

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 528/Mum/2021 (A.Y.2009-10)
&
ITA No. 531/Mum/2021 (A.Y.2010-11)

Shri Avinash Nivrutti Bhosale,
2, ABIL House, Ganesh Khind
Road, Range Hill Corner,
Pune-411 007

..... Appellant

Vs.

DCIT Cent. Cir 2(3)
8th floor, R. No. 803,
Old CGO Bldg, Pratistha
Bhavan, M. K. Road,
Mumbai-400 020
PAN – ABTPB8151F

..... Respondent

Appellant by : Shri Madhur Agarwal, Ld. AR

Respondent by : Smt. Shailja Rai, Ld. DR

Date of hearing : 19/05/2023

Date of pronouncement : 10/07/2023

ORDER

PER GAGAN GOYAL, A.M:

These appeals by assessee are directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 08.02.2021 and 22.02.2021 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2009-10 and 2010-11 respectively. As the grounds raised and facts of the case are absolutely identical in both the appeals and an issue of limitation is involved, we are deciding appeal for AY 2010-11 first so that the issue of limitation if decided in favour of assessee equally applicable for AY 2009-10 also. The assessee has raised the following grounds in ITA No. 531/Mum/2021 for AY 2010-11:-

1. *The learned CIT (A) erred in not appreciating that the learned A.O. had no jurisdiction to issue notice u/s. 153A for the year under consideration and thereby the assessment completed u/s. 153A be declared null and void.*
2. *The learned CIT(A) failed to appreciate that the asst. year under consideration fell beyond six assessment years from the end of the assessment year relevant to the previous year in which the search was conducted and since, no evidence or books of accounts seized in the course of search on the assessee revealed that the income in the form of an asset had escaped assessment amounting to Rs. 50,00,000/- or more, the notice issued u/s. 153A is bad in law and consequently, the assessment completed u/s. 153A be declared null and void.*
3. *The learned CIT (A) erred in not appreciating that the Id. A.O. had issued notice to the assessee u/s. 153A for the year under consideration on the basis of evidence seized in the course of search or India bulls Group without appreciating that no notice u/s. 153A could be issued to the assessee for the year under consideration on the basis of the evidence found with the third party.*

4. *The learned CIT(A) failed to appreciate that India bulls Group was searched on 13.07.2006 which was prior to 1st April, 2017 and therefore, no notice u/s. 153A could be issued to the assessee for the year under consideration on the basis of the search conducted on India bulls Group.*
5. *The learned CIT(A) erred in confirming the addition of Rs. 7,99,04,500/- on the ground that the assessee had advanced cash loans to India bulls Group on the basis of the evidence seized from the search action on India bulls Group and therefore, the addition made by the ld. A.O. was justified on the facts of the case.*
6. *The learned CIT(A) erred in holding that the assessee was in a regular practice of giving unaccounted cash loans and therefore, the addition made by the learned A.O. of Rs. 7,99,04,500/-, was justified on the facts of the case.*
7. *The learned CIT(A) failed to appreciate that no incriminating evidence was found in the course of the search on the assessee pertaining to the addition made and since the original asst. u/s. 143(3) was completed for the year under consideration, no addition to be made in the hands of the assessee.*
8. *The learned CIT(A) erred in placing reliance on the statements recorded of the employees of India bulls Group without appreciating that the copies of the relevant statements were not furnished to the assessee and hence, question of placing reliance on the said statements for making the addition simply did not arise.*
9. *The learned CIT(A) erred in not appreciating that no addition to be made in the hands of the assessee on the basis of the evidence found with third party and in the absence of the any corroborative evidence, the addition made may kindly be deleted.*
10. *The learned CIT(A) ought to have appreciated that before Hon'ble Settlement Commission, India bulls Group had owned up the various noting noted in the seized material on the basis of which the addition was made in the hands of the assessee and accordingly, there was no question of confirming the addition in the case of the assessee.*
11. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

2. The Brief facts of the case are that the assessee Individual is a proprietor of 3 concerns namely M/s. Amit Constructions, M/s. Swapnali Constructions and M/s. Avinash & Bhosale Wind Mill Firms. First two entities are engaged in the business activity of civil contractors and builders while 3rd entity is engaged in generation of wind power. Assessee is also partner in other partnership firms and also director in many companies which are engaged in the business of infrastructure and real estate business. Assessee filed his original return for AY 2010-11 on 05-10-2010 declaring total income at Rs. 10,40,07,140/-. Case of the assessee was selected for scrutiny u/s. 143(2) of the act and assessed u/s. 143(3) at a figure of Rs. 12,89,46,425/-.

3. Being aggrieved with this order assessee preferred an appeal before the Ld.CIT (A) Pune. Ld.CIT (A) partly allowed the appeal and reduced the additions by Rs. 1, 04, 10,638/-. A search and seizure action u/s. 132 was carried out in the case of India Bulls Group on 13 July 2016. During the course of search action incriminating material in the form of digital evidences, loose papers and other documents were found and seized.

4. A further search and seizure action u/s. 132 was carried out on ABIL Group on 21-07-2017. This group belongs to the assessee under consideration. Case of the assessee was centralized and a notice u/s. 153A of the act was issued on 04-09-2018. In response to this notice assessee filed return of income on 14-11-2018 declaring total income at Rs. 12,31,20,230/-. Case of the assessee was assessed at Rs. 20, 30, 24,730/- u/s. 153A r.w.s. 143(3) of the Act. Assessee being aggrieved with this order of AO preferred

an appeal before the Ld.CIT (A). In his order Ld.CIT (A) confirmed the order of AO.

5. Assessee being further aggrieved preferred this present appeal before us. We have gone through the order of AO, order of Ld.CIT (A) and submissions of the assessee. Our observation on the facts of the case is as under:

- i. No notice was issued to the assessee u/s. 153C consequent to search and seizure action u/s. 132 on India Bulls Group on 13 July 2016. Although incriminating material and evidences were found against the assessee during the search at India Bulls Group. It looks to be a cautious call of revenue not to issue notice u/s. 153C of the Act;
- ii. Search u/s. 132 of the Act, conducted on assessee after a period of more than one year, i.e., in 2017. Department have not found anything in the form of incriminating material/evidence which leads to made addition u/s. 153A of the Act;
- iii. Assessee's regular assessment was completed u/s. 143(3) of the Act and further addition can be made only if conditions prescribed in Section 153A fulfilled by the Revenue;
- iv. Even the remand report filed by AO, before the Ld. CIT (A) clearly confirms the factual position, that AO has relied upon the documents/evidences found during the search conducted in 2016 at the premises of India Bulls Group and not at the premises of assessee and its group companies.

- v. AO could have applied provisions of section 147/148 also in case conditions envisaged in section 147/148 are being fulfilled. This also not done in the present case. It's a classic case where all the options equally effective were available to AO but, he opted for assessment u/s. 153A which is rather not available to him in the given circumstances and facts of the case.

6. Identical issue of the assessee discussed and adjudicated earlier also by the coordinate bench in ITA No. 529 & 530/Mum/2021 for AY 2011-12 and 2015-16 in assessee's own case. The relevant extract of the said order is reproduced as under:-

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

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

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

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

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

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

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

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

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

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

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]

we are of the view that the amended provision of the section 153A/153C are applicable to the case of the assessee for which the search was initiated on 22.07.2017 but when the material relied by the AO to initiate the proceedings in the case of the assessee wherein he relies on the material found during search conducted in the case of the third party for which the search material relied for which the search was conducted prior to amendment, even though the transition period, in our view, the provision and procedure should be followed relevant to pre-amendment period. The AO may be allowed to complete the assessment u/s 153A by applying the material found during the search of the third party however, to complete the same he has to follow the procedure laid down for section 153C particularly when they rely on the material found or statement of third party. In the given case, the assessment was completed u/s 153A based on the information found during the search of third party, without corroborating any material in the hands of the assessee and merely relying on the statement of the third party and information declared before ITSC. From the satisfaction note recorded by the AO (as stated above) to initiate proceedings u/s 153A, he has recorded that he was satisfied that the income escaped by unaccounted cash loan is more than 50 lakhs in each of the relevant year. This is new proviso inserted

from 1.4.2017. It is applicable only prospectively and to initiate the assessment proceedings u/s 153A, the new inserted proviso is applicable but the AO has completed the proceedings u/s 153A by heavily relying on the information and material found in the possession of the third party.

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

Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi); [2015] SCC Online Del 11554 concerning the scope of assessment under section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. The Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the Explanation to section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empowers the Assessing Officer to frame the block assessment. This court in Pr. CIT v. Best Infrastructure (India) P. Ltd. [2017] 397 ITR 82 (Delhi); [2017] SCC Online Del 9591¹ has inter alia held that (page 101 of 397 ITR):

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

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

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

In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words 'evidence found as a result of search' would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.

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

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

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

If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under section 132(4) is accepted, it would result in ignoring an important check on the power of the Assessing Officer and would expose the assessee's to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.

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

10. Now, coming to the aspect, viz., the invocation of section 153A on the basis of the statement recorded in search action against a third person, we may note that the Assessing Officer has used this statement on oath recorded in the course of search conducted in the case of a third party (i. e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than the person searched (as referred to in section 153A), then the only legal recourse available to the Department was to proceed in terms of section 153C of the Act by handing over the same to the Assessing Officer who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under section 132(4) of the Act). As noted above, the assessee had no

opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the Income-tax Appellate Tribunal. Therefore, we do not find any substantial question of law that requires our consideration.

Respectfully following the above decision and also we observe from the record that the AO has not followed the due process/procedure laid down under section 153C to complete the proceedings initiated u/s 153A of the Act makes the whole assessment bad in law. The search was conducted in the present case after a gap of almost one year from the date of the search initiated in the case of India Bulls, no material was brought on record to show that the AO of the India Bulls has forwarded his satisfaction and or any procedure followed by the present AO to frame the assessment. Accordingly, the grounds raised by the assessee on the jurisdictional issue are decided in favour of the assessee.

7. Section 153A is a straight jacket formula of making assessment in the case of search and seizure operations conducted in the case of any assessee. Section 153A is straight and strict enough to operate in a particular manner. There is no room for any variation in case of section 153A is being applicable on any assessee. If the submission on behalf of the revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the Assessing Officer can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A is linked with the search and requisition under sections 132 and 132A. The object of section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the Assessing Officer would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment

period even in case of completed/unabated assessment. As per the second proviso to section 153A, only pending assessment/reassessment shall stand abated and the Assessing Officer would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

8. Having perused the decisions relied upon by the Ld. CIT (A) also; we find that none of them deals with the situation of an assessment under section 153A of the Act pursuant to a search under section 132 of the Act. In particular, they do not deal with the situation where no incriminating material is found during the course of search on the basis of which additions could be sustained in the case of un-abated assessment, under section 153A of the Act. In view of the settled legal position as explained in several decisions of High Courts which have been referred by assessee as well as in the order of the Hon'ble Apex Court in the case of **PCIT, Central-3 vs. Abhisar Buildwell P. Ltd., [2023] 149 taxmann.com 399 (SC)**, the Tribunal is not persuaded that a different view should be taken in the matter as far as the present case is concerned.

9. We further rely on the findings of Hon'ble Jurisdictional High Court in the case of **[2015] 58 taxmann.com 78 (Bom.) CIT-II, Thane v. Continental Warehousing Corporation (Nhava Sheva) Ltd.**

"A bare perusal of section 153A would indicate as to how a non-obstante clause has been inserted and with a defined intent. Where search is initiated under section 132 or

books of account, other documents or any assets are requisitioned under section 132A after 31-5- 2003, that the Assessing Officer is in a position to and mandated to issue notice within the meaning of sub-section (1) of section 153A. That is because, Chapter XIII within which the powers of search and seizure and powers to requisition books of account are spelt out enable the revenue to take care of cases where it effects a search and seizure. That search and seizure is affected and after the same is affected, books of account, other documents, money, bullion, jewellery or other valuable article or thing is found as a result thereof that notwithstanding anything and within the meaning of the above provisions having been concluded, it is open for the revenue to make an assessment. It is also open to the revenue to make a reassessment in cases where it exercises the powers to requisition books of account etc. This is because it is of the view that the books of account are required to be summoned or taken into custody. It, therefore, issues a summons in that regard. It may also requisition the books of account or other documents for that might be useful and or any assets representing withholding or part income or property which has not been or would not have been disclosed for the purpose of the Indian Income-tax Act, 1922 or the Income-tax Act of 1961 by any person from whose possession or control they have been taken into custody. This is when the authorities have reason to believe that such powers need to be exercised. Therefore, the fetters and which are to be found in other provisions are removed and a notice of assessment in such cases is then issued. That is mandated by sub-section (1) of section 153A. It is not only the issuance of the notice but assessment or reassessment of total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition has to be made. [Para 22]”

“The Division Bench outlined the ambit and scope of the powers conferred by section 153A and observed that on a plain reading of section 153A, it becomes clear that on initiation of the proceedings under section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under section 132 or making requisition under section 132A stand abated and not the

assessments/reassessments already finalised for those assessment years covered under section 153A. By a Circular No. 8 of 2003, dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under section 153A, the assessments/reassessments finalised for the assessment years covered under section 153A stand abated cannot be accepted. Similarly on annulment of assessment made under section 153A (1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A (1).”

“Once it is held that the assessment has attained finality, then the Assessing Officer while passing the independent assessment order under section 153A read with section 143 (3) could not have disturbed the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under section 153A establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings. If there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings, the Assessing Officer while passing order under section 153A read with section 143(3) cannot disturb the assessment order [Para 28]”

10. In view of the above discussion on facts of the case and relevant judicial pronouncement, we found force in the grounds of the appeal raised by the assessee and **allow Ground No. 1 raised by the assessee** and hold that notice issued by the AO was beyond 6 years, i.e., beyond his jurisdiction and consequently assessment framed is also null and void. As no books of accounts or

evidence seized in the course of search on the assessee, which reveals that income in the form of an asset had escaped assessment amounting to Rs. 50 Lacs or more. Further, we find that assessment in the instant case is of Hybrid Nature, i.e., assessment proceedings carried out u/s. 153A of the Act, but evidence were being used as defined in section 153C of the Act, which is not permissible at all.

11. Rest of the grounds raised by the assessee need not be adjudicated being academic in nature now, in view of our findings with reference Ground No. 1 (supra). Resultantly, Ground No. 1 raised by the assessee is allowed.

12. **In the result, appeal of the assessee is allowed.**

ITA No. 528/Mum/2021 (A.Y.2009-10)

13. The revenue has raised the following grounds of appeal:-

1] *The learned CIT(A) erred in not appreciating that the learned A.O. had no jurisdiction to issue notice u/s. 153A for the year under consideration and thereby the assessment completed u/s. 153A be declared null and void.*

2] *The learned CIT(A) failed to appreciate that the asst. year under consideration fell beyond six assessment years from the end of the assessment year relevant to the previous year in which the search was conducted and since, no evidence or books of accounts seized in the course of search on the assessee revealed that the income in the form of an asset had escaped assessment amounting to Rs. 50,00,000/- or more, the notice issued u/s. 153A is bad in law and consequently, the assessment completed u/s. 153A be declared null and void.*

3] *The learned CIT (A) erred in not appreciating that the Id. A.O. had issued notice to the assessee u/s. 153A for the year under consideration on the basis of evidence*

seized in the course of search or India bulls Group without appreciating that no notice u/s. 153A could be issued to the assessee for the year under consideration on the basis of the evidence found with the third party.

4] *The learned CIT(A) failed to appreciate that India bulls Group was searched on 13.07.2016 which was prior to 1(st) April, 2017 and therefore, no notice u/s. 153A could be issued to the assessee for the year under consideration on the basis of the search conducted on India bulls Group.*

5] *The learned CIT(A) erred in confirming the addition of Rs. 8,50,00,000/- on the ground that the assessee had advanced cash loans to India bulls Group on the basis of the evidence seized from the search action on India bulls Group and therefore, the addition made by the ld. A.O. was justified on the facts of the case.*

6] *The learned CIT(A) erred in holding that the assessee was in a regular practice of giving unaccounted cash loans and therefore, the addition made by the learned A.O. of Rs. 8.50 Crs. was justified on the facts of the case.*

7] *The learned CIT(A) failed to appreciate that no incriminating evidence was found in the course of the search on the assessee pertaining to the addition made and since the original asst. u/s. 143(3) was completed for the year under consideration, no addition to be made in the hands of the assessee.*

8] *The learned CIT(A) erred in placing reliance on the statements recorded of the employees of India bulls Group without appreciating that the copies of the relevant statements were not furnished to the assessee and hence, question of placing reliance on the said statements for making the addition simply did not arise.*

9] *The learned CIT(A) erred in not appreciating that no addition to be made in the hands of the assessee on the basis of the evidence found with third party and in the absence of the any corroborative evidence, the addition made may kindly be deleted.*

10] The learned CIT(A) ought to have appreciated that before Hon'ble Settlement Commission, India bulls Group had owned up the various noting noted in the seized material on the basis of which the addition was made in the hands of the assessee and accordingly, there was no question of confirming the addition in the case of the assessee.

11] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

14. Since we have already decided the similar grounds in ITA No. 531/Mum/2021 for AY 2010-11, the results will apply mutatis mutandis to this appeal also. Hence the grounds raised by the assessee in this appeal are also allowed. Resultantly, this appeal is allowed.

15. **In the result, both the appeals filed by the assessee are allowed.**

Order pronounced in the open court on 10th day of July, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 10/07/2023

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai