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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on*: 18.12.2025*
Judgment delivered on*: 30.03.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **W.P.(C) 15970/2023, CM APPL. 64257/2023**
\+ **W.P.(C) 13572/2024, CM APPL. 56719/2024**
\+ **W.P.(C) 13553/2024, CM APPL. 56682/2024**
\+ **W.P.(C) 14898/2024, CM APPL. 62466/2024**

M/S HUAWEI TELECOMMUNICATIONS (INDIA) COMPANY PVT. LTD. .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2, DELHI & ANR .....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Arvind Datar and Mr. Tarun Gulati, Senior Advocates with Mr. Kishore Kunal, Ms. Ankita Prakash and Mr. Anuj Kumar, Advocates.

For the Respondents : Mr. Indruj Singh Rai SSC, Mr.Sanjeev Menon, Mr. Rahul Singh JSCs and Mr. Gaurav Kumar, Mr.Siddharth Burman, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

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INTRODUCTION

1. The captioned petitions have been filed challenging the directions of the respondent/Revenue requiring special audits to be carried out on the accounts of the petitioner- Huawei Telecommunications (India) Company Private Limited *(hereinafter referred to as the petitioner and the assessee interchangeably)* for the Assessment Year (*AY*) 2013-14 and 2015-16 under Section 142 (2A) of the Income-tax Act, 1961 (*the Act*), and also challenging the decision of the respondents/Revenue to initiate reassessment proceedings against the petitioner for AY 2013-14 and AY 2015-16,

pursuant to a search and seizure carried out on 15.02.2022 under Section 132(1) of the Act.

2. By way of W.P.(C) 13553/2024 and W.P.(C) 14898/2024, the petitioner is impugning the audit direction dated 13.09.2024 along with notices dated 10.06.2024 and 05.07.2024 relatable to AY 2013-14 and the audit direction dated 08.10.2024 along with notices dated 10.06.2024 and 05.07.2024 relatable to AY 2015-16 respectively.

3. W.P.(C) 13572/2024 and W.P.(C) 15970/2023 have been filed impugning the following respectively:

i. Notice dated 31.03.2024 issued under Section 148 of Act and notice dated 24.05.2024 issued under Section 143(2) of the Act and reasons recorded dated 29.05.2024, for the Assessment Year (AY) 2013-14.

ii. Notice dated 31.03.2023 under Section 148 of the Act and notice dated 25.05.2023 issued under Section 143(2) of the Act along with the reasons recorded, for AY 2015-16.

iii. Explanation 2 to Section 148 of the Act and the proviso to Section 148A of the Act, to declare them unconstitutional, being in violation of Part III of the Constitution of India.

4. The petitioner is a company incorporated in 2002 under the provisions of the Companies Act, 1956, engaged in the business of assembly and trading of telecom network equipment and providing installation, commissioning and other support services to various customers in India. It also renders business support services to its various overseas associated companies.

FACTUAL MATRIX

5. In W.P.(C) 13553/2024 and W.P.(C) 13572/2024 for AY 2013-14, it has been submitted that on 29.11.2013, the petitioner filed its Return of Income declaring a loss of Rs. 311,04,30,235/-. Further on 30.03.2015, the petitioner filed its revised Return of Income declaring a loss of Rs.310,39,86,024/-. On 28.10.2016, the Transfer Pricing Officer passed an order under Section 92 of the Act proposing certain adjustments. Further on 29.12.2016, the draft assessment order was passed, assessing the total income at Rs.287,16,50,257/- and proposing the following adjustments:

S.No.	Particulars	Amount (INR)
1.	Transfer Pricing adjustment on account of Intra Group Services	1,97,84,000
2.	Disallowance under Section 36(1)(va) of the Act on employee provident fund	88,62,908
3.	Advertisement Expenses	6,89,16,793
4.	Provision for Customer Claims	12,86,11,894
5.	Advance written off	61,60,172
Total adjustment /disallowance proposed in the draft order		22,23,35,767

6. On 20.09.2017, certain directions were passed by the Dispute Resolution Panel. Consequently, on 03.10.2017 the jurisdictional Assessing Officer passed the final assessment order assessing the total loss of the petitioner at Rs. 2,94,03,55,100/-. Thereafter, the petitioner filed an appeal before the Income Tax Appellate Tribunal (*the Tribunal*) against the assessment order. The Tribunal allowed the appeal of the petitioner for AYs 2012-13 and 2013-14 and decided the issue raised by the petitioner regarding provisions for customer claims in favor of the petitioner.

7. In W.P.(C)14898/2024 and W.P.(C)15970/2023 for AY 2015-16, it has been submitted that the petitioner filed its Return of Income, declaring an income of Rs.235,80,79,340/-. Further, on 31.03.2017, it filed a revised Return of Income declaring an income of Rs.2,35,79,73,090/- and claimed a refund of Rs.48,45,960/-.

8. Thereafter, on 15.02.2022, a search and seizure operation was undertaken by the Revenue in exercise of powers under Section 132 (1) of the Act at the registered office of the petitioner. On 17.02.2022 and 19.02.2022, the bank accounts and trade receivables of the petitioner were provisionally attached by the Revenue under Section 132(9B) of the Act. During the course of the search, various documents, gadgets including electronic records from the laptops, hard drives and mobile phones of the employees of the petitioner were seized and further, statements of various officials of the petitioner company were recorded on several occasions between 15.02.2022 to 22.02.2022.

9. During the search, 42 items of information/material were submitted by the petitioner, including the laptop of one Mr. Zhaolei (who is an employee of the petitioner) having the Enterprise Resource Planning (*ERP*) accounting system access along with its username and password. ERP accounting system is a comprehensive accounting system which contains all data required for preparation of balance sheet, profit and loss account, ledgers etc. and can be accessed using a user ID and password. Thus, the entire books of accounts and necessary details are available on the ERP systems which can also be downloaded in a format suitable (i.e., Microsoft Excel) for the ERP software access. During the search, the Revenue sought backup raw data/ data dump, which formed the basis of entries on the ERP

system and also for transactional level data. Accordingly, the same was downloaded by the representatives of the petitioner for Financial Years (*FY*) 2014-15, 2019-20 and 2020-21 and submitted the same on 18.02.2022. Thereafter, for FY 2015-16 to FY 2018-19, the data was provided on 19.02.2022. However, during the process of copying the relevant ERP data in Microsoft Excel (as per the requirements of the Revenue) some of the entries (for FY 2016-17 and FY 2017-18) were inadvertently copied twice/ overwritten due to the numerous entries in the excel sheets. By way of emails dated 06.05.2022, 10.05.2022, 22.03.2023 and 01.04.2023, the petitioner also submitted reconciliation before the respondent No.1. No issues were either raised or communicated to the petitioner thereafter.

10. Meanwhile, the petitioner filed a writ petition bearing *WP(C) No.6352/2022* before this Court challenging the provisional attachment of its bank accounts and trade receivables. This Court, *vide* order dated 30.08.2022 lifted the provisional attachment subject to certain conditions. Later, the petitioner, by way of *CM Appln. No. 46949/2023*, sought liberty to repatriate royalty and dividend outside India. By order dated 09.02.2024, this Court, while allowing repatriation of royalty and deferring decision on payment of dividend, *inter alia* directed the Revenue to ensure that the search assessments are completed with due expedition and preferably by 31.12.2024.

11. On 31.03.2024 and 24.05.2024 the respondents issued the notices under Section 148 and Section 143(2) of the Act for AY 2013-14. On 31.03.2023 and 25.05.2023 the notices under Section 148 and Section 143(2) of the Act were issued for AY 2015-16.

12. The preliminary objection raised is that the impugned notices are time-barred as the time-limit of three years prescribed under Section 149(1)(a) of the Act, as amended by the Finance Act, 2021, to reopen the assessment for AYs 2013-14 and 2014-15 stands expired on 31.03.2017 and 31.03.2019 respectively. Further, the jurisdictional pre-condition to reopen an assessment beyond 3 years and up to 10 years under Section 149(1)(b) i.e., escapement of income amounting to Rs. 50 lakh or more, represented in the form of an 'asset' is not satisfied in the present case, as no income relating to an 'asset' has even been pointed out by the Revenue which has escaped assessment. Therefore, no fresh incriminating material has been unearthed by the Revenue during the search proceedings and thus, the impugned notices are *ex facie* time-barred, without jurisdiction and are liable to be quashed.

13. A challenge has also been mounted to Explanation 2 to Section 148 of the Act as well as proviso to Section 148A of the Act (*the impugned provisions*) as being in violation of Part III of the Constitution of India, inasmuch as, the procedural safeguards laid down by the Supreme Court in ***GKN Driveshafts v. ITO, [2003] 259 ITR 19 (SC)*** and statutorily prescribed under Section 148A of the Act have not been made applicable to search cases. Further, in view of the impugned provisions, even in absence of any incriminating material/information available, the Assessing Officer is deemed to have information which suggests that income chargeable to tax has escaped assessment for issuing a notice under Section 148 of the Act, thereby granting unbridled power to the Revenue in search cases, which is manifestly arbitrary, discriminatory and does not have any rational nexus with the object sought to be achieved by the Finance Act, 2021. The

impugned provisions also fail to distinguish between cases where incriminating material is found *vis-à-vis* those cases where no such incriminating material is found during the search. Even on this basis on account of failure to treat these two separate categories differently, the impugned provisions are discriminatory and are liable to be struck down as *ultra vires* the Constitution of India.

14. On 10.06.2024, the respondents issued the notice under Section 142 (2A) of the Act to the petitioner to show cause as to why the accounts of the petitioner should not be audited by an accountant as defined in the Explanation to Section 288(2) of the Act, on the basis of the following:

i. During the search, the petitioner provided only the ERP dump without providing the details as required. There are certain issues relating to the correctness of the ERP data provided by the petitioner;

ii. ERP data submitted cannot be treated as necessary compliance for providing adequate facility to inspect the books of accounts during the search;

iii. Significant differences were found in two financial years (i.e., for FYs 2016-17 and 2017-18) in the data provided during the search and the final data provided by the petitioner post search; and

iv. Correctness of the ERP data provided by the petitioner is doubtful and that there are duplicate and missing entries as per the petitioner.

15. On 05.07.2024, the petitioner replied to the notice *inter-alia* submitted the following:

i. The show-cause notice is completely vague and does not even refer to any specific jurisdictional ingredient of Section 142 (2A) which is sought to be invoked;

ii. In the absence of examination of accounts, the same cannot be treated as 'complex' for the purpose of making reference under Section 142(2A) of the Act.

iii. No independent finding in the show-cause notice for the subject AY;

iv. Missing/ duplicate entries for FY 2016-17 and FY 2017-18 were due to an error while copying the data and was duly pointed out by the petitioner:

v. No discrepancies found in the accounts in the other years;

vi. The pre-condition laid down in Section 142(2A) of the Act is not fulfilled in the present case;

vii. Roving and fishing enquires cannot be made through special audit in absence of any specific defects in the books of account;

viii. Extend the timeline for completion of the post-search assessment proceedings in view of the directions of this Court dated 09.02.2024;

16. On 05.07.2024, the respondents issued a revised notice under Section 142(2A) of the Act to show cause as to why the accounts of the petitioner should not be audited, reiterating the grounds mentioned in the notice dated 10.06.2024 and additionally raising doubts regarding the allowability of the provision for customer claims. The revised notice also contained the Terms of Reference, which are as follows:

i. To construct books of accounts of the petitioner from the ERP data dump seized during the search action for AY 2013-14;

ii. The petitioner failed to provide its books of accounts and rather only provided the transaction level details as downloaded from their ERP system in excel format, which needs to be reconciled with the audited financials and ledgers of receipts and expenses needs to be prepared and reconciled with the Profit & Loss of the petitioner;

iii. For determining Arm's Length Price of different transactions, the petitioner has prepared different segments in different years;

iv. In terms of Companies (Accounts) Fourth Amendment Rules, 2022 (vide Gazette Notification dated 05.08.2022), the company is required to keep back up of the digital books of accounts in India which is accessible all the times and back up needs to be taken daily. Therefore, any argument about non-availability of back up of digital books of accounts may be pointed out.

v. The petitioner has created and claimed the provision of customer claims as deduction for the purpose of income tax calculation. The said provision was created by the petitioner due to the probable deduction that the customer might make on account of potential delay in supply of goods or provision of services. The petitioner has not clarified if such liquidated damages are recovered by the petitioner from its overseas Associated Enterprise. Hence, it may also be ascertained whether the petitioner should incur these expenses by itself or get them reimbursed from the Associated Enterprise based on Functions Assets Risks Analysis (FAR Analysis) as per the Transfer Pricing Report submitted for the year.

17. On 12.07.2024, the petitioner replied to the notice, *inter alia* stating that the allowability of items of expenses (customer claims) for AY 2013-14 has already been the subject matter of scrutiny in the original assessment proceedings before the Assessing Officer and the Transfer Pricing Officer. With respect to AY 2015-16, it submitted that the validity of any inter-company transaction is a subject matter of verification to be done by the Transfer Pricing Officer during the course of re-assessment proceedings and the same cannot be referred to the special auditor.

SUBMISSIONS ON BEHALF OF THE PETITIONER

RE: SPECIAL AUDIT

18. Mr. Arvind Datar and Mr. Tarun Gulati, learned Senior Counsel for the petitioner company have submitted at the outset that the impugned notices and the consequential directions have been issued without jurisdiction, inasmuch as the ingredients for invoking Section 142(2A) are not satisfied in the present case. Section 142(2A) of the Act reads as under:

> *(2A) If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, direct the assessee to get either or both of the following, namely:—*
>
> > *(i) to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prepared form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require;*
> >
> > *(ii) to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require:*

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited or inventory so valued unless the assessee has been given a reasonable opportunity of being heard.

19. Their contention is that before issuance of the impugned notices and directions, the respondent No. 1 was required to formulate an opinion based on the '*complexity, voluminous, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activities of the Assessee and in the interest of the revenue'*. However, in the present case none of the aforesaid jurisdictional conditions have been satisfied by the respondent No. 1 before formulating an opinion and the impugned notices and directions have been issued in a mechanical manner without any application of mind. The impugned proceedings have been initiated on the basis of vague and unsubstantiated allegations that the books of accounts of the petitioner are not reliable and cannot be correlated with ERP software, despite the fact that the books of accounts of the petitioner have been scrutinized in detail by the assessing authority as well as the appellate authority during the course of the regular assessment for the relevant period. In any case, for the present relevant period, the books of accounts of the petitioner were never sought by the Revenue and thus, never examined. Therefore, the impugned directions have been passed without any basis. Further, in the present case, the sole basis adopted by the Revenue for direction of special audit under Section 142(2A) is duplication of entries for FYs 2016-17 and 2017-18, which was merely a clerical error which arose while copying the relevant data in Microsoft Excel wherein, some of the entries were copied twice/overwritten due to the numerous entries in the excel sheets as per the requirement of the Revenue. The said clerical error

has duly been explained and rectified by the petitioner by furnishing the correct ERP data dump culminating into trial balance and profit and loss account for the relevant period through emails dated 06.05.2022, 10.05.2022, 22.03.2023 and 01.04.2023, and thereafter, no issues have been raised or communicated by the Revenue. However, none of the explanations contained in the aforesaid emails have been considered by the Revenue while passing the impugned directions. The impugned notices and directions are vague, cryptic and fail to justify the requirement of invoking the provisions of Section 142(2A) of the Act. It is their contention that therefore, the impugned notices and the directions are liable to be quashed.

20. They submitted that the respondent No. 1 has merely reproduced the language of Section 142(2A) of the Act in the impugned directions as evident from paragraph 20 wherein, it has been concluded that the necessity for special audit has arisen on account of unstructured data and discrepancy therein, satisfying the jurisdictional requirement of complexity and volume of accounts and multiplicity of transactions, without actually analysing the requirements of Section 142(2A) of the Act. Further, the approval given by the respondent No. 2 is also mechanical in nature and the copy of the said approval has not been provided to the petitioner. They have drawn our attention to the judgment in ***Simplex Infrastructure Limited v. CCGST, Kolkata, 2016 (42) STR 634,*** wherein it was held that proceedings initiated by merely reproducing language of the jurisdictional provisions, cannot be sustained.

21. It is also submitted that the books of accounts on which special audit is being sought by the Revenue for AY 2013-14 have been duly scrutinized at various earlier stages by the very same authorities and were never found

to be discrepant or warranting a special audit at any of these earlier stages. However, prior to issuance of the impugned notices, no attempt has been made to examine the books of accounts of the petitioner and the same have been arbitrarily termed as complex. The present special audit directions are *inter alia* based on the very same additions which have already been made by the Revenue and have been decided in favour of the petitioner by the Tribunal.

22. They have also contended that the Revenue is attempting to conduct a 'fishing and roving enquiry' to extend the timeline to complete the reassessment proceedings as the same has been directed to be completed by 31.12.2024 by this Court.

23. It is also submitted that the determination of Arms' Length Price in respect of international transactions between the petitioner and its Associated Enterprise is the jurisdiction of the Transfer Pricing Officer and not the special auditor.

24. The learned Senior Counsel for the petitioner also submitted that the impugned proceedings are a clear change of opinion, as the books of accounts of the petitioner have been consistently been accepted by the Revenue. A reading of the impugned directions would reveal that the proceedings have been sought to be justified for two reasons- (1) as the ERP data dump submitted by the petitioner during the course of search as well as ERP data software discloses that the books of accounts are complex and voluminous; and (2) the transactions customer claim undertaken with AEs requires closer analysis by a special auditor. It is submitted that however, both of the above factors existed even at the stage of scrutiny assessment for AY 2013-14 as well as the appellate stage. No new factor other than the

ones already raised during the scrutiny assessments has been reflected in the impugned notices and direction to justify invocation of Section 142(2A) of the Act. That apart, the issues relating to the transactions of customer claims undertaken with the Associated Enterprise have already been decided by the Tribunal in favour of the petitioner.

25. It is also their submission that Section 142(2A) of the Act cannot be invoked in those cases where reassessment proceedings have already been initiated. The purpose of Section 142(2A) of the Act is to provide an aid at the stage of assessment proceedings and the same cannot be invoked at the stage of reassessment. The scope of reassessment proceedings are limited only to the extent of escaped income and therefore, the special audit directions cannot be permitted to audit the entire books of accounts of the petitioner beyond the reasons/information based on which reassessment proceedings have been initiated. Reliance in this regard is placed on the judgment of the Supreme Court in ***CIT v. SUN Engineering, (1992) 4 SCC 12 363***, as well as of the Bombay High Court in ***Ritz Ltd. v. CIT, (1995) 216 ITR 138*** wherein it has been categorically said that the jurisdiction of Income-tax officer is confined only to bring to charge the income which has escaped assessment or was under assessed.

