

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

1. आयकरअपीलसं./ I.T.A. No. 5110/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2008-09)
2. आयकरअपीलसं./ I.T.A. No. 5111/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)
3. आयकरअपीलसं./ I.T.A. No. 5112/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)
4. आयकरअपीलसं./ I.T.A. No. 5113/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2011-12)
5. आयकरअपीलसं./ I.T.A. No. 5114/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)
6. आयकरअपीलसं./ I.T.A. No. 5115/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)
7. आयकरअपीलसं./ I.T.A. No. 5116/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2014-15)

Shri Nilesh M. Agrawal 1A-303, N. G. Sun City, Phase-III, Thakur Village, Kandivali(E), Mumbai-400 101	बनाम/ Vs.	DCIT Cen.Cir-4(3), R. No. 1921, Air India Building, 19 th floor, Nariman Point, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAQPA2297P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

8. आयकरअपीलसं./ I.T.A. No. 5059/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)
9. आयकरअपीलसं./ I.T.A. No. 5057/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

DCIT Cen.Cir-4(3), R. No. 1921, Air India Building, 19 th floor, Nariman Point, Mumbai-400 020	बनाम/ Vs.	Shri Nilesh M. Agrawal 1A-303, N. G. Sun City, Phase-III, Thakur Village, Kandivali(E), Mumbai-400 101
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAQPA2297P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Tejveer Singh/ Shri Narendra Soni /Ms. Dharti Mehta, Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Dr. Mahesh Akhade, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	11.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	30.08.2022

आदेश / O R D E R**Per Amit Shukla, Judicial Member:**

The aforesaid appeals have been filed by the assessee for the Assessment Years 2008-09 to 2014-15 and cross appeals filed by revenue for the AYs 2009-10 & 2013-14, against separate impugned order of even date 01.06.2018, passed by Ld. CIT (Appeals)-52,

Mumbai for the quantum of assessment passed u/s 143(3) r.w.s 153A; and u/s 143(3) for AY 2014-15.

2. Since the issues involved in all the appeals filed by the assessee as well as cross appeals filed by revenue are identical arising out of similar set of facts, therefore the same were heard together and are being disposed of by the way of this consolidated order.

3. The brief facts and the background of the case are that a search action u/s 132 was carried out on Satish Saraf Group on 01.10.2013 based on certain information that the group entities were providing accommodation entries to the various clients as stated in the impugned assessment order. The search action unearthed a web of accommodation entry activities through paper companies / concerns which were directly / indirectly controlled by Satish Saraf Group, the main persons of which were Satish Saraf, Rajeev Jhunjhunwala, Rahul Jhunjhunwala and Vishal Bhuwania. Statements of key persons as well as the employees of the group were also recorded on oath wherein they have admitted to providing accommodation entries to various beneficiaries through paper

concerns in the nature bogus capital gains, bogus loans, bogus share premium, bogus purchases/sales etc. The assessee being one of the directors of the few companies of the group and also doing independent business from his proprietorship concern, consequential search was also conducted at the premises of the assessee on 1st October, 2013. Accordingly, notice u/s 153A was issued to the assessee for the AYs 2008-09 to 2013-14 and notice u/s 143(2) for regular assessment for the AY 2014-15.

4. As brought on record and stated by Ld. Counsel for the assessee, Mr. Tejveer Singh, that no incriminating documents or material were found during the course of search at the premises of assessee qua the addition made in the assessment order. He stated that in AY 2008-09, 2009-10, 2010-11 and 2012-13, assessee had filed his regular return of income u/s 139 and limitation for passing of the assessment order had expired on the date of search, therefore, the same has to be reckoned as completed assessment and cannot be treated as abated assessment in terms of *second proviso* of section 153A. In so far as AY 2011-12 is concerned, he submitted that notice u/s 143(2) was issued and time limit for

completing of assessment has yet not completed, therefore it was pending assessment and gets abated. In AY 2013-14 also, the time limit for completing of assessment had not expired, therefore the same has to be treated as pending assessee and shall abate on the date of search. He further submitted that AY 2014-15 is the regular assessment for the year of search. Thus, issues which are to be considered for our adjudication in the aforesaid 9 appeals pertaining to different assessment years can be bifurcated into two parts:

- **Firstly**, the appeals where assessment had not attained finality and are treated as unabated assessments on the date of search are appeals pertaining to AY 2008-09; cross appeals for AY 2009-10; appeal for AY 2010-11 and AY 2012-13; and
- **Secondly**, appeals for AY 2011-12, cross appeals for AY 2013-14 and AY 2014-15.

