THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 6301/Mum/2018 (Assessment Year 2011-12)

DCIT, Central Circle-6(3) Room No. 1926, 19th Floor, Air India Building Nariman Point Mumbai-400 021.	Vs.	Shri Manoj M. Desai 204, Sahyadri Neelkanth Vally Complex, 7th Road Rajawadi Mumbai-400 077. PAN : ABBPD2066K
(Appellant)		(Respondent)

Assessee by	Shri Nishit Gandhi
Department by	Shri Deepakant Prasad
Date of Hearing	29.10.2020
Date of Pronouncement	07.12.2020

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)]dated 30.8.2018 and pertains to assessment year 2011-12.

2. The grounds of appeal read as under :-

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 5,54,92,000/- u/s 69 of The I.T. Act, 1961 on the ground that the AO has failed to allow cross examination of key witness Shri Praveen Mishra before making addition, despite the fact that -

a) The assessee has never made any request for cross examination during assessment proceeding and thus question of providing of opportunity of cross examination does not arise.

b) Ld. CIT (A) has herself mentioned that Shri Praveen Mishra retracted his statement thereby making him assessee's witness and hence no opportunity of his cross examination was required rather it was assessee's onus to produce him before the AO for cross examination.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 5,54,92,000/- u/s 69 of The I.T. Act, 1961 on the ground that no evidence could be gathered by the AO to prove that cash over and above the admitted amount of Rs. 2.08 Cr. has been paid, despite the fact that in Para 5.1 in the same order, the LD. CIT (A) has mentioned about the details of cash receipts and payments found in the Pen Drive recovered during Search operation, thereby relief has been granted on self contradictory observation.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 5,54,92,000/- u/s 69 of The I.T. Act, 1961 without appreciating the fact that the assessee had failed to rebut the evidence in the form of Pen Drive containing details of cash receipts and payments, which is an evidence being relied upon by the Department against the assessee for Unrecorded transactions.

3. The assessee has also filed an application under rule 27 of the ITAT rules for admission of the following grounds :-

> At the outset, it is respectfully submitted that by way of the present Petition the Assessee has raised a purely legal jurisdictional issue i.e. challenging the action of the Ld. AO in disturbing the concluded assessment by making the additions sans any incriminating material in an assessment u/s 153 A of the Act. This goes to the very root of the matter. In the humble submission of the Assessee, it is a settled law that jurisdiction of the Ld. AO can be challenged at any stage of the proceedings and not only during the course of Appeal but also in any parallel proceeding. A useful reference in this regard can be made to the following judgments wherein it is held that the jurisdiction of a Court to pass a decree can always be challenged either in appeal or even during the execution of the said decree. Such challenge could be raised even if the same is not raised in the first round of the proceedings or even if the same is withdrawn or not pressed before the First Appellate Authority.

4. Assessee has referred to several case laws for this proposition.

5. Brief facts of the case are as under :-

The assessee had filed return of income on 28.7.2011 declaring total income at Rs. 1,16,000/-. The return of income was processed u/s. 143(1) of the IT Act, 1961. In this case, a search and seizure action u/s.132 of the Income Tax Act 1961 was conducted in the case of Nish Developers Pvt. Ltd. on 04.04.2014 and the assessee, who is a Director in Aklavya Builder & Developer Pvt. Ltd. had booked two flats in the project of Nish Developers Pvt. Ltd. The assessee was also covered by search action u/s.132 and survey action U/S.133A of the IT Act on 04.04.2014. In the instant case, notice u/s. 153A of

the Income Tax Act, 1961 was issued on 02.11.2016 and served upon the assessee. In response to the notice u/s. 153A, the assessee did not offer any additional income and filed Return declaring total income at Rs.1,16,000/-. Subsequently, notices u/s.143(2) and 142(1) were issued on 09.11.2016 and 10.11.2016, respectively and served upon the assessee. Assessment order u/s. 143(3) r.w.s. 153A of the I.T. Act, 1961 was passed on 23.12.2016 wherein the Ld. A.O. has assessed the total income at Rs.5,56,08,000/- by making an addition of Rs.5,54,92,000/- u/s. 69 of the IT Act, towards on money paid.

6. In the assessment order the Assessing Officer noted that during the search conducted on Nish Developers Pvt. Ltd. on 04.04.2014, a pendrive was recovered from one of the key employees, Shri Praveen Mishra. That this pendrive had details of cash receipts and payments by Nish Developers Pvt. Ltd. The assessee being one of the purchasers whose name figured in the list of people who have paid on money, the assessee was also covered under search and seizure action. The assessee is also a Director in M/s. Aklavya Builders and Developers Pvt. Ltd. which was also covered in search. During the search, M/s. Aklavya Builders and Developers Pvt. Ltd. has offered additional income of Rs.2.45 crores which includes on money receipts among others. When confronted about the purchase of fiats in One Avighna Park, the assessee has admitted paying cash to the tune of Rs.2,08,08,000/- for both the flats together. This according to him has been paid for some amenities. As per the pendrive found with Shri Praveen Mishra, the assessee was supposed to have made payment of Rs.8.70 crores over a period of three years as under:-

Assessment Years	Amount (in Lakhs)
2011-12	690
2012-13	75
2013-14	105.50
TOTAL	870.50

7. In response to the show cause issued by the Ld.AO to tax the difference between Rs.8,70,50,000/- and Rs.2,08,08,000/-, the assessee replied that

there was no evidence found during the search of on money payment made by the assessee. Certain on money receipt evidences were found on the search of the company, Aklavya Builders & Developers Pvt. Ltd. and an amount of Rs.2.45 crores was offered. The agreement value of each flat booked by the assessee was Rs.3,15,00,000/-. Over and above this the assessee has admitted to have paid cash of Rs.1,04,04,000/- per flat. This would make the per square foot price of Rs.28,000/-. If at all the figure of Rs.8,70,50,000/- is taken as cash paid for two flats, then the rate of per square feet would be Rs.51,500/- which is stupendous and unbelievable according to him.

8. However, the Assessing Officer did not find the explanation of the assessee acceptable and further giving set off Rs.2,08,08,000/- against the income declared by the assessee, he made an addition of Rs.662.42 lakhs paid over three years. For the relevant assessment year, AY. 2011-12, the Assessing Officer admitted that there is no proof for the balance payment of Rs.6.62 crores but he stated that it does not prove that assessee has got unaccounted investment only to the extent of Rs.2.08 crores. He entirely placed reliance on the information found from Shri Praveen Mishra and made an addition of Rs.5,54,92,000/- for the relevant AY. 2011-12.

9. Upon assessee's appeal learned CIT(A) rejected the challenge of the assessee to the jurisdiction of the assessment that the same was dehorse seized material by observing as under :-

> "The submissions of the Id.Counsel have been considered. According to the Id. Counsel, no incriminating material was found during the search with respect to acquisition of flats in 'One Avighna Park', whatsoever. Incriminating material was found in the premises of Aklavya Builders & Developers Pvt. Ltd., and an amount of Rs.2.45 crores has been offered to tax. When asked about the purchase of flat in One Avighna Park, the assessee has admitted to paying cash to the tune of Rs.2.08 crores, the source of which was explained to him as on money receipt Aklavya Builders and Developers Pvt. Ltd. The main contention of the assessee is that he was not confronted during or after the search about Rs.8.70 crores.
>
> The Id.Counsel for the appellant also argued that as there was no incriminating material found during search with regard to acquisition of flats at One Avighna Park, no addition with respect to the same should have been

made by the Ld.AO. However, the main reason for the conduct of search in this case was the payment of on money by the assessee for purchase of flats at One Avighna Park. That is the genesis for the search and the assessee has been confronted with this information during the search. Even though the figure of Rs.8.70 crores was not put to the assessee during the search, it is very much a part of the search and can be considered as incriminating material on the basis of which additions can be made. This plea of the assessee is rejected."

10. However on the merits of the case she deleted the addition by observing that the same has been done solely on the basis of the statement of Shri Praveen Mishra an employee of the builder M/s. Nish Developers Pvt. Limited, which has also been retracted. That assessee was not provided any opportunity to confront the said person. The learned CIT(A)'s order in this regard may be gainfully referred as under :-

"However, I find sufficient force in the argument of learned counsel that an amount of Rs. 8.70 crores has not been paid as on money. If the on money is considered at Rs. 8.70 crores, it would make the rate Rs. 51,500/- per square feet which would be too high and unrealistic. The assessee has booked the flats in October 2010. Perusal of the flats booked post search where, apparently on money was not received shows that they have been booked around 28,000 to 30,000 per square feet. This was the rate in November 2014. Estimating the rate at Rs.51,500/- in October, 2010 would be too far fetched. Another important point is, even after extensive search on the official and residential premises of the assessee, no evidence of any source of income other than Rs.2.45 crores nor any other source of investment was found.

There is no evidence whatsoever brought in by the Ld.AO to show that the assessee has paid on money over and above Rs.2.08 crores. The only so-called evidence is the statement of Shri Praveen Mishra, who has also retracted. Moreover, if on money is taken at Rs.8.70 crores, the rate for per square feet would come to Rs.51,500/- which is unrealistic. The Ld.AO placed his complete reliance on the statement of Shri Praveen Mishra which has also subsequently retracted. The assessee had asked for cross-examination of Shri Praveen Mishra which has not been provided by the Ld.AO. While the statement can be the starting point, the same has to be strengthened by corroborative evidence. It does not matter much if cross-examination is not provided if there is Corroborative evidence, but in this case, there is no evidence whatsoever found to show that the assessee has paid on money over and above the admitted amount of Rs.2.08 crores. In fact, even this amount is by the assessee's own admission and not by way of any evidence gathered by the Department. Even when the assessee himself admitted Rs.2.08 crores, the officer did not confront the assessee with the figure of Rs.8.70 crores. At the time of making assessment order, the Ld.AO blindly relied upon by the statement given by Shri Praveen Mishra which has been subsequently retracted. When the addition Is based on the basis of

third party statement, the least the Ld.AO should have done is provide for cross-examination of Shri Praveen Mishra. Not providing an opportunity to cross examination when reliance is placed on a certain statement, violates the principle of natural justice as held by the Hon'ble Apex Court in the case of Andaman Timber Industries Ltd. Vs, CIT(2015) 127 DTR 0241(SC) and HR Mehta vs. ACIT 289 CTR 0561(Bom). The Hon'ble Apex Court in the case of Andman Timbers, supra held:-

> *"According to us, not allowing the assessee to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the Impugned order is a serious flaw which makes the order nullity Inasmuch as It amounted to violation of principles of natural Justice because of which the assessee was adversely affected. It is to be borne I mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority.....*
>
> *In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.*
>
> *We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."*

Similarly, the jurisdictional in the case of H.R. Mehta vs. ACIT, (2016) 289 CTR 0561(Bom)(HC) held as under :

> *"In our view In the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT(A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very Issue."*

As no cross-examination has been provided to the assessee, the principles of natural justice have been seriously violated and the addition cannot be sustained even on this ground. The only reason/basis for making the addition appears to be the statement given by Shri Praveen Mishra, which has been retracted almost Immediately. In spite of the search on the assessee's place, no evidence whatsoever could be gathered by the Ld.AO to prove that cash over and above the admitted amount of Rs.2.08 crores has been paid. In the absence of evidence either direct or indirect, this addition made by the Ld.AO cannot be upheld. Therefore, the addition made by the Ld.AO cannot be sustained."