26. It is also submitted that even assuming all the allegations in the impugned notices as well as the directions to be correct, there is no discrepancy for the present relevant period as mapping from ERP dump to trial balance, profit and loss account to audited financials for FY 2016-17 and FY 2017-18 were done to the satisfaction of the authorities by way of emails dated 06.05.2022, 10.05.2022, 22.03.2023 and 01.04.2023 and no issues were either raised or communicated to the petitioner after the said

communication. Secondly, in any event, even these allegations are completely misplaced and perverse. Thirdly, the alleged discrepancies do not automatically establish the requirement of complex or voluminous books of accounts. Therefore, the impugned directions have assumed jurisdiction in an erroneous manner and are thus, liable to be quashed.

27. Mr. Datar has submitted that without examining the books of accounts of the petitioner for the relevant period, '*complexity*' or '*doubts about the correctness of the accounts*' cannot be presumed. Further, duplication of entries while copying data also cannot lead to such presumption of '*complexity*' or '*doubts about the correctness of the accounts*', making the impugned notices and directions bad in law. The duplicate entries were nothing but clerical errors occurred during the copying of data and correct set of data along with detailed reconciliation of ERP data dump (provided during the search proceedings) vis-à-vis the trial balance, profit and loss account, etc. mapped with the audited financial statements and the necessary documents were shared vide email dated 06.05.2022, 10.05.2022, 22.03.2023 and 01.04.2023. However, despite providing categorical explanation, the impugned directions erroneously observed that differences were noted between the data provided during the search and the final data provided by the petitioner. Further, the books of account of the petitioner were otherwise available and accessible and even the said differences which arose on account of copying the data stood fully explained as well as supplemented with the Chartered Accountant's certificate. Therefore, there is no basis for assuming that there were any discrepancies in the same.

28. He stated that Section 142(2A) of the Act requires the Assessing Officer to demonstrate the complexity of the accounts of the assessee which an ordinary prudent person, reasonably informed about accounts and law is not in a position to comprehend, as a condition precedent. He has referred the judgment of the Supreme Court in the case of ***Rajesh Kumar and Others v. DY CIT and Others. (2007) 2 SCC 181***, wherein, it was held that:

> *"13. The expression "complexity" would mean the state or quality of being intricate or complex or that it is difficult to understand. Difficulty in understanding would, however, not lead to the conclusion that the accounts are complex in nature. No order can be passed on whims or caprice."*

29. He contended that complexity of accounts cannot be equated with giving raw ERP data which was later converted into Trial Balance and was duly provided to the respondents for FY 2014-15 to 2020-21. Though the Revenue is repeatedly alleging that the ERP data dump provided by the petitioner are complex in nature, nowhere in the impugned notices and directions has it been specified that on what basis it arrived at the conclusion that the books of accounts of the petitioner is complex and voluminous in nature, requiring special audit. In the absence of proper examination of the ERP data dump along with the other documents, it cannot be concluded merely on a cursory glance that the books of accounts are complex in nature. It is his case that thus, the impugned notices and the impugned directions are illegal and without jurisdiction. Reference in this regard is also made to the judgments in ***Swadeshi Cotton Mills Co. Ltd. v. CIT, 1988 (171) ITR 634, Sahara India (Firm), [2008] 300 ITR 403 (SC)***, and ***Delhi Development Authority v. Union of India, [2013] 350 ITR 432 (Delhi)***

30. Further, he stated that no specific findings have been made relating to the AYs under challenge herein, making it obvious that no independent discrepancy has been found for the relevant period, or other years except FYs 2016-17 and 2017-18.

31. Another submission of the learned Senior Counsel for the petitioner is that voluminous accounts and multiplicity of accounts cannot be merely presumed on account of lakhs of line items in the ERP data or on number of transactions. This is for the reason that the words "*volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activities of the Assessee*" have been inserted after the words "*the nature and complexity of the accounts*" in Section 142(2A) of the Act by the Finance Act, 2013, w.e.f. 01.06.2013. Prior to the amendment, special audit under Section 142(2A) of the Act could have been directed only in case where the accounts of the assessee were "complex" in nature and having regard to the interests of the Revenue. The rationale for the aforesaid amendment has been explained in the Memorandum explaining provisions in the Finance Bill, 2013, in the following words:

> *"Direction for special audit under sub-section (2A) of section 142 The existing provisions contained in sub-section (2A) of section 142 of the Income-tax Act, inter alia, provide that if at any stage of the proceeding, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit. The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by*

various courts. It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner of the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit."

32. The contention raised by the learned Senior Counsel for the petitioner based on the above is that it is evident from the above that special audit reference can be made only if the concerned Officer believes that it is not possible for him to form an opinion on the correctness of accounts of the Assessee keeping in mind the nature, volume and complexity of accounts. Based on such audited accounts, the Assessing Officer has to himself form an opinion and arrive at conclusions regarding tax implications, if any, and this function cannot be delegated to the special auditor. Thus, even today complexity of account has to be established by the Revenue before making a reference under Section 142(2A) of the Act, which has not been done in the present case and the impugned notices and directions have been issued mechanically.

33. It is also stated that the expressions "v*olume of the accounts*" does not refer only to the sheer number of transactions or the turnover of an assessee but has reference to the multitude of transactions or integrated transactions in respect of one single financial transaction, which make the accounts complex. Similarly, the expression "*multiplicity of the transactions in*

accounts" again does not refer to the number of transactions undertaken in the books of accounts but refers to multiple transactions undertaken in respect of one single financial transaction. Thus, the interpretation adopted by the Revenue that since the ERP data dump consists of lakhs of transactions, the same is complex in nature, is completely erroneous.

34. They have also contested the stand of the Revenue that the petitioner undertakes "*a very specialized nature of business activity*" by stating that the petitioner undertakes its business in a manner similar to any other multinational telecom equipment supplier and merely because the goods supplied by the petitioner is telecom equipment does not lead to the assumption that the business activity is 'specialized'. In any case, the nature of business cannot lead to complexity of accounts, requiring special audit.

35. That apart, it is submitted that 'interest of the Revenue' is one of the jurisdictional criteria for invoking Section 142(2A) of the Act. However, the same cannot be read unilaterally but has to be read conjointly with other jurisdictional factors provided under the Act.

36. It has also been stated that for AY 2013-14, regular assessment proceedings were already completed and in fact, on the very same issues as raised in the Terms of Reference of the impugned directions, there exists an order of the Tribunal. Even otherwise, the issues raised in the impugned notices and directions are regular routine issues which do not require appointment of a special auditor. The issue pertaining to allowability of customer claims has been decided in favour of the petitioner by the Tribunal *vide o*rder dated 24.02.2021 in AYs 2012-13 and 2013-14. The issue of allowability of warranty expenses is decided in the favour of the petitioner by Tribunal in the petitioner's case for AYs 2008-09 and 2009-10 *vide*

orders dated 07.05.2018 (*reported as 2018 (171) ITD 19*) and 06.06.2019. Therefore, the issue has been finally settled by the Tribunal and the impugned notices and direction have been issued ignoring the same and thus, are liable to be quashed.

37. Yet another submission is that the Terms of Reference are beyond the scope of Section 142(2A) of the Act, as the Assessing Officer does not have any authority to direct preparation of fresh books of accounts for the assessee. To buttress this argument, reliance is placed on the judgment in the case of ***CIT v. Bajrang Textiles, [2007] 294 ITR 561 (Rajasthan).***

RE: REASSESSMENT

38. The learned Senior Counsel for the petitioner have submitted that the reopening of the two assessment years are beyond the six years limitation provided under Section 153A(1)(b) of the Act read with first proviso to Section 149(1) of the Act, and is also barred by limitation because the jurisdictional requirements of Section 153A of the Act are not satisfied. The fourth proviso to Section 153 A requires that reopening beyond six years is permissible only if there is evidence that reveals that income which has escaped assessment is represented in the form of an "asset" and the income escaping assessment should exceed Rs.50 lakhs in the relevant year.

39. They have submitted that from a bare perusal of the impugned notices, it is clear that the sole basis for the initiation of reassessment proceedings was information "*that a search was initiated u/s 132*". Further, the reasons furnished by the Revenue do not disclose any incriminating material indicating escapement of income amounting to Rs. 50 lakhs or more, represented in the form of an 'asset'. As per Section 148 read with

Section 149(1)(b) of the Act, where more than 3 years (but not more than 10 years) have elapsed from the end of the relevant AY, notice under Section 148 can be issued only if the following conditions are cumulatively satisfied:

a. AO has in his possession books of account or other documents or evidence;

b. Such document/evidence/books of accounts shall reveal that some income chargeable to tax has escaped assessment;

c. Such income which has escaped assessment should have been represented in the form of 'asset'; and

d. Amount of escaped income is or is likely to be more than Rs. 50 lakhs for that year.

40. In the present case, the impugned notices and the reasons recorded do not even allege, let alone establish, the satisfaction of any of the above stated mandatory jurisdictional preconditions. The Revenue has neither alleged nor referred to any document/evidence in the reasons which reveals that income represented in the form of 'asset' had escaped assessment and the quantum of such escapement was Rs. 50 lakhs or more.

41. Explanation 2 to Section 153A of the Act, which is applicable to searches conducted on or before 31.03.2021, defines the term "asset" and which shall include immovable property being land or building or both, shares and securities, loans and advances, deposit in bank account. It is their contention that in the absence of any information found during the course of search and as recorded in the reasons furnished by the Revenue suggesting escapement of income amounting to Rs. 50 lakhs or more, represented in the form of an asset, the entire proceedings initiated under Section 148 read with Section 149(1)(b) are vitiated for want of jurisdiction.

42. Section 153A of the Act which was inserted with effect from 01.06.2003 replaced the erstwhile provisions of Section 158BB etc. which had the concept of 'block assessment years', which has now been done away with. It is submitted that each assessment year has to be dealt with separately and for reopening an assessment, incriminating material in each year has to be seen separately as held by the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.,[2023] 454 ITR 212 (SC),*** and this Court in ***Saksham Commodities Ltd. v. Income Tax Officer, [2024] 464 ITR 1 (Delhi).*** Absent incriminating material unearthed on account of search, the reopening of assessment under Section 153A of the Act cannot be sustained. Even otherwise, with respect to searches conducted after 01.04.2021 and before 01.09.2024, opening or re-opening of assessment can be undertaken only by issuance of notice under Section 148 of the Act, which has to be issued for each year separately. Therefore, absent incriminating material leading to reasons to believe for a concerned year, opening or re-opening of assessment for such year is barred by jurisdiction.

SUBMISSIONS FOR AY 2013-14

43. Mr. Datar and Mr. Gulati have submitted that for AY 2013-14, the allegation of the Revenue is that the expenses on account of 'provision for customer claims' amounting to Rs. 12,86,11,894/- were wrongly claimed as deductible expense, and this has resulted in income escaping assessment. This is the solitary reason mentioned in the reasons recorded for reopening. However, the reasons do not refer to any incriminating material unearthed on account of search. Regarding the issue of disallowance of provision for customer claims, the exact same amount of Rs. 12,86,11,894/- was initially

disallowed by the Assessing Officer and confirmed by the DRP in the original assessment proceedings conducted under Section 143(3) of the Act. This issue was then considered by the Tribunal for AYs 2012-13 and 2013-2014 which set aside the said disallowance on the ground that the petitioner/taxpayer had furnished adequate evidence to show that the provision for customer claims were "ascertained liability" and deductible. The issue of disallowance of provision for customer claims has since attained finality. It is their contention that an issue which has already been decided by the Tribunal cannot be reopened by the Assessing Officer under Section 148 of the Act, more so when the finding of the Tribunal was not challenged in appeal.

44. They have also stated that apart from the impermissibility of seeking to reopen a settled issue, there is no question of any escaped income represented in the form of an asset, or of any 'receivables' with regard to the provision for customer claims, In fact there is no reference to 'receivables' even in the reasons recorded.

45. Heavy reliance is placed by the learned Senior Counsel for the petitioner upon the judgment of this Court in the case of ***Smart Chip Private Ltd. v. ACIT, 2025:DHC:2834-DB*** to contend that disallowance of an expense cannot be a ground to invoke Section 148 of the Act.

46. They have also contested the stand of the Revenue that the issue of provision for customer claims was also existent in AY 2015-16 but was not picked up during reassessment by relying upon the following table:

AY	Reasons for opening / re-opening	Counter Affidavit filed by the Respondent
2013-14	Asset as well as entries in the books of account	Entry in the books of account
2015-16	Issue not examined at all	Issue not examined at all
2016-17	Entries in the books of account	entries in the books of account

47. It is their submission that the Revenue, in order to justify the illegal and arbitrary reopening of assessment, has adopted inconsistent stand for the sole reason to reopen the assessment beyond six years limitation provided under Section 153A of the Act. Therefore, without the existence of an asset, AY 2013-14 being beyond 6 years, the impugned notice dated 31.03.2024 is time barred and is liable to be quashed on the basis of limitation, In any event, there is no incriminating material disclosed as a result of search. Therefore, the reassessment proceedings are liable to be quashed even otherwise.

SUBMISSIONS FOR AY 2015-16

48. According to the learned Senior Counsel for the petitioner, the sole ground for reopening the assessment for AY 2015-16 is that the provision for warranty expenses incurred by the petitioner is reimbursed by the Associated Enterprise, and therefore the notional receivables on this account amounts to an asset. However, they stated that the Distribution Agreement relevant for AY 2015-16 does not have any clause for reimbursement of the provision for warranty expenses. Therefore, when there is no right to receive any reimbursement, the theory of "receivables" must collapse, and the reopening of assessment is liable to be quashed.

49. Further, disallowance of provision for warranty expenses is also impermissible, as held by the Supreme Court in the judgment in ***Rotork Controls Pvt. Ltd. v. CIT, (2009) 314 ITR 62***, wherein a warranty claim based on an estimate of 1.8% of the turnover was upheld. That apart, requiring the provision for warranty claim to be an asset is contrary to the accrual method of accounting principles mandated by the Companies Act, 1956/2013.

50. Mr Datar has submitted that the provision for warranty is based on a percentage which is determined based on the historical evidence of defects that have occurred. After ascertaining the actuals, the unutilised provision will be added back to the income of the petitioner in the tax returns and no reimbursement is required at all as it would be automatically credited to the profit and loss account as well as increased taxable profits. Further, assuming without admitting, if the Associated Enterprise actually reimburses the warranty expenses, such amount will be added to the taxable income in the year of such receipt, not in the year when the provision is made. Thus, there is no question of escapement of income represented in the form of receivables.

51. He stated that in the absence of a contractual provision for reimbursement, there is no "receivable" and consequently, no "asset". The alleged receivables are a complete assumption of the Revenue which is not based on any contractual obligation between the parties. Further, the Revenue is in possession of all the records and if the receivables are shown as an asset, it must have been reflected so in the balance sheet. In the present case, the receivables on account of warranty are not shown as an asset at all. Further, merely stating an item of liability or expense to be in the form of an

asset is completely against the intent and letter of pre-conditions provided in the fourth proviso to Section 153 A of the Act read with first proviso to Section 149(1) of the Act, which clearly mandates the existence of "*documents or evidence that revealed that income, represented in the form of asset*". It is submitted that receivables, as argued by the Revenue, is nothing but a notional or fictional asset and the law only contemplates the existence of a real or tangible asset.

52. That apart, since the petitioner and its Associated Enterprises are subject to transfer pricing, the Arms' Length Price is determined by applying the Transaction Net Margin Method (TNMM) approach which takes into account the profit margins that is determined by the Revenue. Thus, once the profit margin is determined, no further addition can be made because all eligible items of expenditure and all amounts includible as income are already taken into account while determining the Arms' Length Price and the Net Margin, and there is no requirement to recover each and every transaction entered with its Associated Enterprises. Therefore, the warranty expenses, even if receivable, will not form an asset in transfer pricing cases. Moreover, these receivables are not shown in the balance sheet as an asset, in view of the approval of transfer pricing assessments.

53. According to the learned Senior Counsel for the petitioner, the Revenue has taken an inconsistent stand for AY 2015-16 by considering the provision for warranty expenses as an asset, whereas for subsequent AYs 2016-17, 2017-18, and 2018-19, the same has been considered as entries in the books of accounts. This contradictory stand reflects the attempt of the Revenue to vaguely justify the reopening beyond six years as provided under Section 153A of the Act.

54. They have also stated that the issue of disallowance of provision of warranty expenses has already been decided in favour of the petitioner by the Tribunal *vide* order dated 07.05.2018 for AY 2008-09 and order dated 06.06.2019 for AY 2009-10 in the petitioner's own case.

55. In view of the above, they have sought the prayers as made in the petitions.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

RE: SPECIAL AUDIT

56. Mr. Indruj Singh Rai, learned Senior Standing Counsel for the respondents/Revenue would contest the stand of the petitioner. He stated that during the course of the search, the officials of the company were inquired about the books of accounts of the company. Only audit report in Form 3CA and Form 3CD were submitted by the assessee during the search. As per Point 11(b) of Form 3CD, following books of accounts were mentioned to be maintained at the Registered Office of the petitioner where the search was carried out:

i. General ledger (computerized),
ii. Journal Book (computerized)
iii. Monthly payroll records (computerized),
iv. Inventory ledger (Computerized),
v. Fixed assets register (computerized),
vi. Other relevant documents, bills, vouchers, receipts, debit notes, credit notes, inventory register, agreements, orders etc.

57. However, these were neither available at the mentioned address nor provided by the petitioner during the search. Instead, it only provided the ERP data dump without providing details as required. The ERP data provided by the petitioner was segregated into years and further into months.

The total value of credits and debits in various financial years were totaled and a summary sheet was prepared. Significant difference was found in two financial years from the data provided during the course of the search and the final data provided by the petitioner thereafter. While enquiring about the same during the search, the petitioner stated that certain values in the ERP data and the final data need to be deleted and some were to be added.

58. It is his case that in such a scenario, the correctness of the ERP data provided by the petitioner remains doubtful, more so when it is conceded by the petitioner itself, that there exist duplicate and missing entries. As such, the ERP data as provided cannot be relied upon to assess the correct income. That apart, the statement of Mr. Lalit Kumar, statutory auditor of the petitioner was recorded under Section 131(1) of the Act on 23.5.2022, wherein he had stated that raw ERP data is not sufficient to audit the books of the company and the same has to be reconciled with the financials. He also stated that the completeness of the ERP data also needs to be established by appropriate procedures. As per Mr. Rai, in view of the same, the ERP data submitted cannot be treated as necessary compliance for providing adequate facility to inspect the books of accounts during the search.

59. He has drawn our attention to Section 128 of the Companies Act, 2013 to contend that a company is allowed to keep books of accounts or other relevant papers in electronic mode, in the manner prescribed in Rule 3 of Companies (Accounts) Rules, 2014 and Sub Rule (5) thereof mandates that a proper system for storage, retrieval, display or printout of the electronic records is required to be kept and such records cannot be disposed of or rendered unusable, unless permitted by law. It further prescribes that a

back-up of the books of accounts and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India, on a periodic basis. Neither was such location conveyed during the search nor in response to the summons dated 31.05.2022. Moreover, the Companies (Accounts) Rules, 2014, now prescribe that a daily backup of the digital books of accounts is required to be kept in servers physically located in India. Even the details of such backup servers were not provided by the petitioner. His contention is that therefore, the discrepancies in linkages of ERP data submitted with the final financials of the company, points towards failure of necessary compliance.

60. Mr. Rai stated that the powers available under reassessment proceedings are analogous to assessment proceedings once a notice under Section 143(2) is issued. Once reassessment proceedings are triggered by way of issuance of notice under Section 148 of the Act, the return filed in response to such notice is to be treated as a return under Section 139 of the Act and the provisions of the Act would accordingly be applicable. Thus, all the powers that would be available during the course of regular assessment are also available when the reassessment proceedings are carried. In order to carry forward the aforesaid submission, he has referred to the provisions of Section 148 of the Act which reads under:

> *"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in*

respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139: ..... "

61. According to him, a perusal of the above would establish that:

i. Return filed in response to a notice under Section 148 would be treated as a return under Section 139 of the Act.

ii. The proceedings, as would be applicable if a return under Section 139 was actually furnished, would kick in and the procedure to initiate assessment which would start by way of issuance of notice under Section 143(2) of the Act would similarly apply to the instances where reassessment proceedings are initiated.

iii. Accordingly, all the powers that would be available to the Assessing Officer that would normally be available in the course of assessment would also be available during the reassessment proceedings under Section 148 of the Act.

iv. Thus, the powers to call for information and make inquiries as available under Section 142 of the Act would be available while carrying out the reassessment proceedings.

62. He also submitted that a reading of Section 142 of the Act would reveal that the powers available to the Assessing Officer thereunder are for the purpose of making an assessment and the word assessment under Section 2(8) of the Act has been defined to include reassessment. He stated that the above fact, along with a perusal of the judgments of this Court in ***Shaily Juneja v. Assistant Commissioner of Income-tax, 2024 SCC Online Del 6310***, and ***Principal Commissioner of Income Tax v. Dart Infrabuild (P) Ltd., ITA 10/2022*** would reveal that after the issuance of notice under

Section 148 of the Act, a return is to be filed which is to be treated as a return under Section 139, and since it is mandatory to issue a notice under Section 143(2) of the Act, it flows from the aforesaid that the powers available to the Assessing Officer in the course of regular/scrutiny assessment are also available at the time of reassessment. Therefore, a careful conspectus of the facts and circumstances of the case coupled with the requirements mandated under Section 142(2A) of the Act would reveal that this is a fit case for directing special audits to be undertaken.

63. He submitted that the words "*volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee*" that finds mention in Section 142(2A) of the Act, were introduced by virtue of the Finance Act, 2013 to expand the scope of the powers available under Section 142(2A) of the Act, because earlier the words "*nature and complexity*" were being given a very restrictive meaning. The said words were added to the provision to ensure that there is a wide ambit by way of which the interests of the Revenue would be protected without hindering upon the rights that may be available to the assesses. A challenge raised to the constitutional validity of the amendment introduced by the Finance Act, 2013 to Section 142(2A) of the Act was turned down by this Court in the case of ***Sahara India Financial Corporation Ltd. v. Commissioner of Income Tax, (2017) 399 ITR 81***.

64. It is the case of the Revenue, as propounded by Mr. Rai that the conditions mandated for special audit with regard to the nature, complexity and volume of accounts as well as the correctness of the same have arisen in the case of the petitioner, as:

i. Instead of providing the books of accounts, the assessee had provided the ERP data dump which was voluminous in nature and spread across various years.

ii. The ERP data was in itself erroneous as it was admitted by the assessee, itself that there were duplication of data of FYs 2016-17 and 2017-18 and therefore, some entries were to be added whilst others were to be deleted.

iii. The Tax Head of the petitioner, Mr. Amit Duggal, had stated that books of accounts were kept in the system of the Deputy Manager, (Finance) and that he was not aware of the location of the ERP system server and whether there was any backup server in India.

iv. The Deputy CFO of the petitioner, Mr. Sandeep Bhatia, stated that they could download the necessary reports, based on requirement by raising a query in the ERP system and that he was also not aware if the physical servers were located in India.

v. The statutory auditor of the petitioner, i.e. Mr. Lalit Kumar, stated in his statement under Section 131(1) that raw ERP data was not sufficient to audit the books of the company and the same was to be reconciled with the financials of the company.

vi. The mandate of Section 128 of the Companies Act, 2013 was also not met as the top officials of the company were not aware as to whether any backup of books of accounts was maintained on servers physically located in India.

vii. The petitioner only provided transaction level data and not the books of accounts.

65. Reliance in that regard is placed on the decision of the High Court of Gujarat in ***Takshashila Realities Private Limited v. DCIT (SCA NO. 4613,4614, 4619 & 4620 of 2017*** dated 21.03.2017 wherein the submission that the Assessing Officer cannot direct special audit under Section 142 [2A] of the Act before calling/or the accounts from the assessee in the assessment proceedings and without doubting the accounts and/or considering the complexity in the accounts, was negated and it was held that as per the amended Section 142 [2A] of the Act, apart from the nature and complexity of the accounts, etc., even in case of multiplicity of transactions in the accounts or specialised nature of business activity of the assessee and the interests of the Revenue, the Assessing Officer can pass an order for special audit.

66. He submitted that the conditions specified in Section 142(2A) are to be read in a conjunctive manner which is evident from the use of the word "*and"* before the phrase "*interest of the Revenue*" and thus, objective satisfaction is required to be reached by the Assessing Officer in light of the facts of the case. Reliance in this regard is placed on the judgment of the Supreme Court in the case of ***Rajesh Kumar v. Deputy Commissioner of Income Tax, [2006] 287 ITR 91 (SC),*** which held as under:

> *"12. The formation of opinion of the Assessing Officer must be on the premise that while exercising his power regard must be had to the factors enumerated therein. The use of the word 'and' shows that it is conjunctive and not disjunctive. All the aforementioned factors are conjunctively required to be read. The formation of opinion indisputably must be based on objective consideration."*

67. Mr. Rai has stated that the submission of the learned Senior Counsel for the Revenue that the petitioner had duly provided its books of accounts, is baseless as there was no definitive answer given by key personnel of the petitioner when they were asked to produce the books of accounts. He alleges that the petitioner is attempting to stall the proceedings by first giving evasive answers to specific requests of the respondents and then contending that the records were available on the laptop of the CEO, which were made available. He has referred to the judgment of the High Court of Judicature at Allahabad in ***Sahara India Mutual Benefit Co. Ltd. v. Commissioner of Income Tax, [2004] 269 ITR 563 (Allahabad)***, wherein, according to him, it was held that when the books of accounts are not produced and the intent of the assessee is to deliberately stall the proceedings, then they could not raise a hue and cry regarding the same.

68. That apart, he has submitted that a direction for special audit may render serious civil consequences for an assessee and therefore, when the determination of direction for a special audit is to be given, it should be followed with the objective satisfaction of the Assessing Officer in consonance with the interest of the Revenue. This is predicated on the intention of the legislature to balance the rights of the assessee and the interest of the Revenue, i.e., to determine taxable income and act on the same accordingly, is not jeopardised.

69. He stated that it is trite law that when the conduct of an assessee is not transparent and the details as called for are not provided, a special audit may be required to be carried out. Reliance in this regard is made to the judgment of this Court in ***DLF Limited. v. Additional Commissioner of Income Tax, (2014) 366 ITR 390.***

70. It is his contention that in view of the above, the direction for special audit was issued in accordance with law. He has sought dismissal of the petitions.

RE: REASSESSMENT

71. Mr. Rai, has at the outset stated that during the course of the hearings, the petitioner has specifically waived their challenge to the *vires* of Explanation 2 to Section 148 in W.P.(C)15970/2023 and W.P.(C)13572/2024, and have restricted their challenge to the singular issue of whether or not there was income which has escaped assessment in the form of an "asset" having value exceeding Rs. 50 lakhs for the purpose limitation under Section 149 read with the fourth proviso to Section 153(A) of the Act.

72. Before submitting on the law, he has endeavored to provide a factual background of the present litigations.

AY 2015-16

73. He stated that, the petitioner did not fully cooperate during the search proceedings and did not provide entire documents and data for the relevant years. Rather, it merely provided an unorganised data dump and it was seen that there were discrepancies and duplication of approximately Rs. 6,136 crore in the debit value of book entries and approximately Rs. 6,454 crore in the credit value in the books of accounts. This was also categorically admitted by the petitioner as noted in the reasons provided in AY 16-17.

74. Pursuant to the notice under Section 148 dated 31.03.2023, a note sheet recording the satisfaction for issuing the notice was communicated to the petitioner, wherein, it was stated that there was escapement of income in

the nature of an "asset" being "receivables" on account of warranty claims reimbursements that were due from the Associated Enterprise of the petitioner. The factual background to such receivables have been stated to be the following:

a. The assessee's parent entity, based in China, manufactures telecom equipment;

b. The assessee acts as a distributor of such telecom equipment in India and sells it to Indian telecom companies;

c. The assessee achieves the distribution by purchasing the equipment from its parent entity and selling it onwards to Indian clients;

d. As part of the sale of the equipment, the assessee also provides a warranty to Indian customers that would cover any losses towards manufacturing defect in the equipment;

e. However, since the assessee was not the manufacturer of the equipment, it had a back to back commitment from its parent entity to reimburse the assessee for any amounts that it goes out of pocket for towards the Indian customers. The evidence of such back to back commitment was two-fold as also noted in the satisfaction note are as follows:

i. The Transfer Pricing Study Report clearly recorded that all risk with respect to warranty claims was to be borne by the foreign parent of the assessee and not by the assessee.

ii. This aspect about the Transfer Pricing Report of the assessee with respect to the claim of warranty expenses made by the assessee was specifically noted by the Assessing Officer as under:

M/s Huawei Telecommunications (India) Company Private Limited

AY 2015-16

Approval for issuance of order u/s 148 of the Act

"5.3.2 The company has claimed expenses as provision of warranty in the various years. The Transfer Pricing Report of HTICPL show that the claim of warranty expenses made by the assessee is against the functional and risk profile detailed by the assessee in its Transfer Pricing Report in view of the' functional, asset, risk analysis of this transaction. Year wise bifurcation of the issue in monetary terms is as given below in Table form.

AY	*Provision for warranty claimed*	*Remarks*
2012-13	*6,64,20517*	*Provision amount of ₹ 6,64,20,517 was created as 2012-13 6,64,20,517 per P&L Account*
2013-14		*No provision was created during the previous year*
2014-15	*12,33,22,221*	*Provision amount of ₹12,33,22,221 was created as per P&L Account*
2015-16	*55,72,52,128*	*Provision amount of ₹ 55,72,52,128 was created as per P&L Account*
2016-17	*48,37,99,536*	*Provision amount of ₹48,37,99,536 was created as per P&L Account*
2017-18	*40,88,97,095*	*Provision amount of ₹20,39,44,418 was created as per P&L Account and ₹ 20,49,52,676 was debited as per the provision of ICDS (refer to the clause Be of tax audit report)*
2019-20	*81,23,81,153*	*Provision amount of ₹ 70,50,27,509 was created as per P&L Account and ₹10,73,53,644 was debited as per the provision of ICDS (refer to the clause Be of tax audit report)*
2020-21	*19,75,18,259*	*Provision amount of ₹19,75,18,259 was created as per P&L Account*
2021-22	*16,88,49,299*	*Provision amount of ₹16,88,49,299 was created as per P&L Account*

iii. Distribution agreement entered into between the assessee and its parent entity stating that the assessee would be reimbursed for any expenses towards the warranty claims made by the end Indian customers, noted as below:

> *"5.3.4. As per the Distribution agreement between assessee and it's Associated Enterprises i.e. M/s Huawei International Pte Ltd, any expenditure incurred on account of warranty is required to be borne by the supplier of the product i.e., the Associated Enterprises. However, assessee has debited warranty expenses and not shown any separate compensation being received from the supplier in the books of accounts. The argument of the assessee that the warranty expenditure is required to be borne by it in terms of the contract with the final client is fallacious. While the provision of warranty for supply of a defective product might be the obligation of the assessee, in terms of its supply contract with the final client, in terms of the distribution agreement, such warranty is finally required to be borne by the supplier of the product. Thus, while the assessee may be required to recognise the expenditure on warranty in its books of accounts due to its obligations towards the final client, reimbursement or compensation received from the supplier is also required to be recognised in the same way. The assessee cannot be in a worse position vis-a-vis warranty, even after back to-back compensation being provided by the supplier."*

f. With respect to the tax treatment of the warranty claims, it was observed that the assessee had made a provision on an estimate basis of any future warrant claims and claimed expense deduction in the relevant AY even though no such expense is incurred in the said AY.

g. It was in this light that it was specifically noted by the Assessing Officer that while there were doubts with respect to the allowability of the expense claims made by the assessee, especially with respect to the accuracy of such provisioning, as to whether the assessee was claiming expenditure deduction and reducing its taxable profits on account of future expenses. If so, it must also reflect the receivables due from its Associated Enterprise since the eventual liability was of the Associated

Enterprise and any such receivable if shown would be the income of the assessee to offset the expense claimed on provisioning basis. The satisfaction note records as under:

> *"5.3.4. As per the Distribution agreement between assessee and it's Associated Enterprises i.e. M/s Huawei International Pte Ltd, any expenditure incurred on account of warranty is required to be borne by the supplier of the product i.e., the Associated Enterprises. However, assessee has debited warranty expenses and not shown any separate compensation being received from the supplier in the books of accounts. The argument of the assessee that the warranty expenditure is required to be borne by it in terms of the contract with the final client is fallacious. While the provision of warranty for supply of a defective product might be the obligation of the assessee, in terms of its supply contract with the final client, in terms of the distribution agreement, such warranty is finally required to be borne by the supplier of the product. Thus, while the assessee may be required to recognise the expenditure on warranty in its books of accounts due to its obligations towards the final client, reimbursement or compensation received from the supplier is also required to be recognised in the same way. The assessee cannot be in a worse position vis-a-vis warranty, even after back to-back compensation being provided by the supplier."*

75. Based on the above discovery of the FAR analysis in the Transfer Pricing Study and the back-to-back commitment in the Distribution Agreement, it was noted by the Assessing Officer that an amount commensurate to the amount of expense claimed towards provisioning of the future warranty claims tantamount to receivable of INR 12,33,22,221/- in the books of accounts of the assessee in the nature of an "asset". The satisfaction note in this regard records as under:

> *"5.3.7. As per discussion above, accounting treatment given by the taxpayer in its books of accounts is the claim of Provision of warranty expenses as an expenditure in profit and loss account,*

while there is no reimbursement/recoupment of expenses from the associated enterprises. Therefore, the income which has escaped assessment (Rs.12,33,22,221/-) should exist as a payment receivable in the books of accounts of the taxpayer, which is in the nature of an 'asset'. Accordingly, I am satisfied that the books of account seized during search suggest that the income chargeable to tax of Rs.12,33,22,221/- has escaped assessment represented in form of asset in the case of assessee for A.Y. 2015-16"

76. The Principal Commissioner of Income-Tax (PCIT), while granting its approval also noted that there was escapement of income reflected in the form of an "asset" i.e., receivable and the conditions set out in section 149(1)(b) read with the 4th proviso to section 153A were met. It is also stated that no assessment was carried out for AY 2015-16 under Section 143(3) and this was the first time the issue of warranty claims would be examined by the Assessing Officer.

AY 2013-14

77. Mr Rai has submitted that for AY 2013-14, the issue is with regard to provision for warranty claims made by the petitioner, which was reimbursed by the Associated Enterprise. His contention is that therefore, income of the petitioner has escaped assessment, in the nature of receivables for customer claims.

78. Pursuant to the search and the notice issued under Section 148 of the Act, a note sheet recording the satisfaction for issuance of the notice was communicated to the petitioner, wherein it was stated that income represented in the form of an asset as well as entry in books of account of the assessee, as gathered from the seized material, amounting to at least Rs. 12,86,11,894/-, which is more than Rs. 50 lakh, has escaped assessment. Even the PCIT and Chief Commissioner of Income-Tax (CCIT) while

according their approval, had noted that income has escaped assessment in the form of assets, i.e., receivables of customer claims.

79. He stated that customer claims which were a liability of the assessee towards liquidated damages i.e., delay or short delivery of telecom equipment, were not disclosed by the assessee. The assessee again had claimed expenses to reduce its taxable profits towards provisioning of customer claims that may arise in the future. However, akin to warranty claims, the eventual liability to bear the liquidated damages, on account of the back to back commitment, was of the foreign Associated Enterprise of the assessee. Therefore, the amount commensurate to customer claims expense was receivable from the Associated Enterprise and since the assessee did not reflect such amount as receivable assets in its books of account or as income despite claiming deduction, there was escapement of income in the form of an asset.

80. The information related to the same was derived from the Transfer Pricing Report of the petitioner, from which it can be seen that the entire risk towards the customer claims was towards the associated enterprise and not the assessee. He stated that since the incriminating material was derived from the same search, a more detailed background to the escapement in the form of customer claims as receivable for AY 2013-14 itself was set out in reasons articulated for AY 2016-17 (which is the subject matter of a different writ petition bearing W.P.(C) 15972/2023), wherein it is clearly stated that the FAR Analysis in the Transfer Pricing Report shows that the assessee should be reimbursed for the customer claims by its Associated Enterprise since the Transfer Pricing Report evidences that the entire risk with respect to customer claims is borne by the foreign Associated

Enterprise and not the assessee, which can only be achieved by the Associated Enterprise reimbursing the assessee.

