

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.As. No.9215, 9216, 9217, 9218, 9219, 9220 & 9221/DEL/2019  
Assessment Years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16,  
2016-17 & 2017-18

Amarjit Motor Finance Pvt. Ltd., Shop No.205, 2 <sup>nd</sup> Floor, Agarwal City Mall Road No.44, Rani Bagh, Pitampura, New Delhi	v.	ACIT, Central Circle-26, New Delhi.
TAN/PAN: AAECA1754A		
(Appellant)		(Respondent)

Appellant by:	Shri Ramesh Goyal, Adv. & Shri R.K. Gupta, Adv.		
Respondent by:	Shri Satpal Gulati, CIT-D.R.		
Date of hearing:	19	01	2021
Date of pronouncement:	29	01	2021

**ORDER**

**PER BENCH:**

The aforesaid appeals have been filed by the assessee against the common order dated 27.09.2019 passed by Ld. CIT (Appeals)-XXXI, New Delhi for the quantum of assessment passed under section 153A r.w.s. 143(3) for the assessment years 2011-12 to 2016-17; and separate order for the assessment year 2017-18 of even date which is passed under section 143(3). Since common issues are involved in all the appeals arising out of identical set of facts and same reasoning given by the Ld. CIT(A), therefore, same were heard

together and are disposed of by way of this consolidated order. In nutshell following additions have been confirmed by the Ld. CIT (A):-

AY	ITA No.	Quantum of Addition (Rs.)	Addition on a/c of commission
2011-12	9215/Del/2019	19,46,054/-	@ 2% on Rs. 9,73,02,862/-
2012-13	9216/Del/2019	18,31,396/-	@ 2% on Rs. 9,15,69,783/-
2013-14	9217/Del/2019	8,89,278/-	@ 2% on Rs. 44,4,63,915/-
2014-15	9218/Del2019	60,15,1857-	@ 2% on Rs. 30,07,59,258/-
2015-16	9219/Del/2019	26,28,215/-	@ 2% on Rs. 13,14,10,732/-
2016-17	9220/Del/2019	34,48,800/-	@ 2% on Rs. 17,24,39,987/-
2017-18	9221/Del/2019	22,22,900/-	@ 2% on Rs. 11,11,44,981/-

2. The facts in brief are that the assessee-company, M/s. Amarjeet Motor Finance Limited was incorporated on 4.4.1981 initially situated in Jalandhar, Punjab up to 12.11.2010 and thereafter the office was shifted to Delhi in Sector-15, Rohini; and later on w.e.f. 27.04.2017 its registered office again shifted to Pitampura, Delhi and still running at the same address as per information given to the

ROC. The company is also registered as NBFC Company vide Registration No.B.06.00513 dated 27.08.2001 with Reserve Bank of India and has been filing its annual return, i.e., NBS 9 with Reserve Bank of India. As per Memorandum of Association, the company is doing business of investment in shares and securities and money lending business which are permitted to be carried out by NBFC. Since beginning it has been duly assessed to income tax and has been regularly filing its return of income and complying with all the statutory requirements as per the Income Tax Act and Companies Act.

3. As per the assessment order, a search and seizure action under section 132 was carried out on 27.04.2016 in Sanjay Bhandari /OIS group of cases, wherein the assessee-company was also covered in the search as per the Panchnama placed before us by the department. The returns of income for the year under consideration, i.e., 2011-12 to 2016-17 were filed and were duly assessed under section 143(1). In pursuance of notices issued under section 153A for the assessment year 2011-12 to 2016-17 the assessee has filed its return of income and assessment have been completed under section 153A r.w.s. 143(3); and the assessment for the Assessment Year 2017-18 being year of search has been completed under section 143(3).

4. The Assessing Officer noted that during the course of search action which was carried out on 27<sup>th</sup> April, 2016 at the registered address of M/s. Amarjit Motors Private Limited and

several other companies at G-10/ 66, ground floor, Sector-15, Rohini, which was a residential premise and no company, was found to be running from the said address. Thus, the activities of these companies could not be verified. The Assessing Officer thus deduced that the assessee-company has been found to be non-existent at the address given and is merely a paper/shell company. Further this company is controlled by Shri Deepak Agarwal, Shri Vishnu Kumar Agarwal and Sri Bal Kishan Singhania who are entry operators and this company is indulged in taking accommodation entries in lieu of cash from various paper/shell company of Shri Deepak Agarwal and Shri Vishnu Agrawal who have provided accommodation entries of unsecured loans and share capital to various beneficiaries in lieu of cash. However, nowhere his allegation in the assessment order is substantiated by any material or information or any enquiry conducted. There is no whisper how he has come to this conclusion. Assessing Officer has further noted that, Assessee Company has also provided accommodation entries to Shri Sanjay Bhandari and his group companies, however, again his premise for drawing this conclusion is not based on any material or information discussed in the assessment order. He called for the bank statements of the assessee-company and KYC documents from Bank of India, DCB bank, Yes bank and Indus Ind bank, New Delhi u/s. 133(6) and on the verification of the same he found that total deposits were as under:-

A.Y.	Union. Bank Of India, A/c. No. 307801010917938	DCB Bank, A/e. No. 04822700000578	Yes Bank, A/c. No. 0002839000 00341	Indusind Bank, A/c, No. 0169-FTO886-050	Total Deposits.
2011-12	3,19,22,182		6,53,80,68		9,73,02,862
2012-13	4,60,41,583		1,10,000	4,54,18,200	9,15,69,783
2013-14	40,36,435	1,10,75,816		29,3 51	44463915
2014-15		30,07,13,987		45,271	30 07,59258
2015-16		13,14,10,732			13,14,10,732
2016-17		17,24,39,987			17,24,39,987
2017-18		11,11,44,981			11,11,44,981

5. From the verification of the bank statement, Assessing Officer noted that the amounts are credited and then are immediately withdrawn from the bank and the debits and credits entries show that assessee is not having any real business; hence it shows that assessee-company is indulged in providing accommodation entries to various persons.

6. Assessing Officer also noted that during the course of search in the case of Shri Sanjay Bhandari and his group companies, certain blank signed receipt of sale proceeds of shares and blank signed repayment receipt of advances given to Shri Sanjay Bhandari and his companies were found, in which this group could not sold the shares but has received sale consideration. Similarly, receipts were found regarding payment of unsecured loan which were inferred that Shri Sanjay Bhandari had given cash against share capital and secured loan received by his company which are nothing but accommodation entries taken from the assessee, another

group shell companies of Shri Deepak Agarwal and Shri Vishnu Agarwal and others. He also scanned a sample copy of sale receipt of shares and deduced the following inference.

*“3. From the above it is established that -*

*1. The assessee is only a paper company, no real business done by the assesses,*

*2. The assessee company is nonexistent at the given address.*

*3. The assessee is indulged in providing accommodation entries to Sh. Sanjay Bhandari and his companies.*

*4. Overall control on the assessee is of Sh. Vishnu Kumar Aggarwal, Sh. Bal Krtshan Singhania and Sh. Deepak Aggarwal.*

*5. The assessee had given blank signed receipt to M/s. Micromet ATI Pvt. Ltd. for sale proceed of shares. Though assessee has not received payment by cheque, it means the assessee has received cash against entry provided to M/s. Micromet ATI. Pvt. Ltd. group company of Sh. Sanjay Bhandari.”*

7. Based on this inference, he had made an addition of unaccounted commission of total deposits in the bank account @ 2%. For the sake of ready reference, the relevant finding as given in the Assessment Year 2011-12 is reproduced herein below which is almost the same in other years also:-

*14. In view of the above it is established that the assessee company is only pope /non-existent company and indulged in providing accommodation entries. The assessee would have earned commission in cash for providing the accommodation*

*entries. The prevailing market .rate of commission is 2% to 2.25% on the. total credits in bank account of the assessee. Therefore, an addition of unaccounted commission of Rs. 19,46,054/- in cash is being made @ 2% of total deposits in bank of Rs.9J3,02,862/- as proposed vide show cause notice dated 17.12.2018. Addition on account of accommodation entries taken by Sh. Sanjay Bhandari and his group companies i.e. M/s. Avaana Software & Services Pvt Ltd., M/s. Saniech IT Services Pvt Ltd., M/s. Santech Investments Pvt Ltd., M/s. OIS Aerospace Pvt Ltd., M/s. OIS Advanced Technology Pvt Ltd.. M/s, Micromet ATI India Pvt Ltd., M/s. Offest India Solutions Pvt Ltd., M/s. Himalayan Helicorp Pvt. Ltd., M/s. S B Hospitality & Services Pvt Ltd and M/s. Santech Energy System & Services Pvt Ltd. will be made. Since the assessee has filed inaccurate particulars of income. I am satisfied that the provision of Section 271(1)(c) of the IT Act, are attracted on the issue and therefore, penalty proceedings u/s.271(1)(c) of the Act will be initiated separately.*

*(Addition of Rs.19,46,054/-)”*

8. The Ld. CIT (A) after incorporating the entire legal and various submissions on merits of the assessee which has been incorporated till page 33 of the impugned order, has confirmed the order of Assessing Officer after observing and holding as under:-

*“4.1. By additional ground no. 1 and 2, the appellant has challenged validity of the assessment order on the grounds that there was no valid search in the case of appellant and no incriminating material was found during the course of search proceedings and accordingly the orders passed u/s 153A are bad*

*in law. However, on perusal of the remand report of the AO as well as material available on record, it is noticed that search warrant no. 5516 was duly Issued in the name of Amarjit Motors Finance Ltd for search on the premises located at. G-10/66, Ground Floor, Sector-15, Rohini Delhi. The same address was mentioned in the PAN database and IT Return of the appellant. I find that the copy of bank statement of appellant company with DCS Bank placed on record for the period from 01.04.2015 to 21.03.2016 also shows address of appellant company as 6-10/66,. Ground Floor, Sector-15, Rohini, Delhi, The warrant was duly executed, on 27.04,2016 as is evident from copy of Panchnama placed on record. Both the search warrant and panchnama were provided to the appellant and the same were not controverted in the rejoinder by the Ld. AR, Therefore, I hold that there was conduct, of a search u/s 132 in the name and at the premises of the appellant. Accordingly I further hold that the AO had rightly initiated the proceedings u /s 1.53A,*

*4.1.1. As regards the claim of appellant that no incriminating material was found as a result of search conducted on appellant, I find, that as result of search and seizure action in the ease of Sh. Sanjay Bhandari/OIS Group, the department was in possession of information that the appellant being a shell entity was engaged in providing accommodation entries of share capital/.loans etc. As a matter of fact, entities providing accommodation entries are those .which are not engaged in genuine business activities and the search, u/s 132 at the premises shown in the Income Tax records clearly revealed that the appellant company was not existing at the given address. In fact, that premises was a residential premises occupied by a*

*family and hence the search action u/s 132 has proved that appellant company was a paper entity not doing any real business and engaged merely in providing accommodation entries. Therefore, I hold that this vital information is an incriminating material to initiate the assessment proceedings u/s. 153A and making consequential addition, Undisputedly, various blank receipts duly signed by the- appellant, company were found at the premises of 8h, Sanjay Bhandari and his group companies for receipt of sale proceeds of shares and repayment of loan. These documents also established that the appellant had already discharged its claim on the share capital/loans given through accommodation entries since, the consideration in cash for the same had already been received by the entry providers. Under these facts and circumstances, the decisions relied upon by the Ld. AR become distinguishable on facts because in those cases particularly in the case of Kabul Chawla (Supra), there was no incriminating material found as a result of search. Accordingly, I uphold the basis of addition, made u/s 153A, Hence additional ground no. 1 and 2 being without any basis are dismissed.*

4.2. *Other grounds of appeal from. 1 to 4 raised in Form No. 35 are general, in nature regarding validity of assessment and In view of the decision regarding additional ground no. 1 and 2, the same become infructuous and hence no specific adjudication, is separately required.*

4.3. *Ground no. 5 to 9 are pertaining to assessment of 2% commission income on accommodation entries provided to various companies of Sanjay Bhandari Group. As already discussed, in para 4.1 to 4.1.1. above, the appellant company was found to be a shell entity not carrying out any genuine business. The AO had*