11. Against the order revenue has filed appeal before the ITAT and the assessee has also raised objection as noted above. The learned departmental representative relied upon the orders of authorities below. He submitted that the addition been made pursuant to clear findings in the search. That a Pendrive was seized from the employee of the concerned builder and developer. That this Pendrive contained the details of on money paid. That the employee's retraction was very late.

12. Per contra learned counsel of the assessee submitted that no incriminating material has been seized in the course of search. That the addition is without reference to any seized material and as such the same is not sustainable in law. He further referred to several decisions that statement on survey cannot be the sole basis of addition. The details submission of the learned counsel of the assessee in this regard the summarised as under :-

"The Assessee humbly submits that the entire addition of Rs.5.54 Crores made by the AO, in the present case is entirely based on the retracted statement of some employee of Nish Developers named Shri Pravin Mishra taken at the time of search and seizure operation carried out on Nish Developers and not the Assessee. The Assessee submits firstly, that extensive search was carried out on the residential premises of the Applicant, Shri Manoj M. Desai on 04.04.2014. It is interesting to note that in the search operation on the Applicant no incriminating material whatsoever was found so as to lead the Officer to believe that there was any undisclosed income. Only in the statement made during the course of search on the Applicant, it was stated by him that an amount of Rs.2.08 crores was paid by him to Nish Developers in cash over and above the Agreement value of the flats purchased in the name of himself and his wife. It was also explained that the source of the said 2.08 crores was the on money received by Aklavya Builders which was offered to tax by them and also

accepted by the Department as well as the Ld. AO himself as such. The said statement was accepted by the Department and as a result no addition was made as regards Rs.2.08 crores by the AO in the assessment of the Applicant. It is worth noting that apart from the statement of the Applicant there was no other and further document or evidence at all unearthed at the time of search, which could even remotely suggest the payment of Rs.5.54 crores by the assessee and which was allegedly invested in the property at One Avighna Park. This fact is undisputed. Not only this, even in the statement of the assessee, he has nowhere mentioned that an amount of Rs. 8.70 crores was ever paid by him to Nish Developers for purchasing the abovementioned property. Interestingly even the Ld. AO or the Search Party never confronted the Appellant with the said amount of Rs.8.70 Cr. alleged to be paid by the Appellant to Nish Developers. This fact is also accepted by the Ld. CIT(A). As such the assessee respectfully submits that in the absence of the any incriminating evidence/document/ material unearthed during the course of search, no addition whatsoever could be made in the hands of the assessee. This position is too well settled and a useful reference in this regard could be made to the following judgments.:-

- *CIT v/s Murli Agro Products Ltd. - [ITXA No. 36 of 2009 - Bom High Court]*
- *CTT v/s Continental warehousing Corporation (Xhava Sheva) Ltd. (2015) 374ITR 645 (BOM)*
- *All Cargo Global Logistics P. Ltd. Vs. ACIT (2011) 137 ITD 287 (Mum)*
- *CIT Vs. Gurinder Singh Bawa (2016) 386 ITR 418 (Bom)*
- *CIT Vs. Kabul Chawla (2015) 61 taxmann.com 412 (Del)*
- *ACIT Vs. M/s. Thakkar Popatlal Velji Sales Ltd. (ITA No. 5743/Mum/2010 dt. 8.5.2013.*
- *Tarannum Zafar Khan Vs. ACIT (ITA No. 5888 to 5890/Mum/2009 dt. 12.7.2013)*