81. Mr. Rai submitted that while the draft assessment order for AY 2013-14 has not been passed yet, the same for AY 2015-16 has been passed, wherefrom it can be seen that the assessee has in fact, recovered an amount of Rs. 69,81,40,820 towards reimbursement of customer claims from its from Associated Enterprise as per its own statement made during the course of reassessment. The relevant part of the draft assessment order for AY 2015-16 is reproduced below:

> *"13.1 In response, the **assessee has furnished its response** vide letter dated 22.04.2025, and the same has been reproduced as below:*
>
> *"In this regard, it is submitted that the Assessee has created provision for customer claim amounting to INR 88,51,14,056 during the subject AY, the working of the same is enclosed as Annexure 4. The break-up of the same is provided as under:"*

Amount (in INR)	***Remarks***
7,02,12,421	*Refer Note 26 (other expenses) of the audited financial statements*
11,67,60,815	*Refer Note 27 of audited financial statements*
69,81,40,820	*Refer footnote below Note 27. In this regard, it is submitted that **the same has already been recovered from the Associated Enterprises** and therefore, there is no impact on the Profit and Loss account to this extent.*
88,51,14,056	*Total Amount*

82. According to him, the above clearly establishes that the preliminary reasoning of the Assessing Officer, in the reasons pursuant to search, are not only based on incriminating material but also on the admission of the

petitioner in the assessment subsequent to the reopening, that there have been reimbursements.

83. The learned Senior Standing Counsel has submitted that the assessment regime related to search and seizure proceedings underwent a paradigm shift from 01.04.2021, prior to which assessments pursuant to a search were carried out in accordance with Section 153A of the Act. Such assessment/ reassessment was initiated by way of a notice under Section 153A itself, which permitted assessment to be carried out for six assessment years immediately preceding the assessment year of the search and further provided for an extended period of reopening of past years up to a maximum of ten assessment years computed from the end of the assessment year from which the search was carried out. From 01.04.2021 onwards until 01.09.2024, the assessment/ reassessment pursuant to search was to be carried out under Section 147 of the Act. Such assessment/ reassessment would be initiated by way of a notice under Section 148 (instead of Section 153A under the earlier regime). Further, Section 149 provided that such assessment / reassessment pursuant to a search could be carried out within a period of three years from the end of relevant assessment year, extendable to ten assessment years from the end of the relevant assessment year.

84. His contention is that it is paramount to note that there is no requirement for the Assessing Officer to have any information suggesting escapement of income to reopen past years pursuant to a search. The legislature has expressly achieved this by providing a deeming fiction in Explanation 2 to Section 148 of the Act as it was in force then, stating that in case of a search, the Assessing Officer shall be "*deemed to have information which suggests that the income chargeable to tax has escaped assessment*".

Additionally, there is also no requirement for the Assessing Officer to furnish any show-cause notice together with the reasons for reopening or to provide any opportunity to the assessee prior to the reopening of past years pursuant to a search. This flows from the proviso to Section 148A of the Act as it was in force then. Therefore, in cases of search, pursuant to a specific deeming fiction, past years can be reopened without the specific requirement of furnishing of reasons or an opportunity to the assessee. The reason for such deeming fiction is to ensure that assessments in serious cases of search are not hindered on account of procedural requirements, particularly since a search is only initiated on fulfillment of conditions as set out in Section 132 of the Act and on specific approval of superior authorities. As such, once a search is carried out, then the Assessing Officer can reassess past years and make the addition/disallowance based on the material available during or post search. Even prior to 01.04.2021 the assessment under Section 153A, pursuant to a search, was carried out without serving of any show-cause notice and only on service of a notice under the said provision.

85. He has drawn our attention to the judgment in ***Principal Commissioner of Income-tax v. Naveen Kumar Gupta [2024] 168 taxmann.com 574 (Delhi)***, wherein this Court while drawing a comparison between Sections 153A and 148 regimes as they stood prior to 01.04.2021 explained the need to keep assessments pursuant to a search free from procedural hurdles, stated as follows:

> ***"59.*** *The non obstante clause as used in Section 153C of the Act cannot be read to completely exclude the provisions of Sections 143 or 147 of the Act in cases where the assessee's income is sought to be assessed inter alia on the basis of the information found during search proceedings. However, it will*

not be open for the AO to take recourse to Section 147 of the Act, where the AO has taken steps under Section 153C of the Act. Thus, if the conditions for exercise of jurisdiction under Section 153C of the Act are satisfied and the AO issues a notice as required under Section 153C of the Act, any reassessment under Section 147 of the Act would obviously, be impermissible. This is because the Act does not contemplate parallel assessment proceedings. Where the AO is satisfied that the assets, material and documents forwarded by the AO of the searched person under Section 153C of the Act has a bearing on determination of the income of the assessee for any of the years, the AO shall proceed to issue a notice under Section 153C of the Act. By virtue of non obstante clause, the AO is not required to follow the procedural rigours of Section 148 of the Act. Subject to obtaining the approval under Section 153D of the Act, if necessary, the AO is not required to seek any approval from the specified authority, as required under Section 148/151 of the Act for issuing a notice under Section 153C of the Act and can proceed to assess / reassess income for the concerned assessment years.

61. The assumption that provisions of Section 153C of the Act precludes any proceeding under Section 147 of the Act by virtue of the non obstante clause, is unpersuasive. The scheme of Sections 153C of the Act indicates that the said provision was enacted to simplify the procedure, while maintaining the necessary safeguards, for assessment / reassessment in cases where assets belonging to the assessee or books of account or documents, which contain information pertaining to the assessee are found pursuant to a search conducted under Section 132 of the Act or requisition made under Section 132A of the Act, in respect of a person other than the assessee. This is subject to the same having a bearing on the determination of income of the assessee. The AO is neither require to record reasons for his belief that the income of the assessee for the concerned assessment year has escaped assessment nor does he require to seek further approvals as required under Section 148 of the Act. However, he must be satisfied that the assets seized or requisitioned or the documents, books of account

or other material transmitted by the AO of the searched person belongs to or contains information, which has a bearing on the determination of the income of the assessee. The reassessment must be predicated on material held to be incriminating and the income assessed / reassessed must be relatable to the material found as held by this Court in Kabul Chawla and affirmed by the Supreme Court in Abhisar Buildwell (P) Ltd. (supra).”

86. It is stated that therefore, once the search assessment regime was subsumed by Sections 147 and 148 of the Act reopening provisions (instead of the erstwhile Section 153A), w.e.f. 01.04.2021, the deeming fiction was specifically provided to ensure smooth implementation of search assessments without the need of furnishing or providing reasons to reopen by way of information suggesting escapement of income. He further stated that in the present petitions, the petitioner has neither challenged the initiation of search proceedings nor the *vires* of the deeming provisions (as the petitioner specifically waived its challenge to the *vires* of the deeming provisions). Therefore, the instant case is covered by the deeming fiction and there was no specific requirement for the Assessing Officer to furnish the reasons for reopening and thus there cannot now be a challenge to the reopening in an indirect manner under Section 149 (1) read with the fourth proviso to Section 153A that provides for an asset test for extending the period of limitation. Even so, the assessing officer shared the reasons as stated in the note sheet for internal approval for AY 2012-13, AY 2013-14 and AY 2015-16 to AY 2018-19 with the assessee. Separately, AY 2014-15 was not reopened since no provisioning for customer claims or warranty claims was made by the assessee and hence a commensurate

amount was not receivable from the parent entity of the assessee in the said assessment year.

87. Another submission of Mr. Rai is that the reasoning stated for meeting the asset test set out in the fourth proviso to Section 153A only needs to be preliminary and the asset test is to be met in aggregate over the relevant assessment years. He has relied upon the judgment of this Court in the case of ***Principal Commissioner of Income Tax v. Ojjus Medicare Private Ltd, 2024 SCC Online Del 4451*** wherein it was held that the Assessing Officer at the stage of recording reasons for reopening assessment pursuant to a search has not had the opportunity to undertake an in depth examination of the evidence collected and hence the view formed at that stage for the purposes of fourth proviso to Section 153A only needs to be provisional and it was enough if the material was indicative of potential escapement of income. It was further held that the Rs. 50 lakh asset test was not to be viewed as being the qualifying criteria for each "relevant assessment year" and the test was met if the test was met in aggregate or cumulatively. He has also referred to the judgment in ***Ankit Gaur v. Income Tax Officer, WP(C) 472/2023*** dated 25.07.2024, which followed ***Ojjus Medicare Private Ltd. (Supra)*** and held that the Rs. 50 lakh test in the fourth proviso to Section 153A is merely a trigger and hence provisional in nature.

88. According to him, in the present case, the six to ten year period from the end of the relevant assessment year of search would include AY 2016-17 to AY 2013-14. Further, as the reasons recorded for AY 2016-17 also include reasons for AY 2013-14 in addition to the independent finding in AY 2013-14 of escapement of income in the nature of assets (receivables

towards customer claims), the preliminary trigger on a cumulative and independent basis for the relevant assessment years in aggregate is met.

89. It has been submitted that so long as reasons exist, recording in a different format, i.e. elaborating reasons for AY 2013-14 in the reasons recorded for AY 2016-17, does not vitiate the reassessment. In cases of search there is a deeming of reasons for escapement of income to reopen the past years and the procedure prescribed in Section 148A of the Act for issuance of notice along with reasons is not applicable to reopenings pursuant to a search. In such cases, where the Assessing Officer is sharing the internally recorded reasons with the assessee, there is no prescribed format, structure, or year-wise manner in which such reasons are required to be recorded. Reliance in this regard is placed on the judgment of the Supreme Court in ***CIT v. Calcutta Knitwears, (2014) 6 SCC 444***, wherein, in the context of post-search assessments under the erstwhile regime, the Court has categorically held that while recording of satisfaction is mandatory, the statute does not impose any restriction as to the stage, manner, or form in which such satisfaction is to be recorded, so long as it exists and is discernible from the record. Accordingly, once reasons and satisfaction exist, mere variation in the manner or format of recording cannot invalidate the proceedings. He stated that in fact, in the case of ***Super Malls (P.) Ltd. v. PCIT, [2020] 115 taxmann.com 105*** similar objections were raised by the assessee therein with respect to the recording of the satisfaction in the case of Section 153C by the Assessing Officer of the searched person. Rejecting such technical objections, the Supreme Court held that once substantive satisfaction is evident, procedural and actions taken for administrative convenience cannot vitiate entire reassessment

proceedings. This principle squarely applies to the present case, inasmuch as elaboration of the reasons for AY 2013-14 while recording the reasons for AY 2016-17, based on the same material, does not amount to absence of reasons for any assessment year and is only a matter of administrative or procedural exigency. Reliance in this regard is also placed on the judgment of the Supreme Court in ***Dhanjibhai Ramjibhai v. State of Gujarat, (1965) 2 SCC 5*** and this Court in ***Indian National Congress v. DCIT, W.P.(C) 4264/2024*** dated 22.03.2024.

90. It is also stated that for the reasons recorded in AYs 2013-14 and 2015-16 while doubt has been casted on the allowability of expense claimed on account of provisioning especially whether such estimation is accurate, apart from the doubt on the allowability of expenses, clear reasoning has been noted with respect to the existence of a right to reimbursement and hence a receivable and escapement of income. Even assuming that the reasoning doubting the expense allowability was to be decided against the Revenue, as long as the reasoning i.e., preliminary view with respect to receivables is upheld in favour of the Revenue, the reopening would be permissible. In this regard, reliance is placed on ***Srikrishna Private Lt. & Ors. v. I.T.O Calcutta & Ors., (1996) 9 SCC 534***, wherein the Supreme Court reiterated the settled law that when the notice can be upheld on even a single ground, the entire reopening is to be upheld. There is a clear preliminary factual finding that the assets in the form of receivables were not disclosed by the assessee that resulted in the escapement of income. If the receivables were reflected, they would be taken as income especially since the assessee has claimed expenses on account of provisioning, and

hence the assessee is attempting to reduce its taxable income by claiming expenses despite having corresponding right to recover the reimbursements.

91. It is also his case that the asset test is in fact met, as the receivables amount to asset for the purposes of the fourth proviso to Section 153A. Explanation 2 to Section 153A reads as under:

> *"Explanation 2.— For the purposes of the fourth proviso, "asset" shall **include** immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account."*

92. Mr. Rai has stated that as can be seen from the above, the definition of asset is broad and inclusive and not exhaustive. Even *ejusdem generis,* it can be seen that receivables are covered by the definition since loans are specifically mentioned as an asset, which is nothing but a right to recover money. Similarly, in the present case, the right to recover reimbursement towards warranty claims or customer claims i.e. receivables, is as asset. The evidence of existence of such right to recover clearly comes out from the FAR Analysis set out in the Transfer Pricing Report prepared by the assessee itself and is further supported by clauses in the Distribution Agreement.

93. It is his submission that if the legislature wanted to provide a narrower definition of asset, it would have done so by providing an exhaustive class of the same. To buttress this argument, he has also referred to the definition of asset contained in Section 281 of the Act.

> *"281. Certain transfers to be void.*
> *(2) …….*
> *Explanation.—In this section, "assets" **mean** land, building, machinery, plant, shares, securities and fixed deposits in banks, to*

the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee."

94. That apart, it is also his case that the sample of the balance sheet as set out in Schedule III of the Companies Act, 2013 (Item 2) clearly reflects trade receivables as an asset. Reference is also made to the judgment in the case of ***M.J. Exports (P.) Ltd. v. Joint Commissioner of Income-tax, [2025] 176 taxmann.com 342 (Bombay)*** wherein the Bombay High Court, while referring to the judgment of the Supreme Court in ***CIT v. HCL Comnet Systems & Services Ltd., [2008] 174 Taxman 118,*** to hold that a debt receivable is an asset.

95. Mr. Rai has vehemently contested that applicability of the judgment in ***Smart Chip Private Ltd (supra)*** to the facts of the present case, since in that case there was no allegation of income escaping assessment in the form of an asset by the Revenue. It was on this basis that this Court held that the test set out in the fourth proviso to Section 153A was not met. Relevant part of the judgment as relied upon by Mr. Rai is reproduced below:

"17. It is clear from the above that there is no allegation that the income which has escaped assessment was represented in the form of an asset. Therefore, the conditions as stipulated in Clause (a) of the fourth proviso to Section 153A(1) of the Act are not satisfied. The AO does not have the possession any books of account, other documents or evidence, which reveals that the petitioner's income that is represented in the form of an asset has escaped assessment."

96. It has been further submitted that the assessee has not placed on record the Distribution Agreement or any other document to demonstrate that there was no clause providing for reimbursement. In the absence of any such supporting document, the assertion that no reimbursement arrangement

existed is unsupported by evidence. As against this, there is a factual finding by the Assessing Officer in the reasons recorded that such a clause existed in the Distribution Agreement. In any case, in addition to the reimbursement clauses in the Distribution Agreement unearthed during the search, the Assessing Officer has also relied upon the FAR Analysis prepared by the assessee to reflect that the assessee was indemnified fully by its foreign parent. Therefore, there is enough evidence for the Assessing Officer to form a preliminary view to reopen assessment pursuant to the search. He has also challenged the submission on behalf of the petitioner that the Revenue could not show the receivables as assets from the balance sheet of the assessee, by stating that the balance sheet is prepared by the assessee itself and it ought to have reflected the receivables on the asset side when it has a right to receive the amounts from its foreign parent. The whole intent of the search is to uncover and unearth what has not been duly disclosed by the assessee reflecting escapement of income. It was during the search that the Revenue came across the arrangement of back to back reimbursement i.e. receivables between the assessee and its Associated Enterprise on coming across the clauses of the Distribution Agreement and the FAR Analysis stated in the Transfer Pricing Report.

97. It is his submission that the present case is pursuant to a search, and since the statute provides for deeming of reasons to reopen to past years, the reopening should be upheld on this aspect alone. Further, the petitioner has waived its challenge to the *vires* of the deeming provisions. Despite the deeming provisions, the note sheet reflects sufficient reasons based on the evidence unearthed during the search, resulting in formation of preliminary

view of escapement of income represented in the form of an asset i.e. receivables.

98. He has prayed the petitions be dismissed.

REJOINDER ON BEHALF OF THE PETITIONER

99. In rejoinder to the submissions on behalf of the Revenue, the learned Senior Counsel for the petitioners stated that the reliance placed by the Revenue on the reasons recorded for reopening assessment for AY 2016- 17, to justify the reopening of assessment for AY 2013-14 is erroneous inasmuch as, incriminating material has to be seen *qua* each assessment year. It is a well-settled principle of law that each assessment year is a separate and independent year and for the purpose of reopening an assessment, incriminating material pertaining specifically to the relevant assessment year must be identified. In this regard, they have referred to the judgments in ***Commissioner of Income Tax v. Sinhgad Technical Education Society, [2017] 84 taxmann.com 290*** (Para 18-22), ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC)*** (Para 12-14) and ***Saksham Commodities Ltd. v. Income Tax Officer, [2024] 464 ITR 1 (Del.)***.

