

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ ITA No.156/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2008-09)

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2. आयकर अपील सं./ ITA No.157/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

3. आयकर अपील सं./ ITA No.158/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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4. आयकर अपील सं./ ITA No.159/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

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5. आयकर अपील सं./ ITA No.160/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT Central Circle-2(3), Chennai.	बनाम/ Vs.	M/s. RKKR Holdings Pvt. Ltd. 6/13, North Avenue, Kesavaperumal Puram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. PAN: AACCR-2912-F		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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6. आयकर अपील सं./ ITA No.27/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Central Circle-2(3), Chennai.	बनाम/ Vs.	M/s. Ritesh Shares & Securities P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECR-1129-C		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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7. आयकर अपील सं./ ITA No.28/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

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8. आयकर अपील सं./ ITA No.29/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT Central Circle-2(3), Chennai.	<u>बनाम/</u> Vs.	M/s. Ritika Shares & Services P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECR-1319-Q		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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9. आयकर अपील सं./ ITA No.31/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

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10. आयकर अपील सं./ ITA No.30/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT Central Circle-2(3), Chennai.	<u>बनाम</u> / Vs.	M/s. Ojasvi Motor Finance P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACO-2343-M		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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11. आयकर अपील सं./ ITA No.32/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Central Circle-2(3) Chennai.	<u>बनाम/</u> Vs.	M/s. Rajiv Shares & Services P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECR-1174-R		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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12. आयकर अपील सं./ ITA No.33/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT Central Circle-2(3), Chennai.	<u>बनाम/</u> Vs.	M/s. Fateh Leasing and Finance P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACF-0390-D		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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13. आयकर अपील सं./ ITA No.36/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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14. आयकर अपील सं./ ITA No.37/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT Central Circle-2(3), Chennai.	<u>बनाम/</u> Vs.	M/s. Gugnani Leasing & Hire Purchase P. Ltd. 6/13, North Avenue, Kesavaperumalpuram,
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		Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECG-5972-C		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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15. आयकर अपील सं./ ITA No.38/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

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16. आयकर अपील सं./ ITA No.39/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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17. आयकर अपील सं./ ITA No.40/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT Central Circle-2(3), Chennai.	<u>बनाम/</u> Vs.	M/s. Rai Shares & Securities P. Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECR-6188-B		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

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18. आयकर अपील सं./ ITA No.46/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2008-09)

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19. आयकर अपील सं./ ITA No.47/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT Central Circle-2(3), Chennai.	<u>बनाम</u> / Vs.	M/s. Chandan Credits Ltd. 6/13, North Avenue, Kesavaperumalpuram, Chennai – 600 028.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACC-6074-D		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri B. Ramakrishnan (FCA) & Shri Shrenik Chordia (CA) - Ld. ARs
प्रत्यर्थी की ओरसे/Revenue by	:	Shri Guru Bashyam (CIT) - Ld. DR

सुनवाई की तारीख/Date of Hearing	:	11-10-2022
घोषणा की तारीख /Date of Pronouncement	:	25-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The facts as well as issues in all the appeals of the revenue for various assessment years with respect to different assessees are admittedly the same. For the purpose of adjudication, ITA No.156/Chny/2019 for AY 2008-09 is treated as the lead case which arises out of common order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 01-10-2018 in the matter of separate assessments framed by Ld. Assessing Officer u/s 143(3) r.w.s. 153C of the Act for Assessment Years (AY) 2008-09 to 2012-13. The grounds taken by revenue in AY 2008-09 read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(A) erred in holding that AO has no jurisdiction to pass an order u/s. 153C, in as much as no reference was made to any incriminating material found during the course of search "except mentioning about some seized documents", despite the fact that the said some seized documents were the Loose Sheets **were copies of the share certificates and share holding pattern** which were required to establish the amount of undisclosed income of the assessee claimed to be invested in the searched companies and as such were incriminating material.

2. The Id. CIT(A) having powers coterminous to the Assessing Officer, ought to have called for a report regarding the clinching evidence used by the AO from the seized material, to conclude that the transactions were bogus in nature, before allowing the appeal.

2.2 The Id. CIT(A) has erred in not considering the decision of the Delhi High Court in the case of M/s. SSP Aviation Services Ltd Vs. DCIT(2012) reported in 346 ITR 177 (Delhi) wherein it has held that "*The starting point of enquiry is the seizure of books of accounts or documents, which according to the satisfaction reached by the A.O., belongs to a person other than the searched person. At the time when the Assessing Officer reaches this satisfaction that the document belongs to a person other than the searched person, it is not necessary for him to reach a firm conclusion/opinion that the documents shows undisclosed income belonging to such other person. This is a matter for enquiry which is to be conducted in the manner prescribed by section 153C*".

2.3 The Id.CIT(A) failed to follow the decision of the Gujarat High court in the case of Rajesh Sunderdas Vaswani vs.ACIT [2016] 76 taxmann.com 311 (Gujarat) wherein it has held that "*..Where Assessing Officer of search person recorded that document found during search was copy of a ledger of books of account of*

assessee company which evidenced certain cheque payments as well as cash payments to a company by assessee, there was prima facie material to suggest that satisfaction as per section 153C was duly recorded and thus, notice issued to file return to assessee was justified."

2.4 The Id.CIT(A) ought to have upheld the jurisdiction of the AO exercised U/S.153C having regard to the Hon' Jurisdictional High Court decision in the case of CIT vs. Rangroop Chand Chordia (241 Taxman 221) that loose sheets constitute documents u/s. 132(4) of the Act.

2.5 The Id.CIT(A) ought to have considered that incriminating evidences belonging to the 'assessee' company were also found in the premises of M/s. SBQ which had financial dealings (like share statement, bank account copy, and breakup of share holding and share premium), based on which the A.O has treated the transaction as bogus purchase.

2.6 The Id.CIT(A) failed to appreciate that the list of 24 companies, all Kolkatta based, furnished by the assessee as share holders invariably appear in all the group companies as providers of sources as found during the search action u/s.132 and hence the asst U/S.153C is valid.

3. The learned CIT(A) erred in deleting the addition of share capital received u/s 68 of Rs.7,82,56,563/- (AY2008-09), Rs.12,00,81,380/- (AY2009-10), Rs.17,64,98,000/- (AY 2010-11), Rs.2,18,91,965/- (AY2011-12) and Rs.2,70,06,330/- (AY 2012-13) made by the AO, whose details the assessee did not furnish.

3.1 The Id. CIT(A) failed to consider that share investments in M/s. SBQ Steels Ltd, has been a subject matter of investigation for share layering with the involvement of entry operators.

3.2 The Id.CIT(A) has erred in not considering that the parties which were claimed by the assessee's group companies as contributors to share capital, were not available, except one Shri. Uday Shankar Mahawar, who was involved in the share layering and had already admitted vide his sworn statements dated 22.08.2014 & 25.08.2014, before Investigation wing, Kolkata that he was indulging in bogus billing, bogus commission fee and bogus share application accommodation entries, bogus purchase and sale of unquoted shares etc, on commission basis.

3.3 The Id.CIT(A) has erred in not considering that there was increase in capital in of the company with share premium of Rs.15,87,22,324/- though there was no corresponding business activity to warrant investment with such huge premium in the share.

3.4 The Ld.CIT(A) failed to appreciate that the Companies Act requires the group companies to mandatorily maintain records of their transactions, whereas the assessee company had taken the plea that it had not kept copies of the share certificates and had not furnished copies of shares certificates claimed as investments to evidence the same.

3.5 The Ld.CIT(A) also failed to appreciate that NO contact particulars of the erstwhile directors and of the companies which purchased share investments were submitted by the assessee and whatever addresses were given such companies could not be found, neither the assessee produced them nor furnished details of correspondence, stating that it did not know them nor has have any control over them to furnish any details.

3.6 The Id.CIT(A) has erred in not considering that the assessee has not explained how the assessee company with substantial share investments was allowed to be

taken over by the Directors & family members of SBQ Steels Ltd when there was no written agreement/MOU regarding entry of new Directors from the group and exit of the erstwhile directors, that too in the absence of valuation report.

3.7 The Ld.CIT(A) also failed to follow the decision of the Punjab & Haryana High Court in the case of Sudhir Kumar Shah (HUF) vs.CIT-III, Ludhiana) [2014] 224 Taxman 178 and SLP Dismissed [2016] 239 Taxman 264 (SC) , wherein it is held that "...since assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of said cash credits, impugned addition was to be confirmed. The onus was upon the assessee to explain the nature and source."

3.8 The Id.CIT(A) ought to have considered the fact that the addition u/s.68 of the said investment in the hands of M/s.SBQ Steels Ltd. was allowed by him in appeal with the comment "AO himself has concluded that these are Bogus Companies. Admitting for a while as observed by AO that these are bogus companies, the right thing AO should have done was to proceed against the said bogus companies, as held in the case of Lovely Exports P Ltd-216 ITR 195 (SC) and should not have considered the said sum u/s.68."

4. The learned CIT(A) erred in deleting the disallowance of loss on sale of Investments amounting to Rs.41,69,240/- without discussing the merits of the issue, though the assessing officer has clearly stated that the assessee has not discharged his burden by submitting documentary evidence in support of his claim.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

The grounds of appeal in all the appeals are identical.

2. The Registry has noted minor delay of 06 days in appeals listed at serial nos.1 & 3 and delay of 03 days in appeal listed at serial nos. 18 & 19. The condonation of the same has been sought by the Revenue. Considering the period of delay, we condone the delay and admit all the appeals for adjudication on merits.

3. The Ld. CIT-DR submitted that the impugned additions have been deleted on the finding that no incriminating material was found during the course of search action as against the fact that material was unearthed by the investigation wing during the course of search operations which was seized. The Ld. CIT-DR relied on various judicial decisions to support the fact that even in the absence of any incriminating material,

the additions could have been made since Ld. AO was empowered to assess as well as reassess the income of the assessee for preceding six years. The judicial decisions could be tabulated as under: -

- (i) E.N. Gopakumar vs. CIT (75 Taxmann.com 215); Hon'ble Kerala High Court
- (ii) CIT vs. St. Francis Clay Décor Tiles (70 Taxmann.com 234); Hon'ble Kerala High Court
- (iii) CIT vs. T. Rangroopchand Choradia (69 Taxmann.com 202); Hon'ble High Court of Madras
- (iv) SSP Aviation Ltd. vs. DCIT (20 Taxmann.com 214); Hon'ble Delhi High Court
- (v) Kamleshbhai Dharamshibhai Patel vs CIT (31 Taxmann.com 50); Hon'ble Gujarat High Court
- (vi) Rajesh Sunderdas Vaswani vs ACIT (76 Taxmann.com 311); Hon'ble Gujarat High Court
- (vii) CIT vs. Anil Kumar Bhatia (24 Taxmann.com 98); Hon'ble Delhi High Court

4. The Ld. AR, on the other hand, supported the impugned order and submitted that no additions could have been made in the absence of any incriminating material. The Ld. AR submitted that there was nothing incriminating in the seized material and the documents found by the investigation team were bank statements, general ledger statements and share certificates etc. which were otherwise part of regular books of accounts. The Ld. AR relied on the following judicial decisions to support its submissions:

- (i) CIT V/s Continental Warehousing Corporation [2015; 374 ITR 645]; Hon'ble Bombay High Court
- (ii) CIT Vs. Kabul Chawla (380 ITR 573) ; Hon'ble Delhi High Court
- (iii) Pr. CIT V/s Meeta Gutgutia (82 Taxmann.com 287); Hon'ble Delhi High Court

The Ld. AR also filed petition under Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 for admission of additional evidences with respect to appeals listed at serial nos.6, 7, 8, 11, 12 and 15 to 17 to substantiate the impugned transactions. These evidences are in the nature of copies of annual return of various companies as well as chart showing break-up of investments made by these entities. The Ld. AR, while pleading for

admission of the same, submitted that these documents would have material bearing on the adjudication of the appeals.

5. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings, ITA No.156/Chny/2019, AY 2008-09

6.1 From the perusal of record, it transpires that the assessee-company is part of M/s. SBQ Steels Ltd. & M/s. RKKR Steels Ltd. group of companies (Ram Krishan Kulwant Rai group). The group is stated to be engaged in production and sale of TMT steel bars for the past five decades. The assessee is in rendering services of business facilities management including maintenance of buildings belonging to the group. The directors of the assessee company include Shri Rajiv Rai, Shri Ritesh Rai, Shri Rupal Rai and Smt. Ritika Rai.

6.2 The group was subjected to search action u/s.132 on 26-09-2012. During the course of search, certain material connected with the assessee company was found regarding investment in the share capital of M/s. SBQ Steels Ltd. and its group of companies. The seized record contained the material to enable the department to examine the correctness of sources of money routed through these companies. The seized material was as under:

1. ANN/RO/SBQ/LS/C
2. ANN/PD/SBQ/S s.No.3, Page 1 to 213
3. ANN/PD/SBQ/LS/S s.No.2, page 1 to 20 and 38 to 41

6.3 Accordingly, notice u/s. 153C r.w.s. 153A of the Act was issued on 26-09-2014 against which the assessee filed its return of income on 12-12-2014. It transpired that the assessee received share application money of Rs.608 Lacs. The assessee claimed loss on account of sale of investment for Rs.41.69 Lacs. Relying on the assessment orders

passed in the case of M/s. SBQ Steels Ltd. for AYs 2008-09, 2009-10, 2012-13 & 2013-14 and other group concerns, it was alleged by Ld. AO that the assessee failed to explain the receipt of share application money. Accordingly, the sum of Rs.608 Lacs was added as unexplained share application money and loss on sale of investment was disallowed. Further, the unexplained investments made by the assessee in M/s. SBQ Steels Ltd. and M/s. RKKR Steels and group companies were added in the respective hands of those companies. However, these were added in the hands of the assessee company also on protective basis to safeguard the interests of the Revenue. The assessment for other years was also framed on similar lines.

Appellate Proceedings

7.1 The assessee, inter-alia, pleaded that the requirement of assessment was not fulfilled since there was no a single document which Ld. AO has specifically referred to as incriminating evidence which he has relied upon to make the assessment. The Ld. AO based his conclusion on the submissions of certain unconnected persons based in Kolkata. On the basis of these submissions made by those persons, it has been alleged that the investments acquired and held by the assessee company in earlier years were in bogus companies. However, no opportunity of cross-examination was ever provided to the assessee. Further, the department did not find any document connecting the assessee company to those unconnected persons stated to be based in Kolkata. Pertinently, nowhere in those submissions, there is any mention of the assessee or its group companies. Therefore, no additions could be made on inferences, surmises or conjectures.

7.2 The Ld. CIT(A), after going through assessment records and assessee's submissions as aforesaid, concurred with the arguments of the assessee and decided the issue in assessee's favor with following observations: -

5. I have perused the Asst. Order, statement of facts, grounds of appeal, written submissions and case laws relied upon by the appellant. After going through the same, the issues are decided as under:

While contesting the various additions/disallowances made in the impugned AYs, the AR raised a significant objection to the effect that the AO while resorting to make such addition/disallowance had not brought on record details of any seized document on which he placed reliance. The appellant's objection has been considered vis-a-vis the contents of the assessment order.

I have gone through the assessment order. The appellant's objection is correct in that except mentioning about some seized documents in the preliminary para of the assessment order, the AO has not pin pointedly discussed as to which seized document pertains to the instant appellant and what are the details contained in these seized documents which throw light on the transactions in shares. Thus it can be concluded that the AO had not drawn any support from the seized documents while making the impugned additions/disallowances.

The above are the only reference made to seized document and nowhere else in the assessment order any discussion has been made with regard to any seized document which allegedly contained details of share transactions done by the appellant. Whatever details of documents the AO refers in the assessment order are all only general books of account such as bank statement, ledger account, financial statements etc., which could be obtained in the normal assessment proceedings. Nowhere in the assessment order the AO draws support from any seized material, page no. etc., specifically so that the issuance of notice u/s. 153C could be justified. In the absence of any such seized material, the invocation of the provisions of Sec. 153C is legally untenable and hence the AO has no jurisdiction to complete the assessment u/s. 153C.

Thus it can be seen from the assessment order and the discussion made as above, nowhere in the assessment order, the AO made any mention of the seized document wherein, as per the AO, evidence was available enabling him to come to the conclusion that appellant had indulged in investments from undisclosed sources. Sans such seized documents, the action of the AO in passing the assessment orders under section 153C is legally untenable.

The reliance placed by the appellant on the following decisions is well founded. For easy assimilation the gist of the above decisions is given below.

- i. In CIT Vs Purushottam Jhawar (2016) 68 (I) ITCL 467 (AP-HC) the issue arose whether Tribunal was justified in deleting the addition on account of unexplained investment holding that there was no reference in the assessment order about the material found during the course of search operations and the addition on account of unexplained investment was made purely on the basis of balance sheet filed by the assessee in course of block assessment proceedings. It was held that the Tribunal had correctly applied the law in section 158BB(1) which clearly says that

- undisclosed income has to be computed on the basis of material found during the course of search operations.
- ii. In CIT vs Vikas Electronics (International) P Ltd (2008) 20 (I) ITCL 83 (Del-HC) (2008) 166 Taxman 137 (Del), it was held that on the basis of statement of third party the assessing officer recorded that the third party was preparing fake bills and receiving commission from assesses, which was retracted by the third party, the undisclosed income allegedly earned by the assessee could not be added as the statement of the third party was recorded after the search and it was not related to the incriminating documents found during the search or evidence relating therefrom.
 - iii. In Vivek Kumar Kanodia V Dy CIT & Vice Versa (2013) 142 ITD 394 (Kol 'A' Trib): (2012) 150 TTJ (Kol 'A' Trib) 462 it was stated that "revenue authorities failed to discharge onus by bringing on record some cogent evidence to disprove the contents of speaking documents, which clearly show sale of gold diamonds and investment in purchase of property and shares etc, which ought to have been accepted, as such, additions made on surmises and conjectures were to be deleted."

These decisions are squarely applicable to the instant case. Since the AO has no jurisdiction in this case to pass an order u/s. 153C, as per the facts highlighted above and inasmuch as no reference was made to any incriminating material found during the course of search, the impugned assessments suffer from infirmity and hence have no legs to stand.

Last but not least is the fact that the AO in the impugned assessment orders has made a mention as under:

"The unexplained investments made by the assessee in M/s. SBQ Steels Ltd and M/s. RKKR Steels Ltd and group companies have been added in the respective hands of these companies. However, these are added in the hands of the assesses also on protective basis to safeguard the interest of the Revenue"

The above observation of the AO itself categorically proves that the AO was not sure that the additions having been not backed up by any seized material would stand the test of law. That is the reason why he made the said addition on protective basis also. Had there been any seized documents certainly the AO would be sure that his action of making addition would be upheld by the appellate authorities whereby he would have certainly mentioned for each addition the relevant or corresponding entry/page No. specifically on the basis of which such addition was made. The fact that this exercise having not been undertaken by the AO clearly proves the non availability of seized document due to which the AO was not pinpointedly mentioned in the assessment order the corroborative details of seized document and established that the various additions made in the assessments having the support of seized documents.

Even in the satisfaction note, specific mention has not been made as to which document pertaining to the appellant had the evidence of investments outside the books of account. In such a scenario, the issuance of notice u/s. 153C based on the above satisfaction note itself does not seem to be legally correct. Further, in the impugned assessment orders not a single document has been specifically referred to as incriminating evidence which the AO relied upon to make the assessments u/s. 153C.

Even though the AO relied on various case laws in framing the assessments, none comes to his rescue as a grave mistake has been committed in passing the order u/s. 153C for which the criteria is reference to seized materials.

Accordingly, all the additions made in the AYs. 2008-09 & 2011-12 are deleted. All the grounds of appeal are allowed.
In the result, the appeals for all the AYs are allowed.

Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings and Adjudication

8. The material facts that emerge are that the assessee group was subjected to search action on 26-09-2012. Since certain documents were found during the search, the assessee's case was covered u/s 153C. The material found include documents which have been marked as ANN/RO/SBQ/LS/C; ANN/PD/SBQ/S having Pages 1 to 213 and ANN/PD/SBQ/LS/S having pages 1 to 20 and 38 to 41. The same has been placed before us. The documents include copies of bank statements, share certificates, work orders, copies of invoices, copies of computation of total income of assessee's directors and their trial balances, correspondences with Income tax Departments and statutory documents / financial statements etc. It could also be gathered that the Ld. AO has not referred to any seized document while making the additions in the hands of the assessee. Rather the impugned additions are based on the basis of mere third-party statements and the view taken in the case of group entities. On the basis of these assessments, it has been alleged by Ld. AO that the assessee failed to explain the receipt of share application money. Accordingly, the impugned additions have been made. At the same time, the assessee also could not establish the genuineness of share application money received by it and it could not file the requisite documents of share applicants. The exact nature of seized document has also not been brought on record. It could also be seen that the assessee group was subjected to search action on 26-09-2012 and the time limit to issue notice u/s 143(2) for AY 2011-12

and 2012-13 had not expired at that time and these years could not be considered as the case of unabated assessment and Ld. AO was at liberty to assess as well as reassess the income of the assessee for these years based on all evidences, material in record including seized document. Therefore, the reasoning of Ld. CIT(A) for these two years could not be accepted.

9. Considering the entirety of facts and circumstances of the case, we deem it fit to set aside the impugned order and restore the issue of assessment to the file of Ld. AO for denovo adjudication after granting reasonable opportunity of hearing to the assessee. The Ld. AO may go through seized document and confront adverse material / information to the assessee, who, in turn, is directed to substantiate its stand. The judicial decisions as cited before us may also be considered in the light of factual matrix. The additional evidences, wherever filed, may also be considered and taken into account.

10. Since admittedly all the appeals are quite identical in all respect, similar directions are issued and all the appeals are restored back to the file of Ld. AO on similar lines. All the issues are kept open.

11. All the appeals of the revenue stand allowed for statistical purposes.

Order pronounced on 25th November, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 25-11-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF