

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No. 1367/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2014-15)

(Virtual Court Hearing)

Sanjay Kumar Choudhary (HUF), (Prop. M/s. Mayank Impex), C/o. 408, Saryu Diamond Complex, Jaddakhadi Mahidharpura, Surat-395003.	Vs.	The ACIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQHS5732R		
(Appellant)		(Respondent)

आयकरअपीलसं./ITA No. 1365/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2014-15)

(Virtual Court Hearing)

M/s. Nazar Impex Pvt. Ltd., C/o. 408, Saryu Diamond Complex, Jaddakhadi, Mahidharpura, Surat-395003.	Vs.	The ACIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCN3603R		
(Appellant)		(Respondent)

आयकरअपीलसं./IT(SS)A Nos.340 to 343/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2009-10 to 2012-13)

(Virtual Court Hearing)

Moulimani Impex Pvt. Ltd., C-805, Oberoi Splendor, Opp. Majas Depot, JVLR, Jogeshwari (East) Mumbai-400060.	Vs.	The DCIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCM4913C		
(Appellant)		(Respondent)

आयकरअपीलसं./IT(SS)A Nos.347 to 351/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2009-10 to 2013-14)

(Virtual Court Hearing)

Anoop Yogendra Jain, 406, Saryu Chambers, 4 th Floor, Jadakhadi, Mahidharpura, Surat-395003.	Vs.	The DCIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AHOPJ3837B		
(Appellant)		(Respondent)

आयकरअपीलसं./IT(SS)A Nos.352 to 355/AHD/2017
(निर्धारणवर्ष / Assessment Years: (2010-11 to 2013-14)
(Virtual Court Hearing)

Manish S. Jain, 302, Nishit Diamond Complex, Gujjar Falia, Mahidharpura, Surat-395003.	Vs.	The DCIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFRPJ9962J		
(Appellant)		(Respondent)

आयकरअपीलसं./IT(SS)A Nos.300 to 305/AHD/2017 &
आयकरअपीलसं./ITA No.1578/AHD/2017
(निर्धारणवर्ष / Assessment Years: (2008-09 to 2013-14 & 2014-15)
(Virtual Court Hearing)

M/s. Sun Diam, C-805, Oberoi Splendor, Opp. Majas Depot, JVLR, Jogeshwari (East) Mumbai-400060.	Vs.	The DCIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABAFS0852K		
(Appellant)		(Respondent)

आयकरअपीलसं./IT(SS)A Nos.344 to 346/AHD/2017 &
आयकरअपीलसं./ITA No.1683/AHD/2017
(निर्धारणवर्ष / Assessment Years: (2011-12 to 2013-14 & 2014-15)
(Virtual Court Hearing)

Sachin R. Parekh, 302, Nishit Diamond Complex, Gujjar Falia, Mahidharpura, Surat-395003.	Vs.	The DCIT, Central Circle-4, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFLPP5405N		
(Appellant)		(Respondent)

Assessee by	Shri Rasesh Shah, CA
Respondent by	Ms Anupama Singla, Sr. DR and Shri S.T. Bidari, CIT(DR)
Date of Hearing	14/12/2021
Date of Pronouncement	29/12/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned twenty six appeals filed by different assessees, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], which in turn arise out of separate

assessment orders passed by the Assessing Officer under section 143(3)/ 144 r.w.s 153C of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.347/AHD/2017, for assessment year 2009-10 have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the assessee in lead case in IT(SS)A No. 347/AHD/2017 for assessment year 2009-10, wherein the grounds of appeal raised by the assessee are as follows:

“Grounds of appeal against the order dated 21/03/2017 u/s 250 of the Act passed by the learned Commissioner of Income-tax (Appeals)-4, Surat.

1.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in upholding the validity of notice issued u/s 153C of the I.T. Act 1961 (hereinafter referred to as “The Act”) without appreciating the fact that provisions of sec 153C are neither applicable nor complied with as mandated in sec 153C of the Act. Therefore, the Ld CIT(A) erred in upholding the impugned assessment order.

2.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the initiation of proceeding u/s 153C of the Act overlooking the fact that satisfaction of Ld AO of searched person and the appellant was not recorded as per provisions of sec 153C of the Act, and no books of accounts were found belonging to the appellant, on the day of search at third party since it was brought from out side the searched premises/neither examined seized back up of audited accounts by the AO of searched person i.e. Rajendra Jain, before issue of notice u/s 153C. Therefore, the impugned assessment order is bad in law and invalid.

3.The Learned Commissioner of Income-Tax (Appeals) has erred in law and in facts confirming the imitation of proceeding u/s 153C without appreciating the fact that statement u/s 132(4) of searched person i.e. Mr. Rajendra Jain does not indicate undisclosed income which has bearing over income of the appellant. Hence assessment order is bad in law and invalid.

4.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in upholding the addition made in the impugned assessment order without appreciating the fact that only pending assessment abate and not the completed assessment, thereby no addition can be confirmed if no incriminating materials found during search action and hence the impugned assessment order bad in law and invalid.

5.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in upholding and confirming that the business of the appellant is accommodation bills provider merely on the basis of confessional statement

recorded u/s 132(4) of the Act of the third party i.e. Mr. Rajendra Jain and u/s 131 of the appellant without appreciating the fact that statements have already been retracted and no incriminating materials found in search action of third party.

6.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in not accepting the retraction statement filed by the appellant and third party i.e. Rajendra Jain without appreciating the fact that such retractions were not rebutted till 29th January 2016 (i.e date of assessment order) by the department after lapse of considerable time of 14 month and retraction corroborated by evidence filed in the proceedings. Hence assessment order is bad in law and invalid.

7.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the assessment of Rs.12,08,834/- as alleged commission on sales, import purchase and loan for acting as accommodation bills providers merely on the basis of statement of the third party recorded u/s 132(4) without appreciating the fact that alleged statements have already been retracted and corroborative evidences filed in support of regular business activity.

8.Without prejudice to Ground no.5,6 and 7, the learned Commissioner of Income Tax (Appeal) has erred in law and in facts in not accepting the claim of the appellant that statement recorded u/s 132(4) in search action of Rajendra Jain ought to be read in totality in respect of income from alleged commission that has already been included in sales transaction disclosed in audited accounts as admitted in the same statement, hence no further addition ought to be confirmed on account of alleged commission in the impugned assessment order.

9.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the rejection of books of account of the appellant without appreciating the fact and law in proper perspective and without finding any defects in the books of accounts and overlooking the evidence furnished in the assessment as well appellant proceeding.

10.The learned Commissioner of Income-Tax (Appeals) has erred in law and in facts in confirming the disallowance of expenses including foreign exchange fluctuation loss on account of import/export business of the appellant as claimed in the return of income.

11.The appellant craves leave of Your Honour to add to, alter amend and/or delete all or any of the foregoing grounds of appeal.”

4. Brief facts as discernable from the orders of lower authorities are that a search action u/s 132 of the Income-Tax Act, 1961 was carried out at the premises of the Rajendra Jain & others Group on 03.10.2013. The assessee filed return of income (ROI) u/s 139(1) on 19.09.2009 declaring total income of Rs. 3,82,260/-. Assessment order u/s 143(3) has been passed by the assessing officer, on 29.12.2010, assessing total income at Rs.5,02,780/-. During the course of search action in the case of Rajendra Jain Group, it is revealed that group of

companies has indulged in giving accommodation entries. The seizure made at place of Rajendra Jain, C-805, Oberoi Splendor Building, JVL Road, Andheri (E), Mumbai comprises of -back up of Computer, Mobile and Two Pen drives which contains details of group companies including details belonging to Adi Impex. Looking at the nature of the transactions, the seized material carry a clear implication over the income of the assessee. The Adi Impex is proprietorship concern run by Shri Anoop Yogendra Jain, which was covered u/s 133 A of the Act. The seized documents and statement u/s 132(4) shows Anoop Yogendra Jain was working as employee with Rajendra Jain and Surandra Jain group. Shri Rajendra Jain and Shri Surendra Jain in their statements recorded on oath during the search proceedings, has categorically admitted that they were operating the business of providing accommodation entries through various companies wherein their employees and Ex-Employees were made the name sake Proprietors/Partners/Directors in these shadow entities and there was an informal agreement between Shri Rajendra Jain and Surendra Jain according to which they were stakeholder in the ratio of 50:50 in the overall profit earned by all these entities. The Adi Impex is one of the concern in which Rajendra Jain & Surendra Jain has done accommodation entries. This requires detailed investigation. Due to these facts involved in the case, the case requires to be covered with the provisions of section 153C of the Act. Therefore, a notice u/s 153C of the I.T. Act was issued to the assessee on 13.01.2015 and duly served upon the assessee. In response to the said notice, the assessee furnished copy of his original return of income (ROI) on 16.02.2015 declaring total income at Rs.3,82,260/-. The assessee has not offered any additional undisclosed income in the return of income filed in response to the notice u/s.153C of the Act. A notice u/s 143(2) was issued on 15.06.2015 and subsequently, a questionnaire and notices u/s 142(1) were issued to the assessee.