100. They have also sought to controvert the stand of the Revenue that the reassessment proceedings for AY 2013-14 do not get vitiated merely for absence of reasons especially when elaborate reasons are recorded in AY 2016-17. Under Section 153A of the Act, recording of reasons for initiation of reassessment proceeding is mandatory and cannot be bypassed. They contended that the reliance placed on ***CIT v. Calcutta Knitwear, [2014] 362 ITR 673 (SC)*** is completely erroneous as it is confined to the recording of

satisfaction in the case of a third person arising out of search proceedings and only holds that such satisfaction may be recorded even after completion of assessment of the searched person. The ratio of the said decision has no application whatsoever to reassessment proceedings initiated against a searched person. It is submitted that the proceedings under Section 153A in the case of a searched person stand on a completely different footing and cannot be equated with proceedings initiated against a non-searched person, as sought to be done by the respondents. The reliance placed by Mr. Rai on ***Super Malls (P.) Ltd. vs. PCIT, 8 New Delhi [2020] 423 ITR 281 (SC)[05-03-2020]*** is also contested as incorrect inasmuch as, this judgment was rendered in the context of Section 153C of the Act where satisfaction notes are recorded by the Assessing Officer of the searched person and the Assessing Officer of the non-searched person, both in case of reassessment initiated under Section 153A of the Act, where recording of reason by the Assessing Officer before assuming jurisdiction is mandatory. They also stated that the submission of the respondent by relying upon the judgment in ***Indian National Congress v. Deputy Commissioner of Income-tax, [2024] 463 ITR 431 (Delhi),*** that where the proceedings for multiple years have arisen from a common search, a composite or common reading of satisfaction note does not vitiate the jurisdiction is based on a complete misreading of the judgment. According to the learned Senior Counsel for the petitioner, the aforesaid judgment clearly holds that a composite satisfaction note would suffice the requirement of Section 153C, provided, it embodies details of material gathered in the course of search and pertaining to AYs forming part of the block as whole. Thus, the ratio lays down that the incriminating material *qua* each year has to be seen and not a common

satisfaction note. In the present case there is no incriminating materials pertaining to both AY 2013-14 and AY 2016-17. If the interpretation adopted by the respondents is assumed to be correct, it will lead to reopening of 10 years in a block without there being any specific incriminating material *qua* each year, which will lead to an anomalous situation.

101. In any case, the reasons for reopening for AY 2016-17 were recorded a year back i.e., in 2023, and the reassessment notice under Section 148 for the said year was issued on 31.03.2023, whereas, for AY 2013-14, the reasons were recorded on 31.03.2024 and the reassessment notice was also issued on 31.03.2024. Therefore, the respondent cannot rely upon reasons recorded for a different AY in the past to justify the reopening done on a subsequent date for a different AY, which is clearly an after-thought as reasons much less, any incriminating reasons does not exist for reopening of assessment for AY 2013-14.

102. Mr. Datar and Mr. Gulati also contest the submission of the Mr. Rai that even if one reason from the various reasons survives, the reopening should be upheld. In the case at hand, neither the liability of expenses on account of provision for customer claim/warranty expenses nor the right to receivables as claimed by the respondent satisfies the requirement of the fourth proviso to Section 153A of the Act. Firstly, there is no receivable at all as there is no contractual provision which requires the associated overseas entity to pay these amounts to the petitioner for the relevant assessment year. Further, a receivable does not constitute an asset as per the explanation to Section 153A in as much as, the definition of the asset is provided under fourth proviso to Section 153A of the Act. The principle of

ejusdem generis cannot be applied to read 'receivable' in the definition of asset, as the aforesaid principle of statutory interpretation is applied to interpret where general words are followed by a specific class of words. An expense claim or a provision which is 'receivable' cannot be equated with 'land or buildings', 'shares and securities', 'loans and advances', or 'deposits in bank account'. They have stated that the judgment in ***M.J. Exports (P.) Ltd. v. Joint Commissioner of Income-tax [2025] 176 taxmann.com 342 (Bombay)*** referred to by the Revenue in support of their argument that a debt receivable constitutes an asset, has no application to the instant matter. In that case, provisions for doubtful debts and advances were created in circumstances where there existed a real and subsisting possibility of recovery. This is clearly distinguishable from the present case, where no receivable was in existence at all. Further, they submitted that the case of the petitioner is covered by the judgment of this Court in ***Smart Chip Private Ltd (supra)***.

103. Mr. Datar has also submitted that the reliance placed by the Revenue on the Transfer Pricing Study for AY 2015-16, the Distribution Agreement and the draft assessment order of AY 2015-16 is erroneous. It is stated that the Agreement dated 01.04.2010 was the only agreement in force during the relevant period viz. in AY 2015-16, and the same does not contain any clause providing for reimbursement of expenses incurred on account of provision of warranty expenses. Despite placing reliance on an alleged reimbursement clause, the respondents failed to bring the said Distribution Agreement on record. For this reason, the petitioner has placed the said Agreement dated 01.04.2010 on record along with its written rejoinder submissions. According to him, a perusal of the same demonstrates the

absence of any such clause relating to reimbursement of provision of warranty expenses. He stated that the Transfer Pricing Study Report for AY 2015-16 was never placed before this Court during the hearing but was only produced along with the written submissions of the respondents. Transfer Pricing Study is part of the statutory filing under the Act and was all along available to the respondents and thus, cannot be an incriminating material allegedly found during the course of the search. Further, in any case, the Transfer Pricing Study clearly records that the petitioner shall be entitled to claim damages from the Associated Enterprise to the extent agreed between them. In the present case, there is no material on record to demonstrate that any such damages were ever agreed to be recovered. In fact, as stated hereinabove, the applicable Distribution Agreement expressly provides otherwise. Lastly, the Transfer Pricing Study merely refers to the warranty risk being that of the overseas Associated Enterprise. Once the margin is deduced on the basis of Transaction Net Margin Method and identification of comparable companies bearing similar risk profile, all the risks are already considered and no further addition can be made because all the eligible items of expenditure and all the amounts includible as income are already taken into account while determining the Arms' Length Price and the net margin, and there is no requirement to recover each and every risk borne by the Associated Enterprises.

104. He has opposed the submission of the Revenue that the draft assessment order passed for AY 2015-16 reflects that amounts were recovered by the petitioner on account of reimbursement of customer claims. Firstly, no such material is referred in the reasons and neither is this the reason stated for reopening. Secondly, the reimbursement does not relate to

AY 2013-14. Thirdly, mere reimbursement and that too, for another year, cannot be considered as an 'asset' for reopening assessment. Further it is bad in law to rely on a draft assessment order for AY 2015-16 which did not exist at all when the impugned notice for AY 2013-14 was issued, so as to justify the re-opening for AY 2013-14. Fourth, once a provision is created, it can either be utilised or written back. If it is written back, there is no requirement of reimbursement as it would be automatically credited to the profit and loss account as well as increase taxable profits. Therefore, in any case it is untenable to request immediate back to back reimbursement once the provision is made. Even otherwise, under the Transaction Net Margin Method, there is no requirement to recover each and every risk borne by the Associated Enterprises, so long as the Arm's Length Price can be achieved. Further. The Transfer Pricing Study of AY 2015-16, produced by the respondents, also clearly records that the petitioner shall be entitled to claim damages from the Associated Enterprise only to the extent agreed between them. Therefore, the reopening of assessment for AY 2013-14 cannot be justified.

105. It is the submission of the learned Senior Counsel for the petitioner that there is no allegation or finding in the draft assessment order that the said amount should be treated as income represented in the form of an asset. The said allegation is merely a weak attempt to satisfy the condition of Section 153A of the Act. They reiterated that the respondent has taken an inconsistent stand for AY 2013-14 and AY 2015-16 by considering the issue as 'asset' whereas for the subsequent years, same issue has been considered as entries in the books of account. The inconsistent stand has been taken only to invoke the condition prescribed in Section 153A of the Act.

SUR-REJOINDER ON BEHALF OF THE RESPONDENTS

106. Mr. Rai, learned Senior Standing Counsel raised an objection that the Distribution Agreement dated 01.04.2010 which has been filed by the petitioner along with its rejoinder was neither relied upon during the arguments nor placed on record earlier. His objections on the Agreement are:

(i) The Distribution Agreement dated 01.04.2010 was not in force during the previous year relevant to AY 2015-16 because as per Section 9.1 of Article IX of the Agreement, it was to be in effect for a period of 2 years, extendable to another 12 months, i.e., until 31.03.2013 at best.

(ii) The respondents had relied on the Distribution Agreement which was found during the search proceedings.

(iii) The Distribution Agreement of 2010 was not relied upon in the Writ Petitions and therefore, reliance on the same is completely misplaced.

107. He submitted that notwithstanding the above, a plain and holistic reading of the Distribution Agreement dated 01.04.2010 clearly demonstrates that the foreign Associated Enterprise has undertaken to indemnify and hold harmless the Indian entity against any loss, cost, or expense arising from non-performance, product defects, or product-related issues. The Agreement expressly delineates the allocation of responsibilities and risks between the parties. Clause 3.2(b) of the Distribution Agreement unequivocally provides that Associated Enterprise shall assume risks relating to product quality, order processing errors, mistakes in

communication of product specifications, and other product-related matters, insofar as such risks are not attributable to the petitioner. Further, the indemnity obligation (Article VII of the Distribution Agreement dated 01.04.2010) is couched in wide and comprehensive terms, and when read in its commercial context, necessarily encompasses warranty obligations, customer claims, liquidated damages, and losses arising from manufacturing or product defects. Consequently, when Clause 3.2(b) is read in conjunction with the indemnity obligation under Article VII, it is evident that although petitioner may initially discharge such claims vis-à-vis customers in India, the financial burden of such payments is contractually borne by the foreign Associated Enterprise. Consequently, any amount paid by the Indian entity towards such claims gives rise to a corresponding right of recovery, which constitutes a receivable and therefore an asset under Act. He has drawn our attention to the Clauses III and VII of the Distribution Agreement dated 01.04.2010.

108. Mr. Rai reiterated that the petitioner has always been a limited-risk distributor of the overseas Associated Enterprise. This is evident from the FAR Analysis contained in the Transfer Pricing Study prepared by the petitioner itself. Merely because the clauses in the earlier agreement are less elaborately worded, and subsequent agreements may articulate the same rights and obligations in more expressive terms, does not alter the substantive nature of the arrangement between the petitioner and the Associated Enterprise. The legal character of the transaction is determined by its economic substance and not by variation in clauses of a contract. The petitioner cannot, on the one hand, claim limited-risk status for transfer

pricing purposes and on the other, deny the corresponding right of recovery when such risks arise for contractual purposes.

109. It is a settled principle of income-tax law that contractual arrangements are required to be examined having regard to their real nature, commercial substance and economic effect, and not merely on the basis of the form or drafting of individual clauses. The true character of a transaction must be determined on the basis of its substance rather than its form, particularly where the issue concerns the allocation of risks and financial burden. It is submitted that the existence of a receivable in respect of warranty and customer claims is borne out from two independent and consistent pieces of evidence. The FAR Analysis contained in the Transfer Pricing Study prepared by the petitioner itself clearly establishes that product quality and warranty-related risks are not borne by the Indian entity but rest with the foreign Associated Enterprise. In any event, the Distribution Agreement confirms the same risk allocation through the warranty and indemnity clauses. Read together, these demonstrate that although the Indian entity may initially discharge such claims vis-à-vis customers in India, the economic burden thereof is borne by the foreign Associated Enterprise, giving rise to a corresponding right of recovery. Even independently, the FAR Analysis itself is sufficient to establish the existence of such a recoverable right and along with the Distribution Agreement, the factum of receivables gets even more fortified.

110. Contesting he submission of the learned Senior Counsel for the petitioner, he stated that the respondents are not seeking to justify the reopening the assessment of AY 2013-14 on the basis of reasons recorded for AY 2016-17. Separate reasons have been duly recorded for AY 2013-14,

founded on incriminating material emanating from the search. Where material found during a search evidences a continuing transaction or arrangement giving rise to recurring tax consequences across multiple years, such material is relevant and applicable to each of those assessment years. The reasons recorded for AY 2016-17 clearly show that the incriminating material unearthed during the search revealed the reimbursement of customer claims quantified at Rs.12,86,11,894 pertaining to AY 2013-14. What the statute requires is the existence of such material to the year sought to be reopened, and not the timing or manner in which such material is first recorded or articulated. He has contested the applicability of the judgments in ***Sinhgad Technical Education Society (supra)*** and ***Saksham Commodities Ltd. (supra)*** by stating that the judgments only require that there must exist some incriminating material related to the relevant assessment year. In the present case, such requirements are satisfied.

111. He submitted that jurisdiction of the respondents does not fail merely because the incriminating material emanating from a common search is elaborately analysed in the satisfaction note prepared and recorded in AY 2016-17. The jurisdictional requirement is the existence and applicability of incriminating material to the relevant assessment year, not the manner and form in which it is recorded.

112. Mr. Rai has further stated that the attempt of the petitioner to distinguish ***Calcutta Knitwear (supra)*** and ***Super Malls (P.) Ltd. (supra)*** by drawing a rigid distinction between searched and non-searched persons by stating that these cases pertain to Section 153C and not Section 153A of the Act, is misconceived. The petitioner is blowing hot and cold, as while seeking to discard these judgments on the ground that they arise under

Section 153C, the petitioner simultaneously places reliance on ***Sinhgad Technical Education Society (supra)*** and ***Saksham Commodities Ltd. (Supra)***,which are themselves rendered in the context of Section 153C and not Section 153A. The principle flowing from ***Calcutta Knitwears (supra)*** and ***Super Malls (supra)*** is not confined to Section 153C alone, but is of general application to search-related provisions, namely that the substance of satisfaction prevails over its form, timing or manner of recording, so long as satisfaction based on incriminating material exists. While he is not equating proceedings against searched and non-searched persons; reliance is placed on these 4 judgments only for the settled proposition that jurisdiction is not vitiated merely because satisfaction is recorded in a particular manner or at a particular point of time.

113. It is also averred that the reasons recorded for AY 2016-17 merely capture the incriminating material emanating from the common search in detail, qua the relevant assessment years. The same material existed and was duly applied while recording reasons for AY 2013-14. Reference to common search material does not amount to bypassing the statutory requirement of recording reasons, nor does it result in borrowing of reasons from another year. This position is settled in ***Indian National Congress (supra)*** wherein it was held that where proceedings arise from a common search, a composite or common satisfaction is not impermissible, provided the material gathered in the course of search has relevance to the assessment years sought to be reopened. In other words, the case of the Revenue is that the incriminating material evidencing a continuing contractual and functional arrangement existed and was relevant to AYs 2013-14 and 2015-16.

114. According to Mr. Rai, the apprehension expressed by the petitioner that the interpretation of the Revenue would lead to the reopening of multiple years without year-specific incriminating material is wholly unfounded. The present case does not rest on a mere "block reopening", but on incriminating material emanating from a search which evidences a continuing arrangement giving rise to recurring tax consequences across years. The law does not require such material to be rediscovered or rearticulated repeatedly for each year; rather, it requires that the material exists and bears a live nexus to the year sought to be reopened, which condition stands fully satisfied in the present case. The reopening flows from the same search, the same material, and the same continuing contractual and functional arrangement giving rise to recurring warranty and customer-claim obligations.

115. He has vehemently contested the submission of Mr. Datar and Mr. Gulati that a receivable is not an "asset" within the meaning of the fourth proviso to Section 153A of the Act, by stating that the definition of "asset" under the said proviso is inclusive and illustrative, and therefore cannot be read in a restrictive or exhaustive manner. Once the definition is inclusive, there is no requirement to invoke the principle of *ejusdem generis* at all. A receivable, being a legally enforceable right to recover money, squarely falls within the ordinary, commercial and legal meaning of an asset and cannot be excluded merely because it is not expressly enumerated. Even otherwise, if the principle of *ejusdem generis* is applied, the same operates in favour of the Revenue. Loans are expressly included within the definition of "asset", and a loan is nothing but a right to recover money. A receivable is of the

same genus and character. Accordingly, even on an *ejusdem generis* construction, the issue of receivables stands squarely covered.

116. He submitted that attempt of the petitioner to equate a receivable with a mere "expense claim" or "provision" fundamentally disregards settled principles of tax jurisprudence and basic accounting concepts. A receivable is an accrued and enforceable right, whereas a provision is contingent and notional. This position is not only recognised under the Companies Act, 2013 and settled accounting principles, which treat receivables as assets (Schedule III of the Companies Act, 2013), but has also been judicially affirmed in ***CIT v. HCL Comnet Systems & Services Ltd., [2008] 174 Taxman 118***, followed in ***M.J. Exports (P.) Ltd. (supra)*** which recognises that a right to receive money constitutes an asset for the purposes of the Act. If the stand of the petitioner is accepted, it would artificially narrow an inclusive statutory definition, which should not be permitted.

117. He has contended that the draft assessment order is not relied upon to substitute, supplement or retrospectively validate the reasons. The reasons recorded stand independently and form the sole basis of jurisdiction. The draft assessment order has been referred to only for two limited purposes: firstly, to demonstrate that the contention of the petitioner that that no amount was ever reimbursed/recovered is factually incorrect; and secondly, to respond to a specific query of this Court as to whether additions were proposed in respect of warranty or customer claims.

118. Contesting the stand of the petitioner, he stated that whether reimbursement was actually received and whether margins under the Transaction Net Margin Method already factor in the risks, pertain purely to the merits of the reassessment and are wholly irrelevant for examining the

validity of jurisdiction to reopen the assessment. The existence of an asset for jurisdictional purposes is not contingent upon its disclosure in the balance sheet. On the contrary, the very object of search and reassessment proceedings is to bring to tax income and assets which have not been disclosed in the books of account.

119. It is his case that the judgment of this Court in the case of ***Smart Chip Private Ltd. (Supra)*** is distinguishable since in the said case there was no issue with regard to existence of an asset, whereas in the present case, there is clear preliminary reasoning in both AY 15-16 and AY 13-14 of there being an asset in the form of receivables.

120. He submitted that the issues raised by the petitioner are inherently factual and lie beyond the scope of writ jurisdiction, particularly at the stage of examining the validity of notice under Section 148 of the Act, which is clearly impermissible in the light of judgments of this Court in ***Principal Commissioner of Income Tax v. Ojjus Medicare Private Ltd., 2024 SCC Online Del 4451*** and ***Ankit Gaur v. Income Tax Officer (Judgment dated 25.07.2024 in WP(C) 472/2023)***.

REBUTTAL ON BEHALF OF THE PETITIONER

121. In rebuttal to the rejoinder submissions of Mr. Rai, it is reiterated on behalf of the petitioner that the challenge to the reopening of the reassessment was required to be decided only on the basis of the reasons recorded by the respondents at the time of issuance of the impugned notices and the documents relied upon in such reasons. The subsequent draft assessment order issued for AY 2015-16 has no bearing whatsoever on the

issue of reopening of the assessment which has to be decided at the threshold.

122. With regard to AY 2013-14, it is submitted that reasons recorded for AY 2013-14 does not meet the test of 'asset' as prescribed under fourth proviso to Section 153A of the Act, inasmuch as the sole basis for reopening of assessment is the alleged expense of Rs. 212,86,11,894/- on account of provision for customer claim. There is no incriminating material which has been referred in the impugned reasons and the disallowance of 'provision for customer claim' cannot be made the basis for reopening for the following reasons:

a. Exact same amount was disallowed by the Respondent at the time of scrutiny proceeding and the above addition was deleted by the Tribunal.

b. There is no right with regard to receivables and neither such a basis is provided in the Impugned Reasons.

123. Even though separate reasons have been recorded by the Revenue for AY 2013- 14, there is no incriminating material which is present justifying the reopening of assessment. The Revenue cannot rely upon the reasons recorded for AY 2016-17 to reopen the assessment for AY 2013-14. In any event, even the reasons for AY 2016-17 do not justify reopening of assessment for AY 2013-14. If any tangible material existed satisfying the jurisdictional precondition under Section 148 of the Act, the same ought to have been recorded particularly in a situation where the reasons for AY 2013-14 was recorded at a later point in time.

124. The expenses on account of customer claims which were initially disallowed in the regular assessment, and later allowed by the Tribunal for

AY 2013-14, were the sole liability of the petitioner. There was no case of the respondents at the time of regular assessment that any amount was receivable from the Associated Enterprise. It is stated that this argument is merely a change of opinion to justify re-opening of assessment and to find an asset where there exists none. Even otherwise, the amount of customer claims was never receivable, and as such there is no question of referring to that amount as an asset.

125. It is also submitted that the respondent's reliance on ***Calcutta Knitwear (Supra)*** and ***Super Malls (P.) Ltd. (Supra)*** is misleading as the ratio of these judgments cannot be applied mechanically without there being any incriminating material in the present relevant year. The present assessment being made under Section 147 of the Act is akin to search assessment under Section 153A (under the erstwhile provisions) and not under Section 153C of the Act. There is no separate satisfaction note which is to be prepared under Section 153A and therefore, the ratio of those judgments have no application whatsoever to the facts of the present case. Subsequent to the search, separate reasons have been recorded for AY 2013-14. Once such reasons have been recorded separately for each year, the question of referring to any material does not arise. In any event, there is no incriminating material found as a consequence of the search, which has been referred to which justifies reopening of assessments.

126. It is also averred that the respondents have failed to rebut the submission of the petitioner that an inconsistent stand has been taken by the Revenue inasmuch as 'provision of customer claims' are being termed as 'asset' for AY 2013-14 and as 'entries in the books of account' for AY 2016-17.

127. Insofar as AY 2015-16 is concerned, the following points have been advanced:

a. In the impugned reasons for AY 2015-16, a reference has been made to a purported Distribution Agreement which purportedly states that the expenditure incurred by the petitioner on account of warranty is required to be borne by the supplier viz. Associated Enterprise. Such a clause did not exist in the Agreement prevalent during AY 2015-16 and this assumption (drawn only in AY 2015-16 and not in AY 2013-14) was based on a subsequent Agreement which was not in existence during the relevant assessment years, as specifically pointed out during the course of hearing.

b. The respondents, without disputing the above position during the course of the hearing, have in their post-hearing written submissions, reiterated the existence of the said Agreement to support their illegal reasons. However they have failed to point out any specific clause relating to reimbursement of warranty expenses in the Distribution Agreement which was applicable to AY 2015-16. This is the reason why though a statement was made in the oral arguments, the relevant Distribution Agreement was not produced by the respondents. Once the petitioner placed on record the relevant Distribution Agreement which discloses that there is no such clause in relation to reimbursement of warranty expenses, the respondents have altered their stand and have adopted a new argument by referring to a general indemnity clause which has no application to the issue. Such an indemnity clause was not even referred to in the reasons recorded for AY 2015-16 and is a

fresh attempt to justify reopening of assessment for AY 2015-16 which goes beyond the reasons recorded.

128. It is submitted that the stand of the Revenue in their rejoinder submissions that the said Distribution Agreement dated 01.04.2010 was not in existence during the relevant AY 2015-16 is completely misconceived inasmuch as, a bare perusal of the Clause 9.1 of the said Agreement establishes that the Agreement is automatically renewed unless a notice is provided by any of the parties. Thus, the Agreement dated 01.04.2010 was the only Distribution Agreement in force during the relevant AY 2015-16 and was only substituted by a later Agreement w.e.f. 01.01.2017 which is after AY 2015-16. It is thus clear that the respondents were basing their entire case on an incorrect agreement which had no application on AY 2015-16 and the reassessment ought to be quashed on this short ground alone.

129. Further, the respondents in their written submission dated 15.01.2026 claim that the Agreement dated 01.04.2010, which is the only applicable Distribution Agreement prevalent during AY 2015-16, is not applicable to that year. This implies that the Agreement dated 01.04.2010 was not referred by the respondents at the time of recording of reasons for re-opening. Therefore, any interpretation of the Agreement dated 01.04.2010 now cannot support the re-opening of assessment for AY 2015-16 because the same has to be decided at the threshold.

130. Further, it is submitted that the reliance placed by the respondents on the ‘indemnity’ clause and ‘responsibility’ clause to support its contention that the petitioner had a right to recover expenses borne out by it on account of customer claims and warranty obligation is a mere assumption. Firstly, it is evident that at least insofar as the conclusion in the impugned reasons that

the Associated Enterprise is bearing the expenditure incurred on account of warranty and obligation of reimbursement is now admittedly incorrect. The attempt to now interpret the general indemnity clause and responsibility clause is clearly not supported by reasons and ought to be rejected on this ground alone. Secondly, the provision of expenses relating to warranty by the petitioner cannot be extended on account of the said general indemnity clause and responsibility clause. The general indemnity clause is with respect to non-performance of the product supplied and cannot be stretched to include provisions created by the petitioner based on scientific data. The responsibility clause also cannot support the alleged reimbursement. Lastly, such an expansion of the indemnity clause and responsibility clause will in fact be beyond the contractual scheme inasmuch as, if that is the position, all expenses incurred in the regular course of business would also become recoverable, which would never be the intention of the Distribution Agreement of the specified product imported by the petitioner.

131. It has been further averred that the respondents' attempt to equate a limited-risk distributor with an unconditional right of reimbursement is misconceived, as limited risk does not mandate recovery of every commercial cost from the Associated Enterprise. In the present case, the reliance of the respondents on the FAR Analysis in the Transfer Pricing Study is completely irrelevant as the petitioner is remunerated at Arm's Length Price under which all operational risks stand subsumed. Once the Arm's Length Price is computed and accepted in the original assessment proceedings, it has taken into account all the risks assumed by the petitioner and no further addition can be made by making reference to different obligations arising under Distribution Agreement as all such risks have

already been considered by computing the Arm's Length Price. In the absence of any contractual obligation requiring separate recovery of warranty-related expenses, the Respondent's contention is untenable.

132. It is also submitted that the respondents themselves in paragraph 15 of their rejoinder have admitted that a receivable is an accrued and enforceable right, whereas a provision is contingent and notional. Therefore, in the absence of any enforceable right of recovery, the respondent cannot assume jurisdiction to reopen assessment.

ANALYSIS AND CONCLUSION

133. Having heard the learned counsel for the parties and perused the record, the primary issues which arise for consideration are the following:-

a) Whether the notices under Section 148 of the Act issued by the respondents for AYs 2013-14 and 2015-16 are beyond limitation as there is no income in the nature of an asset escaping assessment.

b) Whether the respondents are justified directing special audits of the accounts of the petitioner for AYs 2013-14 and 2015-16.

134. The challenge mounted to the validity of Explanation 2 to Section 148 of the Act, was waived off by the learned Senior Counsel for the petitioner during the course of the hearing and as such, we need not examine the same.

REASSESSMENT

135. At first we intend to deal with the first issue as noted above, i.e., whether the impugned notices for AY 2013-14 and AY 2015-16 are barred by limitation inasmuch as they have been issued after the expiry of three years from the end of the relevant assessment years, without any evidence to show that income in the nature of assets has escaped assessment.

136. The submissions of Mr. Arvind Datar and Mr. Tarun Gulati on this aspect are summarised below:-

1) The reasons provided by the Revenue in support of the impugned notices do not disclose any incriminating material indicating escapement of income represented in the form of an asset;
2) There are no receivables due to the petitioner as alleged by the Revenue;
3) There is no contractual agreement between the petitioner and the Associated Enterprise for reimbursement of the provisions for customer claims or warranty;
4) The issue related to disallowance of provision for customer claims and warranty have been decided in favour of the petitioner by the Tribunal;
5) Even if it is assumed that there are receivables due to the petitioner, they cannot construed to be assets as per Explanation 2 to Section 153A of the Act;
6) Any unutilised provision for customer claims or warranty will be written back and credited to the profit and loss account of the petitioner, increasing taxable profits;
7) Even if it is assumed that receivables are due from the Associated Enterprise, the same would be shown in the accounts of the petitioner only when it is actually received; and
8) Reliance cannot be placed on draft assessment order or on the reasons recorded for AY 2015-16 to justify reopening of the assessment for AY 2013-14.

137. On the other hand, the contentions of Mr. Indruj Singh Rai can be summed up as under:-

1) There is no requirement for the Assessing Officer to have any information suggesting escapement of income to reopen assessments pursuant to a search, owing to a deeming fiction in Explanation 2 to Section 148 of the Act as was in force then;
2) Pursuant to the search under Section 132 of the Act, information came to the fore that there is an escapement of income of the petitioner in the nature of an asset, being receivables on account of counter claims and warranty;
3) From the Transfer Pricing Report of the petitioner, it can be seen that the entire claims towards customer claims and warranty are to be borne by the Associated Enterprise and not the petitioner;
4) The petitioner in its reply to a query raised by the Revenue during the draft assessment proceedings for AY 2015-16 conceded that subsequent to the reopening, there have been certain reimbursements;
5) Any receivables would amount to asset for the purpose of Section 153A, as can be seen from the wording of Explanation 2 therein;
6) Even applying the principle of *ejusdem generis*, receivables would have the same meaning as 'loans and advances' mentioned in the Explanation 2;
7) Where material found during a search evidences a continuing transaction or arrangement giving rise to recurring tax consequences across multiple years, such material is relevant and

applicable to each of those assessment years. As such, the reasons recorded for both AYs 2013-14 & 2015-16, are justified.

138. For initiating reassessment beyond three years but up to ten years, it is a necessary pre-condition that income which has escaped assessment must be in the nature of an asset. The stand of the Revenue is that in view of the Distribution Agreement between the petitioner and the Associated Enterprise, the petitioner is a limited risk distributor of the Associated Enterprise, and the provisions made anticipating customer claims and warranty claims are to be reimbursed by the Associated Enterprise. In that sense, the provisions are receivables at the hand of the petitioner, in the nature of assets. However, as per the petitioner, there is no contractual agreement for any reimbursement of the provisions made for customer claims and warranty. When there is no right to receive any reimbursement, there cannot be any receivables.

139. It is a conceded position that the Distribution Agreement dated 01.04.2010, has been executed between the petitioner and the Associated Enterprise. The same was in existence during the relevant assessment years. Relevant parts of the said agreement, on which much reliance is placed by the Revenue, are reproduced hereunder:

> *"WITNESSETH:*
>
> *WHEREAS, Huawei India has been established as a distribution support organisation in the Territory acting as a limited risk distributor in respect of various Huawei products and equipment manufactured outside equipment manufacturers ('OEM products')….*
>
> *……*
>
> *ARTICLE III RESPONSIBILITIES*
>
> *Section 3.2 Responsibilities of Seller. Huawei Singapore shall at all times during the term of this Agreement.*

…….

b. Assume risks relating to Product quality, order processing errors, mistakes in the communication of P specifications, or other Product related matters as long as such risks, errors or mistakes were not considered attributable to Huawei India.

ARTICLE VII
INDEMNIFICATION

Huawei Singapore shall hold Purchaser harmless and shall indemnify Huawei India from and again loss, cost or expense, including reasonable attorneys' fees, related to any act or omission in connection the non-performance of the Products supplied under the terms of this Agreement."

140. A perusal of the above reveals that the Associated Enterprise shall assume the risk related to product quality or other related matters, as long as such risk, error or mistake is not attributable to the petitioner, and also that the Associated Enterprise is to indemnify the petitioner from and against any loss, cost or expense incurred by the petitioner related to any act or omission in connection with the non-performance of a supplied product.

141. When the petitioner has a right to be indemnified for any expense incurred by it for non-performance of the product, it cannot contend that there is no contractual agreement for reimbursement, as the creation of provisions for customer claims and warranty would amount to an "*act… in connection with the non-performance of the Products supplied*..."

142. It is also to be noted that the petitioner in its reply dated 22.04.2025 to the query raised by the Revenue with respect to the draft assessment proceedings of AY 2015-16 has admitted that an amount of Rs.69,81,40,820/- has been recovered from its Associated Enterprise on account of customer claims. If that be so, the submission of Mr. Datar and

Mr. Gulati that there is no agreement between the petitioner and the Associated Enterprise for reimbursement of the provisions is unmerited. As such, it must be held that the provisions claimed for customer claims and warranty are reimbursable to the petitioner, and are as such 'receivables'.

143. Now the question arises whether such receivables are in the nature of "*assets*", and also whether the same should be shown in the profit and loss account for the relevant assessment years for which deductions have been sought.

144. To decide the same, we need to examine Explanation 2 to Section 153A of the Act, which we reproduce again for ready reference:

> *"Explanation 2.— For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account."*

145. The provision states that the word "*asset*" shall include immovable property being land or building or both, shares and securities, loans and advancements, deposits in bank account. The words "*shall include*" used imply that the words provided thereafter are illustrations, and not exhaustive definitions of "*asset*". It is an inclusive provision inasmuch as it contemplates even the words not provided therein. We agree with the submission of Mr. Rai that if the intention of the legislature was to limit the scope of "*asset*" to only those words mentioned, it would have expressly done so, as it did while drafting the Explanation to Section 281 of the Act which, in contrast, provides an exhaustive definition of the same word "*asset*".

146. Even in general parlance, the word "*asset*" represents resources with economic value that an individual or business owns or controls with the

expectation that they will provide a future benefit. In other words, an asset is a tangible or intangible resource that can be used to enhance the economic stature of the holder. An asset cannot be narrowly confined to the specific expressions employed within the above explanatory provision, as sought to be contended by the learned Senior Counsel for the petitioner. To impose such a restrictive interpretation would unduly curtail the scope of its meaning, thereby leading to an anomalous situation whereby the Revenue would be precluded from bringing to assessment those forms of income, which, though not expressly enumerated, fall within the broader conceptual ambit of an asset and would otherwise escape assessment.

147. That apart, the *Conceptual Framework for Financial Reporting under Indian Accounting Standards (Ind AS)* issued by the Indian Accounting Standard Board defines an asset as a present economic resource controlled by an entity as a result of past events. An economic resource is further defined as a right that has the potential to produce economic benefits. It describes three aspects of an asset *viz.* right, potential to produce economic benefits, and control. Relevant portion of the Framework is reproduced as under:-

> *"**Definition of an asset***
> *4.3 An asset is a present economic resource controlled by the entity as a result of past events.*
> *4.4 An economic resource is a right that has the potential to produce economic benefits.*
> *4.5 This section discusses three aspects of those definitions:*
> *(a) right (see paragraphs 4.6–4.13);*
> *(b) potential to produce economic benefits (see paragraphs 4.14–4.18); and*
> *(c) control (see paragraphs 4.19–4.25).*
> ***Right***

4.6 Rights that have the potential to produce economic benefits take many forms, including:

(a) rights that correspond to an obligation of another party (see paragraph 4.39), for example:

(i) rights to receive cash.

(ii) rights to receive goods or services.

(iii) rights to exchange economic resources with another party on favourable terms. Such rights include, for example, a forward contract to buy an economic resource on terms that are currently favourable or an option to buy an economic resource.

(iv) rights to benefit from an obligation of another party to transfer an economic resource if a specified uncertain future event occurs (see paragraph 4.37).

xxx xxx xxx

Potential to produce economic benefits

4.14 An economic resource is a right that has the potential to produce economic benefits. For that potential to exist, it does not need to be certain, or even likely, that the right will produce economic benefits. It is only necessary that the right already exists and that, in at least one circumstance, it would produce for the entity economic benefits beyond those available to all other parties.

4.15 A right can meet the definition of an economic resource, and hence can be an asset, even if the probability that it will produce economic benefits is low. Nevertheless, that low probability might affect decisions about what information to provide about the asset and how to provide that information, including decisions about whether the asset is recognised (see paragraphs 5.15–5.17) and how it is measured.

4.16 An economic resource could produce economic benefits for an entity by entitling or enabling it to do, for example, one or more of the following:

(a) receive contractual cash flows or another economic resource;…

xxx xxx xxx

4.46 A present obligation can exist even if a transfer of economic resources cannot be enforced until some point in the future. For example, a contractual liability to pay cash may exist now even if the contract does not require a payment until a future date. Similarly, a contractual obligation for an entity to perform work at a future date may exist now even if the counterparty cannot require the entity to perform the work until that future date."

(emphasis supplied)

148. Even from the above, it becomes apparent that an asset can be said to be a present right that has the potential to produce economic benefits even in the future. It can include a right that corresponds to an obligation of another party, a right to receive cash, or a right to benefit from an obligation of another party to transfer an economic resource, if a specified uncertain future event occurs. Such a right only has to exist and it need not be certain that it will produce economic benefits, for it to be termed as an asset. Further, a present obligation can exist for an entity even if transfer of the economic resource cannot be enforced until some point in the future.

149. In the present case, by virtue of the Distribution Agreement, the petitioner has acquired a right to be indemnified by the Associated Enterprise for the expenses it incurs on customer claims/warranty. Even if the actual indemnification/reimbursement happens only in the future, it does not take away the fact that such a right has arisen in the relevant assessment year when the provisions for customer claims/warranty were made. Such a right to receive reimbursement in the future would certainly enhance the economic stature of the petitioner, and as such, would amount to an asset.

150. Going by the above, we are of the view that the amounts receivable by the petitioner by way of reimbursement of the provisions made for customer

claims and warranty, are to be treated as assets and shown in the accounts of the petitioner for the relevant assessment years. Though the said amounts may accrue in the future, the right to receive the same emanates from the Distribution Agreement and ensues to the petitioner when it made the provisions and claimed deductions, and must be shown as assets in the accounts of the petitioner for the relevant years.

151. Therefore, the issue as to whether receivables at the hands of the petitioner are in the nature of an asset is answered in favour of the Revenue and against the petitioner/assessee.

152. In view of the above conclusion, we shall now proceed to decide whether the impugned notices are justified. Insofar as the notice dated 31.03.2024 for AY 2013-14 is concerned, we have seen the reasons recorded in support of the notice under Section 148 of the Act, the same read as under:-

> *"1. The assessee, M/s Huawei Telecommunications (India) Company Private Limited (HTICPL) (PAN-AABCHI1376E) is as company. HTICPL is a Private Limited company incorporated on 23 July 2002. It is classified as pon-govt Company and is registered at Registrar of Companies, Delhi. The objective of the company is to carry out business manufacture, assembly, software design, development and activities, development and integration of all types of communications, networks products and solutions, dealing in all equipment products and solutions related to telecom networks and services.*
> *2. The Return of income for AY 2013-14 was filed by the assessee u/s 139(1) of the Act on 29.11.2013 declaring loss of Rs.311,04,30,235/- and revised the return on 30.03.2015 declaring loss of Rs.310,39,86,024/. The return was processed u/s 143(1) of the Act. After that the case was picked up for scrutiny through CASS. The assessment was completed on*

03.10.2017 u/s 143(3)/144C is the total loss of Rs.294,03,55,100/-. Apart from other additions made by the AO, an addition of Rs. 12,86,11,894 was made on account of provision for customer claims under section 37 or 40a(in) of the Act. This issue is also involved under consideration.

3. Thereafter, a search and seizure operation was conducted on Huawei Group and related entities on 15.02.2022. Assessee was one of the persons covered under search action. Accordingly, for the purpose of better coordination, effective investigation and meaningful investigation, the case of the assessee was centralized with the office of the undersigned vide order u/s 127 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") bearing number F. No. Pr. CIT/FBD/Tech/127/Cent/2022-23 dated 09.11.2022 passed by the Pr. CIT, Faridabad.

4. During the search proceedings certain incriminating digital evidences, loose sheets, diaries etc were found and seized from the business premise of HTICPL 19, 10 and 11th Floor, Capital Cyberscape, Gurugram Manesr, Urban Complex, Sector-59, Ullahwas, Gurugram, Haryana-122011"

5. 5. As per submitted audit report dated 08.06.2020 in Form 3CA for FY 2019-20, as per Form 3CD, point 11(b), following books of accounts were mentioned to be maintained at 9th Floor, Capital Cyberscape, Gurugram Manesar, Urban Complex, Sector-59, Ullahwas, Gurugram, Haryana-122011, viz

i. General ledger (computerized)
ii. Journal Book (computerized),
iii. Monthly payroll records (computerized),
iv. Inventory ledger (Computerized),
v. Fixed assets register (computerized),
vi. Other relevant documents, bilis, vouchers, receipts, Debit note, Credit note, Inventory register, Agreements, orders etc.

6. During the course of the Search, the officials of the company were inquired about the books of accounts of the

company. However, during search, HTICPL only provided the dump ERP data without providing details as required. The data provided was analysed and there are issues relating to the correctness of the ERP data provided by the company.

7. The finances of the company provided during the course of Search is incoherent, unsegregated, voluminous and required significant amount of further processing to come to a form that can be examined. The functionaries of the company based in India could not explain the rationale of the various transactions entered by the company and have made post facto submissions. The ERP data itself in two financial years is not matching with the final trial balance of the company on account of duplication and missing data The company has neither provided backup of the digital books of accounts, required to be kept at servers physically located in India nor provided the address of such physical servers. Based on such circumstances, the accounts of the company are clearly complex, voluminous and in certain years incorrect. Accordingly, I am satisfied that the books of account seized during search suggest that the income chargeable to tax has escaped assessment in the case of Assessee.

8. The assessee company has created and claimed the provision of customer claim as deduction for the purpose of Income Tax calculation. The said provision was created by the assessee company due to the probable deduction that the customer might make on account of potential delay in supply of goods or provision of services. The material available on record, pursuant to search, does not justify the allowability of the same especially the reliability of estimate for provisioning of these expenses on scientific basis. It is seen from the financial statements and documents discovered during the search proceedings, the Assessee Company has been claiming huge provisions on account of customer claims as a deduction. The assessee claimed that the said provision is created by the Assessee due to probable deduction that the customer might make on account of customer claims as a deduction. The assessee claimed that the said provision is created by the Assessee due to probable deduction that the customer might

make on account of potential delay in supply of goods or provision of services. Based on the search and post search investigation carried out in the case it became clear that the said provision is not an ascertained liability. Further, it appears the Assessee does not have any present obligation to discharge such liquidated damages, the provision made on this account appears to be a contingent liability which lacked reasonable certainty and possible quantification. Therefore, the same do not constitute expenditure and cannot be the subject matter of deduction. In light of this new fact emerged during search proceedings and post search investigation that assessee does not have any obligation to discharge such liquidate damages, the allowability of provision customer claim without scientific basis should be investigated and nature of transaction. The issue in monetary terms for the year under consideration is given below:

AY	*Amount of provision of customer claims created (in INR)*
2013-14	*12,86,11,894*

9. The undersigned shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of Assessee Company for AY 2013-14, within the meaning of section 147 of the 1.T. Act. Further, it appears the assessee does not have any present obligation to discharge such liquidated damages, the provision made on this account appears to be a contingent liability which lacked reasonable certainty and possible quantification. Therefore, the same do not constitute expenditure and cannot be the subject matter of deduction even under the mercantile system of accounting followed by the assessee company. The expenses booked by assesse company are not less than Rs. 50 Lakh. ...”

(emphasis supplied)

153. Similarly, the relevant reasons recorded for AY 2015-16, are the following:-

“5.3.1 Issues related to Warranty expenses:

5.3.2 The company has claimed expenses as provision of warranty in the various years. The Transfer Pricing Report of HTICPL show that the claim of warranty expenses made by the assessee is against the functional and risk profile detailed by the assessee in its Transfer Pricing Report in view of the functional, asset, risk analysis of this transaction. Year wise bifurcation of the issue in monetary terms is as given below in Table form.

AY	*Provision for warranty claimed*	*Remarks*
2012-12	*6,64,20,517*	*Provision amount of ₹ 6,64,20,517 was created as per P&L Account.*
2013-14	*-*	*No provision was created during the previous year.*
2014-15	*-*	*No provision was created during the previous year.*
2015-16	*12,33,22,221*	*Provision amount of 12,33,22,221 was created as per P&L Account.*
2016-17	*55,72,52,128*	*Provision amount of 55,72,52,128 was created as per P&L Account.*
2017-18	*48,37,99,536*	*Provision amount of %48,37,99,536 was created as per P&L Account.*
2018-19	*40,88,97,095*	*Provision amount of X20,39,44,418 was created as per P&L Account and X 20,49,52,676 was debited as per the provision of ICDS (refer to the clause 13e of tax audit report)*
2019-20	*81,23,81,153*	*Provision amount of %70,50,27,509 was created as per P&L Account and % 10,73,53,644 was debited as per the provision of ICDS (refer to the clause*

		13e of tax audit report)
2020-21	*19,75,18,259*	*Provision amount of %19,75,18,259 was created as per P&L Account.*
2021-22	*16,88,49,299*	*Provision amount of X16,88,49,299 was created as per P&L Account.*

5.3.4 As per the Distribution agreement between assessee and it's Associated Enterprises i.e. M/s Huawei International Pte Ltd, any expenditure incurred on account of warranty is required to be borne by the supplier of the product i.e., the Associated Enterprises. However, assessee has debited warranty expenses and not shown any separate compensation being received from the supplier ii n the books of accounts.

The argument of the assessee that the warranty expenditure is required to be borne by it in terms of the contract with the final client is fallacious. While the provision of warranty for supply of a defective product might be the obligation of the" assessee, in terms of its supply contract with the final client, in terms of the distribution agreement, such warranty is finally required to be borne by the supplier of the product. Thus, while the assessee may be required to recognise the expenditure on warranty in its books of accounts due to its obligations towards the final client, reimbursement or compensation received from the supplier is also required to be recognised in the same way. The assessee cannot be in a worse position vis-a-vis warranty, even after back-to-back compensation being provided by the supplier.

5.3.5 Further, during the post search enquiry, the Assessee was asked to explain how 'warranty fee rate' for the purpose of computing provision for warranty is arrived at. However, the reply given by the Assessee was found to be vague as it was informed that fee rate calculated based on global analysis which took into account the costs incurred by the Group on rectifying defaults in similar products sold to customers. However, the reply of the assessee was not found to be tenable because of following reaons:

a) There is no prescribed methodology which has obtained global recognition in the financial accounting on the determination of the "warranty free rate"

b) Such practice of calculating the rate based on global analysis tantamount to imposing the global average to the Indian market which might not be the case as Indian geographic market might not behave in the same manner as the assessee assumed to do so.

c) Such methodology would also fail in those products which are launched for the first time in the market, or which do not have any precedent to arrive at the "warranty fee rate"

d) Huawei not only provides B2C products but also many B28 product and services which requires high level of personalized customization based on the end user requirement, and therefore in such sales, calculation of provision of warranty would be difficult if not impossible.

5.3.6 Furthermore, the provision for warranty expense is not an allowable deduction as it is a contingent liability. The test to ascertain the nature of liability is whether a provision provides for a liability for which the amount can be determined with substantial accuracy. The Assessee has submitted that liability of warranty provision is determined on the basis of costs liable to be incurred in relation to warranty obligation contracted with respected. customers, which apparently is not on a scientific basis. The contentions of the Assessee are not acceptable.

5.3.7 As per discussion above, accounting treatment given by the taxpayer in its books of accounts is the claim of Provision of warranty expenses as an expenditure in profit and loss account, while there is no reimbursement/recoupment of expenses from the associated enterprises. Therefore, the income which has escaped assessment (Rs. 12,33,22,221/-) should exist as a payment receivable in the books of accounts of the taxpayer, which is in the nature of an 'asset'.

Accordingly, I am satisfied that the books of account seized during search suggest that the income chargeable to tax of Rs. 12,33,22,221/- has escaped assessment represented in form of asset in the case of assessee for A.Y. 2015-16."

(emphasis supplied)

154. A perusal of the notice under Section 148 of the Act dated 31.03.2024 and the satisfaction note containing the reasons recorded for AY 2013-14 would reveal that the re-assessment is being initiated pursuant to the search dated 15.02.2022 under Section 132 of the Act. However, unlike the reasons recorded for AY 2015-16, it does not state that the provision was reimbursable by the Associated Enterprise, making it an asset. It also does not make any reference to the Distribution Agreement or the Transfer Pricing Study. Though the said notice and reasons recorded for AY 2013-14 were issued after the search and also after the notice dated 31.03.2023 for AY 2015-16 was issued, the Assessing Officer has not made any reference whatsoever to any receivables amounting to assets.

155. We must state that the fourth proviso to Section 153A of the Act lays down the conditions precedent for issuance of notice for reassessment. It is only upon fulfillment of such conditions that the Assessing Officer assumes jurisdiction to issue a notice under Section 148 of the Act. Since satisfaction of the conditions therein is a jurisdictional requirement, it is incumbent upon the Assessing Officer to demonstrate in writing as to how the conditions have been satisfied for him to assume jurisdiction. Therefore, initiation of re-assessment has to be examined on the basis of the notice and the subsequent satisfaction note containing the reasons recorded.

156. The Assessing Officer has stated in the reasons recorded for AY 2013-14 that the material discovered during the search proceedings show that the provision made for the customer claims is not an ascertained liability, but a contingent one. It is also stated that the allowability of the

provision should be investigated. In other words, the reasons for the Assessing Officer to issue the notice has to do with the genuineness of the expense claimed.

157. The issue as to whether an assessment can be reopened on the sole basis that allowability or genuineness of the expense need to be investigated or verified is no more *res integra*. This Court in ***Le Passage to India Tours & Travels Pvt. Limited v. Additional Commissioner of Income Tax, 2014:DHC:2015-DB*** has held as under:-

> *"5. In the present case the "reasons to believe" – extracted above – nowhere reveal as to what tangible material which the AO came to obtain to justify the reassessment notice. In the previous instance, the reassessment notice was based on the assumption that a much larger income had accrued to the assessee whereas only a fraction of its was offered in the P & L account. In the present case, a somewhat similar, if not identical, ground has been made out i.e. that of expenses incurred abroad have not been revealed. This was an aspect which was known to the AO at the time of the original assessment; the explanations by the assessee appear to have been taken into account. At the time when the first reassessment notice was issued a facet of this was taken into consideration and in fact cited in the "reasons to believe". A virtual assertion of the same reasons in different words does not clothe the reassessment notice, in the opinion of the Court, with any more sanctity, nor does it take away the vice of lack of jurisdiction noticed in the order in WP 8685/2010. Moreover, an assessment cannot be reopened merely to verify the genuineness of the expenses as that would amount to an impermissible fishing or rowing enquiry without any tangible material to show escapement of income.*

> *For the above reasons it is held that the impugned notice is not justified and beyond the authority of law. It is accordingly quashed and the writ petition is allowed."*
>
> (emphasis supplied)

158. It is pertinent to note here that the allowability of the provisions made for customer claims for AY 2013-14 as well as the methodology used for arriving at the amounts so claimed, was subject matter of an appeal before the Tribunal, in ITA No.7510/Del/2017, wherein while relying upon the judgment of the Supreme Court in ***Rotork Controls India (P) Ltd. (supra)***, the Tribunal has held as under:-

> *"42. Evidence brought on record by the taxpayer shows that aforesaid conditions have been fulfilled and as such, provision made qua the amount provided by the taxpayer pertaining to actual delays and defaults occurred in terms of the contract entered into between the taxpayer and its customers is to be considered as "ascertained liability". So, AO/DRP have erred in making disallowance on account of provision for customer claims. So, it is ordered to be deleted subject to verification of data brought on record by the taxpayer as discussed in the preceding paras. Consequently, grounds no.4 to 4.3 of ITA No.7509/DEL/2017 & 7510/DEL/2017 for Assessment Years 2012-13 & 2013-14 respectively are determined in favour of the taxpayer."*

159. As seen from the above, the Tribunal has given a categorical finding that the provisions made for customer claims for AY 2013-14 is an ascertained liability. The order of the Tribunal has not been challenged. If that be so, the Assessing Officer cannot be permitted to reopen the assessment, based on the same issue. Mr. Datar is justified in relying upon the judgment in ***Smart Chip Private Ltd. (supra)*** wherein it was held as under:-

"16. It is apparent from the above that the AO believed that the petitioner's income had escaped assessment for AY 2016-17 on essentially three grounds. First, that the petitioner had deducted expenses relating to amounts paid to certain persons who had not filed their income tax returns and the AO thus doubted the genuineness of the said transactions. Second, that the petitioner had booked expenses, which according to the AO, were personal expenses of its directors and had not been incurred wholly and exclusively for the purpose of the petitioner's business. And third, that the petitioner had paid certain amounts as expenses for availing contractual manpower services and the AO doubted the genuineness of the said payments.

17. It is clear from the above that there is no allegation that the income which has escaped assessment was represented in the form of an asset. Therefore, the conditions as stipulated in Clause (a) of the fourth proviso to Section 153A(1) of the Act are not satisfied. The AO does not have the possession any books of account, other documents or evidence, which reveals that the petitioner's income that is represented in the form of an asset has escaped assessment.

18. In terms of Explanation 2 to Section 153A(1) of the Act, the term 'asset' is defined to include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank accounts.

19. The AO seeks to disallow expenses on account of doubting the genuineness for the reason that the same were not incurred wholly or exclusively for the purpose of the petitioner's business. Absent any further material to establish that such expenses had resulted in the acquisition of any asset, the conditions stipulated in the fourth proviso to Section 153A(1) of the Act would remain unsatisfied."

(emphasis supplied)

160. Since the genuineness or allowability of expenses cannot be the sole reason to initiate reassessment, we must hold that though the notice for AY 2013-14 was issued subsequent to the notice in AY 2015-16, the Assessing Officer failed to specify as to how the provision made for customer claims

would amount to income escaping assessment in the nature of an asset, for him to assume jurisdiction. Therefore the reasons recorded by the Assessing Officer to reopen the assessment for AY 2013-14 do not satisfy the fourth proviso to Section 153A(1) of the Act.

161. The argument of Mr. Rai is that the reasons provided for AY 2016-17 (subject matter of a separate writ petition W.P.(C) 15972/2023), that incriminating material derived from the search reveal that there is an escapement of income in the form of customer claims as receivables, should be read in conjunction with AY 2013-14 as both notices emanate from the same search proceedings and material gathered. His argument is that so long as reasons exists, elaborating such reasons for AY 2013-14 in the reasons recorded for the AY 2016-17 does not vitiate the reassessment, as in cases of search, since the Assessing Officer is deemed to have incriminating evidence, the procedure prescribed under Section 148A of the Act, i.e. issuance of notice along with the reasons, is not applicable. We are not in agreement with the above submission of Mr. Rai, for the reason that even in cases of search, the jurisdictional requirement set out in Section 153A of the Act needs to be fulfilled, by way of recording of reasons detailing as to how, income in the nature of an asset has escaped assessment.

162. Mr. Rai has referred to the judgment in the case of ***Indian National Congress (supra)*** in support of his contention that since Section 153A does not mandate separate reasons recorded for each assessment year, the reasons recorded in the satisfaction note for AY 2016-17 which encapsulates incriminating material pertaining to the assessment years in question, would suffice. We are not impressed by the submission, for the reason that in ***Indian National Congress (supra)***, this Court while dealing with Section

153C of the Act, was examining the validity of a common satisfaction note issued by the Revenue for the assessment years forming part of a block as a whole. The issue before the Court was whether the composite and common satisfaction note would suffice for the years in the block. However, in the present case, notices and satisfaction notes containing the reasons recorded have been issued for both AY 2013-14 and AY 2016-17 separately. There is nothing before us to suggest that either of the notices were in the nature of a composite or common satisfaction note referring to the block as a whole. The endeavour of Mr. Rai is to say that the reasons recorded for AY 2016-17, emanating from the same search and materials gathered, evidence a continuing transaction or arrangement giving rise to recurring tax consequences across multiple years, and therefore should be read to be applicable to AY 2013-14 also. However, it is not his case that the notice or the satisfaction note for AY 2016-17 make any reference to incriminating material found *qua* AY 2013-14 or a block period. In the absence of such reference by the Assessing Officer, the notice / satisfaction note for AY 2016-17 cannot be considered as a common or composite satisfaction note resting on incriminating material pertaining to the AY 2013-14. For this reason, the above submission of Mr. Rai and his reliance on the judgment in ***Indian National Congress (supra)*** warrant rejection.

163. We are of the view that reliance was rightly placed by the learned Senior Counsel for the petitioner on the judgment of this Court in the case of ***Saksham Commodities Limited (supra)*** to say that the Assessing Officer needs to necessarily identify the assessment years to which the material gathered in the course of a search may relate to before issuing the notice. The judgment in the case of ***Saksham Commodities Limited (supra)*** though

delivered in the context of Section 153C of the Act dealing with abatement of pending assessment and reassessment pursuant to a search, contains ratio applicable to the facts of the present case. We reproduce the relevant part of the judgment as under:-

> *"48. In terms of the Second Proviso to Section 153A, all assessment or reassessment proceedings relating to the six AYs' or the "relevant assessment year" pending on the date of search are statutorily envisaged to abate. Abatement is envisioned to be an inevitable consequence of the initiation of action under Section 153A. Neither issuance of notice nor abatement are predicated upon a formation of opinion by the AO of the searched person that the material is likely to impact the total income of that assessee. However, the spectre of abatement insofar as the "other person" is concerned would arise only after the jurisdictional AO has formed the requisite satisfaction of the material having "a bearing on the determination of the total income of such other person" and having formed the opinion that proceedings under Section 153C are liable to be initiated. It would be pertinent to bear in mind that Kabul Chawla was a decision rendered in the context of Section 153A. It was in the aforesaid backdrop that the Court significantly observed that once a search takes place under Section 132 of the Act, notice under Section 153A(1) would mandatorily issue. The abatement of assessment and reassessment pending on that date would, in the case of a Section 153A assessment, be a preordained consequence. However, and in light of what has been observed hereinabove, it is apparent that Section 153C constructs a subtle and yet significant distinction insofar as the question of commencement of proceedings or assumption of jurisdiction is concerned.*
>
> *49. That takes us to the principal question and which pertains to the nature of the incriminating material that may be obtained and the years forming part of the block which would merit being thrown open. Regard must be had to the fact that while Section 153C enables and empowers the jurisdictional AO to commence assessment or reassessment for a block of six AYs' or the "relevant assessment year", that action is founded on satisfaction*

being reached that the books of accounts, documents or assets seized "have a bearing on the determination of the total income of such other person". We in this regard bear in mind the well settled distinction which the law recognizes between the existence of power and the exercise thereof. Section 153C enables and empowers the jurisdictional AO to assess or reassess the six AYs' or the "relevant assessment year". The Act thus sanctions and confers an authority upon the AO to exercise the power placed in its hands for up to a maximum of ten AYs'. Despite the conferral of that power, the question which would remain is whether the facts and circumstances of a particular case warrant or justify the invocation of that power. It is the aforesaid aspect which bids us to reiterate the distinction between the existence and exercise of power.

50. What we seek to emphasise is that merely because Section 153C confers jurisdiction upon the AO to commence an exercise of assessment or reassessment for the block of years which are mentioned in that provision, the same alone would not be sufficient to justify steps in that direction being taken, unless the incriminating material so found is likely to have an impact on the total income of a particular AY forming part of the six AYs' immediately preceding the AY pertaining to the search year or for the "relevant assessment year".

51. Ultimately Section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have the potential to impact or have a bearing on an assessment which may be undergoing or which may have been completed. The words "have a bearing on the determination of the total income of such other person" as appearing in Section 153C would necessarily have to be conferred pre-eminence. Therefore, and unless the AO is satisfied that the material gathered could potentially impact the determination of total income, it would be unjustified in mechanically reopening or assessing all over again all the ten AYs' that could possibly form part of the block of ten years.

52. The decisions which hold that an assessment is liable to be revised only if incriminating material be found, even if rendered in the context of Section 153A, would clearly govern the question

that stands posited even in the context of Section 153C. It would be relevant to recall that the Division Bench in Kabul Chawla had observed that in the absence of any incriminating material, a completed assessment may be reiterated and the abated assessment or reassessment be concluded. The importance of incriminating material was further underlined in Kabul Chawla with the Court observing that completed assessments could be interfered with, only if some incriminating material were unearthed. This aspect came to be reiterated in RRJ Securities when the Court held that it would be impermissible to either reopen or reassess a completed assessment which may not be impacted by the material gathered in the course of the search and which may have no plausible nexus. The aforesaid position also comes to the fore when one reads para 17 of ARN Infrastructure and which annulled an action aimed at reopening assessments for years to which the incriminating document which was found did not relate.

53. Sinhgad Technical Education Society also constitutes a binding precedent in respect of the aforesaid proposition as would be evident from the Supreme Court noticing that the material disclosed pertained only to AY 2004-05 or thereafter and that consequently the Section 153C action initiated for AYs' 2000-01 to 2003-04 would not sustain. It was this position in law as enunciated in that decision which came to be reiterated by our Court in Index Securities.

54. In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C. Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on

material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C ex abundanti cautela. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated by the respondents.

55. Take for instance a case where the material gathered in the search is contemplated to have an adverse impact on the declarations and disclosures made by an assessee pertaining only to AYs' 2016-17 and 2017-18. What we seek to emphasise is that pending assessments for those two years could validly form subject matter of action under Section 153C and pending assessments in that respect would surely abate. However, that by itself would not be sufficient to either reopen or issue notices in respect of AYs' prior to or those falling after those two AYs' and which may otherwise fall within the maximum block period of ten years merely because the statute empowers the AO to do so. Unless the material gathered and recovered is found to have relevancy to the AY which is sought to be subjected to action under Section 153C, it would be legally impermissible for the respondents to invoke those provisions. Consequently, the AO would be bound to ascertain and identify the year to which the material recovered relates. The years which could be then subjected to action under Section 153C would have to necessarily be those in respect of which the assessment is likely to be influenced or impacted by the material discovered. Section 153C neither mandates nor envisages a mechanical or an en blanc exercise of power, or to put it differently, one which is uninformed by a consideration of the factors indicated above.

56. We also bear in mind the pertinent observations made in RRJ

Securities when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to "necessarily" be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. This aspect was again emphasised in para 38 of RRJ Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforenoted judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY.

57. It becomes pertinent to note that both Sections 153A and 153C require the assessee upon being placed on notice to furnish ROIs' for the six AYs' or the "relevant assessment year". All that the two provisions mandate is that notwithstanding the submission of those ROIs', the AO would frame one assessment order in respect of each of the years which were made subject matter of the notice and which would deal with both disclosed and undisclosed income. This too reinforces our view that Section 153C would apply only to such AYs' where the jurisdictional AO is satisfied and has incriminating material for those AYs' and which may be concerned with disclosed and undisclosed income.

xxxx xxxx xxxx

61. A reading of the aforesaid Satisfaction Notes would establish that jurisdictional AOs' appear to have proceeded on the premise that the moment incriminating material is unearthed in respect of a particular AY, they would have the jurisdiction and authority to invoke Section 153C in respect of all the assessment years which could otherwise form part of the "relevant assessment year" as defined in Section 153A. In our considered opinion, the aforesaid understanding of Section 153C is clearly erroneous and unsustainable. As explained hereinabove, the discovery of material likely to implicate the assessee and impact the assessment of total income for a particular AY is not intended to set off a chain reaction or have a waterfall effect on all AYs' which could form part of the "relevant assessment year". This, more so since none of the Satisfaction Notes record any reasons of

how that material is likely to materially influence the computation of income for those AYs'.

62. Hypothetically speaking, it may be possible for the material recovered in the course of a search having the potential or the probability of constituting incriminating material for more than one assessment year. However, even if such a situation were assumed to arise, it would be incumbent upon the AO to duly record reasons in support of such a conclusion. The Satisfaction Notes would thus have to evidence a formation of opinion that the material is likely to be incriminating for more than a singular assessment year and thus warranting the drawl of Section 153C proceedings for years in addition to those to which the material may be directly relatable."

(emphasis supplied)

164. As seen from the above, even when the Assessing Officer is in possession of material which is likely to be incriminating for more than one assessment year, he has to necessarily record the reasons to reopen assessment *qua* each of the assessment years. It is only through such reasons recorded that a co-relation can be made between the material gathered during the search, and a particular assessment year. Any issuance of notice without fulfilling such jurisdictional mandate would amount to a 'fishing and roving enquiry', which cannot be permitted.

165. Since the reasons stated in the satisfaction note for AY 2013-14 are devoid of merit and as the Revenue cannot be permitted to justify issuance of notice for AY 2013-14 by relying upon the reasons recorded for the AY 2016-17, it must be stated that the impugned notice for AY 2013-14 contains no reasons alleging the existence of income escaping assessment in the form of an asset. As such, the impugned notice dated 31.03.2024 under Section 148 of the Act for AY 2013-14, is bad in law and needs to be set aside.

166. Insofar as, AY 2015-16 is concerned, we have already reproduced the reasons provided for issuing the notice dated 31.03.2023 under Section 148 of the Act, which clearly reveal that the reassessment has been initiated pursuant to evidence that has been unearthed during the search that suggest that there are receivables in the nature of reimbursement of the provisions for warranty. It has been stated that since such receivables have not been recorded in the books of the assessee, income has escaped assessment in the nature of an asset. We have already held that the receivables at the hand of the petitioner would be an asset for the purpose of Section 153A of the Act. As such, the notice dated 31.03.2023, for AY 2015-16 being within ten years of the end of the relevant assessment year 2015-16, meets the requirement under Section 153A and also Section 149(1) of the Act. Therefore, the said notice cannot be said to be beyond limitation. The challenge to the notices dated 31.03.2023 and 25.05.2023 along with the satisfaction note for AY 2015-16, therefore, cannot be sustained.

167. Some of the arguments raised by the learned Senior Counsel for the petitioner with regard to the issue of receivables go into the merits of the case. The said arguments are enumerated as under:

1) After ascertaining the actual expenses incurred for warranty claims, any unutilised portion of the provision would be written back to the profit and loss account of the petitioner;
2) Even if the Associated Enterprise reimburses the provision for warranty or any part thereof, the same would be added to the taxable income of the petitioner for the year in which such reimbursement is actually made;

3) As the petitioner and the Associated Enterprise have been subject to transfer pricing, all the risks associated with the entities have been considered, and it is not necessary to consider anything further. Therefore, even if it is assumed that there were receivables due to the petitioner, it would not be an asset in transfer pricing cases;

4) Since Arm's Length Price of the petitioner has been determined by way of Transaction Net Margin Method, which takes into account all eligible income before deciding the profit margin, there is no scope for further additions; and

5) The Revenue has categorised provisions made for customer claims and warranty for subsequent AYs 2016-17, 2017-18 and 2018-19, as entries in books of accounts, and not as assets.

168. Suffice it to state, we have decided issues raised by the petitioner within this narrow compass, i.e., whether the issuance of the notices for reassessments are bad in law being beyond limitation. Any adjudication on the submissions enumerated would require detailed examination of the accounts of the petitioners, and appreciation of evidence, which squarely fall within the domain of the Assessing Officer. It is not for this Court to step into the shoes of the Assessing Officer and decide these issues on merits under writ jurisdiction. As such, the petitioner may raise all these submissions before the Assessing Officer during the reassessment proceedings.

SPECIAL AUDIT

169. Now we take up the challenges to the direction dated 13.09.2024 and 08.10.2024 for special audits to be carried out on the accounts of the petitioner for AY 2013-14 and AY 2015-16. The reason provided by Mr.Rai justifying the impugned directions is that pursuant to the search under Section 132 of the Act, certain ERP data submitted by the petitioner revealed that there is significant contradiction between the data for two financial years. Further, there are lakhs of line items in the data dump, which have not been segregated into ledgers, making it voluminous and complex.

170. There is no dispute that the special audits have been directed for the purpose of reassessment initiated for AY 2013-14 and AY 2015-16, as would be clear from the submissions of Mr. Rai noted in the paragraph Nos. 60 to 62 above. If that be so, as we have set aside the notice for reassessment under Section 148 of the Act for AY 2013-14 for the want of jurisdiction/ limitation, the direction and notice for special audit for that assessment year serve no purpose, and would not survive.

171. Now we may examine the issue with regard to the direction for special audit for AY 2015-16. The primary submission of Mr. Datar and Mr. Gulati is that the purpose of Section 142(2A) of the Act is to provide an aid at the stage of assessment proceedings and the same cannot be invoked at the stage of re-assessment. According to them, the scope of re-assessment proceedings are limited to the extent of the scope of escaped income and therefore, special audit directions cannot be issued to audit to the entire books of account of the petitioner beyond the reasons/ information based on which such reassessment proceedings have been initiated.

172. We are not in agreement with the above submission for the reason that Section 2(8) of the Act defines 'assessment' to include 'reassessment'. Further, it is settled law that once a notice under Section 143(2) of the Act is issued, the powers available to the Assessing Officer under re-assessment proceedings are analogous to those under assessment proceedings. Mr. Rai is justified in relying upon the judgment of this Court in the case of ***Shaily Juneja (supra)*** and ***Dart Infrabuild Pvt. Ltd. (supra),*** that since a return filed pursuant to a notice under Section 148 will be treated as a return under Section 139 and also since it is mandatory to issue a notice under Section 143(2) of the Act even for reassessment, it needs to be inferred that all the powers are available to the Assessing Officer during the course of regular assessment are also available during reassessment proceedings.

173. Another submission of the learned Senior Counsel for the petitioner is that the clerical error that had crept in the ERP data, i.e., duplication of entries for the financial years 2016-17 and 2017-18 was duly explained and rectified by the petitioner by furnishing the correct EPR data dump culminating into trial balance and profit and loss account, through e-mails dated 06.05.2023, 10.05.2022, 22.03.2023 and 01.04.2023. They have also claimed that alleged discrepancies do not automatically establish the requirement of '*complexity*' or '*voluminous books of account*'. Further without examining the books of the accounts of the petitioner for the relevant period '*complexity*' or '*doubts about the correctness of the accounts*' cannot be presumed. *Per contra,* the submission of the learned Senior Standing Counsel for the Revenue is that the very words '*volume of the accounts, doubts about the correctness of the accounts, multiplicity of transaction of the accounts or specialised nature of business activity of the*

assessee' that find mention in Section 142(2A) of the Act was introduced by the Finance Act, 2013 to expand the scope of the powers available to the Assessing Officer to ensure that there is a wide ambit by way of which the interests of the Revenue would be protected without hindering upon the rights of the assessee. He has substantiated his argument by reasons which we have already reproduced in paragraph no. 64 above.

174. Additionally, it has also been stated in the notice dated 05.07.2024 that while provisions made for warranty has been deducted, the petitioner had not clarified weather such liquidated damages are actually recoverable from the Associated Enterprise. It has also been stated that such expenses on account of warranty, according to Transfer Pricing Report is liability of the Associated Enterprise. We have already held that by virtue of the Distribution Agreement, the provisions for warranty claimed by the petitioner would be reimbursed by the Associated Enterprise.

175. It has also been alleged that the petitioner has failed to provide its books of accounts, instead providing transactional level ERP data in Microsoft Excel format. It had also failed to keep a back-up of the digital books of accounts in India, accessible at all times and backed up daily, as required by law.

176. The contention of the learned Senior Counsel for the petitioner that volume of accounts and multiplicity of transactions cannot be presumed merely on account of lakhs of line items in the ERP data, is completely unmerited, in view of the words *"volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activities of the Assessee"* that find mention in Section 142(2A) of the Act.

177. The relevant Memorandum explaining provisions in the Finance Bill, 2013, on which reliance has been placed by the petitioner itself, reads as under:

> *"**Direction for special audit under sub-section (2A) of section 142***
> *The existing provisions contained in sub-section (2A) of section 142 of the Income-tax Act, inter alia, provide that if at any stage of the proceeding, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.*
> *The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts.*
> *It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner of the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit."*

178. It is clear from the above extract that as contended by Mr. Rai, the intent of the legislature in introducing the words *"volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee"* was to expand the scope of the powers available to the Assessing Officer under Section 142(2A) of the Act, because the words *"nature and complexity"* which existed earlier were being given a restrictive meaning. As such, the

facts that the accounts of the petitioner are voluminous, and there is multiplicity of transactions in the accounts of the petitioner, would be sufficient for the Assessing Officer to exercise the power under Section 142(2A) of the Act and direct the petitioner to have its accounts audited. Mr. Rai is justified in relying upon the judgment in the ***Takshashila Realities Private Limited (supra)*** wherein it was held that apart from the nature and complexity of accounts, even in case of multiplicity of transactions, in the accounts or specialised nature business activity of the assessee and the interests of the Revenue, the Assessing Officer can pass an order for special audit in exercise of powers conferred under Section 142(2A) of the Act.

179. Additionally, since we have already held that the reassessment proceedings initiated under Section 148 of the Act for AY 2015-16 are not barred by limitation and have upheld the notice for the same, we are of the view that the challenge raised to the direction for special audit for AY 2015-16, is devoid of merit and needs to be rejected.

180. Though the parties have referred to a host of judgments as noted above, in support of their contentions, in the facts of this case and in view of our discussion and conclusion above, the need is not felt to refer to them.

OPERATIVE DIRECTIONS

181. In view of the foregoing discussion, we direct the following:

1. The notice dated 31.03.2024 issued under Section 148 of the Act and the notice dated 24.05.2024 issued under Section 143(2) of the Act along with the satisfaction note dated 29.05.2024, for initiating reassessment for AY 2013-14 are set aside.

2. Notice dated 31.03.2023 under Section 148 of the Act and notice dated 25.05.2023 issued under Section 143(2) of the Act along with the satisfaction note for initiating reassessment for AY 2015-16 are sustained.
3. The special audit direction dated 13.09.2024 along with notices dated 10.06.2024 and 05.07.2024 relatable to AY 2013-14 are set aside.
4. The special audit direction dated 08.10.2024 along with notices dated 10.06.2024 and 05.07.2024 relatable to AY 2015-16 are sustained.

182. Consequently, W.P.(C) 13553/2024 and W.P.(C) 13572/2024 are allowed. W.P.(C) 14898/2024 and W.P.(C) 15970/2023 are dismissed.

183. Interim orders, if any, stand vacated. The pending applications are disposed of.

V. KAMESWAR RAO, J.

VINOD KUMAR, J.

MARCH 30, 2026
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