5. In various grounds of appeals, as taken in the appeals by the assessee as well as by the department which are pertaining to unabated assessment, the nature of addition which have been

challenged, can be summarized in the following manner alongwith prima facie contention of the assessee:-

Sr. No.	Particulars	Appellant's contention
AY 2008-2009		
1.	Disallowance of 20% of total purchases as unexplained purchase - INK 23,86,580/-	Additions not justified in the absence of any incriminating material found to suggest that the purchases are bogus in nature. Kindly refer our detailed submission laid down in Para 3(A)(c) below.
AY 2009-2010		
1.	Disallowance of 20% of total purchases as unexplained purchase-INR 17,40,606/-	Additions not justified in the absence of any incriminating material found to suggest that the purchases are bogus in nature. Kindly refer our detailed submission laid down in Para 3(A)(c) below.
2.	Disallowance of loss of Bharat Enterprises — INR 7,76,474/-	Disallowance not justified in the absence of any incriminating material found to suggest that the sales and purchases are not genuine. Kindly refer our detailed submission laid down in Para 3(A)(c) below. Without prejudice, once the purchases are disallowed, separately disallowing the loss would lead to double disallowance.
3.	Disallowance of 20% of share purchase expense in absence of documentary evidence -INR 41,65,3657-	Disallowance not justified in the absence of any incriminating material found to suggest that the share trading activities of the appellant are not genuine. Kindly refer our detailed submission laid

		down in Para 3(A)(c) below.
4.	Addition of claims receivable and loans written off as unaccounted funds brought in books-INR 2,77,515/-	Disallowance not justified in the absence of any incriminating material found to suggest that the business activities of the appellant are not genuine. Kindly refer our detailed submission laid down in Para 3(A)(c) below.
AY 2010-2011		
1	Disallowance of 20% of total purchases as unexplained purchase - INK 266,02,335/-	Additions not justified in the absence of any incriminating material found to suggest that the purchases are bogus in nature. Kindly refer our detailed submission laid down in Para 3(A)(c) below.
2.	Disallowance of loss on sale of investment— INR 23,00,000/-	Additions not justified in the absence of any incriminating material found to suggest that the investment activities are not genuine. Kindly refer our detailed submission laid down in Para 3(A)(c) below.
AY 2012-2013		
1.	Disallowance of 20% of total purchases as unexplained purchase - INR 2,21,33,204/-	Additions not justified in the absence of any incriminating material found to suggest that the purchases are bogus in nature. Kindly refer our detailed submission laid down in Para 3(A)(c) below.

6. In so far as appeals for the AYs 2011-12, 2013-14 and 2014-15, the issues are as under:-

Sr. No	Particulars
AY 2011-2012	
1	Disallowance of 20% of total purchases as unexplained purchase -INR 2,68,85,155/-
2	Advance from debtors treated as unexplained credit — INR 32,06,717/-
AY 2013-2014	
1	Disallowance of 20% of total purchases as unexplained purchase - INR 3,54,34,762/-
2	Unsecured loans treated as unexplained credit - INR 2,30,44,000/-
Regular Assessment AY 2014-2015	
1.	Disallowance of 20% of total purchases as unexplained purchase -INR 5,11,96,369/-
2.	Disallowance of Futures and Options Loss (F&O) of the appellant-INR 1,29,594/-

7. We have heard the rival submissions and on perused the relevant material placed on record and the findings of AO and Ld. CIT(A). Ld. Counsel for the assessee submitted that during the

course of search proceedings as per the Panchnama and also as per the record, the following items were found /recorded:-

- a) Inventory of bank accounts of all the family members of the Appellant;
- b) One locker key of locker no. 783 which was in name of Smt. Sakuntala M. Agarwal & Shri Munilal Agarwal. The same was seized from the residence of the Appellant where the search was conducted;
- c) Inventory of cash amounting to Rs. 2,080/-;
- d) Gold items worth Rs. 1,37,955/- and Silver Items worth Rs. 66,000/- valued as per the valuation report of Pankaj Praful Kumar Bhansali, a Govt. approved valuer;
- e) The Appellant had also furnished the list of companies in which he and his family members were the Director of the company.

8. Admittedly, he stated that, beyond these documents nothing was found from the search of the assessee or from his possession. It has been observed by the AO that during the search of Satish Saraf Group, the statements of the four key persons of the group viz. Satish Saraf, Rajeev Jhunjhunwala, Rahul Jhunjhunwala and Vishal Bhuwania were recorded wherein they had admitted that they provided accommodation entries through paper

concerns/companies operated by them. Further, according to the AO, some evidences were also available and AO has made some very generic observations about the manner of functioning of business by Saraf group. The AO has solely referred and relied on the above statements of four key persons of Saraf Group obtained during search on premises of the company. However, none of these statements were recorded during the course of search in the case of the assessee or at his premises.

9. Before the Ld. CIT (A), assessee has raised specific ground that the additions made by the AO in the assessment order for the assessment years where the assessments had attained finality on the date of search, nothing incriminating material has been found and therefore, the additions made therein are beyond the scope of section 153A.

10. Ld. CIT(A) accepted the legal position alongwith various judgments of Hon'ble Jurisdictional High Court in the case of **CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 58 taxmann.com 78** and **CIT vs. Murli Agro Products Ltd. (2014) 49 taxman.com 172** and other catena of decisions as

noted by him in the order. But held that statements itself has to be considered as incriminating material found during the course of search. Though the Ld. CIT (A) observed that non-abated assessment can only be disturbed, only on the basis of incriminating material seized in course of the search action, however, he held that in these cases, incriminating material are in the form of statement of 4 persons from where it was gathered that; i) movement of unaccounted cash, ii) admission of the role played by brokers, dummy director in the said activities of providing accommodation entries, iii) existence of paper concerns controlled by dummy directors and iv) seizure of unaccounted cash generated from the said dubious activities, etc. Even though there was nothing found in the course of search of assessee, Ld. CIT (A) rejected the grounds raised by the assessee holding that statements constitute incriminating material unearthed on account of search action.

11. Ld. DR before us has strongly relied on these observations and findings of Ld. CIT (A).

12. On the other hand, Ld. Counsel for the assessee submitted that the entire case is based on the statement of 4 key persons which has no bearing on the additions made or cannot be reckoned as material found from the search. The submission of the Ld. Counsel and the judicial pronouncements relied upon by him are summarized here under:-

i) As per Panchnama, no incriminating material has been obtained against the assessee during the course of search. He pointed out that the statements of the four key persons of the Satish Saraf Group as referred above do not have any mention of the assessee at all. There is no document /information/ evidence/ reference which even remotely suggesting that the assessee was involved along with the Satish Saraf Group in providing the accommodation entries.

ii) The additions made by the Learned AO in his orders pertain to his proprietorship business. He further drew our attention to the fact that the Assessing Officer has himself confirmed that the appellant is the stockiest of consumer goods, whereas the Satish Saraf group is engaged in the activity of providing accommodation entries. No documents /evidence /incriminating material is found pertaining to the proprietorship business of the Appellant either from premises of the assessee or from the Satish

Saraf Group which suggest that there is any unaccounted income of assessee's business conducted in his individual capacity.

iii) In fact, from a bare perusal of the assessment order it can be seen that the Learned AO has directly taken the purchase amount from the profit and loss statement and concluded the same as bogus purchases. Therefore, as submitted by Ld. Counsel, the additions made by the Learned AO are not justified in law.

iv) Reliance in this regard was placed by him on various judicial precedents wherein it has been held that statement recorded under section 132(4) of the Act without any corroborative material cannot be considered as incriminating material. The facts of present case are much better than facts in the case laws relied upon in following paragraphs as in present case statement of persons totally unrelated with assessee's business were obtained and during course of search of Saraf Group and were not even presented to assessee and the statement was recorded on premises of assessee or even assessee's statement was also not recorded and other than statements no other incriminating material is obtained or mentioned in the Learned AO's order.

v) In support of the above proposition, he relied on the following judgments:-

i) In the case of PCIT v. Anand Kumarjain (HUP) [2021] 432ITR 384 (Delhi HC), wherein it was held as under:

"A reading of the impugned order reveals that the statement of PK recorded under s. 132(4) forms the foundation of the assessment carried out under s. 15 3A. That statement alone cannot justify the additions made by the AO. Even if the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee is accepted, yet it is discerned from the record that apart from the statement of PK, Revenue has failed to produce any corroborative material to justify the additions. On the contrary during the course of the search, in the statement made by the assessee, he denied having known PK. Since there was insufficient material to support the additions, the Tribunal deleted the same. This finding of fact, based on evidence calls for no interference.

Existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of PK, which according to them is the incriminating material discovered during the search action. **This statement certainly has the evidentiary value and relevance as contemplated under the Explanation to s. 132(4). However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment** — CIT vs. Kabul Chawla (2015) 281 CTR (Del) 45: (2015) 126 DTK (Del) 130: (2016) 380 ITR 573 (Del),

Principal CIT vs. Zest Infrastructure (India) (P) Ltd (2017) 159 DTR (Del) 257: (2017) 397 ITR 82 (Del) and CIT vs. Harjeev Aggarwal (2016) 133 DTR (Del) 122 : (2016) 290 CTR (Del) 263 followed.

ii) Ultimate Builders v. Assistant Commissioner of Income Tax (ITA No. 134/Ind/2019), ITAT Indore wherein it was observed that;

Coming to the issue of addition made by the AO on the basis of the statement but no reference been given to the incriminating material, in the assessment order AO has referred to various seized documents but none of them is directly related to the assessee. These seized documents are of the SG Group and AO has only mentioned the details of the seized document without uttering a word about their nexus with the business transaction carried out by the assessee or by pointing out assessee 's connection with the seized document in name or otherwise. Thus, it can be safely concluded that the addition made by the AO was not on the basis on the incriminating material found during the course of search but only on the basis of statement of V given on 2nd Feb., 2014. Additions cannot be sustained merely on the basis of statement given during the course of search without correlating the addition with the incriminating seized material.

'Thirdly, no reference has been given by the Avenue authorities to any incriminating material found during the course of search at the business premises of the assessee, which could be correlated to the alleged surrendered income earned by the assessee from

undisclosed sources. The addition of Rs. 2,25,00,000 deserves to be deleted since it has been made on the basis of a statement not given under s. 132(4) and without referring to any incriminating material found during the course of search. — *Asstt. CIT vs. Sudeep Maheshwari* (ITA No. 524/Ind/2013, dt. 13th Feb., 2019), *Kailashben Mangarlal Chokshi vs. CIT* (2008) 220 CTR (Guj) 18 : (2008) 14 DTK (Guj) 257 and *Shree Ganesh Trading Co. vs. CIT* (2013) 84 DTK (Jharkhand) 94 : (2013) 257 CTR (Jharkhand) 159 relied on.

iii) Commissioner of Income Tax v. Smt. S.Jayalakshmi Ammal (Source (2016) 242Taxman 449 (Mad): (2017) 390 ITR 189 (Mad)) wherein the Madras High Court held that:

"Thus, the Tribunal, in the absence of any material found during the course of search operation, was also of the considered view that statement of son of the assessee, dt. 29th Dec 1999, not corroborated with any documentary evidence, cannot be relied upon, for making any addition, in the hands of the assessee.

In the case on hand, statement recorded on 29th Dec., 1999 from the son of the assessee under s. 132(4) is not corroborated by any material document. Admittedly, Revenue has also not confronted the assessee, with the said statement of his son. If that be the case, it can be safely concluded that, there was no material documentary evidence, to substantiate and corroborate the statement of son of the assessee. If the assessee makes a statement under s. 132(4), and if there are any incriminating

documents found in his possession, then the case is different. On the contra, if mere statement made under s. 132(4), without any corroborative material, has to be given credence, then it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterised as undisclosed and, on the facts, and circumstances of the case, men statement without then being any corroborative evidence, should not be treated as conclusive evidence against the maker of the statement.

*iv) **Commissioner of Income Tax v. Harjeev Aggarwal [2016] 70 taxmann.com 95 (Delhi)**, wherein the Delhi High Court has held as follows:*

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) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the

incriminating evidence/ material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence material found during search in order to for an assessment to be based on the statement recorded.

v) Shri Dinesh Salecha v. Dy. Commissioner of Income Tax (ITAno.5165/Mum. /2018; ITA no.5166/Mum. /2018; ITA no.5167/Mum. /2018) wherein the Mumbai Tribunal had held as follows:

It may not be out of place here to mention that it is specifically provided in section 153A "that assessment or reassessment if any relating to any relevant assessment year or years referred to in this subsection pending on the date of initiation of search under section 132 or making of requisition under section 132 a as the case may be shall abate". This makes it further abundantly clear that only those assessments which are pending abate. Hence sanguine provisions of the act read with Hon'ble jurisdictional High Court decision as above make it abundantly clear that the assessments which do not abate and assessment and addition under section 153A without reference to incriminating seized material is not sustainable.

vi) Reliance was also placed on the various judicial precedents wherein it has been held that where incriminating material is found / statement under section 132(4) of the Act is recorded during the search of a third-party, but no evidence is obtained

during assessee's search, then the addition cannot be made in the hands of the assessee.

i) Pavitra Realcon (P.) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-32, New Delhi [2017] 87 taxmann.com 142 (Delhi - Trib.) (Referpage no. 94 to 128 of Paperbook - I) wherein the Delhi ITAT had held that:

Where only in independent search of accommodation entry provider, alleged incriminating material was found doubting assessee's transactions but extensive search operation on assessee had not yielded any incriminating material and further, no notice under section 153C had been issued on assessee for period under consideration, no addition could be made in hands of assessee.

ii) DCIT v. Shivali Mahajan & 11 others (ITA No.5585/Del/2015), ITAT Delhi wherein it was held that

The statement recorded during the course of search on standalone basis without reference to any other material discovered during the search and seizure operation would not empower the Assessing Officer to make the addition merely because any admission was made by the assessee during the search operation. Admittedly, in this case, during the course of search of assessee's premises, no incriminating material was found except the statement of one family member viz., Shri Lalit Mahajan. Solely on the basis of the statement of Shri Lalit Mahajan the addition was in the case of all

the family members, which cannot be done in view of the decision of Hon'ble jurisdictional High Court in the case of Harjeev Aggarwal (supra) and Rest Infrastructure (India) (P.) Ltd.(supra).

iii) Krishna Kumar Singhania v. Deputy Commissioner of Income-tax, Company Circle - 3 (3), Kolkata [2017] 88 taxmann.com 259 (Kolkata - Trib.) wherein the Kolkata ITAT had held that:

Where Assessing Officer seized documents from office premises of group of companies in which assessee was a director, said material could not be used under section 153A against assessee.

Considering the above legal position and supporting case laws, the Appellant is of the view that for unabated assessments, no additions can be made by the Learned AO in the absence of incriminating material.

14. From the above, submissions and on perusal of records, we find that, it is an admitted fact during the course of search, nothing incriminating material has been found qua the additions which has been reproduced above, which are mostly ad hoc disallowance of 20% of the total purchases; addition on claim of receivables; loans received or advance written off; F&O income, etc. All these additions are not based on any specific incriminating material found during the course of search or as a matter of fact from the so called

statements of the persons recorded in some other search proceedings. In any case, the assessee's main business was that stockist of some other goods and nothing incriminating has been found to vitiate that there was unaccounted income from the assessee's business conducted in his individual capacity. The AO has doubted the purchase amount debited to profit and loss account and based on his surmise and presumption concluded that these are bogus and thereby making an ad hoc disallowance of 30%, reduced to 20% by Ld. CIT(A). Even from the perusal of the statement recorded u/s 132(4) of the other persons as mentioned in the assessment orders for various assessment years, there is no reference to any corroborative material found from the possession of the assessee which can be reckoned as incriminating material to rope the additions within the scope of assessment u/s 153A.

15. In any case, as above highlighted in various case laws referred to by the Ld. Counsel for the assessee, the existence of incriminating material found during the course of search is sine-qua-non for making addition u/s 153A where assessment have attained finality and have not abated. The statements of person do

not on standalone basis can be treated as incriminating material found during the course of search. Thus, the ad hoc additions or other additions made in the assessment order cannot be sustained for the assessment years which are unabated assessment as discussed above in foregoing paragraphs.

16. Accordingly, we agree with the contention of Ld. Counsel for the assessee that the additions which has been made in AYs 2008-09, 2009-10, 2010-11 and 2012-13 are beyond the scope of assessment u/s 153A as the same are not based on any incriminating material suggesting that either the purchases are bogus or advances to the debtors are not genuine or the disallowance on sale of investment, etc. as incorporated above in the table are based on any incriminating found during search action. Accordingly, all these additions made in assessment order for AY 2008-09, 2009-10, 2010-11 and 2012-13 are directed to be deleted. Consequently the appeal of the assessee for AY 2008-09, 2009-10, 2010-11 and 2012-13 are **allowed** and revenue's appeal for AY 2009-10 is **dismissed**.

17. In so far as additions made in AY 2011-12 and 2013-14, which are pending assessment on the date of search and the addition made in the regular assessment for AY 2014-15, the Ld. Counsel for the assessee submitted that assessee has filed a petition for additional evidences with regard to every addition, the summary of which are as under:-

Sr. No	Particulars	Appellant's contention
AY 2011-2012		
1	Disallowance of 20% of total purchases as unexplained purchase -INR 2,68,85,155/-	The Appellant hereby submits the copy of sample invoices in connection to the purchases made during AY 2011-2012 (<i>Refer Annexure - 2 of Paper book - II</i>) Further, the Appellant contends the advances were received against the futures sales so therefore the additions made by AO were not justified.
2	Advance from debtors treated as unexplained credit — INR 32,06,717/-	We request your Honour to remand back the assessment to the Learned AO and we undertake to submit the requisite information.
AY 2013-2014		
1	Disallowance of 20% of total purchases as unexplained purchase - INR 3,54,34,762/-	The Appellant hereby submits the copy of sample invoices in connection to the purchases made during AY 2013-2014 (<i>Refer Annexure - 3 of Paper book - II</i>) along with sample copies of ledger confirmations of suppliers (<i>Refer Annexure - 4 of Paper book - II</i>) and the copy of balance confirmations from M/s

2	Unsecured loans treated as unexplained credit - INR 2,30,44,000/-	Stallion Ceramics in connection to the unsecured loans obtained AY 2013-14 (Refer Annexure - 5 of Paper book - II) We request your Honour to remand back the assessment to the Learned AO and we undertake to submit the requisite information.
Regular Assessment AY 2013-2014		
1.	Disallowance of 20% of total purchases as unexplained purchase -INK 5,11,96,369/-	The Appellant hereby submits the copy of invoices in connection to the purchases made during AY 2014-2015 (Refer Annexure - 6 of Paper book - II) Considering the documentary evidences, we request your Honour to delete the addition made on account of bogus purchases.
2.	Disallowance of Futures and Options Loss (F&O) of the appellant-INR 1,29,594/-	The Appellant hereby submits the copy of Profit & Loss Account and ledger in connection to the F&O trading activities conducted during AY 2014-2015 (Refer Annexure - 7 of Paper book - II) Considering the documentary evidences, we request your Honour to delete the addition made on account of unexplained F&O loss.

18. In the petition for admission of additional evidences under Rule 29, the reasons for admitting the additional evidences have been stated as under:-

“1. The Appellant submits that he was a proprietor of Bharat Enterprises - trader of plastic powder during the years under consideration. The Appellant could not submit documentary

evidences related to purchases and other items of expenses and bank credits as requested by the Assessing Officer at the time of assessment due to reasons specified in Para 3 below.

2. Accordingly, vide this application, the Appellant wishes to place the following documents as additional evidence before your good self in order to enable your good self to adjudicate the matter:

AY 2011-2012

1. Copy of sample purchase invoices amounting to INR 1,30,42,628 (excluding tax) for AY 2011-2012. [Annexure 2 of Paper Book II]

AY 2013-2014

2. Copy of sample purchase invoices aggregating to INR 32,82,000 (excluding tax) for AY 2013-2014 [Annexure 3 of Paper Book II]

3. Copy of Ledger confirmation as on 31 March 2013 from 8 suppliers. [Annexure 4 of Paper Book II]

4. Copy of Ledger confirmation for the period 01 April 2012 to 31 March 2013 in respect of the unsecured loan of INR 2,30,44,000 taken from Stallion Ceramics Private Limited. [Annexure 5 of Paper Book II]

AY 2014-2015

5. Copy of purchase invoices amounting to INR 22,77,39,575 (excluding tax) for AY 2014-2015 [Annexure 6 of Paper Book II]

6. Copy of Profit & Loss Statement and ledger statement provided by the broker RKSV for the period 01 April 2013 to 31 March 2014 (AY 2014-2015). [Annexure 7 of Paper Book II]

3. The Appellant during the course of assessment proceedings and first appellate proceedings could not submit the above documentary evidences on account of genuine reasons. The books of accounts and all the documentary evidences of the Appellant pertaining to his business activities were maintained by the erstwhile Chartered Accountant ('CA'). The appellant was primarily dependent on his erstwhile CA for representation of the matter and submission of requisite documents both before the Assessing Officer and the CIT(A). However, unfortunately, for reasons best known to him, the erstwhile CA did not produce the relevant documents at the time of assessments and appeals.

4. The Appellant, in order to prove that the purchases and other expenses made by him and loans taken by him are genuine, wishes to produce the aforesaid additional evidences.

5. The Appellant submits that the additional evidences mentioned above are essential in order to factually ascertain the claim of the Appellant that the business activities of the Appellant are genuine.

6. *The Appellant requests that the Additional Evidence is of vital importance and will be of assistance in determining the claim of the Appellant on merits.”*

19. After considering the aforesaid submissions and looking to the fact that these are part of the records and books of account which were not furnished during the course of assessment or appellate proceedings for the reasons stated above, therefore in the interest of natural justice, we remand back the entire addition which has been raised before us to the file of the Assessing Officer to consider the additional evidences and decide the matter afresh and in accordance with law after giving due and effective opportunity to the assessee of being heard. Accordingly, the assessee's appeal for AY 2011-12, 2013-14 and 2014-15 is **allowed for statistical purposes.**

20. In so far as revenue appeal for AY 2013-14, the following grounds have been raised:-

1. *On the facts and in the circumstances of the case in law, the Ld. CFT(A) has erred in restricting the disallowance at 20% instead of 30% without giving any basis regarding unexplained purchase transaction.*

2. On the facts and in the circumstances of the case in law, the Ld. CJT(A) has erred in deleting the addition of Rs. 1,96,696/- ignoring the facts that the history of the assessee was regularly bringing in books of accounts the unaccounted funds through various ways and evading legitimate taxes.

21. Since this issue is connected with assessee's appeal, therefore this ground is also remanded back to the file of AO for deciding the matter in accordance with law. Accordingly, the appeal of the revenue is as well as assessee is **allowed for statistical purposes**.

Orders pronounced in the open court on 30th August, 2022.

Sd/-

(Prashant Maharishi)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 30/08/2022
Sr.PS. Dhananjay

Sd/-

(Amit Shukla)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai