

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NOs.529& 530/MUM/2021
(A.Ys. 2011-12& 2015-16)**

Shri AvinashNivruttiBhosale 2, ABIL House, Ganesh KhindRoad Range Hill Corner, Pune – 411007 PAN: ABTPB8151F	V.	DCIT – Central Circle – 2(3) 8 th Floor, Room No. 803 Old CGO Bldg, Pratishtha Bhavan M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vijay Mehta & Shri Mandar Joshi
Department Represented by	:	Shri R.S. Srivastav
Date of Hearing	:	17.11.2022
Date of Pronouncement	:	18.01.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals)–48, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.02.2021 and 25.11.2020 for the A.Y.2011-12 and 2015-16 respectively.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 529/MUM/2021 for Assessment Year 2011-12 as a lead appeal.

3. Brief facts raised by the assessee on jurisdictional issue are, in this case, the original assessment was completed on 21.03.2014 u/s. 143(3) of the Act. A search u/s. 132 of the Act was conducted on 21.07.2017 in the case of Avinash Bhosale group, business premises of the group as well as residential premises of partners/directors of group entities were covered in search action. The assessee was also covered in the said search. The group is primarily engaged in infrastructure development, real estate development and hospitality industry.

4. During the assessment proceedings, Assessing Officer observed that a search action u/s. 132 of the Act was carried out in the case of India bulls group on 13.07.2016. During the course of search, various documents and material in form of loose papers and digital data were seized and statements of key persons of India bulls group were recorded. Shri Ashok Sharma, CFO of India bulls group in reply to one of the questions stated that the acronym 'AB' in the data of unaccounted

cash transactions stands for Avinash Bhosale i.e. the assessee. On the basis of the evidence and statements recorded, it was observed that India bulls group has entered into cash transactions with the assessee. The assessee filed his reply wherein he stated that no incriminating document has been found from the premises of the assessee which suggest that the assessee has not entered into cash transactions with India Bulls group. It was further submitted that India bulls group companies have filed an application before the Hon'ble Income Tax Settlement Commission wherein they have owned up the noting/transaction referred in the seized pages and offered the same to tax and hence, no addition can be made u/s. 69C of the Act. The Assessing Officer rejected the contention of the assessee and relying on the findings of the search party in case of India bulls group added the peak credit of ₹.25,05,00,000/- u/s. 69C of the Act.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and assessee submitted before Ld.CIT(A) that addition u/s 69C of the Act is bad in law since no incriminating material has been found during the course of search and the relevant year is a non-abated year. It was further submitted that the relevant assessment year falls beyond the

period of six years and hence notice u/s. 153A of the Act could only be issued if Assessing Officer has in his possession evidence which reveal that income represented in the form of asset exceeding rupees fifty lakhs has escaped assessment which is not satisfied in the present case. It was further submitted that the Assessing Officer ought to have issued notice u/s 153C of the Act since addition is being made on the basis of documents found from third party premises.

6. The Ld.CIT(A) called for a remand report from the Assessing Officer seeking his comments on the legal argument raised by the assessee. The Assessing Officer, vide remand report dated 19.10.2020, reiterated his objections on merits of the addition as stated in the assessment order and offered no comments in respect of the legal argument raised by assessee. The assessee submitted in his rejoinder to the remand report dated 20.10.2020 wherein it was submitted that no reference has been made to any incriminating material found from the premises of assessee. However, the Ld.CIT(A) did not agree with the contention of the assessee, he has discussed the same in his order at pages 39 to 50. According to the Ld.CIT(A), the ratio of decision of the Hon'ble Bombay High Court in the case of CIT v. Continental

Warehousing Corporation (NhavaSheva) Ltd. [374 ITR 645] is not applicable in the present case.

7. On merits, assessee submitted before Ld.CIT(A) that relevant copy of the seized material and the statement on the basis of which addition has been made was not provided to the assessee. It was reiterated that no evidence was found from the premises of assessee indicating that the assessee had entered into unaccounted transactions with India bulls group. It was further stated that no opportunity of cross examination was provided to the assessee. The Ld.CIT(A) did not agree with the contention of the assessee and upheld the addition made by the Assessing Officer. He has held that there are sufficient material on record to justify the addition made by the Assessing Officer. Against this order of the Ld.CIT(A), assessee is in appeal before us.

8. Assessee has filed concise grounds of appeal, which are reproduced below: -

"1. The learned CIT (A) has erred in not holding that the issue of notice u/s. 153A of the Act and the consequential assessment order passed is without jurisdiction and null and void.

2. The learned CIT (A) has erred in confirming the addition of Rs. 25,05,00,000/- u/s. 69C of the Act on account of cash payments to Indiabulls Group.

3. *The learned CIT (A) ought to have held that the addition of Rs. 25,05,00,000/- is without jurisdiction and bad in law.*

4. *The learned CIT (A) has erred in confirming the addition of Rs. 58,50,000/- on account of alleged unexplained investment in jewelry.*

5. *The learned CIT (A) ought to have held that the addition of Rs. 58,50,000/- is without jurisdiction and bad in law.*

6. *The learned CIT (A) ought to have held that the order passed by the Assessing Officer was without following the principles of natural justice and, hence, unsustainable.*

7. *The appellant craves leave to add to, amend, alter or delete the foregoing grounds of appeal."*

9. At the time of hearing, assessee has mainly contested jurisdictional issues u/s. 153A of Income-tax Act, 1961 (in short "Act") raised relevant to Ground No. 1, 3 and 5 of the above concise grounds and also on merits. We shall proceed to adjudicate the jurisdictional issue first. It is also submitted that the issues in A.Y. 2015-16 are also exactly similar.

10. At the time of hearing, Ld. AR submitted that a search u/s 132 of the Act was carried out in the case of the assessee on 21.07.2017. The assessment order was passed u/s 143(3) of the Act on 21.03.2014. Hence, there was no assessment proceedings are pending for the impugned year as on the date of search. It is submitted that the impugned year, being a non-abated year, addition can be made only on

the basis of incriminating material found during the course of search from the premises of assessee.

11. Further, he brought to our notice relevant discussion on the jurisdictional issue from the assessment order, that there is no reference to any incriminating document found during the course of search at the premises of the assessee. It is submitted that the entire assessment order refers to and relies upon the documents found and the statements recorded during the course of search conducted on India Bulls group on 13.07.2016 much before the date of search in case of assessee i.e. 21.07.2017.

12. Further, he submitted that during the course of appellate proceedings, the Assessing Officer forwarded a remand report dated 19.10.2020 (Pgnos 1 to 5 of P.B.) to the CIT(A) which also contained the satisfaction note (Pg no 3 of P.B.) recorded for issue of notice u/s 153A of the Act. On perusal of the satisfaction note, it is evident that the same does not make reference to any incriminating material found during the course of search on the assessee. It is submitted that, in order to make addition in hands of assessee, incriminating material must be found from the search conducted in premises of assessee and not of

any other person. In order to support the said contention reliance is placed by the counsel on the following judicial pronouncements

- (i). *Dy. CIT v. Shivali Mahajan and Others (ITA No.5585/Del/2015) dated 19.03.2019 (Pgnos 48, 59, 60 of P.B.).*
- (ii). *ii)DCIT v. Arun Kumar Mehta (ITA No. 2477/Mum/2018) dated 06.09.2019 (Pgnos 101, 106 of P.B)*
- (iii). *CIT v. SKS Ispat and Power Ltd [398 ITR 584 (Bom)) (Pgnos 98, 99 of P.B)*
- (iv). *PCIT v. Anand Kumar Jain [432 ITR 384 (Del)) (Pgnos 39, 41, 42, 47 of PB)*

13. It was submitted that in absence of any incriminating material found from the premises of assessee, the impugned year, being a non-abated year, no addition can be made. In order to support the said contention reliance was placed on the decisions of the Hon'ble Bombay High Court in the case of CIT vs Continental Warehousing Corporation (NhavaSheva) Ltd. (374 ITR 645) and CIT v. Gurinder Singh Bawa (386 ITR 483)

14. It was submitted that statement of the assessee was recorded u/s. 132(4) of the Act on 21.07.2017 (Pg nos 29 to 38 of P.B). In the said statement, Q. Nos. 39 to 43 are in relation to the search conducted in India bulls group. However, nothing incriminating has come on record in

any of the answers of the assessee. It was submitted, in fact the assessee has reiterated that it has not entered into any cash transactions with India bulls group.

15. It was submitted that the statement recorded is material 'obtained' during the course of search and not 'found' during the course of search. It was further submitted that the statement on a standalone basis would not constitute incriminating evidence found during course of search. In order to support the said contention, reliance was placed on the judicial pronouncements at Pg no 90 of the P.B. It was submitted, the statement of the assessee is not incriminating and hence cannot form a basis for making addition.

16. Ld AR invited our attention to the fourth proviso to S 153A of the Act which was inserted vide Finance Act 2017 w.e.f 01.04.2017. As per the said proviso, the notice can be issued for relevant assessment year (ie. 7th to 10 years) if (i) the escaped income is of Rs. 50,00,000/- or more and (ii) such income is 'represented in the form of asset'. It was further submitted that an identical phrase Le represented in the form of asset has been used in the newly inserted S. 149(1)(b) of the Act and the same has been understood by the CBDT as escaped income which is

supported by underlying asset. He brought to our attention to Q. No. 11 of the FAQ dated 09.02.2021 issued by CBDT (Pgnos 91 to 95 of P.B),

17. It was submitted, in the present case, there is no underlying asset found in search which has been even alleged by the revenue. In the absence of any such asset, the issue of notice u/s. 153A of the Act beyond a period of six years is invalid.

18. It was submitted, it is evident from the assessment order that the entire addition has been made on the basis of documents found and statement recorded during the course of search conducted in India bulls group on 13.07.2016 and not on the basis of any document found from the premises of assessee. It is submitted that, in such cases, the Assessing Officer ought to have issued notice u/s. 153C of the Act in order to make addition on the basis of documents found from the premises of third party. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of PCIT v. Anand Kumar Jain [432 ITR 384 (Del)] (Pgnos 39, 47 of P.B.).

19. Further, on merits Ld. AR submitted as under: -

20. Ld AR submitted that on perusal of the assessment order, it is evident that the Assessing Officer has relied upon certain documents and statements of key persons recorded during the course of search conducted on India bulls group. It was submitted that the assessee, in response to Q. Nos 40 and 42 of the statement recorded u/s 132(4) of the Act dated 24.07.2017 (Pg nos 29-38 of P.B) asked for a copies of the statements of the concerned persons of the India bulls group. Subsequently, the assessee made repeated requests before the lower authorities to provide copy of material/statement being relied upon for making addition in the case of assessee.

21. It was reiterated that no incriminating documents have been found from the premises of assessee. It was submitted that no addition can be made merely on the basis of seized material found or statement recorded during the course of search conducted in the premises of third party more particularly in absence of any other independent evidence. In order to support the said contention, reliance was placed on the following judicial pronouncements:

- a. Jawaharbai Atmaram Hathiwala v. ITO [128 TTJ 36 (Ahd) (URO)] (Pgnos 121-124 of P.B.)

- b. Naren Premchand Nagda v. ITO (ITA No. 3265/Mum/2015)
dated 08.07.2016 (Pgnos 125-133 of P.B.)
- c. CIT v. Sant Lal (118 taxmann.com 432) (Del) (Pgnos 134-
138 of P.B.)

22. It was submitted that the seized material and the statements cannot be relied upon as the seized material and the statements have not been given to the assessee despite repeated requests. The assessee has also not been granted cross-examination of the parties. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries v CIT (Civil appeal No. 4228 of 2006) dated 02.09.2015 (Pgnos 139 to 145 of paper book).

23. It was submitted that there is no presumption about the correctness of the documents found from the premises of third party. The presumption available to the department u/s 292C of the Act is qua the documents found from the premises of the party in whose case search was conducted.

24. It was submitted that India bulls group companies have filed applications before the Hon'ble Income Tax Settlement Commission wherein they have owned up the notings/transactions referred in the seized pages as their income. The said fact has also been noted by the Assessing Officer in the assessment order. Hence, no addition can be made in the hands of assessee since there is no document in possession of the department that would show that the assessee has entered into cash transactions with India bulls group

25. Without prejudice to the above, it was submitted that admission before the Hon'ble Income Tax Settlement Commission made by the third party cannot be used against the assessee unless the same is provided to the assessee for confrontation. It was further submitted that even if the person from whom documents are found accepts the correctness of transactions before the Hon'ble Income Tax Settlement Commission, the same is not binding on assessee. In order to support the said contention reliance was placed on the orders of the Tribunal in the case of Asst. CIT v. Anand Jaikumar Jain [218 TTJ 813 (Mum)] (copy already on record) and in the case of Rajvee Tractors (P) Ltd v. ACIT [143 taxmann.com 330 (Ahd)] (copy already on record). It was

submitted that in the case of Asst. CIT v. Anand Jaikumar Jain (supra), the copy of the order of the Income tax Settlement Commission was provided to the assessee still the Tribunal held that no reliance can be placed on the order passed by the Income Tax Settlement Commission. It was submitted, in the present case, the copy of the order of Income Tax Settlement Commission in the case of entities of India Bulls group has not been given to the assessee.

26. On the other hand, Ld.DR submitted that various documents were found during search in the case of India Bulls and Radius Group and Nirav Modi Group cases, based on the above information a search was conducted in the case of assessee and in the case of search parties like India bulls and others, various documents were found relating to the assessee. It is fact on record that the documents found in the search in which abbreviation was used "AB", it was stated to be the name of assessee by the Investigation Wing. However, before Income Tax Settlement Commisison, India Bulls have confirmed that it denotes the Assessee. It clearly denotes that the above abbreviation relates to the name of the assessee only. The preponderance of the human probability indicates that the various documents found in search in the case of India

Bulls are belongs to the assessee. It is also fact on record that India bulls and others have not retracted the statements and they have approached the Income Tax Settlement Commission and they have accepted the informations found during the search. It is also fact that assessee has not cooperated while recording statement and he submitted that certain informations are not clearly brought on record in the Assessment Order. Ld DR submitted, in the interest of justice, it may be remitted back to the file of the Assessing Officer to appreciate the facts properly on record and reassess the same.

27. In the rejoinder Ld. AR of the assessee submitted that there is nothing on record or evidences which requires remitting back the matter to Assessing Officer. It is not a criminal case and he objected to the proposition of the Ld.DR. It is fact on record that there are no incriminating material found during the search and revenue is heavily relied on the evidences found in the third party place, which are not shared with the assessee. The addition cannot be made in the hands of the assessee without giving proper opportunity to the assessee to rebut as submitted in the main submissions.

28. Considered the rival submissions and material placed on record, we observe from the assessment order and remand proceedings that the search action u/s 132 of the Act was initiated in the case of the assessee on 21.07.2017 only based on the information found from the search action carried in the case of India Bulls on 13.07.2016. It is clear from the record that the assessment years under consideration before us is unabated years. The revenue was having information which was found during the search in the case of India Bulls for more than a year and in order to verify the same, they have initiated search u/s 132 of the Act in the case of the assessee. It is clear fact that the revenue was having this information and material before initiating the proceedings u/s 132. The question arises whether any incriminating material found during the search conducted in the case of the assessee on 21.07.2017 which corroborates with the information available with the revenue before hand. It is fact on record that there is no material found in the hands of the assessee which corroborates with the information or incriminating material found in the case of India Bulls. Therefore, the addition cannot be made without there being any incriminating material found in the case of assessee, as held in the case of Continental Warehousing (supra).

29. Coming to the next issue, it is clearly recorded by the AO in the remand proceedings that the satisfaction was recorded by him in order to initiate the proceedings u/s 153A of the Act. For the sake of clarity it is reproduced below:

"It is found from the search u/s 132 of IT Act on Indiabulls group and subsequently on ABIL Group that unaccounted cash of Rs. 114.13 Cr as per details provided in the table above has been received by Indiabulls Group from Avinash Bhosale and unaccounted cash of Rs. 125.89315 Cr has been paid to Avinash Bhosale by Indiabulls Group during various years as summarized below:

<i>Sr. No</i>	<i>Financial Year</i>	<i>Amount of unaccounted paid by Avinash to Indiabulls (In Crore)</i>	<i>Amount of unaccounted cash received by Avinash Bhosale from Indiabulls (In Crore)</i>
<i>1</i>	<i>2009-10</i>	<i>15.20</i>	<i>1.70955</i>
<i>2</i>	<i>2010-11</i>	<i>39.00</i>	<i>65.5836</i>
<i>3</i>	<i>2011-12</i>	<i>8.17</i>	<i>9.50</i>
<i>4</i>	<i>2012-13</i>	<i>1.00</i>	<i>10.00</i>
<i>5</i>	<i>2013-14</i>	<i>1.76</i>	<i>39.10</i>
<i>6</i>	<i>2014-15</i>	<i>39.00</i>	<i>-</i>
<i>7</i>	<i>2015-16</i>	<i>3.00</i>	<i>-</i>
<i>8</i>	<i>2016-17</i>	<i>7.00</i>	<i>-</i>

Hence from the above mentioned facts and discussion in appraisal report, it is clear that Shri Avinash Bhosale had received and paid unaccounted cash loan which needs to be taxed after proper verification.

In view of the above, I am satisfied that assessee has received and paid unaccounted cash loan, which has to be added to the income of the assessee after verification and also the escapement of income by unaccounted cash loan is more than Rs. 50,00,000/- in each of the relevant year i.e. AY 2010-11 and AY 2011-12"

From the above, it is clear that the AO has initiated the proceedings based mainly on the findings made in the case of India Bulls. Since no materials were unearthed in the search initiated in the case of the assessee to corroborate the findings or material found in India Bulls, they have resorted to proceed with the assessment based on the material found and statements recorded in the case of India Bulls. The issue before us is, whether the AO can proceed to complete the assessment without following the procedure laid down in the case of assessment u/s 153C when the material relied to complete the assessment u/s 153A and also whether the amended provision of Section 153A/153C is applicable in the case of the assessee where the search was conducted in the case of the assessee on 21.07.2017 however the material relied by the AO on the search conducted in the case of third party on 13.07.2016.

On careful consideration of the fact, we observe that section 153A/153C were amended and 4th proviso was inserted, they are:

[Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- (c) the search under [section 132](#) is initiated or requisition under [section 132A](#) is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]

we are of the view that the amended provision of the section 153A/153C are applicable to the case of the assessee for which the search was initiated on 22.07.2017 but when the material relied by the AO to initiate the proceedings in the case of the assessee wherein he relies on the material found during search conducted in the case of the third party for which the search material relied for which the search was conducted prior to amendment, even though the transition period, in our view, the provision and procedure should be followed relevant to pre-amendment period. The AO may be allowed to complete the assessment u/s 153A by applying the material found during the search of the third party however, to complete the same he has to follow the procedure laid down for section 153C particularly when they rely on the material found or statement of third party. In the given case, the assessment was completed u/s 153A based on the information found during the search

of third party, without corroborating any material in the hands of the assessee and merely relying on the statement of the third party and information declared before ITSC. From the satisfaction note recorded by the AO (as stated above) to initiate proceedings u/s 153A, he has recorded that he was satisfied that the income escaped by unaccounted cash loan is more than 50 lakhs in each of the relevant year. This is new proviso inserted from 1.4.2017. It is applicable only prospectively and to initiate the assessment proceedings u/s 153A, the new inserted proviso is applicable but the AO has completed the proceedings u/s 153A by heavily relying on the information and material found in the possession of the third party.

30. On careful consideration, we observe that in the similar case, Hon'ble Delhi High Court held in the case of Anand Kumar Jain (HUF) (supra) as under:

Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi); [2015] SCC Online Del 11554 concerning the scope of assessment under section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the 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. The Revenue's case is hinged on the statement of Mr. Jindal, 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 section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empowers the Assessing Officer to frame the block assessment. This court in Pr. CIT v. Best Infrastructure (India) P. Ltd. [2017] 397 ITR 82 (Delhi); [2017] SCC Online Del 9591¹ has inter alia held that (page 101 of 397 ITR):

"38. Fifthly, statements recorded under section 132(4) of the Act do not by themselves constitute incriminating material as has been explained by this court in Harjeev Aggarwal."

9. In CIT v. Harjeev Aggarwal [2016] 6 ITR-OL 504 (Delhi); [2016] 290 CTR 263; [2016] SCC OnLine 15122 this court had held as follows (page 515 of 6 ITR-OL):

"In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the assessee in its statement, under the provisions of Chapter XIV-B of the Act.

In our view, a plain reading of section 158BB(1) of the Act 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) 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 Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.

However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of account, documents, assets, etc. Plainly, the intention of Parliament is to permit such examination only where the books of account,

documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of section 132(4) of the Act are read in the context of section 158BB(1) read with section 158B (b) of the Act, it is at once clear that a statement recorded under section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an assessee has to be computed on the basis of evidence and material found during search. The statement recorded under section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order for an assessment to be based on the statement recorded.

In CIT v. Shri Ramdas Motor Transport [1999] 238 ITR 177 (AP), a Division Bench of the Andhra Pradesh High Court, reading the provision of section 132(4) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under section 132(4) of the Act cannot be invoked....

It is also necessary to mention that the aforesaid interpretation of section 132(4) of the Act must be read with the Explanation to section 132(4) of the Act which expressly provides that the scope of examination under section 132(4) of the Act is not limited only to the books of account or other assets or material found during the search. However, in the context of section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under section 132(4) is accepted, it would result in ignoring an important check on the power of the Assessing Officer and would expose the assessee's to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by

officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.

In CIT v. Naresh Kumar Agarwal [2014] 369 ITR 171 (T&AP), a Division Bench of the Telangana and Andhra Pradesh High Court held that a statement recorded under section 132(4) of the Act which is retracted cannot constitute a basis for an order under section 158BC of the Act..."

10. *Now, coming to the aspect, viz., the invocation of section 153A on the basis of the statement recorded in search action against a third person, we may note that the Assessing Officer has used this statement on oath recorded in the course of search conducted in the case of a third party (i. e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than the person searched (as referred to in section 153A), then the only legal recourse available to the Department was to proceed in terms of section 153C of the Act by handing over the same to the Assessing Officer who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under section 132(4) of the Act). As noted above, the assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the Income-tax Appellate Tribunal. Therefore, we do not find any substantial question of law that requires our consideration.*

Respectfully following the above decision and also we observe from the record that the AO has not followed the due process/procedure laid down under section 153C to complete the proceedings initiated u/s 153A of the Act makes the whole assessment bad in law. The search was conducted in the present case after a gap of almost one year from the

date of the search initiated in the case of India Bulls, no material was brought on record to show that the AO of the India Bulls has forwarded his satisfaction and or any procedure followed by the present AO to frame the assessment. Accordingly, the grounds raised by the assessee on the jurisdictional issue are decided in favour of the assessee.

31. Coming to the merits of the case, In the given case, the AO heavily relied on the submissions made by India Bulls before ITSC and settlement made before them. No doubt they have made settlement before ITSC which suits them and when AO relies on those settlement to make addition in the case of the assessee, it is the duty of the AO to give proper opportunity to the assessee to rebut or give an opportunity for cross examination. Without following proper procedure laid down under law no addition can be made under law. even if the person from whom documents are found accepts the correctness of transactions before the ITSC, the same is not binding on assessee. In order to support the said contention reliance is placed on the orders of the coordinate bench decision in the case of Asst. CIT v. Anand Jaikumar Jain [218 TTJ 813 (Mum)]

18. Coming to the nature of seized material found during search, we observe that the seized data was maintained by Shri Joydeep Basu but he is stated to be only recording the entries. He is stated to be during as per the inputs provided by Shri Neel Kamal Berry. Shri Neel Kumar Berry is stated to be receiving instructions from Sanjay Mitra and Puneet Dalmia. (Para's 4.3, 4.4 of the assessment order). It is evident from the above that even as per Department, the person carrying out the transactions, person recording the transactions and person giving instructions are different. This is to be seen in the light of the fact that Dalmia Group have disowned the seized data while filing the application before settlement commission. The relevant portion of the order of ITSC, containing the averments of Dalmias, is reproduced as under:

"4.1 During the course of search, a pen-drive as seizedin this connection, the applicants have made the following narration in the SOF which is reproduced hereunder :

A pen-drive was alleged to have been seized from the residenceThe Department claims that print out of 125 pages was taken from the cloned copy of pen-drive.....

5. it is submitted byShri Gautam Dalmia, the Modus operandi and background of the cases, the nature of income offered, etc. have been discussed in the SOF and other submissions, which are briefly summarized as hereunder:

As stated supra, a pen-drive was also allegedly found from the residence of an employee. No copy of the said pen-drive has been made available to the applicants by the Departments....."

19. Further, we observe that in reply to r. 9 report reproduced on page No. 18 of the order. Dalmias have stated that 'the employees who were recording/executing the transactions were not actually aware of the whole/correct import of the transaction. They have further observed at p. 21 of the order that none of the Dalmia family member was present at the time when the pen-drive was seized or cloned. It is their claim that hence, the ownership and authenticity of the contents of the pen drive per se is not clear. We observe that amount of addition admitted before the settlement commission by the Dalmias is way too small than the addition made in the case of the assessee. Although the Department has strongly objected this before the settlement commission (page No. 13 of ITSC order), the application has been accepted and nothing has been brought on record to show that the order of the settlement commission has been reversed or even challenged. In any case, even if the person from whom the documents have been found out

have accepted the correctness of transaction before the settlement commission, in our considered view, the same is not binding on the assessee. The similar view was expressed in the decision of Jaipur Bench of the Tribunal in the case of Mott Developers vs. Asstt. CIT in ITA No.101/Jp/2017. dt. 7th July, 2017. Further, it is brought to our notice that the seized MOUS relied upon by the Department are undated. unsigned (by either party) and titled as draft. It is the duty of the AO to bring on record that the same was acted upon, at the same time, the Daimia Group has gone to ITSC to settle the issue, this itself does not prove that unsigned MOUS were actually acted upon and how it is linked to the assessee.

20. Further, the seized material relied upon by the AO for making addition in the hands of assessee does not have any reference to the name of assessee. The addition of Rs. 47 crores in the year under consideration has been made on the basis of seized documents page No. 21 (page No. 14 of paper book). We observe that no statement has been recorded in respect of this page and seized material has not been corroborated by bringing on record any of the transactions of assessee in respect of purchase of shares, sale of shares, receipt of dividend, etc. The statement and affidavit of the assessee, on the contrary, disproves the seized documents. In our view, such statement and affidavit has not been disproved.

Therefore, even in the given case, India Bulls had accepted and indicated that the abbreviation "AB" found are relating to the assessee, merely on their submissions before ITSC, however, nothing was brought on record before us. Therefore, in this situation, it does not give right to the AO to make addition in the hands of the assessee without following due process of law by giving proper opportunity of cross examination and in particular following the procedure laid down in the case of assessment u/s 153C of the Act. Therefore, as held in the case of Anand Kumar Jain (HUF) (supra), the addition made under section 153A by

relying on the material found from third party without following procedure laid down under section 153C is bad in law. Accordingly, the grounds raised by the assessee are allowed.

32. With regard to Ground Nos 4 and 5 in respect of Addition of ₹.58,50,000/- u/s 69B of the Act is bad in law.

33. Brief facts relating to the ground are, a search action u/s. 132 of the Act was carried out on various premises in the case of Nirav Modi/ Firestar group on 14.01.2017. During the course of search, various documents and materials were seized and statements of employees were recorded. The employees of Niravi Modi group admitted that cash was received over and above the sale consideration recorded in the books of accounts. During the course of search, data relating to assessee was found wherein it was mentioned that the assessee has purchased jewellery from Nirav Modi store and made part payment in cash. During the course of assessment proceedings, the assessee submitted the relevant invoices of purchase of jewellery and stated that no cash has been paid for purchase of jewellery. The Assessing Officer did not accept the contention of assessee. The Assessing Officer relied on the statement of Mrs.Aparna Chudasama, one of the employees of

Nirav Modi group, whose signature was found on the invoice submitted by assessee and held that the assessee has paid cash of ₹. 58.50,000/- for purchase of jewellery and added the same u/s 69B of the Act.

34. Assessee preferred appeal before the Ld.CIT(A) and assessee contended before the Ld.CIT(A) that the addition u/s 69B of the Act is bad in law since no incriminating material has been found during the course of search and the relevant year is a non-abated year. It was further submitted that the relevant assessment year falls beyond the period of six years hence notice u/s. 153A of the Act could only be issued if Assessing Officer has in his possession evidence which reveal that income represented in the form of asset exceeding rupees fifty lakhs has escaped assessment which is not satisfied in the present case. It was further submitted that the Assessing Officer ought to have issued notice u/s. 153C of the Act since addition is being made on the basis of documents found from third party premises.

35. The Ld.CIT(A) called for a remand report from the Assessing Officer seeking his comments on the legal argument raised by the assessee. The Assessing Officer, vide remand report dated 19.10.2020, reiterated his objections on merits of the addition as stated in the

assessment order and offered no comments in respect of the legal argument raised by assessee. The assessee submitted his rejoinder to the remand report dated 20.10.2020. The CIT(A) did not agree with the contention of the assessee (Pgnos 39 to 50 of the CIT(A)'s order).

36. On merits, it was submitted that copy of the statement on the basis of which addition has been made was not provided to the assessee. It was reiterated that no evidence was found from the premises of assessee indicating that assessee had made cash payment for purchase of jewellery. It was further stated that no opportunity of cross examination was provided to the assessee. The Ld.CIT(A) did not agree with the contention of the assessee and upheld the addition made by the Assessing Officer.

37. At the time of hearing, Ld. AR submitted a search u/s. 132 of the Act was carried out in the case of the assessee on 21.07.2017. The assessment order was passed u/s 143(3) of the Act on 21.03.2014. Hence, there was no assessment proceedings pending for the impugned year as on the date of search. It was submitted that the impugned year, being a non-abated year, addition can be made only on the basis of

incriminating material found during the course of search from the premises of assessee.

38. It was submitted that from the reading of the assessment order, there is no reference to any incriminating document found during the course of search at the premises of the assessee. It was submitted that the entire assessment order refers to and relies upon the documents found and the statements recorded during the course of search conducted on Nirav Modi Group on 14.01.2017, much before the date of search in case of assessee i.e. 21.07.2017.

39. It was submitted that during the course of appellate proceedings, the Assessing Officer forwarded a remand report dated 19.10.2020 (Pg nos 1) to incriminating material found during the course of search on the assessee. It was submitted that, in order to make addition in hands of assessee, incriminating material must be found from the search conducted in premises of assessee and not of any other person. He brought to our notice page no 5 of P.B. which is submission before the CIT(A) and also brought to our notice satisfaction note (Pg no 3 of PB) recorded by the AO for issue of notice u/s 153A of the Act. He submitted that on perusal of the satisfaction note, it is evident that the same does

not make reference to any contention, reliance was placed on the following judicial pronouncements.

- (i). Dy. CIT v. Shivali Mahajan and Othrs (ITA No 5585/Del/2015) dated 19.03.2019 (Pgnos 48, 59, 60 of P.B.).*
- (ii). DCIT v. Arun Kumar Mehta (ITA No. 2477/Mum/2018) dated 06.09.2019 (Pgnos 101, 106 of P.B.)*
- (iii). CIT v. SKS Ispat and Power Ltd [398 ITR 584 (Bom)] (Pgnos 98, 99 of P.B)*
- (iv). PCIT v, Anand Kumar Jain [432 ITR 384 (Del)] (Pgnos 39, 41, 42, 47 of P.B.)*

40. It was submitted that in absence of any incriminating material found from the premises of assessee, the impugned year, being a non-abated year, no addition can be made. In order to support the said contention reliance was placed on the decisions of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (NhavaSheva) Ltd. (374 ITR 645) and CIT v. Gurinder Singh Bawa (386 ITR 483).

41. Further he brought our attention to the fourth proviso to S. 153A of the Act which was inserted vide Finance Act 2017 w.e.f. 01.04.2017. As per the said proviso, the notice can be issued for relevant assessment year (ie. 7th to 10th years) if (1) the escaped income is of Rs.

50,00,000/- or more and (ii) such income is 'represented in the form of asset. It was further submitted that an identical phrase i e. represented in the form of asset' has been used in the newly inserted S. 149(1)(b) of the Act and the same has been understood by the CBDT as escaped income which is supported by underlying asset. The same is evident from Q. No. 11 of the FAQ dated 09.02.2021 issued by CBDT (Pgnos 91 to 95 of P.B.)

42. In the present case, there is no underlying asset which has been even alleged by the revenue. In the absence of any such asset, the issue of notice u/s. escaped assessment 153A of the Act beyond a period of six years is invalid.

43. It was submitted that from the assessment order, the entire addition has been made on the basis of documents found and statement recorded during the course of search conducted in Nirav Modi group on 14.01.2017 and not on the basis of any document found from the premises of assessee. It was submitted that, in such cases, the Assessing Officer ought to have issued notice u/s. 153C of the Act in order to make addition on the basis of documents found from the premises of third party. Reliance is placed on the decision of the Hon'ble

Delhi High Court in the case of PCIT v. Anand Kumar Jain [432 ITR 384 (Del)] (Pgnos 39,47 of P.B.)

44. Further, on merits, Ld. AR submitted that on perusal of the assessment order, it is evident that the Assessing Officer has merely relied upon the documents found from the premises of Nirav Modi group. The assessee submitted the invoice copy of purchase of jewellery. It was submitted that the Assessing Officer relied upon the statement of the employee, who had signed the purchase invoice, submitted by the assessee to contend that the assessee has made cash payment for purchase of jewellery. It was reiterated that no incriminating documents have been found from the premises of assessee. It was submitted that no addition can be made on the basis of seized material found and statement recorded during the course of search conducted in the premises of third party more particularly in absence of any other independent evidence. In order to support the said contention, reliance was placed on the following judicial pronouncements:

- (i). *Jawaharbai Atmaram Hathiwala v. ITO [128 TT] 36 (Ahd) (URO)* (Pgnos 121-124 of P.B.)

- (ii). *Naren Premchand Nagda v ITO (ITA No. 3265/Mum/2015) dated 08.07.2016 (Pgnos 125-133 of P.B.)*
- (iii). *CIT v. Sant Lal (118 taxmann.com 432) (Del) (Pgnos 134-138 of P.B.)*

45. It was submitted that the seized material and the statements cannot be relied upon as the seized material and the statements/cross-examination of the parties have not been given to the assessee despite repeated requests. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of M/s Andaman Timber Industries v CIT (Civil appeal No 4228 of 2006) dated 02.09.2015 (Pgnos 139 to 145 of paper book).

46. It was submitted that there is no presumption about the correctness of the documents found from the premises of third party. The presumption available to the department u/s 292C of the Act is qua the documents found from the premises of the party in whose case search is conducted.

47. Ld.DR relied on the order of the Ld.CIT(A).

48. Considered the rival submissions and material placed on record, the issue involved in this ground also similar to the facts in the ground nos 1,3, and 5 raised by the assessee. The decision reached in the para nos 28 to 30. However, in the issues raised here, the addition was made relying on the statement recorded from the employee of the Nirav Modi Group, wherein it was stated by the employee that the assessee has paid more than the invoiced amount. No corroborative evidence found in the hands of the assessee during the search action initiated in the case of assessee however, assessee had repeatedly asked for the documents and statements recorded from the search conducted in the case of Nirav Modi Group but it was never provided to the assessee. It is well settled procedure that the addition cannot be made in the hands of the assessee by relying on the material or statement of third parties without giving an opportunity to the assessee to rebut or cross examine the other parties. It is held in the case of Sant Lal (*supra*) held as under:

11. We have perused the impugned order and notice that the ITAT has given a finding of the fact that the case of the respondent is covered with the decision of the ITAT in the cases of Mahabir Prasad Gupta (supra) and Ashok Prasad (supra). The relevant portion of the impugned order read as under:

"4. In the circumstances and fact of the case, we are of the view that the case is fully covered with the decision of ITAT in the cases of Mahabir Prasad Gupta (supra) and Ashok Prasad Gupta (supra) and further

observed that Revenue could lay its hands on the diary of Sh. Brij Mohan Gupta where names of persons were recorded in quoted words and revenue could not establish the name of the assessee from such quoted words. Though the Revenue has placed on record statement of Sh. Brij Mohan Gupta, Ram Avtar Singal and Rajiv Gupta but still Revenue has failed to establish link between the information noted in abbreviated form and the assessee. The diary was neither found from the promises of the assessee nor in the hand writing of the assessee any third person may write the name of any person at his sweet will, in such circumstances assessee cannot be put to any liability on the action of the third person, the same has to be corroborated by the Revenue which has not been done in the present case. In the circumstances and facts of the case, we do not find any infirmity in the order of the Ld. CIT(A) who has rightly deleted the additions so made by the AO. Accordingly, all the grounds of the Revenue are dismissed.

12. In case of the Mahabir Prasad Gupta (supra), this Court has examined the facts and concluded that the concurrent finding of the facts cannot be disturbed as there was no material which could justify the assessment order. The relevant portion of the said order which reads as under:

"13. The above submissions fail to persuade this Court to interfere with the matter. Concurrent findings of fact have been rendered by the CIT (A) as well as by the ITAT. Nothing has been pleaded in the memorandum of appeal to persuade the Court to hold that those findings are perverse or contrary to the facts on record. Secondly, there is not a whisper in the order of the AO about any bag recovered from the premises of the Assessee during the search of the Assessee's premises on 22nd March 2006. There is no such averment even in the memorandum of appeal filed before this Court. The material referred to in the order of the AO is that which was recovered from the premises of Mr. Brij Mohan Gupta and nothing else. That material has been discussed threadbare in the order of the CIT (A). Detailed reasons have been given as to why that material was insufficient to link the Assessee with "MP Gupta" whose name finds mention in the diary and the documents seized from the premises of Mr. Brij Mohan Gupta.

14. Consequently, the Court is not persuaded to permit the Revenue, for the first time, before this Court to set up an entirely different case of there having been a bag seized from the premises

of the Assessee which according to the Revenue contained incriminating material against the Assessee."

13. In view of the aforesaid facts and the concurrent findings given by the CIT (A) and ITAT, it is evident that the Revenue has not been able to produce any cogent material which could fasten the liability on the respondent. The CIT(A) has also examined the assessment record and has observed that the AO did not make any further inquiry/investigation on the information passed on by the DCIT, Central Circle-19, New Delhi. No attempt or effort was made to gather or corroborate evidence in this relation.

From the above, it is clear that the information found in the case of third party cannot be relied without giving proper opportunity to the assessee and even the evidence found from the third party could not be traced or no cogent material was unearthed during the search conducted in the premises or establishment of the assessee. Therefore, there is no merit in the submissions of the tax authorities to substantiate the above additions. We are not inclined to further in the other submissions made by the assessee. Accordingly the grounds raised by the assessee are allowed.

49. In the result, appeal filed by the assessee is allowed.

ITA.No. 530/MUM/2021 (A.Y. 2015-16)

50. Assessee has raised following grounds in its appeal: -

"1. The learned CIT (A) has erred in not holding that the issue of notice u/s. 153A of the Act and the consequential assessment order passed is without jurisdiction and null and void.

2. The learned CIT (A) has erred in confirming the addition of Rs. 14,69,00,000/- on the ground that the assessee had advanced unaccounted cash loans to Radius Group and earned interest thereon.

3. The learned CIT (A) ought to have held that the addition of Rs. 14,69,00,000/- is without jurisdiction and bad in law. The learned CIT (A) ought to have held that the order passed by the Assessing Officer was without following the principles of natural justice and, hence, unsustainable.

4. The appellant craves leave to add to, amend, alter or delete the foregoing grounds of appeal."

51. In A.Y. 2015-16 the facts are exactly similar to the facts in A.Y.2011-12 except the fact that the search action u/s. 132 was carried in the case of Radius Group on 16.12.2015 based on that various documents and material found and digital data seized in the case of Radius Group and two entities of the group had filed an application before Income Tax Settlement Commission. Based on the above informations Assessing Officer issued notice to the assessee u/s. 153A of the Act in reply assessee submitted that assessee has not given any loan to Radius Group nor any interest has been earned during the relevant Financial Year. Hence no addition can be made u/s. 69 of the Act. However, Assessing Officer rejected the contentions of the assessee and

relying on the findings of the Assessment Order in the case of Radius Group the addition was made u/s. 69 of the Act of the Act.

52. On appeal before Ld.CIT(A), he sustained the action of the Assessing Officer. Even though assessee contended before Ld.CIT(A) that the addition u/s. 69C of the Act is bad in law since no incriminating material has been found during the course of search and the relevant previous year is a non-abated year. It was further submitted that the Assessing Officer ought to have issued notice u/s. 153C of the Act since addition is being made on documents found from third party premises. The CIT(A) did not agree with the legal contention of the assessee (Pgnos 37 to 48 of the CIT(A)'s order).It was submitted that the relevant documents seized from Radius group. information furnished before the Hon'ble Settlement Commission and an opportunity of cross examination of concerned persons was not provided to the assessee. It was further submitted that no addition can be made in the hands of assessee on the basis of the order passed by the Hon'ble Settlement Commission in the case of some other party. The CIT(A) did not agree with the contention of the assessee and upheld the addition made by the Assessing Officer.

53. Before us, Ld. AR made similar submissions as made in the AY 2011-12, for the sake of clarity it is reproduced below: -

54. It was submitted, a search u/s 132 of the Act was carried out in the case of the assessee on 21.07.2017. The return of income was filed on 30.09.2015 and the time limit to issue notice u/s 143(2) of the Act expired on 30.09.2016. Hence, there was no assessment proceedings pending for the impugned year as on the date of search. It was submitted that the impugned year, being a non-abated year, addition can be made only on the basis of incriminating material found during the course of search from the premises of assessee.

55. It was submitted that from the reading of the assessment order, there is no reference to any incriminating document found during the course of search at the premises of the assessee. It was submitted that the entire assessment order refers to and relies upon the information pertaining to the search conducted on Radius group on 16.12.2015, which was shared by the Assessing Officer of Radius group.

56. It was submitted that, in order to make addition in hands of assessee, incriminating material must be found from the search

conducted in premises of assessee and not of any other person. In order to support the said contention reliance was placed on the following judicial pronouncements

- (i). Dy. CIT v. Shivali Mahajan and Othrs (ITA No.5585/Del/2015) dated 19.03.2019 (Pgnos 48, 59, 60 of P.B.).*
- (ii). DCIT v. Arun Kumar Mehta (ITA No. 2477/Mum/2018) dated 06.09.2019 (Pgnos 101, 106 of P.B.)*
- (iii). CIT v. SKS Ispat and Power Ltd [398 ITR 584 (Bom)] (Pgnos 98, 99 of P.B)*
- (iv). PCIT v. Anand Kumar Jain [432 ITR 384 (Del)] (Pgnos 39, 41, 42, 47 of P.B.)*

57. It was submitted that in absence of any incriminating material found from the premises of assessee, the impugned year, being a non-abated year, no addition can be made. In order to support the said contention reliance is placed on the decisions of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (NhavaSheva) Ltd. (374 ITR 645) and CIT v. Gurinder Singh Bawa (386 ITR 483).

58. It was submitted that from the assessment order the entire addition has been made on the basis of documents found and statement recorded during the course of search conducted in Radius on 16.12.2015

and not on the basis of any document found from the premises of assessee. It was submitted that, in such cases, the Assessing Officer ought to have issued notice u/s. 153C of the Act in order to make addition on the basis of documents found from the premises of third party. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of PCIT v. Anand Kumar Jain [432 ITR 384 (Del)] (Pgnos 39, 47 of P.B.).t.

59. Further, on merits Ld. AR submitted from the assessment order, it is evident that the Assessing Officer has relied upon information pertaining to the search conducted on Radius group on 16.12.2015 which was shared by the Assessing Officer of Radius from the premises of assessee. It was submitted that no addition can be made based on the information found during the course of search conducted in the premises of third party more particularly in absence of any other independent evidence. In order to support the said contention, reliance was placed on the following judicial pronouncements:

- (i). *Jawaharbai Atmaram Hathiwala v. ITO [128 TTJ 36 (Ahd) (URO)]*
- (ii). *Naren Premchand Nagda v. ITO (ITA No. 3265/Mum/2015) dated 08.07.2016*

(iii). CIT v. Sant Lal (118 taxmann.com 432) (Del)

60. It was submitted that the seized material and the statements cannot be relied upon as the seized material, the statements/cross-examination of the parties and copy of the order passed by the Settlement Commission have not been given to the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries v. CIT (Civil appeal No. 4228 of 2006) dated 02.09.2015 (Pgnos 139 to 145 of paper book).

61. It was submitted that there is no presumption about the correctness of the documents found from the premises of third party. The presumption available to the department u/s 292C of the Act is qua the documents found from the premises of the party in whose case search is conducted.

62. It was submitted that Radius group companies filed an application before the Income Tax Settlement Commission wherein they have provided details of various parties from whom cash loan were recorded in the seized data to the Income Tax Settlement Commission. It was submitted that admission before the Income Tax Settlement Commission

made by the third party cannot be used against the assessee unless the same is provided to the assessee for confrontation. It was further submitted that even if the person from whom documents are found accepts the correctness of transactions before the Income Tax Settlement Commission, the same is not binding on assessee. In order to support the said contention reliance was placed on the orders of the Tribunal in the case of Asst. CIT v Anand Jaikumar Jain (218 TTJ 813 (Mum)) and in the case of Rajvee Tractors (P) Ltd v. ACIT [143 taxmann.com 330 (Ahd)] It was submitted that in the case of Asst. CIT v. Anand Jaikumar Jain (supra), the copy of the order of the Income tax Settlement Commission was provided to the assessee still the Tribunal held that no reliance can be placed on the order passed by the Income Tax Settlement Commission. In the present case, the copy of the order of Income Tax Settlement Commission in the case of entities of Radius group has not been given to the assessee.

63. Considered the rival submissions and material placed on record, Coming to the appeal relating to A.Y. 2015-16, since facts in this case are mutatis mutandis, therefore the decision taken in A.Y. 2011-12 is

applicable to this assessment year also. Accordingly, this appeal filed by the assessee is allowed

64. To sum-up, all the appeals filed by the assessee are allowed

Order pronounced in the open court on 18th January, 2023

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Mumbai / Dated 18/01/2023
Giridhar, Sr.PS

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum