to the judgment of the Delhi High Court. Therefore, if the submission on behalf of the respective respondents – assessees that despite the fact that the incriminating materials have been found in the form of books of account or documents or assets relating to them from the premises of the searched person, still they may not be subjected to the proceedings under Section 153C solely on the ground that the search was conducted prior to the amendment is accepted, in that case, the very object and purpose of the amendment to Section 153C, which is by way of substitution of the words “belongs or belong to” to the words “pertains or pertain to” shall be frustrated. As observed hereinabove, any interpretation, which may frustrate the very object and purpose of the Act / Statute shall be avoided by the Court. If the interpretation as canvassed on behalf of the respective respondents is accepted, in that case, even the object and purpose of Section 153C namely, for assessment of income of any other person (other than the searched person) shall be frustrated.

11. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is held to be unsustainable and the question, i.e., "Whether the amendment brought to Section 153C of the Income Tax Act, 1961 *vide* Finance Act, 2015 would be applicable to searches conducted under Section 132 of the Act, 1961 before 01.06.2015, i.e., the date of amendment?", is answered in favour of the Revenue and against the assessees and is answered accordingly. Therefore, it is observed and held that the amendment brought to Section 153C of the Act, 1961 *vide* Finance Act, 2015 shall be applicable to searches conducted under Section 132 of the Act, 1961 before 01.06.2015, i.e., the date of the amendment. The impugned common judgment and order passed by the High Court, therefore, deserves to be quashed and set aside and is accordingly quashed and set aside. However, as before the High Court respective assessment orders were challenged mainly on the aforesaid issue, which is now answered in favour of the Revenue as above, we reserve the liberty in favour of the respective assessees to challenge the assessment orders before CIT (A) on any other grounds which may be available and it is observed that if said appeals are

preferred within four weeks from today, the same be considered in accordance with law and on their own merits, on any other grounds.

Present appeals are accordingly allowed in terms of the above. However, in the facts and circumstances of the case, there shall be no order as to costs.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
APRIL 06, 2023. **[B.V. NAGARATHNA]**