5. During the search, various evidences were collected, which explained inter alia, the modus operandi of the "business of providing accommodation entries in the nature of bogus sales and unsecured loans". During the search proceedings, it was established by evidences and statements of Shri Rajendra Jain, Surendra Jain,

Shri Sanjay Choudhary and Shri Dharmichand Jain that their group concerns are: (i) Engaged in merely paper transaction, (ii) Engaged in import of rough & cut polished diamonds for other clients (who do not want to show in their books), whose physical delivery is taken by actual importers, immediately after the clearance of consignment by CHA, (iii) These concerns of Rajendra Jain, Sanjay Choudhary & Dharmichand Jain are left with paper & zero stock in actual. These are basis of issuing bills & giving accommodation entries on commission basis, to various parties, who either purchases from cash, or want to inflate the cost, (iv) In addition to these, these concern provides entries of unsecured loans against cash. Shri Rajendra Jain in his statement u/s 132(4) of the Income Tax Act, 1961 has explained the nature of his business and also identified its beneficiaries. He categorically admitted that his *“main source of income is from commission for providing accommodation by bogus bills & bogus loans”*.

Shri Rajendra Jain has explained *modus operandi* of his business operation, which is mentioned by the assessing officer on page no.5 of assessment order. During the course of post search enquiries also, the above *modus operandi* followed by the above groups has been accepted by the key persons of the Groups. Statements of Shri Rajendra S. Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain were recorded during the course of post search enquiries. All of them inter-alia admitted the fact that they are engaged in paper transactions only without any physical stock of the goods (diamonds).

6. Based on the statements of Shri Rajendra S. Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain and other corroborating evidences gathered during the course of search action and post search enquiries; the following findings of fact and *modus operandi* come to surface:

- (i) The above concerns are merely doing the paper transactions instead of carrying out any real business of diamonds trading.
- (ii) These concerns actually do business of maintaining 'books of accounts' only and do not carry out any actual trading of physical commodity i.e. diamonds,
- (iii) The actual importers of rough diamonds approach these concerns to import their diamond through their group companies/concerns and on receipt of the

consignment, the real importer gets the delivery of diamond after clearance from CHA.

(iv) The book stocks of rough diamonds have been converted by these concerns to cut and polished diamonds through their commission companies. Or sometimes these name lending concerns issue bills of rough diamonds to local purchasers and show purchase of polished diamonds from them to square up the transaction.

(v) On receipt of such cut and polished diamonds, they issue sale bills to various parties at the request of the actual importers. The actual importer arranges the sale proceeds from parties to whom sale bills were issued. Once the sale proceeds are received, these name lending concerns make import remittance at the request of importer.

7. During the course of search and seizure action statement of Shri Sachin Pareek (Prop, of Arihant Exports, Director of Karnawat Impex Pvt. Ltd. and Moulimani Impex Pvt. Ltd., Shri Manish Sushil Jain (Prop, of Kalash Enterprises, Director of M/s. Kriya Impex Pvt. Ltd. and Karnawat Impex Pvt. Ltd.) and Shri Anoop Y. Jain (Prop, of Aadi Impex) have also been recorded on oath. All the above persons in their statement admitted that they were acting as per the directions of their bosses, namely, Shri Rajendra Jain and Shri Surendra Jain, for which they were getting salary. Hence, it is clear that concerns are totally controlled and managed by Shri Rajendra Jain and Shri Surendra Jain; and other directors/partners/proprietors are just name lenders who are actually employees of Sh. Rajendra Jain and Sh. Surendra Jain. In such business, the income of assessee is generated by commission on the Bills, loans & commission on import. Assessee has given statement that he receives following commission:

- i) On import = 0.20% on Billed import
- ii) On loan = 0.50 % on the bogus loan entry.
- iii) On local bills = No details (Considered 0.02% on the local sales bills after deducting imports & group turnover from turnover)

8. The assessing officer observed that Shri Sachin Pareek is the employee of Shri Rajendra Jain and doing business through proprietorship firm M/s Arihant Export. Since the business is not done by the assessee in actual which is shown

and same is proved with evidence as well as confessed in statement u/s 132(4), in such circumstances, Books of accounts maintained by the assessee are not found correct and complete. Therefore, as per the provision of section 145(3) of the I.T. Act, a show cause notice for rejection of books of account of the assessee was issued on 22.12.2015 and served on 22.12.2015. The relevant portion of show cause notice is reproduced as under:

“1. A search and seizure action in the case of Shri Rajendra Jain Group, Shri Sanjay Chaudhary Group and Shri Dharmichand Jain Group was carried out on 03/10/2013. During the search action statements on oath of Shri Rajendra Jain, Dharmichand Jain and Surendra Jain were recorded who confirmed this fact that they were the main/key persons of the group and other are merely name sake Proprietors /Partners/Directors in the group companies. The key persons of the group has admitted that fact on oath that they are not doing any real trading in diamond but indulge in paper transactions only.

2. As per the statement recorded, it is evident that the income of assessee is generated by commission on the Bills, loans & commission on import. Assessee has given statement u/s 132(4) that he receives following commission:-

i) On import = 0.20% on Billed import

ii) On loan= 0.50 % on the bogus loan entry.

in)On local bills = No details(Considered 0.02% on the local sales bills after deducting imports & group turnover from turnover)

3. This fact remain to be of great importance that during the entire search and survey wherein all the known/declared premises of the Group were covered, were found to be with not even a single piece of diamond and as per books there was stock. Means no stock was found with any of the company/entity at any of the premises. This very fact points out and confirm all concerns of the group were indulged into the activities of providing paper entries and no factual business of Diamond was undertaken by them.

4. The search and survey teams also found that each of these concerns had e-mail Ids and the backup of these e-mail messages also corroborates this modus operandi of the group in respect of giving entries of bogus purchases and unsecured loans. Evidences of actual importers -who used to procure diamonds through these concerns of the Group were also found from the e-mail correspondences.

5. From the above facts it is clear that your books of a/c is not correct, so you are requested to explain as to why the books should not be rejected u/s 145(3) of the Act and why the income calculated on the basis of commission actually received on various heads as per your statement given u/s 132(4)131 of the I.T. Act may not be taken.”

9. Assesses has replied to the above show cause notice dated 22.12.2015 vide letter dated 28.12.2015, relevant portion of reply is reproduced below:-

“In the above factual back ground and the regard to your honour's show cause notice as to why books of accounts of the assessee should not be rejected, I would like to state as under:-

1.1 The assessee follows Mercantile system of accounting as permitted by I.T. Act 1961. All the accounting standards, policies concepts and principles are followed appropriately. No Material discrepancies in the accounts have been noticed. The assessee maintains regular books of accounts comprising of day to day stock register, purchase, sales register and day books of cash and banking transaction. The same have been verified by the Investigation wing of Mumbai on the day of search itself. The accounts have been duly audited by chartered Accountant U/s 44AB of the Act. C.A. has never issued any qualified report in the case of assessee. Audit report with all the annexures have been submitted to your good office. In earlier submission, all the details of sales, import, purchase, stock and expenses have been furnished before your honour. Therefore no doubt should arise about correctness and completeness of the books of accounts of the assessee.

1.2 It is believed that you have surmised that books of accounts are not reliable merely on the basis of statement recorded during search proceeding in the case of assessee. Rajendra Jain and others have already retracted the statement made in the course of search proceeding and submitted to your good office explaining the circumstances leading to such confession which was under coercion and duress. Moreover the detailed submission with voluminous evidences submitted herewith as mentioned supra makes it crystal clear that the statement recorded in search proceeding has no substance. Therefore, your honour proposed action to reject books of accounts merely on the basis of statement is bad in law (Refer page No.100 to 116)

1.3 Assessee has also been registered with sales Tax authority. The sales tax authority has never rejected its books of accounts. They have always accepted the return filed by the assessee. The assessee has also paid huge amount of VAT to sales tax authority. Sales Tax authority has also accepted sales/ purchases of the assessee while scrutinizing the accounts in scrutiny assessment of sales tax. Relevant evidences are being submitted here in above.

1.4 Section 145 deals with method of accounting and rejection of books of accounts. The section read as under:

"145(1) Income Chargeable under the head "profit and gains of business or profession" or "income from other sources" shall, subject to the provisions of subsection (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesses or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub section (2), have not been regularly followed by the assessee, the Assessing Officer may make an

assessment in the manner provided in Section 144. Therefore, it is submitted that the income chargeable under the head "Profit and gains of business or profession" shall be determined in accordance with the method of accounting regularly employed by the assessee.

Further, the books of accounts of the assessee should not be rejected unless the assessing officer is not satisfied with the correctness or completeness of the accounts of the assessee, or where the method of accounting employed by the assessee have not been regularly by the assessee.

It is further submitted that till date, your honour has not found any particular defect in the books of the assessee company and therefore your honour's proposal for rejection of books of accounts of the assessee is against the basic principal of natural justice and also against law.

1.5 Your honour have alleged that there was no physical stock found on the day of search, therefore it was presumed that no real business activity was undertaken by us. However considering the above referred submission along with documentary evidence with regard to payment of VAT to sales tax authority, payment of Custom duty to custom authority for import of polished diamonds, civil suit for recovery filed by overseas supplier against us, sales/ purchases transactions being accepted by sales tax authority, sales made by government public undertaking to us, and host of other evidences makes it clear that we are engaged in to genuine business activity. Merely not finding physical stock on the day of search cannot be ground to hold that we are engaged into paper transactions only. As you are aware, we are dealing in precious products having substantial value in small quantity. We do not have locker in our premises and keeping diamonds at premises is not safe. Further in most of our concerns, we do not have stock in our books of account on the day of search/ survey proceeding. Even whenever we have stock, the same are given on jangad (Approval memo) to various brokers/ parties for their approval for business requirement. Therefore your honour can not treat our business as non-genuine merely on the basis of not finding stock at premises on the day of survey for above reason. (Refer page No. 117 to 124)

1.6 Your honour alleged that email id of group concerns corroborates that actual importers used to procure diamonds through these concerns. We submit that in order to import diamonds in some of cases. Diamonds merchants (our business friends) engaged in diamonds business for years in diamonds market, used to give our reference to overseas party for timely payment by us to them, since we do not do not know them . Therefore in those case, whenever we remit money for import, we send copy to such party who gave our reference that we meet our commitment for payment to them. This email ids do not prove that we procures diamonds on behalf of parties to whom we send message for timely payment of remittance to overseas party. Investigation wing did not find any actual importers who admitted that we have imported goods on their behalf. There is no other material /facts available on record to indicate that real importers are different than us. Even your good office has also verified from custom authority regarding import being made by us by collecting information u/s 133(6) of the Act. Therefore we pray that books of account u/s 145(3) can not be rejected on this ground also."

10. However, assessing officer rejected the contention of the assessee and observed that business premises as well as residential premises were covered during search & survey proceedings. During the search and survey proceedings Shri Rajendra Jain, Shri Surendra Jain alongwith their employees were asked to explain the nature of business functions, day to day affairs, role of theirs in business activity details of persons who were contacted for purchase/ import/ sale. All the employees (who are proprietor/partners/directors in many concerns only on paper) of the assessee were accepted that they work as an accountant only for assessee and all the concerns in which they are proprietor/ partner/ director floated by the assessee in their names. They all have explained the modus operandi of the assessee and his group concerns. The assessee himself was not able to explain these things and admitted and explained the entire modus operandi. Learned assessing officer noted that no single piece of diamond was found from any of business or residential premises of Shri Rajendra Jain, Shri Surendra Jain & group concerns. Upon being confronted, the assessee has stated that he doesn't do any real purchase/sale of diamond and further explained modus operandi of his business. In response to show cause notice dated 22.12.2015 for rejection of books the assessee has submitted that-

"we do not have locker in our premises and keeping diamonds at premise is not safe. Further in most of our concerns, we do not have stock in our books of account on the day of search/ survey proceedings. Even whenever we have stock, the same are given on jangad (approval memo) to various brokers/parties for their approval for business requirement."

The above submission during assessment proceedings that due to safety reason stock was not kept at business premises is not tenable because of the fact that no such explanation was offered in statement recorded u/s 132(4), rather in statement during search proceedings the assessee in reply to whereabouts of physical stock admitted non-existence of stock. No evidence of goods being in transit (popularly called as jangad) was made or stated by the assessee. Nevertheless, even in present submission no evidence of stock movement 'jangad" are offered mere attempt to present an alibi scene to be clear work of afterthought. The assessee have precluded department from any corroborative and independent verification. Moreover, the claim of goods being in transit /jangad must be supported by

verifiable and reliable evidences which is not offered in this case. Further, it cannot be without reason that no record of any previously done/executed "jangads" was found nor brought to the notice of search team or Investigation wing during post search proceedings. As per books of accounts of the assessee and his group concern there was stock on the date of search/survey proceedings. The details are as under:

STOCK POSITION CHART

<i>Sr. No.</i>	<i>Name of the assessee</i>	<i>Stock as on date of search</i>	
		<i>Rough Diamond</i>	<i>Polished Diamond</i>
1.	<i>Sparsh Exports Pvt. Ltd (Director - Rajendra S Jain)</i>	<i>Nil</i>	<i>64.40</i>
2.	<i>M/s Sun Diam (Partner -Rajendra S Jain)</i>	<i>787.64</i>	<i>12.73</i>
3.	<i>Kriya Impex Pvt Ltd (Director - Rajendra S Jain)</i>	<i>Nil</i>	<i>14.24</i>
4.	<i>Kalash Enterprise (Prop. Manish S Jain)</i>	<i>Nil</i>	<i>Nil</i>
5.	<i>Aadi Impex (Prop. Anoop Y Jain)</i>	<i>184590.04</i>	<i>11.72</i>
6.	<i>Arihant Exports (Prop. Sachin Pareek)</i>	<i>3778.87</i>	<i>8.0</i>
7.	<i>Vitrag Jewels (Prop. Mudit Karnavat)</i>	<i>Nil</i>	<i>Nil</i>
8.	<i>Karnavat Impex Pvt Ltd .(Director - Rajendra S Jain)</i>	<i>Nil</i>	<i>26.92</i>
9.	<i>Mouliamani Impex Pvt Ltd. (Director - Rajendra S Jain)</i>	<i>Nil</i>	<i>Nil</i>
10.	<i>Rajendra S Jain (Prop. Avi Export)</i>	<i>Nil</i>	<i>170.59</i>

In order to validate the above modus operandi and to cross check the findings of the above search action, few beneficiaries were covered u/s 132 of the I.T. Act, 1961 on 05.05.2014, who had taken accommodation entries in the nature of bogus unsecured loans and bogus purchases from the group concerns of the assessee.

- (i) M/s R. Kantilal & Co. (R. Kantilal & Co. Group)
- (ii) M/s. A.S.Export (A.S.Export Group)
- (iii) M/s. S. Jogani Exports Pvt. Ltd. (S. Jogani Group)
- (iv) M/s. Decent Dia Jewels Pvt. Ltd. (Decent Diamond Group)

The assessing officer observed that findings of the above search actions were very well corroborates the findings of the search action in the case of Shri Rajendra Jain Group and others and establishes beyond doubt that all the concerns run, controlled and operated by Shri Rajendra Jain, Dharmichand Jain and Sanjay Choudhary are indulged in the activity of providing accommodation entries only.

11. About retraction of statement, the assessing officer was of the view that the statement which are recorded by administering oath are presumed to be carrying truth in view of provisions of section 181 and section 193 of the Indian Penal Code which provides for imprisonment if the false statement is given. When it is so, no one like to be punished knowingly and hence, it is but logical to accept a sworn statement or the statement taken on oath as revealing the truth. Burden to prove the statement as incorrect is on the deponent and in case of failure of the deponent to prove that earlier stated facts were wrong, his earlier statements are sufficient to conclude a matter. Merely because a statement is retracted, it cannot become as involuntarily or unlawfully obtained. For any retraction to be successful in the eyes of law, the deponent has to show as to how earlier recorded statements do not state the true facts or that there was coercion, inducement or threat while recording his earlier statements. It is settled law that admission by a person is a good piece of evidence though not conclusive and the same can be used against the person who makes it. The reason behind this is, a person making a statement stops the opposite party from making further investigation. This principle is also embedded in the provisions of the Evidence Act. But, the statement recorded under section 132(4) is on a different footing. The Legislature in its wisdom has provided that such a statement may be used as evidence in any proceedings under the Act. However, there are exceptions to such admission where the assessee can retract from such statement/admission. The first exception exists where such statement is made involuntarily, i.e., obtained under coercion, threat, duress, undue influence, etc. But the burden lies on the person making such allegation to prove that the statement was obtained by the aforesaid means. The second exception is where the statement has been given under some mistaken belief either of fact or of law. If he can show that the statement has been made on mistaken belief of facts, than the facts on the basis of which admission was made were incorrect. In the case of ACIT v/s Hukum Chand Jain [2010] 191 Taxman 319 (Chhattisgarh) Hon'ble High Court held that burden of proving that statement under section 132(4) was obtained by coercion or intimidation lies upon assessee. Proof of threat or coercion is necessary for valid retraction. The

allegation that the assessee was tortured and harassed by the search team and was forced to make an admission is not enough [Manharlal Kasturchand Chokshi v. Asstt. CIT [1997] 61 ITD 55 (And.)]. The Mumbai Tribunal, in the case of Param Anand Builders (P.) Ltd. v. ITO [1996] 59 ITD 29, has held that allegations of torture and harassment were unacceptable when independent witnesses were present at the time of search. Mere filing of a letter retracting the statement was not held to be rebuttal of the presumption that what is admitted is true. The Tribunal's observations were also based on the fact that the 'Panchas' had not brought any harassment to the notice of the higher authorities. In the present case assessee failed to prove by any legally acceptable evidence that statement given during search was involuntary or was tender under coercion or duress or was under misconception of facts. If there is any retraction, it is to be made at earliest [**Green View-Restaurant. vs. Asstt. CIT (2003) 185 CTR (Gau) 651**]. Investigating officer normally puts questions in order to gain support for the 'findings' in search. Admission by a person is a good piece of evidence. It stops the opposite party from making further investigation [**Dy. CIT v. Bhogilal Mool Chand [2005] 3 SOT 211 (Ahd.)**].

12. The assessing officer noted that retraction was filed by the assessee on 12/01/2015 before the Assessing Officer after 1 year of search/ statement recorded. The assessee has not filed any retraction before Investigation wing. The assessee has submitted that he retracted the statement recorded on 06/10/2013 through an affidavit before notary on 15/10/2013 which was kept with him and filed it before the A.O. on 12/01/2015. The assessee by non- filing the affidavit before Investigation wing stopped any further investigation and not given time to Investigation wing to collect the evidence against retraction. The Hon'ble Supreme Court held that in absence of proper verification affidavit cannot be admitted in evidence [**A.K.K. Nambiar v/s Union of India (AIR1970SC652)**].

13. The assessing officer observed that during the search and surveys proceedings the assessee could not produce any verifiable evidence that the business was actually conducted. Only evidences have been created in the form of bank entries and books of account to claim that business have been conducted.

Auditor has verified the bills and vouchers; not the goods. The assessee claimed that his business activities are duly acknowledged by the other Government authorities like customs department, sale tax department, is not reliable. Regarding Customs Department, as explained by assessee himself diamonds were handed over to real beneficiaries after the clearance from customs officials. Other Government authorities has not done any physical verification as the I.T. department has done. Issuance of sales tax/ VAT registration, payment of trade tax (in certain cases) are done by State- Authorities. There is no evidence brought before the department whether any spot verification or any physical verification is carried out by such authorities, on other hand proceedings u/s 132, collection of evidences and information's during the course of such proceedings as well as corroborative verification with parties, transactions undertaken by this assessee prove that no real business was being carried out by this assessee. Such finding of the department is past the event of any verification or issuance of VAT/ sales tax numbers, registration etc. by State Government or any other Authorities. In the light of all foregoing discussion, the assessing officer held that assessee is not doing actual business and earned only commission income on sales, import and loan entry on direction of Shri Rajendra S. Jain. Hence, based on these facts, the assessing officer held that books of account maintained by the assessee is not reliable and therefore rejected u/s 145(3) of the Income Tax Act, 1961 and order was being passed by assessing officer u/s 144 of I.T. Act on best judged assessment basis. It was also held by assessing officer that when assessee is doing import on behalf of client who is "not identified by the assessee" it is held that all expenses like exchange loss, VAT payment, octroi payment, custom duties and all statutory expenses are also met by such client on whose behalf the goods are imported. Due to such reasons the books of accounts and audit prepaid by assessee was rejected by assessing officer and assessment of income was done on the basis of commission income earned by assessee, as follows:

Working of commission on Total import, Local sales, Loan entries:

Sales	Amount	Rate of commission	Commission income
Total turnover	2,92,31,21,378/-		
Total Import	47,69,80,705/-	-	-

Total turn over (Excluding import & group turnover)	1,94,69,19,093/-	@0.02%	3,89,384/-
Import made	47,69,80,705/-	@0.20%	9,53,961/-
Loan outstanding at year end	5,36,86,849/-	@0.50%	2,68,434/-
Total Commission income earned			16,11,779/-
Deduction of expenses of 25% is given for paper transactions & related cost as the such.			4,02,945/-
Income computed by commission.			12,08,834/-

This, way, assessing officer made addition to the tune of Rs. 12,08,834/-. The assessing officer also made addition in the hands of Shri Rajendra Jain at Rs. 12,08,834/- on protective basis.

14. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

15. Shri Rasesh Shah, Learned Counsel for the assessee furnished before us, the written submission, which are reproduced below:

1. *“In this case, four assessment years are involved from A.Y. 2009-10 to 2012-13, wherein the assessment was made u/s 153C consequent to search conducted on 03.10.2013 in case of Shri Rajendra Jain. In the course of search, the statement of Rajendra Jain was recorded u/s 132(4) on 06.10.2013. He stated that he is engaged in providing accommodation entries and earned the commission on such arrangement for which assessee and other control companies are engaged. The relevant questions and answers of the statement recorded u/s 132(4) are as under :*

Q5. Kindly specify the nature of present occupation /business of yours.

Ans. I am engaged in the business of import, export as well as local trading of rough and polished diamonds.

Q12. It has come to the notice that your employees are also running their independent proprietorship concerns of their own. Do you know? If yes, please explain as to how they do justice with the roles and responsibilities assigned to them by you.

Ans. Sir, in fact, the proprietary concerns in the names of our employees are not independent business activity of their own. When I was working for Shri Ratanlal Jain, besides other concerns, he had been also operating through M/s Minar Gems, a proprietary concern in my name. So, after quitting the job, I took the idea of operating through various concerns including several proprietorship concerns in the names of our employees. In such a case. the effective control of business remains with us and the business income of such proprietorship concern

get adjusted against the overall salary payable to such employee on annual basis.

Q.26. Please give the details of movable properties held by you or in the name of your family members.

Ans. Sir. I have one Honda City car and one scooty.

Q.27. Please give details of immovable property held by you or in the name of your family members.

Ans. The details of immovable properties held by me and in the name of my family members are as under :

<i>Sr. No.</i>	<i>Details</i>	<i>Owner</i>	<i>Area in sq. ft.</i>	<i>Total cost in lacs and year of acquisition</i>	<i>Sources of purchase</i>
<i>1</i>	<i>C – 805, Oberoi Splendor, Opp. Majas Depot, JVLR, Jogeshwari East, Mumbai</i>	<i>Smt. Leela R. Jain</i>	<i>891</i>	<i>Rs. 102 lacs in 2011</i>	<i>Consideration received from the sale of Flat in A-401, Sheffield Apartment, Dahisar East, Mumbai – 68 and my personal savings</i>
<i>2</i>	<i>302, Nishit Diamond Complex, Mahidharpura, Surat</i>	<i>Rajendra S. Jain</i>	<i>250</i>	<i>Rs. 2.50 lacs in 2005</i>	<i>From Business Income</i>

Q.38 Please furnish the particulars of your income through these operations of accommodation entries/ bill shopping?

Ans. We get only commission income at the rate of 0.2% on the value of import from the real importer who routes the transaction through our paper concerns. Besides this whenever we give any entry for unsecured loan we receive commission income in the range of 0.25 to 0.5%. Further I want to state that we are very simple people of lower middle class, our stakes are very low and we are indulged in this business only to earn bread and butter for our family. I state that commission on such imports as admitted above, was accounted for in the P&L A/c. by way of inclusion in profit margin on purchase and sale of diamonds in respective firms/companies. I also incurred other administrative expenses as well as loss on exchange rate fluctuation on such imports, which was disclosed in the P&L A/c of respective firms/ companies. Therefore my earnings out of same is reflected in books of respective firms and offered for taxation as income in the regular return of income filed by the respective firms/ companies after taking into consideration commission on such imports.

- 2. However, the statement recorded u/s. 132(4) was retracted by Rajendra Jain subsequently by filing the affidavit before the assessing officer. In the course of assessment proceedings, assessee filed submission vide letters dated 11.10.2015, 26.12.2015 and 28.12.2015 in response to notice issued u/s 142(1) and show cause notice.*

3. *The notice u/s 153C was issued on 02.02.2015 and accordingly the date of the search is to be treated as 02.02.2015. In all the cases, the returns of income were filed before 02.02.2015 and time limit for issue of notice u/s 143(2) had already expired for all the years. So, for all the 4 years, the assessment has to be treated as completed assessment or unabated assessment. The assessee has given the separate chart giving the details of date of filing of return of income and issue of notice u/s 153C.*

Validity of assessment u/s 153C :

4. *In ground no. 1, 2 and 3, assessee challenged the validity of the assessment made u/s 153C. The proceedings u/s 153C are initiated on the basis of the seizure of backup of the computer, mobile and 2 pen -drives in case of Rajendra Jain as narrated in satisfaction note. However, actually no such evidence was found in the course of search conducted in the case of Rajendra Jain belonging to assessee. This is because of the fact that this backup of computer and mobile data along with physical documents in the form of books of accounts were brought by Shri Sachin Pareek and it was not found in the course of search in case of Rajendra Jain. This is evident from the order passed u/s 132(3) on 06.10.2013 which is placed at page no. 355 of the paperbook. In this order it was mentioned that Shri Sachin Pareek brought books of accounts during the search action in case of Shri Rajendra Jain. The revenue has not brought on record any panchnama suggesting that computer, mobile phone and 2 pen-drives as mentioned in the satisfaction note were found in the course of search in case of Shri Rajendra Jain. Shri Rajendra Jain in the statement recorded u/s 132(4) in reply to question no. 17, stated that the books of accounts of all the concerns controlled and managed by assessee were maintained and kept at Surat. Even otherwise all these materials are regular audited books of accounts on the basis of which the returns of income were filed and so they cannot be said to be of incriminating nature.*
5. *In the satisfaction note, the assessing officer has failed to establish that the documents which were seized have any correlation document-wise with these four assessment years. Under Section 158BC the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BC. Before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is, after such satisfaction is arrived at that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the satisfaction note recorded u/s 153C it was also mentioned that the proceedings u/s 153C were initiated on the basis of statement of Shri Rajendra Jain and Surendra Jain without mentioning any incriminating material except back up of the computer, mobile phone and 2 pen drives containing regular books of accounts. The statement cannot be standalone basis without reference to any material discovered during search and seizure operations can empower the assessing officer to frame block assessment u/s 153C. The statement recorded u/s 132(4) can only be basis for block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and seizure. Merely because a satisfaction note*

was recorded, same could not lead to reach a conclusion that notice under section 153C was justified.