*examined the bank accounts for appellant company and noticed that the credits received, in bank accounts were transferred immediately to beneficiaries. The AO has also identified certain beneficiaries of accommodation entries such as Sh. Sanjay Bhandari and his group companies i.e. M/s. Avaana Software &- Services Pvt. Ltd., M/s. Santech IT Services Pvt. Ltd., M/s. Santech Investments Pvt. Ltd., M/s. OIS Aerospace Pvt. Ltd., M/s. OIS Advanced Technology Pvt. Ltd., M/s. Micromet ATI India. Pvt Ltd., M/s. Offest India Solutions Pvt. Ltd., M/s. Himalayan Helicorp Pvt. Ltd., M/s. S B Hospitality & Services Pvt Ltd. and M/s. Santech Energy System 8s Services Pvt Ltd. The addition on account of unexplained investment has been made by the AO in the hands of these beneficiaries. It is also noticed that certain blank receipts duly signed by the appellant company, a sample of which is placed in para 12 of the assessment order, were found and seized in the case of Sh. Sanjay Bhandari Group. Through, these receipts, the appellant company had discharged its claim on shares/loans given to the beneficiaries namely Micromet ATI India Pvt Ltd, HB Hospitality and Services Pvt Ltd etc. These facts clearly establish that the appellant has provided only the accommodation entries of share capital/loans to the beneficiaries through its bank accounts. As a prevailing practice, commission on accommodation entries a charged by the entry provider and accordingly the AO has assessed 2% commission income on accommodation entry. Under these facts and circumstances, the decisions relied upon by the Ld. AR are not applicable in the case of appellant. Therefore, I do not find any infirmity in the order of AO assessing the commission income. Accordingly the additions made by the AO on this account in respective assessment years are confirmed and Ground 5 to 9 are dismissed.”*

9. Before us, the learned counsel for the appellant assessee submitted that here in this case, first of all no incriminating material whatsoever was found from the possession of the assessee-company and nothing was recovered from the registered office of the company. Even the additions which have been made are not based on any incriminating material found from assessee's possession which can be said to be relating to result of any search. In so far as the allegation made by the AO that the assessee-company was found to be non-existent at the address given, is incorrect. The registered office of the company as per records was duly shown and disclosed in the statutory records. And all the communications have been received by the company at the said address only. Later on, the address of Rohini was shifted to unit number 205, second floor, Aggarwal city Mall, Road No.44 Pitampura, Delhi. It has been filing the return of income with Income Tax Department, ROC and RBI from its registered office since beginning, and therefore, such an allegation of the AO is completely baseless. One very important fact, here in this case, is that which is also evident from the assessment order that, neither the search was conducted on the directors of the company nor on any official or authorized person of the company. Apart from that, neither any document was found during the course of search proceedings either from the possession of the assessee company or its directors.

10. Ld. Counsel further submitted that, one of the document

which has been referred in the assessment order, was found in the course of search of Shri Sanjay Bhandari and his group, which is a blank receipt without any mention of any figures. Thus, if there is no incriminating material found during the course of search proceedings u/s. 132 in the case of the assessee then there is no material for framing the assessment under section 153A especially when most of the assessments on the date of search were unabated. In support, he strongly relied upon the judgment of Hon'ble Delhi High Court in the cases of; **PCIT versus Meeta Gutgutiya, 395 ITR526; and CIT vs. Kabul Chawla, 380 ITR 573**. The entire observation of the Assessing Officer is based on presumptions and surmises that assessee is a shell company and at the same time non-existing. The addition which has been made by the Assessing Officer is by taking 2% of alleged notional commission on the entire deposit, which is wholly unjustified and without any basis or material on record.

11. Further, in the assessment order, the Assessing Officer has named 10 companies whereas the assessee-company had no dealing with 7 of these companies. Out of said companies, assessee company had following transaction during the year:-

S.No.	Name of the Company	Amount (Rs.)	Remark
1.	Avaana Software & Solutions Pvt. Ltd.	5,50,000/-	Investment Sold
2.	Micromet ATI India Pvt. Ltd.	50,00,000/-	Investment made in unquoted shares
3.	SB Hospitality & Services Pvt. Ltd.	75,00,000/-	Investment made in unquoted shares

12. Thus, from these companies there were total transaction of Rs.1,30,50,000/- only. All the observation and the findings of the Ld. CIT(A) is again based on surmises and presumption without any basis of making the addition of notional commission income. Thus, the entire addition should be deleted.

13. On the other hand, Ld. CIT-DR has strongly relied upon the order of the Assessing Officer and Ld. CIT(A) and also given his written submission, which is reproduced here under:-

*1. During the hearing proceedings, the AR of the assessee claimed that the assessee/premises belonging to the assessee was not covered in the search and it has no relation with the Sanjay Bhandari Group (searched group) in any manner. In response to this, the Hon'ble member raised certain queries with the department to be requisitioned from the concerned Assessing Officer. The AO has submitted response to the queries raised by the Hon'ble Member. The same is as under:-*

S.No	Query	Clarification
1.	<i>Whether the assessee /premises belonging to the assessee was covered during the search operation on the Sanjay Bhandari Group</i>	<i>Yes the case of the assessee was covered during the search operation u/s 132 of the Income Tax Act of 1961. on 27.04.2016 along with other cases of Sanjay Bhandari Group</i>

2.	<p><i>If the assessee premises belonging to the assessee was covered in the Search operation of Sanjay Bhandari Group? What was the basis of search and the finding there upon of that search?</i></p>	<p><i>The department was in possession of information that group companies of Sanjay Bhandari (namely SB Hospitality &amp; Services Pvt Ltd, Avaana Software &amp; Services Pvt Ltd, Micromet ATI India Pvt Ltd etc.) have taken bogus entries of share capital along with huge premium. Shri Sanjay Bhandari has routed his unaccounted income through the assessee company and brought back into the books of his group company in the form of investments.</i></p> <p><i>The search u/s 132 of the Act was carried out at the registered address of the assessee company i.e. at G~ 10/66, Ground Floor, Sector-15, Rohini. Delhi. During the search, the assessee company was found nonexistent at the registered address. Also, incriminating documents like signed but blank shares transfer issued from S.B, Hospitality and services Pvt Lid (company of Sanjay Bhandari) was found. Further, in his statement on oath Sh Sanjay Bhandari admitted to have taken bogus entries of share capital with huge premium from the assessee company.</i></p>
3.	<p><i>What was the co-relation of the Sanjay Bhandari Group with that of the assessee/premises belonging to the assessee for which, if it was covered during the search?</i></p>	<p><i>The group companies of Sanjay Bhandari (namely SB Hospitality &amp; Services Pvt Ltd, Avaana Software &amp; Services Pvt Ltd, Micromet ATI India Pvt Ltd etc) have taken bogus entries of share capital along with huge premium from the assessee company. Sh Sanjay Bhandari has routed his unaccounted income through the assessee company and brought back into the books of his group company in the form of investments.</i></p>

4.	<p>What was the basis of assessment in case of the assessee for Assessment Years 2015-16, 2016-17 and 2017-18?</p>	<p>The assessee company is only a paper company, no real business done by the assessee. The assessee company was nonexistent at the given registered address. I he assessee company is indulged in providing accommodation entries to Sh Sanjay Bhandari and his group companies. Overall control on the assessee company is of Sh Vishnu Kumar Agarwal, Sh Bal Krishna Singhanian and Sh Deepak Agarwal. The assessee had given blank signed receipt to M/s Micromet ATI Pvt. Ltd, (group company of Sh. Sanjay   Bhandari) for sale proceed of shares. Though assessee I has not received payment by cheque, it means the   assessee has received cash against entry provided to M/s. Micromet ATI Pvt. Ltd and have earned commission for j providing the accommodation entries. Therefore, addition on account of unaccounted commission at 2% of total deposits in bank was made for the A. Yrs. 2011- : 12 to 2017-18. i he details of additions (assessment year wise) as required are as under:</p> <table border="1" data-bbox="890 1361 1369 1574"> <thead> <tr> <th>Asstt. Year</th> <th>Amount (Rs.)</th> </tr> </thead> <tbody> <tr> <td>2015-16</td> <td>26,28,215/-</td> </tr> <tr> <td>2016-17</td> <td>34,48,800/-</td> </tr> <tr> <td>2017-18</td> <td>22,22,900/-</td> </tr> </tbody> </table>	Asstt. Year	Amount (Rs.)	2015-16	26,28,215/-	2016-17	34,48,800/-	2017-18	22,22,900/-
Asstt. Year	Amount (Rs.)									
2015-16	26,28,215/-									
2016-17	34,48,800/-									
2017-18	22,22,900/-									
5.	<p>In case the assessee/ premises belonging to the assessee were covered in the search of Sanjay Bhandari Group the relevant copy of Panchanama drawn, copy of authorization / warrant etc. may be provided to the Hon'ble Bench.</p>	<p>Copy of warrant of authorization u/s.132 No.5516 dated 27.04.2016 is enclosed.</p>								

2. Further, it is submitted that the facts of the present case are peculiar. It is a case where search & seizure action took place at the given address of the appellant company. However, during search action, it was found that no such company was running at the given address. Finding of a fact during search action that the said company is only on paper further gets corroborated from the fact that this company was managed by accommodation entry provider Sh. Deepak Aggarwal. Going by the principle laid down by Hon'ble Delhi High Court in the case of Kabul Chawla (ITA No. 707/2014) regarding finding of incriminating evidence, it is to highlight that the fact of non-existent company is an incriminating information gathered during the search & seizure action. The spirit behind the decision of Delhi High Court in the case of Kabul Chawla (supra) is that there has to be some incriminating document/ finding/ information which would not have come to light in the absence of search & seizure action. In the present case, the finding of fact of appellant entity as non-existent entity/paper company is incriminating finding based on search action. Thus, addition can be made in this case based on the observation made during search for abated as well as unabated assessments.

It may be relevant to add that this company is in the list of high risk NBFC as per <https://centrik.in/wp-content/uploads/2018/03/List-of-High-Risk-NBFCs-as-on-31.01.2018> pdf.”

### **DECISION**

14. We have heard that rival submissions and also perused the relevant finding given in the impugned orders as well as the material referred to before us. The entire basis of the additions which has been made in the impugned appeals are

that;

- *firstly*, the assessee was found to be non-existing company at the time of search;
- *secondly*, it is a paper/ shell company of Shri Deepak Agarwal, Shri Vishnu Agarwal and Shri Bal Krishna Singhanian, who were entry operators and later two of them are residents of Kolkata;
- *thirdly*, the assessee-company has indulged in taking accommodation entry in lieu of cash from various paper/ shell company of Shri Deepak Agarwal and Shri Vishnu Agarwal;
- *fourthly*, during the course of search in the case of Shri Sanjay Bhandari and his group company certain blank signed receipt of sale proceeds of shares and blank signed repayment receipt of advances given to Shri Sanjay Bhandari and his company were found from his possession. The assessee had also given blank signed receipt to it, M/s. Mircomet ATI Pvt. Ltd. for sale proceeds of shares. Though assessee has not received any payment by cheque which was inferred as if the assessee has received cash against entry provided by the group company of Shri Sanjay Bhandari.

15. Based on the aforesaid premise, Assessing Officer has held that assessee is providing accommodation entries, for which assessee might have earned commission as per the prevailing market rate of 2% to 2.25% on the total credits on

the bank account of the assessee. He has further observed that addition on account of accommodation entries taken by Shri Sanjay Bhandari and his group companies for which list of 10 companies have been given will be made in their hands, however what has been the fate of the assessments or additions made in hands of these companies has not been brought on record before us nor there is any whisper in the impugned appellate order or in the report submitted by the Assessing Officer, before us.

16. From the perusal of the records, it is seen that, firstly the assessee-company is very old company incorporated way back on 4<sup>th</sup> April, 1991 and has been duly registered as NBFC with RBI. Since then Assessee Company has been regularly filing its return with Income Tax Department, under the Income Tax Act, Returns with ROC under the Companies Act and also before RBI, being NBFC. It has been regularly filing its return of income along with audited accounts. The balance-sheet as on 31<sup>st</sup> March, 2011 reflects share capital reserve and surplus of more than Rs. 20.65 crores. It has investments of more than Rs. 18.27 crores and loans and advances given for the business purpose was at Rs.2.43 crore and cash and bank balance of approximately Rs. 10 lakhs. The interest income has been shown at Rs.19.65 lakhs. Same is the position in all the subsequent years' balance-sheets. Thus, it cannot be held that it is non-existing company having no real business.

17. Admittedly, during the course of search nothing incriminating or any iota of document has been found or seized from the possession of the assessee company. In fact, as per the assessment order itself nothing was found from the possession of assessee as no one was present at the premises. The entire premise has been drawn on the basis of certain information in possession with the Department from the search and seizure of group companies of Shri Sanjay Bhandari and from there it has been gathered that the assessee-company was engaged in some accommodation entry. If that is the case, then what information or material pertaining to the Assessee Company was found or unearthed which was handed over the Assessing Officer. Another allegation is that this company is controlled and used for accommodation entry purposes by Shri Deepak Agarwal and Shri Vishnu Agarwal. The learned counsel has clarified that neither Shri Deepak Agarwal nor Shri Vishnu Agrawal are related to the assessee-company nor they were directors. Further, the document which has been referred in the assessment order has neither been found from the possession of the assessee nor it has been confronted to assessee nor any person was examined wherein the name of the assessee-company has been implicated. This material itself cannot be held to be found from the search conducted in the case of the assessee. In case, if such a material found from the search of a different person, then the same should have been considered there in that case or satisfaction should have been

recorded in terms of 153C against the assessee. In so far as this matter is concerned it cannot be reckoned as an incriminating material to make assessment under section 153A. Moreover, this paper has been recovered from a third party and is purely a blank paper without any mention of year or any amount so this cannot be basis for any inference or addition. Nowhere, it has been brought on record that the assessee-company is a Benami of some other group or individual. In that case also if any addition or any adverse inference at all could have been made then same should have been made in case of that person. Here, the entire addition is based on some notional presumption of commission on accommodation entry. First of all, the Department has to establish that assessee-company was providing accommodation entry especially when during the course of search in the case of assessee nothing has been found that assessee was indulged in any kind of accommodation entry. If at all there was any information of third-party case then without bringing on record as to what inference has been drawn against the assessee in those cases or any substantive addition have been made in those cases, notional addition cannot be made in the hands of the assessee.

18. The contention of ld. CIT-DR is that the assessee-company was not found at the given address during the search, and itself constitutes an incriminating evidence cannot be upheld, because when an action has been taken under section 153A then the basic premise is that the

addition has to be based on something found or unearth during the course of search in the case of the assessee for a particular assessment year especially in the case of unabated assessment. Here, in this case, the assessment for the Assessment Year 2011-12 to 2015-16 had attained finality. The period for the assessment year 2015-16 and 2016-17 nothing has been found from any enquiry or carried out in the case of the assessee that assessee was providing any accommodation entry and the business carry on by the assessee is sham or paper transaction, hence the addition cannot be made on the basis of any hypothesis presumption *albeit* it has to be based on evidences or material or enquiry conducted. The addition here in this case has purely been made on surmises and presumption that assessee might have earned 2% commission on accommodation entry. This approach is unsustainable in law and on facts. At least, there has to be a concrete finding with material that assessee was found to be carrying out shady accommodation entry transaction. Accordingly, we do not find any reason to uphold the alleged commission income in all the years.

19. Apart from that, we find from the records as referred to at the time of hearing that the assessee was having regular income and revenue from operation in its return of income and audited accounts which for the year under appeal have been given as under:-

Asstt. Year	Intt. Income	Sales Turnover	Total Revenue	TDS Deducted
2011 - 12	19,64,441/-	—	19,64,441/-	1,93,066/-
2012-13	12,65,995/-		12,65,995/-	1,25,639/-
2013-14	10,29,834/-	56,23,355/-	66,53,189/-	1,02,305/-
2014-15	1,08,69,552/-	5,78,662/-	1,14,48,214/-	9,45,550/-
2015-16	1,21,78,234/-	48,72,000/-	1,70,50,234/-	11,67,833/-
2016-17	1,15,53,420/-		1,15,53,420/-	11,17,565/-
2017- 18	1,12,90,225/-	80,88,952/-	1,93,79,177/-	5,32,537/-

20. Thus, it cannot be held that assessee is paper company or was earning income was on the basis of alleged commission on accommodation entry.

21. In the result, the additions made in all the years are deleted and all the appeals of the assessee are allowed.

**Order pronounced in the Open Court on 29<sup>th</sup> January, 2021**

Sd/-

**[B.R.R. KUMAR]**

**ACCOUNTANT MEMBER**

DATED: 29<sup>th</sup> January, 2021

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**