Assessee further submits that apart from the above it is also settled law, that a statement on a standalone basis cannot be equated with incriminating material so as to enable the Assessing Officer to make additions in the hands of the Applicant. Further, it is also well settled that no addition could be made in the hands of the Assessee simply on the basis of a statement. Ref. S Khader Khan Sons - (2008) 300 ITR 157 (Mad) affirmed in 352 ITR 480 (SC), Satinder Kumar v/s. ACIT- (1977) 106ITR 64 (HP). Not only that an admission or an acquiescence on the part of an assessee cannot be the foundation of assessment as held in various judicial pronouncements [Ref. Absalom v/s Talbot (1944) 26 Tax Cases 166, Abdul Qayumme v/s CIT- (1990) 184 ITR 404 (All), Mayank Poddar v/s. ITO - (2003) 262 ITR 633 (Cal), SAIL DSP Employees Association v/s UOI - (2003) 262 ITR 638 (Calutta). As evident, the addition made by the the Assessing Officer is simply based on the statement of some third party who later retracted his statement. Even this action of the Ld. AO is a seriously questionable since, it is a far too settled proposition of law that no addition can be made on the basis of a statement made by third party against the assessee. First Global Stocking (P.) Ltd. vs. ACIT (2008) 115 TTJ (Mum) 173, Dalpat Singh Choudhary vs. ACIT (2012) 143 TTJ 500 (Jodhpur), ACIT vs. Mrs. Uttara S. Shorewala [ITA No. 5506

& 5507/Mum/2009 and CO. No. 107/Mum/2010], Jafferali K. Rattonsey vs. DCIT [ITA 5068/M/2009].

Further, this finding of the Ld. CIT(A) that the addition is made simply on the basis of a statement which was rectracted is not disputed and in fact accepted in the grounds of the appeal before the Hon'ble Tribunal [Ref. Ground l(b) before the Hon 'ble Tribunal]. As such, the addition made by the Ld. AO was totally beyond his jurisdiction.

It is further respectfully submitted that, a mere statement of some third party in some other assessee's search operation and nothing further cannot be treated as an incriminating material and solely on the basis of such a statement no addition could be made in the hands of an assessee. Even a statement taken u/s 132(4) during the course of search could not be the sole basis for making an addition in the block assessment unless there is some material or evidence unearthed during search to corroborate the same. The Applicant relies on the following judgments in support of his contention CIT vs. Harjeev Agarwal (ITA 8/2004 Delhi High Court).

> *"...However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation....*
> *A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded."*

Shri Basant Bansal v/s ACIT - (2015) 171 TTJ 603 (Jaipur Tribunal)

> *<u>Held that:</u>*
> *(ii) Whether in the light of CBDT Instruction dt. 10th March 2003, search proceedings and assessment can be based upon incriminating material and not on such disclosures.*
>
> *Conclusion : A perusal of the CBDT instruction reveals that even Board is aware of such laconic disclosures and expects its officers to rely on incriminating evidence. Thus, CBDT also is not in favour of search assessments being based only on such disclosures; it wants them to be based on incriminating material. In view of the facts, circumstances, CBDT instructions and various case law relied on by the assessee we*

are unable to uphold the additions solely on the basis of disclosure which doesn't meet the eye and have been held by us to be involuntary.

(iii) Whether the additions are based on any incriminating material discovered as a result of search in terms of s. 153A.

Conclusion : There is no reference to impugned additions being based on any worthwhile incriminating material or evidence except raising some '- suspicions. The sole basis of additions in both cases is proposed to be the disclosure. Consequently, the additions made are not as a result of any material found during the course of search, in view thereof impugned additions cannot be sustained as they do not conform to mandate of s. 153A.

Also refer:

ACIT v/s ShriDharam Pal Gulati-ITA No.671/Del/2012

Admittedly no incriminating material whatsoever has been unearthed during the course of search of the Applicant so as to reflect a state of affairs contrary to that stated by the Applicant. In fact, the entire addition has been made by the AO merely on presumptions and surmises. Even this action is unsustainable in law since no addition can be made on presumptions. Dheeraj Lal Girdhari Lal vs. CIT - (1954) 26ITR 736 (SC), Dhakeshwari Cotton Mills Ltd. vs. CIT - (1954) 26 ITR 775 (SC), Omar Salay Md. Sheikh vs. CIT- (1959) 37ITR 151 (SC), Lal Chand Bhagat Ambika vs. CIT (1959) 37 ITR 288 (SC).

The Respondent Assessee further submits that undisputedly in the present case the Assessment order was passed without providing the Assessee a copy of the information relied on by the AO which was gathered at the back of the Assessee and without granting an opportunity to cross examine the parties whose statements were relied upon by the AO. The request for the information and the opportunity to cross examine were specifically made vide letter dated 09.12.2016 before the AO which is also reproduced in the Assessment Order. In Ground 1(a) raised before the Hon'ble Tribunal an incorrect statement is made by the Ld. AO and deserves to be rejected in toto. In the humble submission of the Assessee if any order is passed/additions made without granting a copy of the statements and information relied on by the AO and an opportunity to rebut the same or without granting an opportunity to cross examine the party whose statement is used against the Assessee, then the said order is bad in law and deserves to be quashed.

Kishinchand Chellaram v/s CIT- (1980) 125ITR 713 (SC)
CIT v/s Ashish International - ITXA 4299 of 2009 (Bombay High Court)
CIT v/s H.R. Mehta - ITXA 58 of 2001 (Bombay High Court)"

13. In view of the above submissions the additions made without any incriminating material, in the assessment order passed by the AO u/s 153A of the Act deserves to be deleted and the action of the Ld. AO in disturbing the concluded assessment deserves to be quashed."

13. Upon careful consideration we find the addition in this case for on money payment for the booking of flat is solely based upon the pendrive drive and the statement of the employee of the builder. The same has been retracted. Apart from the above there is no other corroborative material. The assessee during the course of search has admitted to have paid ₹ 2.08 crore for amenities in cash. This was duly offered for assessment in the case of the company of the assessee where he was director and the same has been accepted by the Department. No addition on this account has been done by the assessing officers also.

14. As regards the addition based upon the statement of the employee of the builder proposed by the assessing officer, the assessee has duly explained that if the same is accepted as correct then the rate of flat in October 2010 would be Rs. 51,500. The learned CIT(A) has found that on a perusal of flats booked post search where apparently on money was not received, it is clear that the flats were booked around at ₹ 28,000 to 30,000 ft² in November 2014. Hence the rate applied by the Assessing Officer for four years prior transaction is quite fantastic and not sustainable. Moreover as noted by the learned CIT(A) despite extensive search no other material of on money was seized except for the admission of the assessee for the amount paid for the amenities, which were duly offered to tax in the hands of the assessee's company in which he was director. Furthermore there is no other material on record to suggest that the value of the flat would be at that rate assigned by the assessing officer. It is also not the case that assessing officer had sent the matter for valuation by the DVO. In similar circumstances when there was allegation of on money paid, honourable Madras High Court in the case of P.V. Kalyansundaram (282 ITR 259) found that non-reference to DVO is fatal. In the said case on money/addition solely based upon scribblings/jottings was found to be non-

sustainable. The honourable Supreme Court had duly affirmed the said decision reported in the case of Commissioner of Income Tax vs. P.V. Kalyanasundaram (2007) 294 ITR 49 (S.C). The other case laws referred by learned CIT(A) are also germane and support the case of the assessee.

15. Hence in our considered opinion on the facts and circumstances of the case when the addition is solely based upon builder's employee statement, which has been retracted and without any corroborative material brought on record, the same is not sustainable. The case laws cited above duly support this proposition. As already noted above the assessing officer having not referred the matter to the DVO for valuation has committed a fatal error. Hence in our considered opinion there is no infirmity in the order of learned CIT(A).
Accordingly we uphold the same.

16. As regards the objection of the assessee under Rule 27 of the ITAT Rules that the addition under section 153A is not sustainable as the same has been done without reference to any material found on search, the adjudication of the same is now only of academic interest as we have already confirmed the order of learned CIT(A) deleting the addition on merits. Hence we are not engaging into the adjudication of the issue raised in this regard.

17. In the result the revenues appeal stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 07.12.2020.

Sd/-	Sd/-
(RAMLAL NEGI)	(SHAMIM YAHYA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 07/12/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)

PS ITAT, Mumbai