- 6. Prior to 01.06.2015, the proceedings u/s 153C can be taken only when the books of accounts seized in the course of search of third person belongs to assessee. However, with effect from 01.06.2015, the amendment was made and even when the books of accounts seized do not belong to the assessee, the proceedings u/s 153C can be taken if such books of accounts relates or pertains to assessee. It has been held by the courts that the amendment made u/s 153C w.e.f 01.06.2015, cannot be applied retrospectively. With effect from 01.10.2014, section 153C was amended and Assessing Officer should also be satisfied that the document seized have bearing on the total income of the assessee. In assessee's case the satisfaction note was recorded on 02.12.2014 and therefore this amendment is applicable. Accordingly, in the satisfaction note recorded u/s 153C, assessing officer should have spelled out that the materials recovered from third person belonged to the assessee and they had bearing on the total income of the assessee. No such satisfactions are discriminable from satisfaction note recorded u/s 153C. In the satisfaction note, it has not been stated that materials seized in the course of search of Rajendra Jain and Surendra Jain have bearing on the total income of the assessee. In the satisfaction note it was indicated that action u/s 153C was taken on the basis of the seizure of the backup of the computer, mobile & two pen drive in case of Shri Rajendra Jain and on the basis of statement of Shri Rajendra Jain & Shri Surendra Jain. In fact, both these things do not have bearing on the total income of the assessee as assessee declared the income as per the books of accounts seized and any ways as stated above no such satisfaction was recorded in satisfaction note.*
 - 7. The learned CIT(A) confirmed the validity of notice u/s 153C by considering the statement of Rajendra Jain and Surendra Jain. He further placed reliance on the evidence found in the form of emails. In this regard it is submitted that the emails were not referred in the satisfaction note. The satisfaction note cannot be supplemented subsequently as held by courts in connection with the reasons recorded u/s 148. The validity of the proceedings u/s 153C should be decided as per the satisfaction note recorded by assessing officer. The reference can be made on the decision of the Honourable Bombay High Court in the case of Hindustan Lever Ltd. [(2004) 268 ITR 332] and the Honourable Gujarat High Court in case of PCIT V/s. Manzil D. Shah [95 taxmann.com 96 (Gujarat HC)].*
 - 8. Further, the emails found in the course of search in case of Rajendra Jain do not belong to assessee although it may be relating to the assessee. As discussed above, the audited accounts cannot be said as incriminating materials as assessee has disclosed the returned income on the basis of audited accounts filed before the date of search. Further, the statement of Rajendra Jain and Surendra Jain cannot be the sole basis for initiating action u/s 153C as jurisdiction u/s 153C is vested only when incriminating materials are found in the course of search of third person that has to be referred in the satisfaction note. It was stated by Rajendra Jain in reply to question no. 38 that income declared in the return of income represent the net commission income earned. So even the statement of Shri Rajendra Jain is not incriminating having bearing on undisclosed income.*
- CIT vs. Singhad Technical Education Society [84 taxmann.com 290] (SC)*

- *CIT vs. Calcutta Knitwears [362 ITR 673](SC)*
- *PCIT vs. Munisuvrat Corporation [115 taxmann.com 265](SC)*
- *PCIT vs. Himanshu Chandulal Patel [108 CCH 0019] (SC)*
- *PCIT vs. Himanshu Chandulal Patel [419 ITR 132] (Guj. HC)*
- *Anilkumar Gopikishan Agrawal vs. ACIT [106 taxmann.com 137](Guj. HC)*
- *CIT vs. Shardaben K. Modi [365 ITR 0169](Guj. HC)*
- *PCIT vs. Anand Kumar Jain [432 ITR 0384](Del. HC)*
- *CIT vs. Renu Constructions Pvt. Ltd. [99 taxmann.com 426](Del. HC)*
- *CIT vs. Harjeev Aggarwal [70 taxmann.com 95] (Del. HC)*
- *PCIT vs. Allied Perfumes Pvt. Ltd. [124 taxmann.com 358](Del. HC)*
- *PCIT vs. Meeta Gutgutia [82 taxmann.com 287](Del. HC)*
- *PCIT vs. Index Securities Pvt. Ltd. [157 DTR 0020] (Del. HC)*
- *Pepsico India Holdings Pvt. Ltd. vs ACIT [370 ITR 295](Del. HC)*
- *Pepsi Co. India Holding (P.). Ltd. v. ACIT [370 ITR 295]*
- *CIT vs. Shri Ramdas Motor Transport [238 ITR 0177](A.P. HC)*
- *CIT vs. Naresh Kumar Agarwal [369 ITR 0171](A.P. HC)*
- *CIT vs. IBC Knowledge Park Pvt. Ltd. [385 ITR 346](Kar. HC)*
- *CIT vs. Arpit Land Pvt. Ltd. [78 taxmann.com 300](Bom. HC)*
- *Sri Sai Cashews vs. CCIT – [131 taxmann.com 177] (Orissa HC)*
- *CIT vs. RRJ Securities Ltd. [380 ITR 612](Del. HC)*

9. *In support of the above submissions the reliance is placed on the following decisions of courts :*

Discussion of the above case laws :

- *CIT vs. Singhad Technical Education Society [84 taxmann.com 290] (SC)- Where loose papers found and seized from residence of president of assessee, an educational institution, indicating capitation fees received by various institutions run by assessee did not establish co-relation document-wise with assessment years in question, notice issued under section 153C had rightly been quashed and set aside.*
- *CIT vs. Calcutta Knitwears [362 ITR 673] (SC) – Under section 158DB the existence of the cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary to initiation of action under section 158BD. The above decision was accepted by the CBDT. They accepted that the guidelines of the Supreme Court should be followed as several high courts have held that the provision of Section 153C of the Act are similarly/pari-materia to the provision of Section 158BD of the Act.*

- *PCIT vs. Himanshu Chandulal Patel [109 taxmann.com 202] (Guj. HC) – Before a notice under section 153C can be issued two steps have to be taken. The first step is that the assessing officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to the other person. The second step is – after such satisfaction is arrived at – that the document is handed over to the assessing officer of the person to whom the said document “belongs”.*
- *Anilkumar Gopikishan Agrawal vs. ACIT [106 taxmann.com 137](Guj. HC) – The section 153C as amended with effect from 1-6-2015 would apply to search initiated on or after 1-6-2015 and, thus, it is date of search that has been considered to be relevant date for purpose of applying amended provisions of section 153C(1). Consequently, in relation to searches carried out till 31-5-2015, it is not permissible for Assessing Officer to assume jurisdiction under section 153C.*
- *CIT vs. Shardaben K. Modi [365 ITR 0169] (Guj HC) – The sole basis for issuance of notice was statement made during course of survey by son of Assessee. The reasons did not give any further details regarding amount which had been accepted by son of the assessee and how it would blind assessee. In absence of any independent material, record did not reveal how statement of son of Assessee. Any notice of reopening issued u/s 148 would be required to be tasted at touchstone of reasons recorded by assessing officer.*
- *PCIT vs. Anand Kumar Jain [432 ITR 0384](Del. HC) - Assessment framed under section 153A on basis of a standalone statement recorded under 132(4) without reference to any other material discovered during search and seizure operations is not sustainable.*
- *CIT vs. Renu Constructions Pvt. Ltd. [99 taxmann.com 426](Del. HC) - Prior to 1-6-2015, at stage of initiation of proceedings under section 153C it was necessary to show that seized material 'belonged to' other person and not merely pertaining to such other person.*
- *CIT vs. Harjeev Aggarwal [70 taxmann.com 95] (Del. HC) - A plain reading of section 158BB(1) does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words 'evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4). However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.*

- *PCIT vs. Allied Perfumes Pvt. Ltd. [124 taxmann.com 358](Del. HC) - Merely because a satisfaction note was recorded, same could not lead to reach conclusion that notice under section 153C was justified.*
- *PCIT vs. Meeta Gutgutia [82 taxmann.com 287](Del. HC) - Invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search is not justified in absence of incriminating material found during search qua each such earlier assessment year.*
- *PCIT vs. Index Securities Pvt. Ltd. [86 taxmann.com 84] (Del. HC) - In order to justify assumption of jurisdiction u/s 153 C documents seized must be incriminating and must relate to each of AYs whose assessments were sought to be reopened. Seized documents referred to in Satisfaction Note in case of each assessee were trial balance and balance sheet for period of five months. They did not relate to AYs for which assessments were reopened in case of both assessees. Secondly, they could not be said to be incriminating. Assessing officer finalized assessment at returned income qua each Assessee without making any additions on basis of those documents. The essential requirement for assumption of jurisdiction u/s 153 C was not met in case of Assesseees.*
- *Pepsico India Holdings Pvt. Ltd. vs ACIT [50 taxmann.com 299](Del. HC) - Unless it is established that documents seized, whether they be photocopies or originals, do not belong to searched person, question of invoking Section 153C does not arise and mere finding of photocopies in the possession of a searched person does not necessarily mean and imply that they “belong” to the person who holds the originals.*
- *Pepsi Co. India Holding (P.). Ltd. v. ACIT [370 ITR 295] : "In the instant case, it is nobody's case that Jaipuria Group had disclaimed those documents as belonging to them. Unless and until it is established that the documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of section 153C do not get attracted because the very expression used in section 153C is that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A..." In view of this phrase, it is necessary that before the provisions of section 153C can be invoked, the Assessing officer of the searched person must be satisfied that the seized material (which included documents) does not belong to the person referred to in section 153A, i.e., the searched person. In the satisfaction note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This even apart from the fact that there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.*
- *CIT vs. Shri Ramdas Motor Transport [238 ITR 0177](A.P. HC)- Since the Department could not find any unaccounted money, article or thing or incriminating document either at the premises of the company or at the residence of managing director or other directors the finding of the Tribunal*

that the statement of managing director recorded patently under s. 132(4) does not have any evidentiary value is correct and did not raise any question of law.

- CIT vs. Naresh Kumar Agarwal [369 ITR 0171](A.P. HC) - It is well established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against person who made such statement.*
- CIT vs. IBC Knowledge Park Pvt. Ltd. [69 taxmann.com 108](Kar. HC) - Though documents belonging to Assessee were seized at time of search operation, there was no incriminating material found leading to undisclosed income. Assessment of income of Assessee was unwarranted.*
- CIT vs. Arpit Land Pvt. Ltd. - 78 taxmann.com 300 (Bom. HC) - It was held that the seized document which formed basis of impugned proceedings, did not belong to assessee so condition precedent under section 153C was not satisfied and, therefore, entire proceedings would be null and void*
- Sri Sai Cashews vs. CCIT – [131 taxmann.com 177] (Orissa HC) - In absence of incriminating material vis-a-vis assessee being found in course of search of third persons, impugned assessment order and consequential demand order were unsustainable in law and were to be set aside*
- CIT vs. RRJ Securities Ltd. [380 ITR 612](Del. HC) - Section 153C of the Income-tax Act, 1961, only enables the Assessing Officer of a person other than the one in respect of whom search conducted, to investigate into the documents and/or assets seized and ascertain that they do not reflect any undisclosed income of the assessee (i.e., a person other than the one in respect of whom search conducted) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the Assessing Officer of the assessee, are duly disclosed and reflected in the returns filed by the assessee, no further interference would be called for. Similarly, if the books of account/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the assessee have been seized and handed over to the Assessing Officer of the assessee that would not necessarily require the Assessing Officer to reopen the concluded assessments and reassess the income of the assessee.*

Addition on account of alleged commission income :

- 10. Regarding ground no. 4, it is submitted that the addition is not made on the basis of incriminating documents but on the basis of the statement of Rajendra Jain. The materials indicated in the satisfaction note u/s 153C cannot be correlated with the addition made by the assessing officer. The email recovered doesn't specify the portion of the commission received by the assessee against alleged accommodation entry. The emails were not referred in the satisfaction note. Anyway, the email doesn't belong to the assessee. Accordingly, no addition can be made in case of unabated assessment in view of the following judgments of High Courts :*

- *PCIT vs Saumya Construction [81 taxmann.com 292] (Guj HC)*
- *PCIT vs. Star PVG Exports [112 taxmann.com 163](Kar. HC)*
- *CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd [58*
- *CIT vs Kabul Chawla [93 CCH 0210] (Del HC)*

11. In the case of assessment made u/s 153C or 153A, the addition cannot be made on the basis of statement recorded u/s 132(4).

12. As regards to ground no. 5 and 6, it is submitted that Shri Rajendra Jain retracted his statement recorded at the time of search. The retraction statement was filed on 31.10.2014 which was not rebutted till the passing of assessment order. It is to be noted that in reply to question no. 5 of the statement recorded of Shri Rajendra Jain, it was stated by him that he was engaged in the business of import, export as well as local trading of rough and polished diamonds. In the course of assessment proceedings assessee explained various emails recovered from the internet vide letter dated 28.12.2015. It was explained that the business associates used to give reference of assessee to overseas party for timely payments by the assessee to them. Therefore, it is stated that whenever assessee made payment for import, they used to send the copy of such payment evidencing the payment. It was also stated that the investigation wing of the assessing officer, did not find any actual importers on whose behalf assessee made the imports. Assessee also filed the explanation for not finding the physical stock on the date of search. Further it is submitted that no actual search was conducted in the case of assessee but it was conducted in the case of Shri Rajendra Jain. In the course of assessment proceedings, assessee filed ample evidence that his business of trading in goods was genuine as can be seen from page no. 40 to 99 of the paperbook which are as under:

- *Import Invoices verified by Customs department*
- *House Air Waybills showing movement of goods*
- *Bill of entry furnished before Customs department*
- *Details of customs duty paid on imports*
- *Export documents verified by Customs department*
- *Documents showing movement of goods from India to overseas*
- *Insurance documents for goods in transit*
- *Kimberley process certificate issued after physical inspection of good*
- *Civil Suit against Rajendra Jain for non-payment on account of import made by*
- *Registration certificate issued by Maharashtra and Gujarat Sale Tax Department*
- *VAT Audit report along with VAT Challans*
- *Import-Export Certificate issued by Director General of Foreign Trade*
- *Invoices for purchase made from a government sponsored enterprise*
- *Sample Bank Statement showing non-existence of any substantial cash*

13. *In the following cases, the purchases were held to be genuine even when the statement was given by the entry provider that he has given the accommodation entries. The reliance is placed on the following decision of tribunals :*

- *DCIT vs. Shri Sourabh Navalkishore Garg [ITA No. 4130/Mum/2017]*
- *Shantivijay Jewels Ltd. [ITA No. 1045/Mum/2016]*
- *Prabhat Gupta vs. ITO [ITA No. 277/M/2017 & 797/M/2017]*
- *Manoj Begani vs. ACIT [ITA No. 932, 933, 935, 936/Kol/2017]*
- *M/s. M.B. Jewellers & Sons vs. DCIT [ITA No. 1/Kol/2017]*

Out of the above cases, in case of Manoj Begani vs. ACIT (supra) and M/s. M.B. Jewellers & Sons vs. DCIT (supra), the additions were made on the basis of statement of Shri Rajendra Jain.

14. *As regards to ground no. 7 to 9, it is submitted that assessing officer has estimated commission income on the basis of the statement recorded u/s 132(4) in case of Rajendra Jain although no incriminating documents were found indicating the percentage of commission earned by the assessee in providing accommodation entries. Accordingly, no addition can be made on the basis of statement recorded u/s 132(4) particularly when the statement was subsequently retracted in view of decision of Gujarat High Court in case of CIT vs. Ramanbhai B. Patel [96 CCH 0495](Guj. HC) and Chetnaben J. Shah vs. ITO [79 taxmann.com 328](Guj. HC). Even otherwise, the statement has to be read as a whole and no pick and choose method can be adopted. The revenue cannot blow hot and cold water at the same time. In other words revenue cannot approbate and reprobate at the same time. The reliance is placed on the decision of Gujarat High Court I the case of PCIT vs. Income Tax Settlement Commission [111 taxmann.com 176] and CIT vs. Advance Construction Co. Pvt. Ltd. [275 ITR 30]. In reply to question no. 26, he stated that he has Honda City car and a scooter. In reply to question no. 27, Shri Rajendra Jain has given the details of immovable properties together with the source thereof. No unexplained investment or unexplained expenditure was found in the course of search in case of Shri Rajendra Jain corresponding to the income estimated by the assessing officer in various cases of the group. In reply to question no. 35, he has given the percentage of commission earned in providing the accommodation entries. At the same time he stated that the commission was accounted in the profit and loss account by way of inclusion in profit margin on purchase and sale of diamonds in respective firms/companies and also incurred other administrative expenses as well as loss on exchange rate fluctuations. He ultimately stated that he is earning out of the accommodation entries which were reflected in the books of accounts of respective firms and companies and offered for taxation as income in the regular return of income filed by firms/companies after taking into consideration commission on such imports. The import expenses are reflected in the Audited Books of Accounts and are supported by documents. Accordingly, without prejudice it is submitted that the commission should be assessed as per the net profit disclosed as per the Profit and Loss A/c. In fact, in the satisfaction note recorded u/s 153C also the audited accounts were considered to be incriminating materials. The assessing officer has made the addition on the basis of the statement of Shri Rajendra Jain where he disclosed the percentage of commission earned on providing of accommodation entries however, he also*

stated after allowing the commission, the net profit that was reflected in the regular books of accounts has been earned by way of commission on providing accommodation entry. When no unexplained expenditure or unexplained investment was found in the course of search, the income should be estimated by adopting net profit ratio and not gross profit ratio.

- 15. Further it is submitted that the lower authorities have observed that the assessee group has declared less commission income in providing accommodation entries as compared to Bhanwarlal Jain. However, the story is other way round as assessee declared more commission income as compared to Bhanwarlal Jain. The main difference is of commission on import which assessee declared at 0.2% while Bhanwarlal Jain declared commission income at 0.02%. Accordingly, assessee declared the commission income ten times than Bhanwarlal Jain and this fact is considerable as assessee's volume is much on imports compared to other items i.e. other items viz. loan. In case of Bhanwarlal Jain, the commission was estimated @ 1% for loan and in case of assessee it was taken @ 0.5% but this is having negligible effect as the loan outstanding in the case of the assessee is very less. Accordingly, Shri Bhanwarlal Jain declared commission on import after considering the expenses on import including Forex loss. Alternatively, it is submitted that the commission income @ 0.02% on import should be taken if expenses are allowed @ 25% as it was allowed in the case of Bhanwarlal Jain.*
- 16. In the case of Bhanwarlal Jain, all the additions on account of commission of controlled concerns were added in his case only. However, in case of Rajendra Jain, the additions of controlled concerns were made on protective basis which were deleted by CIT(A) and therefore there are separate appeals in case of alleged controlled concerns of Rajendra Jain.*
- 17. As regards to ground no. 10, it is submitted that assessing officer has given deduction of expenses @ 25%, however, as submitted above and net profit disclosed should be considered as net commission income after incurring expenses which is supported by the statement recorded u/s 132(4) of Rajendra Jain. Without prejudice, it is submitted that expense should be allowed @ 50% in view of the decision of Tribunals in case of Rajendra P. Jain vs. DCIT [ITA No. 296, 297, 298/Mum/2018]. The lower authorities have not given the further deduction for expenses on the ground that in the case of Rajendra Jain group, the addition was made less compared to Bhanwarlal Jain group. However, as stated above in case of Bhanwarlal Jain the rate of commission was declared substantially low in case of import. The substantial addition was made in the case of Bhanwarlal Jain as in that case the volume was more. Accordingly, it is submitted alternatively that the expenses should be allowed @ 50% considering the decision of Rajendra P. Jain vs. DCIT cited supra.*
- 18. In view of the above submission, the assessment framed u/s 153C may please be quashed and/or addition in excess of declared income may please be deleted."*
16. On the other hand, Learned DR for the Revenue submitted that Shri Rajendra Jain and Surendra Jain as a group, the appellant, the companies where Shri Rajendra Jain is director, the businesses in the style of firms and proprietorships in the name of the appellant and his other employees/persons

controlled by him and Surendra Jain as a group were: (i) found with no physical stock of diamond at all, (ii) there were numerous e-mails including copies of some found and seized during the search and some apparently recovered from the computer during the search which clearly proved that the real beneficiaries of import of diamonds were different than in the books, (iii) there were also e-mails which proved that persons wanting accommodation entries were approaching the appellant and other group concerns (iv) correspondence or orders, were found not placed by the assessee and his group to the foreign concern from which imports were shown in the books. (v) Besides, books of various concerns, including of Aadi Impex whose proprietor is the appellant, which the Shri Rajendra Jain himself said were being run in the name of his employees/persons of his group were found in his control and he was clearly able to get them to his home during search through Sachin Pareek his accomplice and (vi) a pen drive containing accounts from various concerns including that of Aadi Impex run as proprietorship of Shri Anoop Y Jain (appellant and others where Shri Rajendra Jain as per ownership shown had no interest. All this prove that his admission was given when corroborative evidence was unearthed during the course of search. All these clinching and corroborative evidences along with the statements given during the search constitute incriminating evidence against the appellant. Even the appellant, Shri Anoop Y. Jain (part of statement reproduced by AO in para 5 of the assessment order), Shri Manish S Jain and Shri Sachin Pareek had accepted the entire modus operandi during the course of search in statement recorded u/s. 131 of the Act. In this case, therefore, there are ample incriminating evidences/documents recovered during the course of search. Even otherwise, the Hon'ble Delhi High Court in the case of M/s. Nau Nidh Overseas Pvt. Ltd. in ITA No. 58 of 201 7 and other cases in its order dated 03.02.2017; 2017-TIOL-389; has held that statement of a third party recorded during course of search proceedings u/s 132(4), constitutes 'material on record' for purposes of section 153C of the Act. This way, ld DR reiterated the findings of ld CIT(A).

17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the

case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that issue under consideration is squarely covered against the assessee by the judgment of Division Bench in IT(SS)ANos. 294 to 299 /Ahd/2017 for assessment year 2008-09 to 2014-15 order dated 26.11.2021, in the case of Shri Rajendra Sohan Lal Jain whereby the issue relating to Commission @ 0.02%, Commission on import @0.20% and Commission on loan @ 0.50% were adjudicated by upholding the order of ld CIT(A). Learned DR for the Revenue submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's own group case, vide order dated 26.11.2021. In this order, the Tribunal has inter alia observed as follows:

“10. We have heard the submissions of the learned authorised representative (ld AR) of the assessee and the learned Commissioner of Income Taxdepartmental representative (ld CIT-DR) for the revenue and have gone through the entire record carefully. The Ld. AR for the assessee submits that investigation team was recorded the statement of assessee by pressurizing him. The assessee has already retracted the statement by filing retraction statement dated 21.10.2013 and 09.01.2014, before the assessing officer on 31.03.2014. When search was conducted the assessment for 2008-09 to 2012-13 were not pending and were already concluded either under section 143(3) or 143(1) and hence no income can be assessed unless there is incriminating material found during the course of search action. The A.O. merely relied on the fact that no stock of the diamonds was found at the time of search. The goods were given for approval to customers for sales. The assessing officer overlooked the entire documentary evidences. The Ld. AR for the assessee read over the written submissions filed before Ld. CIT(A). On merit the Ld. AR of the assessee submitted that the assessee was doing the real business and has shown business income while filing return of income. The ld AR for the assessee Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 15 submits that Kolkata Tribunal in Manoj Begani Vs ACIT (ITA No. 932,933,935 936/Kol/2017), which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, deleted the entire additions. In other words the ld AR for the assessee impressed that the business model of Rajinder Jain was accepted as genuine. In alternative claim the assessee claimed that he has already included the commission income in his business income disclosed in his audited accounts. To support all his legal and factual submissions the ld AR for the assessee relied on the following case laws; ϖ CIT Vs Singhad Technical Education Society [(84 taxmann.com 290(SC)], ϖ CIT Vs Calcutta Knitwear (362 ITR 673 SC), ϖ PCIT Vs Munisuvrat Corporation (115 taxmann.com 265 SC), ϖ PCIT Vs Himanshu Chandulal Patel (108 CCH 0019 SC), ϖ PCIT Vs Himanshu Chandulal Patel (419 ITR 132 Guj), ϖ Anil Kumar Gopikrishan Aggarwal Vs ACIT (106 taxmann.com 137 Guj HC), ϖ PCIT Vs Ananad Kumar Jain 432 ITR 384 Delhi HC, ϖ CIT Vs Renu

Construction Pvt Ltd (99 taxmann.com426 (Delhi HC), ꣳ CIT Vs Harjeev Aggarwal (70 taxmann.com 95 Delhi HC),] ꣳ PCIT Vs Allied Perfumes Pvt Ltd (124 taxmann.com 358 Delhi HC), ꣳ PCIT Vs Meeta Gutgutia (82 taxmann.com 287 (Delhi HC), ꣳ PCIT Vs Saumya Construction (81 taxmann.com 292 Guj HC), ꣳ CIT Vs Raman bhai patel ((96CCH 0495 Guj HC), ꣳ Chetnaben J Shah Vs ITO (79 taxmann 328 Guj HC), ꣳ PCIT Vs Star PVG Export (112 taxmann. Com163 Kar HC) ꣳ CIT Vs Continental Warehousing Corporation Ltd (58 taxmann.com 78 Bom)' Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 16 ꣳ CIT Vs Kabul Chawla (92 CCH 210 Delhi HC) ꣳ DCIT Vs Sourabh Naval Kishore Garg (ITA No.4130/Mum/2017), ꣳ Rajinder P Jain Vs DCIT (ITA No. 296 to 298/ Mum/2018, ꣳ Manoj Begani Vs ACIT (ITA No. 932,933,935 936/Kol/2017), ꣳ M B Jewellwrs & sons (ITA No. 1/Kol/2017).

11. On the other hand the Ld. CIT-DR for the revenue supported the order of the Ld. CIT(A). The ld CIT-DR for the revenue submits that during search action sufficient incriminating evidence was unearthed. The statement of assessee and his associates were recorded under section 132(4). The assessee in his statement disclosed the modus operandi of the operation of accommodation entry. During the search action the assessee confessed in his statement recorded under oath that he along with his other associate, employees and family members are operating through a number of business concern of three natures i.e. Proprietorship firm, partnership firm as well as companies in the name of various persons including his employees. For all practical purposes, he himself ensures the chain of entire business network on profit sharing basis. During the search on business premises as well as residential premises and survey on their employee it was admitted by all the person and family members and relatives that they were working for the assessee. Not a single piece of diamond was found from any of the business or residential premises of the assessee. The ld CIT-DR for the revenue further submits that while recording statement of the assessee, he was confronted with various emails extracted from his computers. The assessee clearly admitted that he was receiving commission on value of import at the rate of 0.2% from the Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 17 real importer who route the transaction through his paper concern. It was also disclosed that on entry of unsecured loan, he received commission in the range of 0.25% to 0.5%. The AO on the basis of his statement, incriminating evidence found in the form of statement of account recovered from the pen drive and on post search inquiry the assessee was served with the notice under section 153A to file his return of income for assessment year under consideration. The assessee filed return of income in response to the notice under section 153A, however, no additional income was offered by the assessee, despite recovery of huge incriminating material. During assessment the assessee tried to impress that he has retracted his statement. The so called retraction has no evidentiary value, which is otherwise afterthought story. The alleged retraction was filed after more than one year before the AO. No complaint or protest was raised by the assessee before the investigation team. The AO made additions on the basis of statement of assessee which is corroborated with incriminating evidence found during the search action. The AO made very fair and reasonable additions of commission income in the assessment. The allegation of the assessee that no incriminating material was found in the search

is unfounded and baseless. All the appeals of the assessee are liable to be dismissed.

12. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We have also perused all the documents placed on record by the assessee. We have also deliberated on Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 18 the various case laws relied by the ld. AR for the assessee. We find that in Ground No. 1, the assessee has challenged the validity of search action carried out under section 132 and upholding the action of A.O. in making assessment under section 144 rws 153A, however, during the submissions no specific submissions was made, therefore, the corresponding ground No.1 of appeal is treated as not pressed and dismissed as such.

13. Now adverting to the Ground No. 2 to 5 which relates to the additions of commission income that such additions are not based on incriminating evidence. A search action was carried out by the revenue at the assessee group on 03.10.2013, during the search action the statement of Rajinder Jain, Dharmi Chand Jain and Sanjay Chowdhary was recorded. Consequent on the search action and evidences gathered during search and post search action, notice under section 153A was served on the assessee to file return of income. The assessee filed return in response to the said notice, but no additional income was offered. The assessing officer after serving statutory notices proceeded for assessment. During the assessment the assessing officer referred relevant part of the statement of assessee and diagram of modus operandi of business operation which was prepared during the search action, as followed by assessee and his group while making the business of accommodation entry. The assessing officer further noted that the statement of Sachin Pariekh proprietor of Arihant Export, director of Karnawat Impex Pvt Ltd & Moulimani Impex, Manish Jain (prop of Kalash Enterprises, Director of Kriya Impex Pvt Ltd and Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 19 Karnawat Impex Pvt Ltd.) and Anoop Jain (Prop of Adi Impex) was recorded during search. The Assessing Officer (AO) on the basis of statement of Sachin Parikh, Manish Jain and Anoop Jain in wherein they admitted that all they were working on remuneration with Rajinder Kumar Jain (assessee). The AO also held that during recording statement of assessee, in Question No. 15, the assessee was asked to explain the modus operandi of his business. The AO prepared the diagram of modus operandi disclosed by the assessee. The AO on the basis of incriminating material gathered during the search action and on the basis of statement of Rajendra Jain and his associates held that all the business concerns of the assessee were merely doing paper transaction, instead of carrying any real business, those concern were doing of maintaining 'books of accounts' and do not carry any actual or physical business of diamonds. It was held by AO that the actual importers of rough diamonds approach assessee to import their diamonds through his group and on receipt of consignment, the real importer get the delivery of diamonds after clearance from CHA (clearance house agent). The books of stock of rough diamonds have been converted by assessee group to cut and polished diamonds through commission companies or through name landing concern, issues bill of rough diamonds to local purchasers and show purchase of polished diamonds from them. On receipt of sale proceed; this group makes import remittance at the request of importer. Further, the AO on the basis of discloser of assessee, evidences of e-mails and other material which was

incriminating material Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 20 gathered during the search held that the assessee is entry provider as stated by him in his statement recorded during the search and received commission @0.20% of bill amount of import and commission @ 0.50% on loan transactions. The AO worked out the total disallowance of Rs.24,54,136/- as a commission income and after granting deduction of expenses @ 25% on such addition made addition of Rs.18,40,602/- in the following way:

<i>Sales</i>	<i>Amount</i>	<i>Rate of commission,</i>	<i>Commission income</i>
<i>Total turnover</i>	<i>2,43,23,94,646/-</i>		
<i>Total Import</i>	<i>86,88,19,534/-</i>		
<i>Total turn over (Excluding import & group turnover)</i>	<i>1,47,37,83,599/-</i>	<i>@0.02%</i>	<i>2,94,757/-</i>
<i>Import made</i>	<i>89,88,19,534/-</i>	<i>@0.20%</i>	<i>17,37,639/-</i>
<i>Loan outstanding at year end</i>	<i>8,43,48,087/-</i>	<i>@0.50%</i>	<i>4,21,740/-</i>
<i>Total commission income earned</i>			<i>24,54,136/-</i>
<i>Deduction of expenses of 25% is given for paper transactions & related cost as the such</i>			<i>6,13,534/-</i>
<i>Income Assessed</i>			<i>18,40,602/-</i>

14. Though, the AO also made various protective additions of income assessed in assessee's group concern, however, all those protective additions were deleted by the ld CIT(A). No further appeal is filed by revenue against such order in deleting the protective additions.

15. The Ld. CIT(A) confirmed the additions of commission income on export as well as on unsecured loan. The ld CIT(A) while confirming the order of the assessing officer recorded that that the basic objection of the assessee that his admissions of doing only paper business of trading of diamonds, in providing accommodation entry; is not correct and not based on Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 21 incriminating document recovered in search action. The ld CIT(A) noted that assessee is Director in various companies/partners in various firms and also proprietor of a firm, the business of all firms and companies are controlled by the assessee. During the search no physical stock of diamonds was found, there were numerous e-mails including some e-mail found and seized during search clearly proved that the real beneficiary of importer of diamonds were different then the books, there were also e-mails which prove that the person wanting accommodation entry were approaching the assessee and his group, the correspondence of orders were found not placed by the assessee and his group to the foreign parties. Besides, books of account of various concerns was maintained by assessee, which the assessee himself said being run by him in the name of various persons, which he able to get them to his residence from Surat, during the search though Sachin Parikh, who is his accomplice. A pen drive containing accounts from various concerns including those where Rajendra Jain as per ownership had no interest was also provided by the assessee. All these facts and evidence clearly prove with the corroborative evidence recovered during the search action that assessee was indulging in providing accommodation entry. All these aforesaid evidence and corroborative facts found during the search are incriminating material. The ld CIT(A) also recorded that not a single piece of diamond found during the search action. Further, from

the admission of assessee, Sachin Pareek and Surendra Jain in their statement and identification of actual beneficiary of import and Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 22 delivery of diamonds by actual beneficiary and e-mail found to actual beneficiary, the ld CIT(A) concluded that assessee and his group was providing accommodation entry. The ld CIT(A) further concluded that once the business as per books is proved fictitious and bogus, the action of AO in rejecting the books is obvious. On the ground/ grievance of the assessee on additions of commission and allowance of 25% expenses the ld CIT(A) concluded that the addition made by AO is on lower side comparative to the addition in case of Bhanwar Lal Jain, who was also providing similar accommodation entry with similar modus operandi. The ld CIT(A) further held that once books are rejected, the profit is to be estimated on the basis of commission rates and net profit is to be determined. On the grievance of assessee of exchange rate difference, the ld CIT(A) held that when the actual business is importing for others and in the books credit in the name of exporters (other beneficiary), the exchange rate difference is not payable by the assessee and rejected the ground raised by the assessee.

16. Before us, the ld AR for the assessee basically made two fold submissions that no incriminating material/ evidence was recovered during the course of search and that the assessee retracted from his statement recorded by the search party and the assessee was doing real business and not engaged in providing accommodation entry. We find that during the search action more than sufficient incriminating evidence was found, which is also supported with the corroborative evidence found in the form of e-mails and other evidence in the form of books of account recovered from the pen Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 23 drive, which itself is incriminating evidence against the assessee. We further noted the assessee in his retraction statement has not explained the material evidence found in the form of e-mail, from his e-mail account, his background history as to how he entered in the this particular business of providing entry, which he himself disclosed during the search action that he learnt all this business module of providing accommodation entry from his ex-employer namely Ratanlal Jain. The said retraction is filed for the first time before AO after gap of 12 months period. The reliance in case Manoj Begani Vs ACIT (supra), passed by Kolkata Tribunal which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, is not helpful to the assessee. Here in the present case, there is clear admissions of the assessee about the entire business affair carried out by him with his associate for providing bogus entry, mere obitor in case of beneficiary by the Coordinate bench, will not absolve the assessee from his own admission. The finding of Tribunal in Manoj Begani vs. ACIT(supra) is based on the facts and evidences produced by that assessee. Therefore, in view of the abovesaid discussions, we are in full agreement with the finding of ld CIT(A) that once the books are rejected the profit is to be estimated on the basis of commission rates and net profit is to be determined. We also affirms the finding of ld CIT(A) that that when the actual business of assessee was importing goods for others and in the books credit in the name of exporters, thus exchange rate difference is not payable by the assessee and the assessee is not eligible for deduction of such exchange rate fluctuation. Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 24 Even otherwise, no evidence is filed by the assessee on record to prove the fact that the assessee entered into hedging contract with the Banker, the evidence found in the form of e-mail and other evidences show

the facts otherwise. Therefore, the submissions made by the assessee do not inspire confidence. None of the case laws relied by the Id AR for the assessee is helpful to the assessee as there was sufficient incriminating material seized during the search action on the assessee on the basis of which it is clearly proved that the assessee is in the business of entry provider. Therefore, we do not find any merit in the grounds No. 2 to 5 raised by the assessee, which we dismissed.

17. Ground No. 6 relates to alternative and without prejudice ground that the alleged commissions has already included by the assessee in his sales transaction. Considering the facts that the lower authority have categorically held that the assessee was not doing any genuine business transactions and was engaged in providing accommodation entry, books of the assessee was rejected and only very meager rate of commission income was added to the total income of the assessee, which we have already affirmed. If for the sake of assuming it is considered that the assessee was doing genuine business, thus, keeping in view of volume of transactions in his bank account, the income of assessee would be estimated many fold comparative to the commission income added by the AO. Thus, the alternative ground of appeal is also rejected. Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 25

18. Ground No. 7 relates to rejection of books of accounts and ground No. 8 relates to expenses including foreign exchanges expenses, we find that the grievances of the assessee raised in these grounds of appeal has already been discussed in ground No. 3 to 5, therefore, needs no further adjudication. In the result all the grounds of appeal raised by the assessee are rejected.

19. In the result, the appeal of the assessee for AY 2008-09 in ITA No. 294/SRT/2021 is dismissed. 20. Considering the fact that we have dismissed the appeal for AY 2008-09, the remaining appeals for AY 2009-10 to 2014-15, are also dismissed with similar observation. No order as to cost.”

18. As the issue is squarely covered against the assessee by the decision of the Division Bench, in the case of Shri Rajendra Sohan Lal Jain (supra) and there is no change in facts and law and the Id Counsel is unable to produce any material to controvert the aforesaid findings of the Division Bench (supra). We find no reason to interfere in the said order of the Division Bench, therefore, respectfully following the judgment of the Division Bench, we dismiss the appeal of the assessee.

19. We have adjudicated the issue by taking lead case in IT(SS)A No. 347/AHD/2017, for assessment year 2009-10. The facts and grounds of appeals are identical and similar in case of other appeals. Accordingly, our observations made in IT(SS)A No. 347/AHD/2017, for assessment year 2009-10, shall apply *mutatis mutandis* to the aforesaid other appeals of assessees.

20. In the result, appeals filed by the assessee (in IT(SS)A No. 1367/AHD/2017, IT(SS)A No.1365/AHD/2017, IT(SS)A Nos.340 to 343/AHD/2017, IT(SS)A Nos. 347 to 351/AHD/2017, IT(SS)A Nos. 352 to 355/AHD/2017, IT(SS)A Nos.300 to 305/AHD/2017 & ITA No.1578/AHD/2017 and IT(SS)A Nos.344 to 346/AHD/2017 & ITA No. 1683/AHD/2017, are dismissed.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 29/12/2021 by placing the result on the Notice Board as per Rule 34(5) of the income Tax (Appellate Tribunal) Rule, 1963.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 29/12/2021

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat