IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकरअपीलसं/ I.T.A. Nos. 4001 & 4002/Mum/2019
(**निर्धारणवर्ष** / Assessment Year: 2010-11 & 2011-12)

Renukamat Multi State Co-op Urban Credit Soc. Ltd. Renuka Bhavan, 2nd Floor, Survey No. 35/2A+2B, Behind Pushpak Hotel, Pipe Line Road, Savedi, Ahmednagar, Maharashtra-414003.	**बनाम**/ Vs.	ACIT, Central Circle-4(4) 1922, 19th Floor, Air India Building, Nariman Point, Mumbai-400021.

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आयकरअपीलसं/ I.T.A. Nos. 3943 & 3944/Mum/2019
(**निर्धारणवर्ष** / Assessment Year: 2010-11 & 2011-12)

ACIT, Central Circle-4(4) 1922, 19th Floor, Air India Building, Nariman Point, Mumbai-400021.	**बनाम**/ Vs.	Renukamat Multi State Co-op Urban Credit Soc. Ltd. Renuka Bhavan, 2nd Floor, Survey No. 35/2A+2B, Behind Pushpak Hotel, Pipe Line Road, Savedi, Ahmednagar, Maharashtra-414003.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AADAS7782D		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Dharmesh Kansara
Revenue by**:**	Smt Riddhi Mishra (DR)

सुनवाईकीतारीख / Date of Hearing: 12/12/2022
घोषणाकीतारीख /Date of Pronouncement: 06/02/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These cross appeals preferred by the Revenue and the assessee are against the orders of the Ld. Commissioner of Income-tax (Appeals)-52, Mumbai [in short 'CIT(A)'] dated 27-03-2019 in relation to the orders passed u/s 153A/143(3) of the Act, by the Asst.

Commissioner of Income-tax, Central Circle 4(4), Mumbai [in short 'AO'] for AYs 2010-11 & 2011-12. Since issues involved were common, all the appeals were heard together. Both the parties also argued them together raising similar arguments on these issues. Accordingly, for the sake of brevity, we dispose all the appeals by this consolidated order.

2. Before we advert to the grounds taken in the cross appeals, it would first be relevant to cull out the facts of the case in brief. The assessee is a registered Multi-State Cooperative Urban Credit Society established under the Maharashtra Co-operative Societies Act, 2002 which is engaged in the activity of providing credit and credit facilities to its members. The assessee society has inter-state operations having around 100 branches across India having more than 35000 members. Since the assessee is a co-operative credit society, which provides credit facilities to its members, it is governed by the Banking Regulation Act, 1949 to the extent specified in Part V thereof. It is therefore mandatory for the assessee to obtain & maintain KYC documents in relation to its members. It is noted that, a survey action u/s 133A of the Income-tax Act, 1961 [in short 'the Act'] was conducted by Range-4, Raipur on 08-02-2016 at the Raipur Branch of the assessee society, where cash to the tune of Rs.1,49,79,000/- was found and seized by the survey authorities. The said survey action was converted into a search action u/s 132 of the Act on 09-02-2016. Prior to the date of search, the income-tax assessment u/s 143(3) of the Act for AY 2010-11 stood completed on 07-12-2012. Accordingly, the assessment for AY 2010-11 did not abate consequent to the search.

The original return of income for AY 2011-12 was filed on 23-09-2011and undisputedly, the time limit for issuance of notice u/s 143(2) of the Act had expired as on the date of search i.e. 09-02-2016. Hence, even AY 2011-12 was not pending before the AO on the date of search, and as such was an unabated assessment year. The summary of the additions/disallowances in dispute in the cross appeals for AYs 2010-11 & 2011-12are as follows :

Disallowance / Issue	AY 2010-11	AY 2011-12
Addition of deposits made by members by way of unexplained cash credit u/s 68 of the Act	577,23,58,118/-	1882,83,84,972/-
Disallowance of expenditure u/s 69C of the Act	9,24,13,277/-	15,99,28,041/-

3. We first take up the appeal filed by the assessee and the Revenue for AY 2010-11 in IT(SS) No. 4001/Mum/2019 & 3943/Mum/2021 as the *lead case*. For AY 2010-11, the assessee society had originally filed the return of income on 28-09-2010 declaring total income of Rs. NIL. The income tax assessment u/s 143(3) of the Act for AY 2010-11 was completed on 07-12-2012 at total income of Rs.NIL. After the assessee filed a return in response to notice u/s 153A of the Act, notices u/s 143(2) & 142(1) of the Act were issued calling for details/information. According to the AO, the pre-search enquiries had revealed that the assessee society was facilitating transfer of unaccounted monies belonging to various persons, including itself, through Scheduled Banks. It was also gathered in the pre-search enquiries that, the assessee society was not

maintaining proper KYC documents of its members and that the society was functioning as a cash transfer agency, for which it was charging a commission. The AO also referred to the spot verification undertaken by the DDIT (I&CI), Unit 1(2), Mumbai prior to the search, wherein it was observed that the assessee society was acting as a conduit to transfer the unaccounted monies of individuals from one place to another. The DDIT (I&CI) noted that there were no statutory requirements or reporting liabilities on the assessee society to report instances of substantial cash deposits, which advantage was being utilized by the individual-members to deposit and/or route their unaccounted monies. The enquiries conducted in FY 2015-16 revealed that several persons had made systematic deposit and withdrawal of substantial cash in their bank accounts but most of them had not filed any income-tax returns for the relevant year nor did they disclose these bank accounts held with the assessee society. In the course of the search action, the Investigating authorities had gathered that sixty-four (64) accounts had been opened in the name of several individuals at the assessee's Raipur Branch, out of which the following twelve (12) members were examined under oath.

Sr. No.	**Name of the Account Holder**	**A/c No.**	**Total Cash Deposit (in Rs.)**
1.	Ajay Kumar Panjwani	405/05	71,87,53,375
2.	Suraj Naidu	501/03	96,49,39,750
3.	Rajesh Enterprises Prop. Ashok Shahu	501/11	9,42,69,856
4.	Sanjay Nandlal Bhagtani	403/09	55,54,917
5.	Krishna Liladhar Tiberwala	403/2	3,22,25,600

6.	Pradeepkumar Sudhakar Jain	403/3	36,30,560
7.	Ashwaria Sheshnarayan Dubey	403/10	2,19,12,800
8.	Abdul Aziz	501/4	3,30,33,500
9.	Hemant Hargovind Saboo	501/6	63,22,858
10.	Basant Raj Purohit	501/7	33,72,55,575
11.	Surya Trading Co. Prop. Bhupendra Singh Thakur	501/9	30,87,500
12.	Kundanlal Sahu	501/10	61,16,200

4. According to the AO, these account holders had stated that, they had received commission to facilitate cash deposits and transfers and these transactions were not related to the business activities of the account holders. The statements of some of these persons have been extensively extracted by the AO at Pages 17 to 68 of the assessment order. Referring to these statements, the AO observed that the assessee society was openly violating the relevant norms & regulations of the Reserve Bank of India in as much as it did not follow the KYC norms. According to the AO, the assessee was well aware that these members were small-time earners, and that by permitting them to deposit several crores of rupees in their accounts, the assessee society had knowingly assisted them to transfer its own unaccounted monies as well as that of unscrupulous traders. The AO in his notice dated 07-12-2017 & 14-12-2017 had inter alia required the assessee to furnish the details of PAN & addresses of all those members of the assessee society who had deposited more than Rs. 2 lacs during the year. After analysing the KYC documents maintained by the assessee at its branches, the AO noted five (5) instances encountered by him wherein

there were irregularities or discrepancies in the KYC documentation. Besides these five (5) instances, the AO observed that he had also come across instances where members had deposited cash in excess of Rs.50,000/-, but the assessee society had not collected Form 60 or PAN from such depositors which was in violation of Rule 114B of the Income-tax Rules, 1962 (hereinafter "the Rules") . The AO noted that, although the assessee had furnished the KYC documents of the account-holders in a pen drive but the assessee was unable to produce the returns of income of these account holders who had deposited and withdrawn huge sums from their respective bank accounts held with the assessee society. The AO, accordingly, issued show cause notice on 27-12-2017, wherein the following queries were raised:-

> "Please refer to the pending scrutiny assessment proceedings u/s 143(3) r.w.s. 153A of the I.T. Act in your case before this office for the above assessment years.
>
> 2. In connection with the survey & search action conducted on your various premises across the country on 09.02.2016, you are required to answer the following queries with evidence and supporting documents wherever required by you:
>
> i) Please submit the PAN wise and Non-PAN wise bifurcated list of total cash deposits made in various accounts of your society by all your members during the F.Y. 2009-10 & F.Y. 2010-11 respectively viz. Savings Deposits, Cash Credit deposit, agent security deposits, current deposits, MIS deposits, recurring deposits, short term fixed deposits, Long term fixed deposits, DAM Duppat deposits & Pigmy deposits and squared up loans during the year. The PAN wise list is the list that contains particulars of members who have mentioned their PANS in the

KYC details and the Non-PAN wise list is the list where the PANS are not mentioned.

ii) Please provide a bifurcated list of the branches operated by your society in rural areas/segments and urban areas/segments separately.

iii) Copy of requisite permission obtained by RBI for carrying out the operations as a Co- operative Credit Society in Maharashtra, as per Banking regulation act and if so a copy of the Registration Certificate.

iii) You as a credit society do not accept cheque as a norm. The moneys are received only in cash from all your members. Please explain the process of registering the members and what are your charges for registering such members.

iv) Please provide a copy of the Annual Financial statements, Balance Sheet, Audit report of the F.Y. 2009-10 & F.Y. 2010-11 pertaining to A.Y. 2010-11 & A.Y. 2011-12, Minutes of AGM of the BODs and the resolution which you have submitted to Central Registrar of Cooperative society, New Delhi.

v) Please give the account statements of all the regular members of your co-operative credit society who are stated to be your shareholders for A.Y. 2010-11 & A.Y. 2011-12. Also give comprehensive details of all regular as well as nominal members of your society."

5. The assessee was allowed a day's time to respond to the above show cause to which the assessee complied on 28-12-2017. The submissions furnished by the assessee were held to be unacceptable by the AO. After examining the KYC documents, the AO noted that majority of the members did not have PAN Cards and photo identities were not found in some cases. The addresses mentioned in the KYC documentation was incomplete. Also, no information regarding their sources of income, contact details, income-tax returns etc. were

available in the application forms. The AO, thus, held that the identity, creditworthiness and genuineness of the account holders remained unsubstantiated. The AO observed that the assessee was not following the rules and regulations of KYC and other guidelines as stipulated by Reserve Bank of India. According to the AO, the activities of the assessee society was akin to a Bank but these banking functions were being discharged by the assessee society without obtaining license from the Reserve Bank of India.

6. The AO also made independent enquiries from some of the special savings account holders who had carried out substantial transactions in the relevant FY 2009-10, and the enquiry report dated 26-12-2017 submitted by the ITI to the AO, as extracted in the assessment order, is reproduced below:

> "As per your directions, I visited the residence Mr. Mohd. Irshad Siddique at Room No. 32, 3 Floor, Usmania Manzil, 89/91, Kambekar Street, Mumbai: 400003, one of the members of the credit society, mentioned in the list of members (based in Mumbai) as per the submissions of the assessee, to make inquiries regarding the Special Savings Account he held with the Society. Mr. Mohd. Irshad Siddique is a chawl resident who stated that he was enticed by some persons belonging to the credit society (few years back which he now failed to remember) to become its member. He was lured with some lucrative offers by the society officials like higher commission payment in case he roped in more members to their society. He didn't take much interest in the scheme although he became its member by signing some forms given to him. However, he never received any cheque book or pass book from the society. When he was shown the amount of Rs. 95, 21,073/- which

has been debited from his account during the F.Y. 2009-10 as per the records of the credit society, he categorically denied having deposited or withdrawn any such amount from the account maintained with the credit society. He reiterated that he had never been issued pass book or cheque book from the said society and he was not aware of his member status as of now since he never operated the account in the first place. He was asked whether he files his return of income regularly to which he questioned me whether I had the authorization to pose such questions to him to which I replied that it was a general inquiry as per the orders of my superiors. The enquiry was thus concluded.

2. Thereafter, I visited the residence of Mr. Shaikh Irfan Ismail, another credit society member at the address given at 40, Tandel Street, 1st floor, North Dongri at 7.30 p.m. However, 1 was informed by the resident that the person had shifted somewhere else and she does'nt know about his present address.

3. I also tried to locate the address of the other member viz. Essa Shiekh at 3rd Floor, Room No. 29, Chinch Bunder Post Office, Bldg. Shajda Marg, Dongri, Chinch Bunder, Mumbai : 400009 However, I could not locate the residence since the address was incomplete in that, the name of the building was not mentioned in the address and enquiries with the local people proved futile in finding out his whereabouts."

7. In light of the above, the AO concluded that the assessee was facilitating routing of unaccounted monies of itself and other tax evaders through its proxy account holders. Further, in absence of proper KYC documentation, the AO held that the assessee had failed to establish the identity, creditworthiness and genuineness of these account holders. Accordingly, in the assessment completed u/s 153A r.w.s 143(3) of the Act on 29-12-2017, the AO inter alia made addition

of Rs.577,23,58,118/- on account of unexplained cash deposits u/s 68 of the Act.

8. The AO in the impugned order further observed that, as the monies in relation to which the interest and administrative expenses aggregating to Rs.9,24,13,277/- has been claimed, are held to be unexplained cash credits of the assessee, these expenses are to be disallowed u/s 69C of the Act. The AO also denied the benefit of deduction claimed u/s 80-P of the Act. Accordingly, the total income of the assessee society was assessed at Rs.586,47,71,400/-. Aggrieved by the order of the AO, the assessee society preferred an appeal before the Ld. CIT(A).

9. In the course of appellate proceedings before the Ld. CIT(A), the assessee vide letters dated 17-08-2018 and 23-08-2018, submitted that necessary KYC compliances were made by it at the time of opening of accounts of the members and therefore the addition of Rs.577.23 crores made by the AO, which included transfer credits of Rs.318.68 crores should not have been considered by the AO. According to the assessee, all the KYC documents were in place and that the averments made by the AO that there was no proper documentation or that in several instances certain documents were found missing or not to be proper was unjustified. The assessee further explained that, the statements of the twelve (12) account holders, which formed the basis of the impugned addition were not in existence during the FY 2009-10. The assessee thus submitted that it was

incorrect on the AO's part to draw adverse inference based on statements of such persons who did not hold any account with the assessee during the relevant year. It was further pleaded that the expenses had been disallowed without verification. Also, vide letter dated 29-08-2018, the assessee objected to the additions/ disallowances made in the unabated assessment of AY 2010-11 since they were not backed or supported by any incriminating material unearthed in the course of search. Having regard to these pleadings of the assessee, the Ld. CIT(A) vide letter dated 31-08-2018 required the AO to submit a remand report after making necessary enquiries. Thereafter, vide letter dated 17-12-2018, the AO was further directed to quantify the deposits in relation to whom corresponding PAN/KYC details were available and where such details were not available. The AO was also required to quantify the deposits where there was violation of Rule 114B of the Rules. The AO furnished his 1st remand report on 22-01-2019 whose relevant extracts are as follows:

> "3. Your good self vide above referred letter dated 31.08.2018 has asked to furnish the details of the evidences on the basis of which the addition of Rs. 577.23 crores has been made.
>
> 3.1 In this regard, it is submitted that during the assessment proceedings, total credits in the different types of accounts of the members of the said society were found to the tune of Rs. 577.23 crores. Accordingly, the assessee was asked to submit the KYC documents of all the account holders and to prove the creditworthiness of the members. In reply, assessee submitted KYC documents of only some of its account holders only in physical form and major portion of the details were submitted by the

assessee in soft format in some CD-drives. However, the CD Drives submitted by the assessee did not work. Therefore, only part details submitted in physical form by the assessee were available to verify at the time of assessment proceedings.

3.2 Further, independent enquiries were conducted in case of some of its account holders on random basis to identify the creditworthiness. Details

	Name of the Account Holder	**Remarks**
	Mohd. Irshad Siddique	He was not aware of his member status as he never operated the account
	Shaikh Irfan Ismail	Shifted to some other address.
	Essa sheikh	Could not locate the address.

of the same are reproduced hereunder.

As per the above facts, the assessee failed to substantiate the identity, creditworthiness of the account holders. Therefore, the addition was made of Rs. 577.23 crores were made of in the hands of the assessee on the basis of on the verification of these physically submitted data and the enquiries done in some cases on random basis.

4. Further, good self has asked to furnish the details on the basis of which the expenses of Rs. 9.24 crores have been disallowed.

4.1 In this regard, it is submitted that during the assessment proceedings, it was conclusively proved that the credits in the accounts held with above mentioned society were unexplained cash credits. In view of this, the expenses claimed by the assessee of Rs. 9.24 crores were treated as unexplained and addition was made on this issue.

5. Furthermore, good self has asked to identify the account holders where huge cash was deposited during the year and carry out enquiries to ascertain the source of the cash deposited.

5.1 In this regard, it is submitted that on verification it is ground that there are huge number of accounts where huge cash have been deposited

during the year. Therefore, it is very difficult to make enquiries in those cases due to large number. More time will be required to complete this process. However, as mentioned above in para 3.2, enquiries in some cases had been made which proved that in some cases the details provided by the assessee are incorrect and in some cases account holders are completely unaware of their account held with the society.

6. Your good self vide letter dated 17.12.2018 has asked to quantify the deposits wherein PAN and KYC details are available and wherein such details are not available. Your good self has also asked to quantify the deposits wherein there has been violation of Rule 114B.

6.1 In this regard, it is submitted that during the remand proceedings, the assessee has submitted details of total credits of Rs. 577.23 crores which includes the transfer credits of Rs. 318.60 crores. Out of total 577.23 crores, total cash deposits are to the extent of Rs. 258.62 crores. Out of total cash deposits of Rs. 258.62 crores, deposits exceeding Rs. 50000/- per account in the year under consideration amounts to Rs. 256.68 crores. In this regard, assessee has submitted PAN/Form 60 & KYC documents of top 50 account holders. It is clarified that these data were not submitted during the assessment proceedings in the physical form but in soft copy only.

Further, as per the finding of the appraisal report as well as verifying the seized material, it is clear that no data regarding PAN and KYC details for A.Y. 2010-11 was seized during the search action."[Emphasis by us]

10. The above report of the AO was forwarded to the assessee for its comments. With regard to the AO's observation that some of the CD-Drives containing KYC documents were not working, the assessee submitted that they had furnished the hard copies of the KYC documents in six (6) box files along with soft copy and that the AO did not make proper effort to operate the CDs. With regard to the outcome

of enquiries conducted by the ITI in relation to three (3) account holders for FY 2009-10, the assessee society submitted as follows:

> "ii) In point no. 3.2 of the Remand Report, the Assessing Officer stated that independent enquiries were conducted in case of some of its account holders on random basis to identify the creditworthiness.
>
> Outcome of enquiries is reproduced as under:
>
> a) Mohd. Irshad Siddique: He was not aware of his member status as he never operated the account.
>
> b) Shaikh Irfan Ismail: Shifted to some other address.
>
> c) Essa Shaikh: Could not locate the address.
>
> In response to the above the appellant state as under:
>
> a) Mohd. Irshad Siddique: He was well aware of his member status as he has signed the account opening form, affixed his photograph on account opening form, Nomination Details has been filled and signed by him along with witness (Mr. Kanchanlal Bhagwandas), his left hand thumb impression has been affixed on the form and he has also submitted the self attested copy of PAN Card, Driving License, Form-60 & Form-61. The appellant states that at the time of the account opening, the customer receives the Withdrawal Slip and welcome kit by post. Further, SMS alerts were sent to customers for their transactions on their registered mobile number. Also all the transactions were carried out by him as the deposits/withdrawals slips were signed by him.
>
> Further, finding of the Inspector O/6 ACIT-CC-4(4) (as per the assessment order) is also incorrect as the accountholder has opened his account on 15.07.2010 in the society, hence there were no transactions during the F.Y-2009-2010 but the finding reveals that he has withdrawn a sum of Rs.95.21 Lakhs during the F.Y.- 2009-2010 .
>
> (copy of account opening form, form-60/61 and KYCs are attached herewith as **Annexure 'C'**).

b) Shaikh Irfan Ismail: He may have shifted to other address but at the time of accounting opening he has signed the account opening form, affixed his photograph on account opening form, Nomination Details has been filled and signed by him along with witness (Ansari Sajjad), his thumb impression has been affixed on the form and he has also submitted the self attested copy of PAN Card, Ration Card & Form-61. After the account has been opened, the accountholder has not intimated any changes in his address, if any.

During the FY-2009-2010, he has deposited cash of Rs. 100/- only in his account maintained with the society.

(Copy of account opening form, form-60/61 and KYCS are attached herewith as **Annexure 'D'**).

c) Essa Shaikh: The address mentioned in the report of the Inspector O/6 ACIT- CC-4(4) (as per the assessment order) itself is incorrect. That is the reason why they could not locate the address. The address which the officer visited was 3rd Floor, Room No.29, Chinch Bunder Post Office, Bldg, Shajda Marg, Dongri, Chinch Bunder, Mumbai - 400 009. However, the address as per the KYC documents (Passport Copy & Ration Card) provided by the account holder was 177, Shaida Marg, Ismail Dosa Bldg, 3d Floor, Room No.29, Mumbai- 400 009.

(Copy of account opening form, form-60/61 and KYCS are attached herewith as **Annexure 'E'**).

During the F.Y.-2009-2010, the account holder has not carried out any transactions.

The mobile number updated in KYC of customers are correct number as it can be verified from True Caller (Mobile App) that displays the account holders exact name as mentioned in account opening form. So in cases where the address changed or address could not located, the department's officials could have contacted the customers for verification but it seems that in all the above cases no sincere efforts were made by the department's official to bring on record the real facts.

> On the basis of the above verification and enquiries done in some cases on random basis that too in a vague manner, the identity and creditworthiness cannot be judged and the addition for such a huge amount of Rs.577.23 Crores were made in the hands of the appellant is totally against the natural justice.
>
> We have already submitted the account statement of above parties to your honour in our submission dated 29.08.2018 as Annexure 'C' therein."

11. In connection with the AO's averment that, it is difficult to make enquiries & verification due to large number of account holders, the assessee society submitted that they had furnished the complete list of account holders who had deposited cash in excess of Rs.50,000/- along with their Branch Name, Account No., Type of A/c, Customer ID, Cash Credit, Transfer Credit, Remote Credit, Sub-total, Account Opening Date, Account Closing Date, PAN, Mobile, Address. The assessee had also submitted the PAN/Form 60/KYC of the top high value members before the AO. The assessee thus contended that the AO's failure to make enquiries cannot be held against it. In respect of the AO's last observation that these KYC documents were not found in the course of search, the assessee objected to the same and furnished the list of seized material which inter alia contained the KYC documentation of the account holders.

12. Having regard to the contradicting versions of the assessee society and the AO, the Ld. CIT(A) vide letter dated 17-02-2019 forwarded the list of account holders with PAN, addresses, Form 60 etc. to the AO to cross-verify the correctness of the data from the

ITD/ITBA system. The Ld. CIT(A) also directed the AO to re-verify the assessee's contention that out of the total addition of Rs.577.23 crores, sum of Rs.318.60 crores related to transfers within the various accounts of the assessee and therefore not in the nature of cash deposits assessable u/s 68 of the Act. The Ld. CIT(A) is noted to have further re-analyzed the balance sum of Rs.258.62 crores [577.23 – 318.60] and found that sum to the extent of Rs.19.46 crores related to accounts where individually cash deposited was less than Rs.2 lacs. Since deposit of Rs.2 lacs by the members in the entire year is quite nominal, according to Ld. CIT(A), the aforesaid sum was not relevant for the purposes of Section 68 of the Act. Out of the balance sum of Rs.239.16 crores (258.62 – 19.46), the Ld. CIT(A) noted that, the assessee had furnished PAN, address and details of gross cash deposited in relation to accounts in which sum of Rs.108.88 crores were deposited. For the remaining balance of Rs.130.27 crores, the assessee had explained that these accounts were originally opened with Form 60/61 given by the account holders, but had provided details such as date of birth, address etc. to assist the Department in identifying the PAN of these account holders. The Ld. CIT(A) forwarded the aforesaid data to the AO for verification. In the intervening period, the Ld. CIT(A) also deployed his ITI to compile the above information which would assist the AO and the said details were also forwarded to the AO on 12-03-2019. The AO vide letter dated 27-03-2019 submitted that, prima facie it appears that transfer credits are of Rs.318.9 crores and that the KYC compliance in respect of the members were properly maintained by the assessee at the time

of opening of the accounts. The AO however sought further time to conduct deeper verification. The Ld. CIT(A) noted that in spite of giving several opportunities and time of more than six months, the AO had failed to carry out the requisite verification, which he was directed to perform. Therefore, in exercise of the co-terminus powers vested in him, the Ld. CIT(A) undertook verification into the identity, creditworthiness and genuineness of the account holders on his own and proceeded to adjudicate the appeal before him.

13. The first issue adjudicated by the Ld. CIT(A) was whether the unabated assessment for AY 2010-11 could have been disturbed by the AO in absence of incriminating material seized in the course of search so as to make additions u/s 68 of the Act. In principle, the Ld. CIT(A) agreed that an unabated assessment cannot be interfered with by an Assessing Officer unless some incriminating material is found in the course of search in relation thereto. The relevant findings of Ld. CIT(A) are as follows:

> "5.12 The assessee submits that the original assessment was completed u/s. 143(3) on 07.12.2012 and had attained finality since by the time of the search action, the time limit for selecting the case for scrutiny assessment had lapsed long time back and therefore, the assessment for the relevant years was a non-abated assessment. Therefore, the assessee contends that the assessment for the relevant year could not have been disturbed by the AO in absence of incriminating material as held by the jurisdictional High Court in the case of **All Cargo Global Logistics Ltd (I.T. appeal No. 1969 of 2013).** On the issue as to whether the assessments which have attained finality can

be disturbed in absence of seized material, there are a number of decisions where this issue has been examined by the Hon'ble Courts which includes the decisions of the jurisdictional High Court in the cases of **Continental Warehousing Corpn. (Nhava Sheva Ltd.) (58 taxmann. com 78) and Murli Agro Products (49 taxmann.com 172)**, decisions of the Hon'ble Delhi High Court in the cases of **Anil Kumar Bhatia (352 ITR 493) and Chetandas Lachmandas (211 taxmann. 61)** and Hon'ble Kerala High Court **in the case of Canara Housing Development Co. (49 taxmann.com 98).** After analyzing all such decisions on this issue, the Hon'ble Delhi High Court in the case of **Kabul Chawla (61 taxmann. 412),** has summarized the legal position that emerges as under:

i.Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six A.Ys. immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such A.Ys. will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYS 'in which both the disclosed and the undisclosed income would be brought to tax'.

iv. Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be

arbitrary or without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material.

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

5.13 In principle, the contention of the assessee that a non-abated assessment which has attained finality can be disturbed only if some incriminating material is found in course of the search action, is acceptable. This contention is acceptable considering that the Hon'ble Supreme Court in the case of **Meeta Gutgutia (96 taxman.com 468)** has dismissed the SLP against the decision of the Hon'ble Delhi High Court wherein it was similarly held that no additions can be made since no incriminating material was unearthed at the time of the search action."

14. According to Ld. CIT(A) however the search action at Bhopal, Indore & Sendhwa had revealed that the assessee society was being

used as a conduit for transferring unaccounted cash across various parts of the country by depositing cash in dummy accounts. For this, (i) he referred to the statements of twelve (12) account holders at Raipur as recorded in the course of the search. The Ld. CIT(A) also (ii) referred to the report of the DDIT(I&CI), Mumbai; and (iii) the instances of improper KYC documentation found in the course of the second search action conducted on 26.05.2017 as 'incriminating material' found in the course of search. The Ld. CIT(A) also relied (iv) upon the findings of the test check enquiries which were conducted by the AO in the course of assessment through his ITI in respect of three (3) depositors who had held bank accounts with the assessee society in FY 2009-10. The Ld. CIT(A) thus held that, there were sufficient incriminating evidences and incriminating statements which constituted incriminating material unearthed in the course of search to warrant action u/s 143(3) of the Act read with 153A of the Act in the unabated AY 2010-11.

15. On merits, the Ld. CIT(A) in principle upheld the action of the AO in making addition on account of unexplained cash deposits as according to him, the assessee was unable to prove the identity & creditworthiness of the account holders and the genuineness of the transactions. The Ld. CIT(A) however was not agreeable to the quantum of addition of Rs.577.23 crores made by the AO. According to him, the AO vide letter dated 22-01-2019 had informed his office that out of the total addition of Rs.577.23 crores, sum of Rs.318.60 crores represented transfer credits within the accounts and cash

deposits were only of Rs.258.62 crores in the relevant AY 2010-11. The Ld. CIT(A) accordingly held that the transfer credits within the accounts not involving any outside entity would lead to double addition. He, however, directed the AO to re-verify the transfer credits and identify the credits not involving any outside entityand allow its benefit thereof. With regard to the remaining sum of Rs.258.62 crores, the Ld. CIT(A) applied several filters and parameters to arrive at the final amount of addition, which he has elaborately set out at Paras 5.30 to 5.38 of his appellate order. The Ld. CIT(A) accordingly directed the AO to re-compute the addition, based on these directions and after re-verifying the figures provided by the assessee in respect of the amounts deposited in different accounts.

16. On the issue of disallowance of interest & administrative expenses of Rs.9,24,13,277/- u/s 69C of the Act, the Ld. CIT(A) noted that all these expenses were accounted in the books of accounts of the assessee and therefore held that the invocation of Section 69C of the Act by the AO was incorrect. He also upheld the assessee's contention that, there was no incriminating material found in the course of search, which suggested that the interest & administrative expenses were unaccounted for, and therefore the Ld. CIT(A) held the impugned disallowance to be unsustainable. For this, he relied on the decisions rendered by the jurisdictional Hon'ble Bombay High Court in the case of CIT Vs **Continental Warehousing Corporation (Nhava Sheva) Ltd (374 ITR 645)**&**CIT Vs Murli Agro Products Ltd (49 taxmann.com 172)**.

17. Before the Ld. CIT(A), the assessee had alternatively claimed the benefit of deduction u/s 80P(2)(a) of the Act on the additions made u/s 68 & 69C of the Act. Referring to the decisions of the Hon'ble Supreme Court in the case of **Citizens Cooperative Society Ltd Vs ACIT (397 ITR 1)**, the Ld. CIT(A) observed that, the assessee had acted in violation of the Cooperative Societies Act and the principles of mutuality, as it was rendering services to nominal members as well apart from the ordinary members. Further, by relying upon the decision of the coordinate Bench of this Tribunal at Hyderabad in the case of **Citizens Cooperative Society Ltd Vs Addl. CIT (24 taxmann.com 347)**, the Ld. CIT(A) held that deduction u/s 80-P of the Act could not be given to cooperative societies found to be involved in giving accommodation cheques. He, accordingly, rejected this alternate claim of the assessee.

18. Aggrieved by the order of Ld. CIT(A), the assessee as well as Revenue are in appeal before us by taking the following grounds.

Grounds of Appeal of the Assessee (ITA No.4001/Mum/2019)

BREACH OF THE PRINCIPLE OF NATURAL JUSITCE

1.1 The Learned Commissioner of Income — tax (Appeals) — 52, Mumbai, ["Ld. CIT (A)"] erred in confirming the assessment order which was bad and illegal as the same was passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant.

1.2 Without prejudice to the above, the Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.

1.3 It is submitted that in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

(i) The same is framed in breach of the principles of natural justice; and

(ii) |The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

ASSESSMENT U/S. 143(3) R.W.S. 153A IS WITHOUT JURISDICTION

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in framing the assessment u/s. 143 (3) r.w.s. 153A of the Income — tax Act, 1961 ["the Act")

2.2 It is submitted that in the facts and the circumstances of the case, and in law, the assessment so framed by the A.O. was bad, illegal and without jurisdiction.

2.3 Without generality of the above ground, it is submitted that the assessment so framed by the A.O. was bad, illegal and without jurisdiction, as

(i) the order was passed without proper jurisdiction / in excess of jurisdiction;

(ii) no incriminating material was found concerning the previous year in course of the search proceeding.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3. ADDITION U/S. 68 IS BAD IN LAW

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition with respect to the cash deposited by the

members of the Appellant Credit Society by invoking section 68 of the Act.

3.2 While doing so, the Ld. CIT (A) failed to appreciate that: (i) Section 68 had no application to such deposits; and (ii) 'In any case, on the facts and the circumstances of the case, and in law, no addition by invoking section 68 was called for in the Appellant's case.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4. MERITS OF THE ADDITIONS 4.1 The Ld. CIT (A) erred in confirming the addition made by the A.O., to the extent as under:

Sr. No	Nature of Deposit	Extent of confirmation	Amount (Rupees) in Crores)
A	Transfer credits related to transactions involved with outside entities	100%	To be quantified by the AO
B	Cash deposits less than Rs.2 lacs	10%	1,946
C	Cash deposits between Rs. 2 lacs to Rs.40 lacs		
(i)	Where PAN submitted but ROI not submitted	100%	81.26
(ii)	Where PAN submitted but ROI not submitted	100%	17.94
(iii)	Where PAN submitted and Roi filed but no business income declared	100%	2.39
(iv)	Where PAN submitted, ROI filed and business income declared	10%	2.03
D	Cash deposits exceeding Rs. 40 Lacs		
(i)	Where form 60/61 submitted but no PAN submitted	100%	49.01
(ii)	Where PAN submitted but ROI not submitted	100%	6.87
(iii)	Where PAN submitted and ROI filed but no business income declared	100%	38.72
(iv)	Where PAN submitted, ROI filed and business income declared	10%	2.26

4.2 While doing so, the Ld. CIT(A) erred in:

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

4.3 It is submitted that in the facts and the circumstances of the case, and in law, no such additions were called for.

4.4 Without prejudice to the above, assuming but not admitting that some additions were called for, it is submitted that, in the facts and the circumstances of the case, and in law, the computation of the additions confirmed by the Ld. CIT (A) is arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

5. REJECTION OF CLAIM U/S, 80P(2)(a)

5.1 The Ld. CIT (A) erred in confirming the action of the A.O. in rejecting the claim of exemption / deduction u/s. 80P (2) (a) of the Act.

5.2 It is submitted that in the facts and the circumstances of the case, and in law, no such rejection of the claim of exemption / deduction u/s. 80P (2) (a) of the Act was called for.

5.3 Without prejudice to the above, assuming but not admitting that any rejection of exemption was called for, the Ld. CIT (A) erred in rejecting the claim vis -a - vis the entire income of the Appellant.

5.4 It is submitted, without prejudice, that in the facts and the circumstances of the case, and in law, the action of Ld. CIT (A) in denying the exemption with respect to the entire income is arbitrary, excessive and not in accordance with the law."

Grounds of Appeal of the Revenue (ITA No. 3943/Mum/2019)

"1. Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), is justified in only allowing the addition to the extent of Rs. 202.46 Cr and deleting the balance addition of Rs. 56.16 Cr without considering the facts of the case that the total addition made u/s. 68 on account of total cash deposit was at Rs. 258.62 Cr

2. Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), is justified in deleting the addition made u/s. 69 of the I.T. Act, 1961 of Rs. 9,24,13,277/- on account of interest & administrative expenses without considering the facts that during the assessment proceedings the assessee has failed to discharge its onus to prove the genuineness of the expenses recorded in the regular books of account of the assessee."

19. After going through the grounds raised in appeal by both parties, we deem it fit to first to take up the 2nd ground raised by the assessee and modify the ground to adjudicate as agreed by both sides as to whether there was any incriminating material found in the course of search at the premises of the assessee to justify the additions/disallowances made in the *unabated* assessments of the assessee society.

20. As noted earlier, on the date of search i.e. 22-06-2016, income tax assessment for AY 2010-11 was unabated. The provisions of Section 153A of the Act, forming part of Chapter XIV of the Act, contains special provisions for completing assessments in case of Search conducted u/s 132 or requisition made u/s 132A of the Act. These provisions can be invoked only in cases where the Income-tax Department has exercised its extra ordinary powers of conducting

search and seizure operations after complying with stringent pre-conditions prescribed in Section 132 of the Act**.** There is no denial that once a search u/s 132 of the Act is conducted against a person then irrespective of whether any incriminating material is found, the AO is required to proceed against such person for completing the assessments u/s 153A of the Act for the specified six **(**6**)** assessment years**.** However, we find that Section 153A of the Act, itself creates the differentiation amongst specified six **(**6**)** assessment years **[**in short AYs**]** depending upon whether prior to the search, the proceedings are abated or not**.** We note that the relevant section itself clarifies **(**2nd proviso to Section 153A of the Act**)** that where an assessment **[**for an AY which falls in specified six AYs**]** was already completed against an assessee and no proceedings for those years are pending before AO on the date of search, then such assessments for those AYs do not abate whereas, on the other hand, the assessment/re-assessments for those years which are pending before the AO on the date of search shall abate; and so the assessments/re-assessments which are not pending before the AO on the date of search wont abate, so will be treated as unabated assessments**.** It should be borne in mind that just because an assessee is subjected to search u/s 132 of the Act, such an event by itself does not give *carte blanche* to the Department to subject such an assessee to the rigors of being assessed afresh for all the specified six **(**6**)** years**.** It is for this reason that the Parliament in its wisdom has categorically created two classes among the six years, **(**a**)** un-abated assessment and **(**b**)** abated assessments**.** Consequent to a search conducted u/s 132 of the Act, **(***as per the law in force during the*

relevant period) the AO is required to issue notices u/s 153A of the Act to assess the income of the assessee for six (6) assessment years preceding the date of search (relevant assessment year). These six (6) assessment years comprise of assessments which are not abated and assessments which are pending on the date of search and therefore it is treated to be abated. In case of abated assessments, the AO is free to frame the assessment in regular manner and determine the correct taxable income for the relevant year *inter alia* including the undisclosed income, having regard to the provisions of the Act. However, in relation to unabated assessments, which were not pending on the date of search, there is restriction on the powers of the AO. In case of unabated assessments, the AO can re-assess the income only to the extent of and with specific reference to the incriminating material which the Revenue unearths in the course of the search.The logic behind this legislative classification is that merely because an assessee is subjected to search, such assessee cannot be placed on a different pedestal or put in a more disadvantageous position than an assessee who is not subjected to search unless in the course of search, some incriminating documents or evidence or information is gathered by the Investigating authorities, so as to vest the AO with the necessary powers to make additions to the total income in relation to assessments which did not abate on account of search. Considering these aspects, the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla reportedin (2016) 380 ITR 573 (Del) held as under:-

"37. On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The Ld AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Ld AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to complete assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the Ld AO.

vii. Completed assessments can be interfered with by the Ld AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

38. The present appeals concern AYs 2002-03, 2005-06 and 2006-07, on the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

21. We find that the Hon'ble Delhi High Court while adjudicating the appeal in the case of CIT vs Kabul Chawla (supra) had judiciallytaken note of a host of earlier decisions rendered in the cases of CIT vs Anil Kumar Bhatia reported in (2013) 352 ITR 493 (Del) ; CIT vs Chetan Das Lachman Das reported in (2012) 211 Taxman 61 (Del HC) ; Madugula Venu vs DIT reported in (2013) 215 Taxman 298 (Del HC) ; Canara Housing Development Co. vs DCIT reported in (2014) 49 taxmann.com 98 (Kar HC) ; Filatex India Ltd vs CIT reported in (2014) 229 Taxman 555 (Del HC) ; Jai Steel (India) vs ACIT reported in (2013) 219 Taxman 223 (Del HC) ; CIT vs Murli Agro Products Ltd reported in (2014) 49 taxmann.com 172 (Bom HC) ; CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd

reported in (2015) 374 ITR 645 (Bom HC) and All Cargo Global Logistics Ltd vs DCIT reported in (2012) 137 ITD 287 (Mum ITAT) (SB). We also find that the Revenue's SLP against the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (Supra) was dismissed by the Hon'ble Apex Court.

22. This view also finds support from the judgment of the Hon'ble Jurisdictional High Court in the case of **CIT Vs Gurinder Singh Bawa (386 ITR 483)** wherein it was held as follows:

> *"*3. For the Assessment Year 2005-06, the respondent-assessee had filed his return of income declaring an income of Rs.9.61 lakhs. The return of income as filed by the respondent- assessee was processed under Section 143*(*1*)* of the Act. Admittedly, no notice under Section 143*(*2*)* of the Act has been issued. Thereafter on 5 January 2007, a search was conducted on the respondent-assessee under Section 132 of the Act. Consequent thereto, proceedings under Section 153A of the Act were initiated. During the assessment proceedings for A.Y. 2005-06, the Assessing Officer added an amount of Rs.93.72 lakhs *(*declared as gifts*)* as being covered by Section 68 of the Act and an amount of Rs.43.67 lakhs *(*accumulated profits of the lendor*)* out of Rs.1.5 crores received as loan from one K.P. Developers Pvt. Ltd. as deemed dividend under Section 2*(*22*)(*e*)* of the Act. Undisputedly, respondent-assessee was a shareholder in M/s K.P. Developers *(*P*)* Ltd. The aforesaid additions are reflected in an assessment order dated 31 December 2008 passed under Section 143*(*3*)* r/w 153A of the Act determining the respondent-assessee's total income at Rs.1.47 crores.
>
> 4. In appeal, the CIT*(*A*)* held that the addition of an amount of Rs.43.67 lakhs as deemed dividend has to be deleted. This on the ground that there were no accumulated profits available with M/s K.P. Developers *(*P*)* Ltd. to

distribute amongst it's shareholders. However, so far as the addition in respect of the unexplained gifts aggregating to Rs. 93.70 lakhs is concerned, the CIT(A) did not disturb the finding of the Assessing Officer.

5. On further appeal before the Tribunal, the assessee interalia challenged the validity of the assessment made under Section 153A of the Act. This on account of the fact that no assessment in respect of the six assessment years were pending so as to have abated. The impugned order accepted the aforesaid submission of the respondent-assessee by interalia placing reliance upon the decision of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. rendered on 6 July 2012. The Tribunal in the impugned order further held that no incriminating material was found during the course of the search. Thus the entire proceedings under Section 153A of the Act were without jurisdiction and therefore the addition made had to be deleted on the aforesaid ground. The impugned order also thereafter considered the issues on merits and on it also held in favour of the respondent-assessee.

6. Mr. Kotangale, the learned Counsel for the revenue very fairly states that the decision of the Special Bench of the Tribunal in Al-Cargo Global Logistics Ltd. was a subject matter of challenge before this Court as a part of the group of appeals disposed of as CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645/58 taxmann.com 78/232 Taxman 270 (Bom.) upholding the view of the Special Bench of the Tribunal in Al- Cargo Global Logistics Ltd. Consequently, once an assessment has attained finality for a particular year i.e. it is not pending then the same cannot be subject to tax in proceedings under Section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under Section 153A of the Act which are contrary to and/or not disclosed during regular assessment proceedings.

7. In view of the above, on issue of jurisdiction itself the issue stands concluded against the revenue by the decision of this Court in Continental

Warehousing Corpn. (Nhava Sheva) Ltd. (supra). In the appeal before us, the revenue has made no grievance with regard to the impugned order of the Tribunal holding that in law the proceedings under Section 153A of the Act are without jurisdiction. This in view of the fact that no assessment were pending, so as to abate nor any incriminating evidence was found. The grievance of the revenue is only with regard to finding in the impugned order on the merits of the individual claim regarding gifts and deemed dividend. However once it is not disputed by the revenue that the decision of this Court in Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) would apply to the present facts and also that there are no assessments pending on the time of the initiation of proceedings under Section 153A of the Act. The occasion to consider the issues raised on merits in the proposed questions becomes academic."

23. Identical view was expressed by the Hon'ble jurisdictional Bombay High Court in the case of **CIT Vs SKS Ispat & Power Ltd (398 ITR 584)** wherein it was held as follows:

"5. We have considered the arguments canvassed by the learned counsel for the respective parties. On perusal of section 153A of the Act, it is manifest that it does not make any distinction between assessment conducted under section 143(1) and 143(3). This court had occasion to consider the scope of section 153A of the Act in the case of Gurinder Singh Bawa and in the case of Continental Warehousing Corpn. (Nhava Sheva) Ltd. (referred to supra). It has been observed that section 153A cannot be a tool to have a second inning of assessment either to the Revenue or the assessee. Even in the case of Gurinder Singh Bawa (referred to supra) the assessment was under section 143(1) of the Act and the court held that the scope of assessment after search under section 153A would be limited to the incriminating evidence found during the search and no further. In the said judgment, the judgment of this

court in Continental Warehousing Corpn. *(*Nhava Sheva*)* Ltd. *(*referred to supra*)* has been followed.

6. Considering the authoritative pronouncements of this court in the above referred cases one of which is also with regard to assessment under section 143*(*1*)*, the issue is no longer res integra and stands concluded in the above referred judgments.*"*

24. It is noted by us that the Ld. CIT(A) also agreed with the above position of law and categorically held that a non-abated assessment which had attained finality can be disturbed only if some incriminating material is found in the course of search action conducted u/s 132 of the Act. Even the Ld. CIT, DR appearing on behalf of the Revenue has not disputed this legal principle. The Ld. CIT(A) has however held that there were *'incriminating material'* in the form of statements and enquiries against the assessee and therefore the AO had rightly disturbed the unabated assessment for AY 2010-11.

25. Before we look into the relevant *'incriminating material'* referred to by the Ld. CIT(A), it is first necessary to understand the meaning of the expression "incriminating material" or evidence. It is noted that there is no definition set out in the Act and therefore meaning of this term has to be discerned from its judicial interpretation made by different judicial forums. We understand that there can be several forms of incriminating material or evidence. In order to constitute an incriminating material or evidence, it is necessary for the AO to establish that the information, document or material, whether tangible or intangible, is of such nature which incriminates or militates

against the person in relation to whom it is found**.** Some common forms of incriminating material are for instance, where the search action u/s 132 of the Act reveals information **(**oral or documented**)** that the assets found from the possession of the assessee in the form of land, building, jewellery, deposits or other valuable assets etc**.** do not corroborate with his returned income and/or there is a material difference in the actual valuation of such assets and the value declared in the books of accounts**.** Further, incriminating evidence may also constitute of information, tangible or intangible which suggests or leads to an inference that the assessee is carrying out certain activities outside books of accounts which is not disclosed to the Department**.** Incriminating material also comprises of document or evidence found in search which demonstrates or proves that what is apparent is not real or what is real is not apparent**.** In other words, if an assessee has recorded transactions in his books or other documents maintained in the ordinary course, then in order to hold the material or evidence found in the course of search to be incriminating in nature, the seized documents/evidences should lead to the conclusion that the entries made in the books of the assessee do not represent the true and correct state of affairs of the assessee**.** Rather the evidence unearthed or found in the course of search should establish that the real transaction of the assessee was something different than what was recorded in the regular books and therefore the entries in the books did not represent true and correct state of affairs i**.**e**.** the assessee has undisclosed income/expense outside the books or that the assessee is conducting income earning activity outside the books of accounts or all the

revenue earning activities are not disclosed to the tax authorities in the books regularly maintained or the returns filed with the authorities from time to time, etc**.** The nature of the evidence or information gathered during the search should be of such nature that it should not merely raise doubt or suspicion but should be of such nature which would prima facie prove that real and true nature of transaction between the parties is something different from the one recorded in the books or documents maintained in the ordinary course of business**.** In some instances, the information, document or evidence gathered in the course of search, may raise serious doubts or suspicion in relation to transaction reflected in regular books or documents maintained in the ordinary course of business, but in such case the AO is not permitted to straightaway treat such material to be **'**incriminating**'** in nature unless the AO thereafter brings on record further corroborative material or evidence to substantiate his suspicion and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs**.** Until these conditions are satisfied, it cannot be held that every seized material or document or information is incriminating in nature, capable of justifying the additions in unabated assessments**.**

26. In view of the above legal position, let us now proceed to examine whether the additions/disallowances which the AO made in the orders of the unabated AYs impugned in this appeal was based on or made with reference to any incriminating material/information gathered in the course of search**.** The Ld**.** AR appearing on behalf of

the assessee society first took us through the queries raised in several notices/requisitions issued by the AO u/s 142**(**1**)** of the Act and the final show cause notice dated 27-12-2017 to show that, at no point of time did the AO refer to any incriminating material unearthed in the course of search based on which he made the additions u/s 68 & 69C of the Act in the relevant unabated AY**.** To buttress his contention, the Ld**.** AR invited our attention to the office letter dated 31-08-2018 issued by the Ld**.** CIT**(**A**)** to the AO wherein he had specifically required the AO to explain the basis of the additions made u/s 68 & 69C of the Act, to which the AO in his remand report dated 22-01-2019 had stated as follows**:**

> "3. Your good self vide above referred letter dated 31.08.2018 has asked to furnish the details of the evidences on the basis of which the addition of Rs. 577.23 crores has been made.
>
> 3.1 In this regard, it is submitted that during the assessment proceedings, total credits in the different types of accounts of the members of the said society were found to the tune of Rs. 577.23 crores. Accordingly, the assessee was asked to submit the KYC documents of all the account holders and to prove the creditworthiness of the members. In reply, assessee submitted KYC documents of only some of its account holders only in physical form and major portion of the details were submitted by the assessee in soft format in some CD-drives. However, the CD Drives submitted by the assessee did not work. Therefore, only part details submitted in physical form by the assessee were available to verify at the time of assessment proceedings.

	Name of the Account Holder	**Remarks**

	Mohd. Irshad Siddique	He was not aware of his member status as he never operated the account
	Shaikh Irfan Ismail	Shifted to some other address.
	Essa sheikh	Could not locate the address.

3.2 Further, independent enquiries were conducted in case of some of its account holders on random basis to identify the creditworthiness. Details of the same are reproduced hereunder.

As per the above facts, the assessee failed to substantiate the identity, creditworthiness of the account holders. Therefore, the addition was made of Rs. 577.23 crores were made of in the hands of the assessee on the basis of on the verification of these physically submitted data and the enquiries done in some cases on random basis.

4. Further, good self has asked to furnish the details on the basis of which the expenses of Rs. 9.24 crores have been disallowed.

4.1 In this regard, it is submitted that during the assessment proceedings, it was conclusively proved that the credits in the accounts held with above mentioned society were unexplained cash credits. In view of this, the expenses claimed by the assessee of Rs. 9.24 crores were treated as unexplained and addition was made on this issue."[Emphasis given by us]

27. Referring to the above report, the Ld**.** AR submitted that the only basis of the impugned additions were the enquiries made by the AO through his ITI in light of the details/documents furnished in the course of assessment**.** He contended that the report of the ITI which was obtained much after the search and in the course of assessment cannot be said to constitute incriminating material unearthed in the course of search**.** He further submitted that even the report of the ITI suffered from defects and infirmities, which we shall discuss in detail in the subsequent paragraphs**.**

28. The Ld**.** AR thereafter submitted that, the Ld**.** CIT**(**A**)** had however made out a completely new case to justify the additions made in the assessment order with purported material found/statements obtained in the course of search, which was not even the case of the AO in the relevant AY**.** Apart from the above material referred to by the AO, the Ld**.** CIT**(**A**)** had extensively referred to the statements of the twelve **(**12**)** account holders recorded in the course of search at the Raipur Branch of the assessee society to justify the addition made in the unabated AYs 2010-11 & 2011-12**.** The Ld**.** AR showed us that, the Raipur Branch itself was not in existence in these years as it was opened only in 20-06-2014 i**.**e, in AY 2015-16**.** Taking us through the statements of these twelve **(**12**)** account holders, the Ld**.** AR showed us that none of them held any accounts with the assessee society in the unabated AYs 2010-11 & 2011-12, but that they had opened their accounts in FY 2015-16 / 2016-17 and therefore their statements were of no relevance in these unabated AYs**.**

29. The Ld**.** AR further contended that the Ld**.** CIT**(**A**)** had also erred in relying upon the errors/omissions in KYC documentations found in the course of second search conducted on 26-05-2017 **[**AY 2018-19**]** to justify the additions made in the assessments framed u/s 153A of the Act for the unabated AYs 2010-11 & 2011-12 consequent to the first search dated 09-02-2016**.** He further submitted that neither the AO nor the Ld**.** CIT**(**A**)**, were able to specifically pin-point any specific instance of such error/omission in KYC formalities in the unabated AYs 2010-11 & 2011-12**.**

30. Lastly, the Ld**.** AR took us through the contents of the report of the Ld**.** DDIT**(**I&CI**)**, which was relied upon by the Ld**.** CIT**(**A**)**, as incriminating material found in the course of search**.** He showed us that, the Ld**.** DDIT**(**I&CI**)** had only cast aspersions on the high value deposits being made by some of the account holders in their accounts held with the assessee society and it was accordingly reported that the assessee was being used by these unscrupulous individuals as a conduit to transfer their unaccounted monies from one place to another**.** According to Ld**.** AR, the contents of this report did not contain any tangible incriminating material against the assessee**.** He submitted that, if one reads the findings of Ld**.** DDIT**(**I&CI**)**, it would be noted that the Investigating authority had nowhere stated or suggested that the monies deposited with the assessee society represented their own unaccounted monies**.** Instead, the Ld**.** DDIT**(**I&CI**)** was categorical in its findings that these deposits represented the unaccounted monies of other individuals who were taking advantage of the absence of reporting obligation on the assessee society to accommodate the transfer of their monies from one place to another**.** This report, according to Ld**.** AR, supported their case in as much as this report did not suggest that additions u/s 68 of the Act was to be made in the hands of the assessee society**.** Instead, it was the respective members/depositors who were the real beneficiaries of these sums and therefore adverse inference, if any, could have been drawn against these depositors or beneficiaries alone, in their respective income-tax assessments**.** He showed us that, even the Ld**.** DDIT**(**I&CI**)** had identified some of the entities who were the beneficiaries of these

deposits and who had not disclosed these receipts and/or not filed income-tax returns**.** In order to further fortify the case of the assessee society, the Ld**.** AR made an application for admission of additional evidence in terms of Rule 29 of the Income-tax Appellate Tribunal Rules, 1963, in which he placed the enquiries made by the assessee society under the RTI Act along with the enquiries made/assessment orders passed in the case of some depositors/members**.** Referring to these additional evidences, the Ld**.** AR showed us that, even the Revenue is assessing these cash deposits/third party credits in the hands of the respective depositors/members as their unaccounted monies**.** These additional evidences, therefore, according to him showed that the report of the Ld**.** DDIT**(**I&CI**)** and the subsequent conduct/action taken by the Revenue did not incriminate the assessee in any manner which would justify the additions made in their hands in these unabated AYs**.**

31. Per contra, the Ld**.** CIT DR appearing on behalf of the Revenue supported the orders of the lower authorities**.** She extensively referred to the findings recorded by the Ld**.** CIT**(**A**)** at Paras 5**.**14 to 5**.**21 of the impugned appellate order**.** She submitted that the pre-search enquiries had revealed that the assessee society was not maintaining KYC documentation in respect of its members and consequent to the search, it was unearthed that the assessee society had been facilitating transfer of unaccounted monies through their accounts from one location to another like hawala transaction**.** The statements of the depositors/ account-holders and the report of the Ld**.** DDIT**(**I&CI**)**, according to

her, corroborated the Revenue's case that the assessee was routing unaccounted monies of its own and other individuals through these accounts. She thus submitted that the additions made by the AO u/s 68 & 69C of the Act in these unabated AYs was indeed supported by incriminating material found & incriminating statements obtained in the course search.Therefore, she does not want us to disturb that part of addition upheld/confirmed him. However, she assailed the action of Ld. CIT(A) directing deletion of addition made by AO u/s 68 of the Act as well as the action of Ld. CIT(A) directing the AO to delete Rs.9.24 crores (interest and administrative expenses) which was added by AO u/s 69C of the Act and pleaded that action of Ld CIT(A) be reversed on this part of his order.

32. Having heard both the parties and after perusing the material placed before us, we note that, in the course of assessment, the AO had issued several notices u/s 142(1) of the Act requiring the assessee to explain the deposits made by the several account-holders with the assessee society. However, at no point of time did the AO in his notices refer to any material or document seized in the course of search. The Ld. AR has rightly pointed out that the AO, in his remand report dated 22-01-2019, did not refer to any incriminating material unearthed in the course of search which had led him to make the impugned additions in the unabated AYs 2010-11 & 2011-12.

33. It is noted by us that, the AO had cited the report dated 26-12-2017 furnished by the ITI attached with his office as the basis of the

impugned addition**.** It is apparent from the records that this field enquiry/report was not conducted in the course of search but it was obtained by the AO in the course of assessment proceedings conducted u/s 153A of the Act in the relevant AY**.** It is observed that, in the course of assessment, the AO had initially requisitioned the details of the account-holders, their KYC documentation and details of deposits**.** In light of the details & explanations submitted by the assessee and referring to the report of the Ld**.** DDIT **(**I&CI**)** and the statements given by some of the account-holders at Raipur Branch in the course of search, the AO himself initiated suo moto enquiries into three **(**3**)** depositors, who according to him, held accounts with the assessee society during the relevant year**.** As per the report of the ITI, the identity &creditworthiness of these three **(**3**)** account-holders were in doubt**.** The AO, therefore, inferred that the aggregate deposits of Rs**.**577**.**23 crores made by several account-holders at its different branches were in the nature of unexplained cash credits and accordingly assessed the same u/s 68 of the Act **(**which included Rs**.**318**.**6 cr**.** which represented transfer credit i**.**e**.** transfer of money within the assessee society Rs**.**577**.**23 **–** Rs**.**318**.**60 **=** Rs**.**258**.**60 cr**.)**

34. The Ld**.** AR has submitted before us that, this report of the ITI dated 26-12-2017, was obtained at the instance of the AO at the fag end of assessment proceedings u/s 153A of the Act, and therefore cannot be said to constitute *incriminating material* unearthed in the course of search as held by the Hon'ble Bombay High Court in in the case of Gurinder Singh Bawa and in the case of Continental

Warehousing Corpn. *(*Nhava Sheva*)* Ltd. *(*referred to supra*)*, wherein it has been observed *that section 153A cannot be a tool to have a second inning of assessment either to the Revenue or the assessee. Even in the case of Gurinder Singh Bawa (referred to supra) the assessment was under section 143(1) of the Act and the Court held that the scope of assessment after search under section 153A of the Act [*in respect of unabated assessment years*] would be limited to the incriminating evidence found during the search and no further***.** It was pointed out by the Ld**.** AR that this enquiry was initiated and the report was obtained much after the completion of the search action u/s 132 of the Act **(***report of inspector was made with in a day at the fag end of framing of assessment***).** Hence, according to him, this material cannot be neither termed as incriminating material nor as a material un-earthed during search to disturb the finality of the unabated assessments**.**

35. In this regard, it is noted by us that the assessee had furnished all the relevant KYC documentation which it was required to maintain ordinarily in respect of these three **(**3**)** account holders**.** Perusal of ITI report of three **(**3**)** members dated 26**.**12**.**2017 **(**AO passed the assessment order making addition of Rs**.**577 cr on 29**.**12**.**2017**)** shows that the Inspector located the first account holder, i**.**e**.** Mr**.** M**.** I**.** Siddique, and that the depositor informed him that he was enticed by some persons to open account with the credit society**.** Although he was not interested in the same but he still signed some papers which were given to him**.** He averred that he was not aware about the deposits made in the said account and refrained from sharing the details of his

personal tax returns. In this regard, the Ld. AR invited our attention to the KYC documentation of Mr. M. I. Siddique which shows that he was a PAN-holder who had furnished his complete personal details to open the account with the assessee society. The Ld. AR, thus submitted that, the averment of Mr. M. I. Siddique that he had only signed some papers was incorrect for the reason that no third party would have been privy to his personal details including his PAN, mobile number, address, photo proof and details of his family members. It is noted that Mr. M. I. Siddique had tacitly admitted that, he held account with assessee society but conspicuously avoided to give the exact details of the account opened and also the details of his personal tax returns. According to Ld. AR therefore these glaring aspects raise suspicion on the personal conduct of Mr. M. I. Siddique rather than that of the assessee society. It is also noted that the ITI had enquired about withdrawal of Rs.95.21 lacs from his bank account held with the assessee society in FY 2009-10/AY 2010-11, but the facts placed before us shows that he had opened his account only in the subsequent FY 2010-11/AY 2011-12 on 15.07.2010 and that there was no deposit or withdrawal during relevant assessment year under consideration i.e. FY 2009-10 (AY. 2010-11). We thus find merit in the submission of the Ld. AR of the assessee that, the enquiries made by the ITI and his findings were erroneous which were not borne out from the facts on record.

36. In respect of the second depositor, Mr. S. I. Ismail, whose enquiry was made by the ITI, it is noted that even this account holder

had completely filled out the application form wherein he had *inter alia* quoted his PAN & address details along with other personal details as well**.** It was therefore not a case that he did not have a PAN or that he had not filled out Form 60, etc**.** According to the ITI, he was able to locate the address but the depositor was not present there and the residents therein informed that the depositor had shifted to another address**.** The Ld**.** AR submitted that, it was not the case of the ITI that the locals did not confirm the identity of this depositor**.** They had confirmed that he was indeed residing there earlier but he had since shifted**.** The Ld**.** AR explained that, having regard to the fact that the account opening form PAN and KYC documentation were done in FY 2009-10 and the enquiry were made by ITI after more than seven **(**7**)** years, one cannot doubt the existence of the account holder simply because he had shifted from that address and failed to intimate the same to the assessee society**.** The Ld**.** AR rightly submitted that the PAN details were available with the office of the AO and therefore his current address could have been obtained from the ITD/ITBA system**.** He further pointed out that, his mobile number was also available in KYC documentation but there is no indication in the report that the ITI had tried to contact him over phone to enquire about his present address or made any use of any digital tools to locate him**.**

37. As regards the third depositor, Essa Sheikh, the Ld**.** AR rightly showed us that the address at which the ITI made the enquiry and the address mentioned in the KYC documentation furnished before the AO was different and therefore the allegation of the ITI that the address

given was incomplete is incorrect**.** The Ld**.** AR submitted that the AO never confronted the assessee society with this report nor tried to cross-verify the relevant address and had that been done, the correct facts could have been brought on record**.** The Ld**.** AR thus submitted that the ITI**'**s action of visiting and making enquiries at the incorrect address cannot be held against the assessee society**.**

38. The Ld**.** AR further demonstrated that these members from whom enquiries were made by the ITI had only deposited cash aggregating to Rs**.**100/- in FY 2009-10 **(**Rs**.**1,67,95,633/- in FY 2010-11**)** and therefore the reliance placed by the AO/Ld**.** CIT**(**A**)** on this report of ITI dated 26**.**12**.**2017 of this assessee**'**s case to hold that the entire cash deposits made with the assessee society represented its unaccounted monies to make addition of Rs**.**577**.**23 crores u/s 68 of the Act in the relevant AY 2010-11 was completely unjustified**.**

39. Having regard to the above, we find merit in the submissions of the Ld**.** AR that not only did the ITI report **(**supra**)** not constitute incriminating material found in the course of search but even the findings recorded by the ITI in his report was factually incorrect, irrelevant and flawed and so, AO as well as Ld**.** CIT**(**A**)** erred in relying on it**.** It is further noted that the AO**'**s action of making enquiries from only 3-4 depositors who had deposited only Rs**.**100/- in FY 2009-10 which constituted almost NIL **%** of the total cash deposits for that year and **(**0**.**09**%** in AY 2010-11**)** was untenable, as in our considered view, the AO ought to have conducted an exercise of

higher scale i.e. enquiries on a bigger sample size before proceeding to draw adverse inference against the entire deposits made during the year. We thus hold that the reliance placed by the AO/Ld. CIT(A) to justify the additions made u/s 68 of the Act in these unabated AYs 2010-11 & 2011-12 is untenable and conclude that the inference drawn by the AO as well as Ld. CIT(A) in as much as the identity and creditworthiness of depositors and genuineness of transactions had not been substantiated is held to be unsustainable both on facts and in law. We therefore hold that this ITI report (supra) riddled with factual inconsistences as discussed (supra) cannot be termed as incriminating material to justify the additions made in the unabated assessments.

40. It is further noted that, when enquired by the Ld. CIT(A), the AO in his remand report dated 22-01-2019 had only relied upon the above ITI report as the incriminating material based on which he had made the additions in these unabated AYs. It is however observed that, the Ld. CIT(A) additionally relied upon new material viz., statements/report etc., which according to him, also constituted incriminating material which supported the impugned additions in these unabated AYs. According to Ld. AR, when the AO himself did not rely upon these material to justify the impugned additions in these unabated assessments in his remand report, then the Ld. CIT(A) could not have made out a completely new case on this aspect. However, the Ld. CIT, DR, pointed out on this contention of Ld. AR that the Ld. CIT(A) not only has co-terminus powers of the AO, but the power of enhancement as well, and therefore the Ld. CIT(A) was well within his

rights to support the order of the AO with new material/evidence which came before him in the course of the appellate proceedings**.** We do not find it necessary to examine this contention raised by the assessee as such because we are inclined to examine the additional materials relied upon by the Ld**.** CIT**(**A**)** and adjudicate as to whether any of them constituted incriminating material qua the assessee society qua the un-abated AY's before us, which would justify the additions made in their hands**.**

41. It is noted that, the Ld**.** CIT**(**A**)** has first relied upon the statements of the twelve **(**12**)** account-holders of the Raipur Branch as the relevant incriminating material which justified the additions made u/s 68 of the Act in these unabated AYs i**.**e**.** AY**.** 2010-11 & 2011-12**.** In this regard, it is noted by us that, the Raipur Branch was opened by the assessee-society only on 20-06-2014 and that these twelve **(**12**)** members had opened their accounts subsequent thereto in FYs 2014-15 & 2015-16**.** None of these twelve **(**12**)** persons held accounts with the assessee-society in the relevant AYs 2010-11 & 2011-12 and therefore these statements *per-se* had no relevance in these relevant AYs before us**.** And it is also not in dispute that the Investigating authorities did not make any enquiries from the account-holders who had transacted in FYs 2009-10 & 2010-11**.** On this score alone, we find merit in the Ld**.** AR**'**s submission that the Ld**.** CIT**(**A**)'**s reliance upon these statements to justify the impugned additions in the unabated AYs 2010-11 & 2011-12 was factually misplaced and unjustified**.** And these statements which pertains to AY**.** 2015-16 &

AY. 2016-17 cannot in any manner be termed as incriminating material found during search to make addition in an un-abated assessment as held by the Hon'ble Bombay High Court in Continental Agencies and other case referred (supra).

42. Further, the Ld. AR also took us through the contents of these twelve (12) statements and showed us that, none of these persons had averred that their accounts were being used by the assessee society to route its unaccounted monies. Instead, they had specifically named the unscrupulous individuals who had used them to their advantage and routed their own unaccounted monies through the accounts of these individuals by offering them minimal remuneration. The Ld. AR particularly invited our attention to the office letter issued by the Ld. CIT(A) dated 17-12-2018 to the AO wherein after perusing these statements, he had stated as follows:

> "The real beneficiaries of some of these 12 accounts were found to be M/s Riddhi Sidhi Jewellers, Shri Amar Israni, M/s Goyal Colliery, M/s Kriplani Industries, M/s Krishna Industries and Shri Ashok Dhariwal, all based out of Raipur. In the statement on oath recorded of Shri Rakesh Amrani of M/s Riddhi Sidhi Jewellers, it was explained that he is in the business of purchasing bullion from Mumbai, Kolkata etc., and selling the same in the local market of Raipur. The money collected in advance from the bullion traders of Raipur was deposited and RTGS was done to Mumbai, Kolkata etc. for purchasing bullion on their behalf."

43. In view of the above, we find merit in the submissions of the Ld**.** AR of the assessee that these twelve **(**12**)** statements of the account-holders did not contain anything which incriminated the assessee society or which would suggest that the cash deposited with the assessee society by these account holders represented its own unaccounted monies**.** Even if these statements are considered at their face value, it is noted that some individuals were taking advantage of the absence of reporting compliances on the assessee society to route their own unaccounted monies and even the ultimate beneficiaries had been named by these account-holders and identified by the authorities as well**.** On these facts, we find merit in the assessee society**'**s contention that these twelve **(**12**)** statements did not contain any incriminating material which could be used to disturb the finality of these unabated AYs and justify the additions made by the AO u/s 68 of the Act**.**

44. It is noted that the Ld**.** CIT**(**A**)** had also relied on the findings of the second search action conducted u/s 132 of the Act dated 26**.**05**.**2017 to justify the additions made by the AO in these two unabated AYs which were being framed consequent to the first search conducted on 09**.**02**.**2016**.** According to us, the findings, if any, made by the Investigating authorities in the course of second search cannot be said to constitute incriminating material unearthed in the course of first search to justify the additions in the unabated AYs 2010-11 & 2011-12 unless the Ld**.** CIT**(**A**)** was able to find anything from the seized material **(**during second **(**2nd **)** search**)** pertaining to AY**.** 2010-

11 & AY. 2011-12 which is not the case of Ld. CIT(A) as per the impugned order. Moreover, we find that the relevant material/ evidence/asset etc. which was subsequently found & seized in the second search dated 26-05-2017 neither forms part of the seized material of the first search nor the assessment records pursuant to which the assessments framed u/s 153A of the Act dated 29-12-2017 for the relevant unabated AYs 2010-11 & 2011-12. Apart from making a sweeping statement that instances of improper KYC documentation was noted in second search, the Ld. CIT(A) has also not brought on record any specific incriminating material found in the second search which would show that these errors/omission were unearthed in the KYC documentation of the existing account-holders in FYs 2009-10 &2010-11. This aspect assumes significance for the reason that, according to Ld. CIT(A) at Para 5.8 of his appellate order, the AO had prima facie stated that KYC compliance was done by the assessee at the time of opening the accounts in these two AYs. In our considered view therefore, in the facts and circumstances discussed (supra), the instances of improper KYC documentation if any noted in second search cannot constitute incriminating material found in the course of first search so as to make additions in the impugned unabated AYs.

45. As far as the report of Ld. DDIT(I&CI) is concerned, it is noted that, this spot verification was not the result of the search but it comprised of the *pre-search* enquiries made by the I&CI Wing of the Investigating authorities which led to the search action u/s 132 of the Act upon the assessee society. Only if the Revenue demonstrates that

some material or document or evidence was unearthed in the course of search or that some incriminating statement was obtained in the course of search, which supported the findings of this verification report, only then such verification report could have been used to disturb the finality of the unabated assessments**.** The Revenue, however, has been unable to do so in the present case**.** In our considered view therefore, this verification report on its own cannot be said to be incriminating material unearthed in the course of search**.**

46. Also, this spot verification was conducted in relation to the cash deposits made by ten **(**10**)** members in their accounts held with the assessee society during FY 2015-16 and therefore it did not pertain to the relevant AYs 2010-11 & 2011-12**.** The Ld**.** AR also explained that this spot verification report primarily traces the cash deposits with the transfers/RTGS made to different firms/entities**.** He showed us that, during the relevant FY 2009-10 there were no RTGS made by any of the members of the assessee society and therefore this report was of no relevance in the relevant AY**.** Hence, we find merit in the Ld**.** AR**'**s contention that the Ld**.** CIT**(**A**)'**s reliance on this report to justify the impugned additions in the unabated AYs 2010-11 & 2011-12 was factually misplaced**.**

47. Be that as it may, the contents of the report shows that the Ld**.** DDIT**(**I&CI**)** had observed that these account holders were depositing large sums of cash on different dates in the accounts held by them with the assessee society, which was in turn being routed to different firms

by way of RTGS who were the ultimate beneficiaries of these deposits and had failed to disclose the same in their respective tax returns**.** The Ld**.** DDIT**(**I&CI**)** observed that by taking advantage of the absence of reporting liabilities, these societies were being used as a conduit for money laundering**.** It is therefore noted that, it was not the case of the DDIT**(**I&CI**)** that these cash deposits belonged to the assessee or represented its unaccounted monies**.** Rather, according to the DDIT**(**I&CI**)**, certain individuals were using the accounts held by members in the assessee society to route their unaccounted monies and the beneficiaries in relation thereto is also noted to have been identified by the DDIT**(**I&CI**).** In fact, one of the ten persons viz**.**, Mr**.** R**.**A**.** Shah from whom enquiries were made had admitted that he had not disclosed his account in his tax return and accordingly revised his return of income and paid taxes thereon**.** On these facts, we are unable to countenance the action of Ld**.** CIT**(**A**)** seeking to justify the additions by way of unexplained monies being made u/s 68 of the Act in the hands of the assessee society, based on this spot verification report which does not incriminate the assessee qua the cash deposits made by these depositors qua these relevant AYs in these appeals**.**

48. It is further noted that, the Ld**.** DDIT**(**I&CI**)** was of the view that the assessee was flouting the norms of prudent financial irregularities by accepting such high value cash deposits without first verifying the source of funds and creditworthiness of the account holders**.** To this, the Ld**.** AR submitted that these observations were their own subjective inferences of the DDIT**(**I&CI**)** and were not based on any

tangible material or cogent evidence against the assessee**.** The Ld**.** AR explained that, the assessee being a cooperative credit society was providing banking & credit facilities to its members**.** In terms of the Multi State Cooperative Societies Act, 2002 read with Part V of the Banking Regulation Act, 1949, the assessee society was only required to obtain the relevant KYC details of the members at the time of opening of their accounts and like other banks / banking institutions, they were not statutorily empowered to enquire into their source of funds or their creditworthiness whenever they deposited funds in their respective accounts held with the assessee society**.** He pointed out that, unlike banks which could flag suspicious transactions in their suspicious transaction report or cash transaction report which they were required to statutorily file with the concerned departments, the assessee society was unable to do so in the absence of any corresponding provision in law**.** It is noted by us that this absence of statutory reporting obligation/liabilities were also taken note of by the DDIT**(**I&CI**)** in their report**.** The Ld**.** AR thus submitted that, the absence of statutory reporting liabilities cannot be held against the assessee so as to suggest that the assessee was facilitating such high value cash deposits**.** To substantiate the bonafides of the assessee society, the Ld**.** AR showed that the assessee had suo moto written several petitions to the Financial Intelligence Unit **(**FIU-IND**)** much prior to the date of search on 09**.**02**.**2016 viz**.**, between July 2014 to June 2016 wherein they had time and again requested them to register them with FIU-IND so that they could share the details & information of their members with the concerned Department**.** He showed us that,

it was only vide Circular dated 08-01-2018 that the multi-state cooperative societies were brought within the purview of PMLA Act, 2002 and all multi-state cooperative societies were required to register themselves with the Department**.** Before us, the Revenue was unable to bring any material on record to controvert the aforesaid submissions of the assessee society**.**

49. On the overall conspectus of the facts, as discussed in the foregoing, we thus hold that the reasoning given by the Ld**.** CIT**(**A**)** *viz***.**, existence of incriminating material & statements against the assessee society, to justify the validity of the additions made in the unabated assessments framed u/s 153A/143**(**3**)** of the Act for AY 2010-11 was untenable both on facts and in law**.**

50. As far as the disallowance of interest & administrative expenses u/s 69C of the Act, it is noted that according to Ld**.** CIT**(**A**)**, there was no incriminating material found in the course of search which suggested that these expenses were unaccounted for**.** Further, the Ld**.** CIT**(**A**)** has rightly observed that these expenses were recorded in the regular books of the assessee and therefore invocation of Section 69C of the Act was unwarranted**.** The relevant findings of the Ld**.** CIT**(**A**)** in this regard were as follows**:**

> **"**5**.**40 The assessee contends that the addition made by the AO u/s**.** 69C of interest and administrative expenses of Rs**.**4**.**86 crores and Rs**.** 4**.**37 crores respectively, is not justified since the AO did not carry out any verification

of its claim of expenses**.** It is noted that in course of the search action, there was no incriminating material found, which suggested that the expenses claimed by the assessee of interest and administrative expenses are unaccounted**.** It is further observed that the AO has made these disallowance of unexplained expenditure u/s**.** 69C, which is not correct considering the said expenses were duly recorded in the regular books**.** Further, it is noted that the entire findings of the search action is related to the unaccounted cash being deposited for the purposes of its laundering, non-compliance of to the KYC norms, violation of Rule 114B, etc**.** Since the assessment for the relevant year is an unabated assessment, which cannot be disturbed in absence of incriminating material as held by jurisdictional High Court in the cases of Continental Warehousing Corp**. (**Nhava Sheva**)** Ltd**. (**supra**)** and Murli Agro products **(**supra**)**,, there is merit in the contention of the assessee that the disallowance of interest and administrative expenses made by the AO under sec**.**69C is not correct**.** The AO is therefore directed to delete the said disallowances of the interest and administrative expenses of Rs**.** 4**.**86 crores and Rs**.** 4**.**37 crores respectively**."**

51. Before us, the Ld**.** CIT, DR was unable to bring anything on record to controvert the above findings of the Ld**.** CIT**(**A**).** Accordingly, we do not see any reason to interfere with the above findings of the Ld**.** CIT**(**A**).**

52. For the reasons set out above, we are therefore of the view that there was no incriminating material qua the assessee which would justify the additions made by the AO in the unabated AY 2010-11. The AO is accordingly directed to delete the same. Therefore, the ground

of appeal of the assessee as stated by us at para 19 (supra) therefore stands allowed.

53. In view of our above findings, the remaining grounds taken by the assessee on the merits of the additions/disallowances have been rendered academic in nature and is therefore not being separately adjudicated upon. Accordingly, the appeal of the assessee in ITA No.4001/Mum/2019 for AY 2010-11 stands allowed on the legal ground as stated at para 19 (supra).

54. Since the facts and circumstances in the lead case under consideration, being ITA No. 4001/Mum/2019, [for A.Y. 2010-11] is identical to the other unabated AY 2011-12 in ITA No. 4002/Mum/2019, our decision in the case of ITA No. 4001/Mum/2019, for A.Y. 2010-11 of the assessee's appeal shall apply *mutatis mutandis* to the assessee`s appeal in ITA No. 4002/Mum/2019 for the unabated AY 2011-12. Hence, the appeal of the assessee for the AY 2011-12 also stands allowed in terms of para 19 (supra).

55. In view of our above findings, the appeals of the Revenue in ITA Nos. 3943/Mum/2019 & 3944/Mum/2019 for AYs 2010-11 & 2011-12, respectively, are rendered academic in nature. We therefore dismiss the both of them as infructuous.

56. In the result, the appeals of the assessee for AYs 2010-11 & 2011-12 in ITA Nos**.** 4001 & 4002/Mum/2019 stands allowed and the

corresponding appeals of the Revenue in in ITA Nos. 3943 & 3944/Mum/2019 stands dismissed as infructuous**.**

57. Before parting, we make it clear that this order of ours is based on peculiar facts and circumstances of the case as discussed **(**supra**).** And so, should not be taken as a precedent while deciding such matters**.**

Order pronounced in the open court on this 06/02/2023.

Sd/-	Sd/-
(AMARJIT SINGH)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांकDated : 06/02/2023.
Vijay Pal Singh, (Sr. PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

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