

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER,**

**ITA Nos. 247 & 240 to 244/MUM/2023
(AYs 2011-12 & 2013-14 to 2017-18)**

Naresh Manakchand Jain Flat No. 2101, Tower-1 Summer Trinity, Next to Samna Press, Prabhadevi Rd. Mumbai 400025	vs.	Asst. CIT Central Circle-2(1) 804, 8 th Floor, Pratishtha Bhawan, M.K. Road Mumbai 400020
PAN/GIR No. : AACPJ9811A		
Appellant	..	Respondent

Appellant by :	Shri Sucheck Anchaliya & Shri Tushar Nagori
Respondent by :	Shri S. Srinivasu, CIT-DR

Date of Hearing	04.04.2024
Date of Pronouncement	27.06.2024

आदेश / O R D E R

PER OM PRAKASH KANT, AM:

These appeals by the assessee are directed against orders passed by the Id. Commissioner of Income Tax (Appeals) - 46 (in short 'the CIT(A)') for AYs 2011-12 and 2013-14 to 2017-18, respectively. The facts and circumstances and grounds raised in the appeals being identical, these appeals were heard together and disposed off by way of this consolidated order for convenience.

2. The captioned appeals are arising from two separate search actions in the case of the assessee. The appeal for AY 2011-12 is arising from assessment completed consequent to search and seizure action u/s. 132 of the Income Tax Act, 1961 (in short 'the Act') conducted by the Investigation Wing of the Income Tax Department, Pune on 20.10.2016 in connection with the searches carried out on 'Ranka' Group of cases, whereas the appeals for AYs 2013-14 to 2017-18 are arising from assessments completed consequent to search carried out on 19.03.2019 at the premises of assessee. Therefore, first we take up the appeal for AY 2011-12 for adjudication.

ITA No. 247/Mum/2023

3. The grounds raised by the assessee are reproduced as under:

“1. *Under the facts and circumstances of the case the CIT(A) has erred in confirming the addition made by the Assessing Officer amounting to Rs.1,71,046/- out of Rs.3,59,713/- as unexplained expenditure u/s 69C of Income Tax Act, 1961.*

Relief Claimed”

Addition made by the AO and confirmed by the CIT(A) amounting to Rs.1,71,046/- should be deleted.

The appellant craves right to add, amend, alter, modify, substitute any or all of the grounds of appeals at the time of hearing.”

3.1 The assessee also filed additional grounds as under: -

“Additional Ground No. 01

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding the assessment order passed by the Assessing Officer u/s.153A r.w.s. 144 of the Act as valid without appreciating the fact that the assessment made by the Ld. Assessing officer u/s 153A of the Act was beyond jurisdiction as no

incriminating material was found during the course of search u/s 132 of the Act with respect to the addition made by the Ld. AO.

Additional Ground No. 02

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding the notice issued by the Ld. AO u/s 153A of the Act on 29.08.2019 as valid, without appreciating the fact that for the search conducted u/s 132 of the Act on 20.10.2016, the notice u/s 153A of the Act was already issued by the DCIT CC-2(1), Pune on 18.09.2018 and thereby erred in not appreciating the fact that there cannot be two notices u/s 153A issued in respect of the same search u/s 132 of the Act.

Additional Ground No. 03.

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in considering the impugned order of the Ld. AO u/s 144 r.w.s. 153A of the Act dated 12.09.2019 as valid, without appreciating the fact that in respect of the same search proceedings conducted u/s 132 of the Act dated 20.10.2016, an order u/s 144 r.w.s 153A of the Act was already passed by DCIT CC 2(1), Pune on 30.04.2019 and thereby erred in not appreciating the fact that there cannot be two assessment orders for a particular assessment year in consequence to proceedings u/s 153A of the Act emanating from the same search conducted u/s 132 of the Act on 20.10.2016.

Additional Ground No. 04.

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the assessment order u/s 144 r.w.s. 153A of the Act dated 12.09.2019 passed by the ACIT 20(2), Mumbai valid without appreciating the fact that the ACIT 20(2), Mumbai has no jurisdiction to make an assessment of the assessee if the declared income of the assessee is less than 20 Lacs and thereby erred in not following the Instruction No. 01/2011 of CBDT dated 31.01.2011."

3.2 The additional grounds raised being legal in nature and not requiring investigation of fresh facts and therefore, after considering the rival submissions of the parties, we admitted the additional grounds for adjudication in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT [1998] 229 ITR 383 (SC).

4. Briefly stated facts of the case are that consequent to search action dated 20.10.2016 on the assessee, the case of the assessee was centralized at Pune. However, in view of the writ preferred by the assessee, the order u/s. 127 passed by the Pr. Commissioner of Income Tax, 20, Mumbai was quashed by the Hon'ble Bombay High Court. Subsequently vide another order u/s. 127 dated 28/08.2019, the case of the assessee was assigned to the Asst. Commissioner of Income Tax – 20(2), Mumbai. Thereafter statutory notices were issued and the Assessing Officer (AO) completed assessment u/s. 153A r.w.s. 144 of the Act) and made addition for unexplained credit card expenses amounting to Rs.3,59,713/-. On further appeal, the ld. CIT(A) allowed part relief to the assessee by way of deleting the expenses to the extent of Rs.1,88,667/-. The relevant findings of the ld. CIT(A) is reproduced as under:

“6.3 From the above submissions, I find that appellant has already incurred and shown Rs.1,88,667/- as expenses through credit card of ICICI Bank. Therefore, I am the opinion that appellant is entitled for relief upto the extent of Rs.1,88,667/- being expenses incurred through credit card of ICICI Bank.

*6.4 Accordingly, the AO is directed to allow the deduction of Rs.1,88,667/- to the appellant. Thus the Ground No. 5 of appellant is **partly allowed.**”*

5. Before us the ld. Counsel for the assessee, addressing the additional grounds, challenged the validity of the addition made in assessment u/s. 153A of the Act without the aid of any incriminating material. He referred to the assessment order and submitted that the AO has only made the addition for the credit card expenses which is based on the Annual Information Return (AIR). He further submitted that the year under assessment was unabated assessment, therefore, any

addition could have been made only with the aid of incriminating material as held by the Hon'ble Mumbai High Court in the case of **CIT V. Continental Warehousing Corporation [2015] 374 ITR 645]** which has been upheld by the Hon'ble Supreme Court in **PCIT v. Abhisar Buildwell (P) Ltd. [2023] 454 ITR 212 (SC)**. Therefore, he submitted that in absence of any incriminating material, the addition made by the AO cannot be sustained.

6. On the contrary, the ld. D.R. relied on the orders of the lower authorities.

7. We have heard rival submissions of the parties in respect of the additional ground No. 1 raised by the assessee. The dispute raised in the additional ground between the parties is whether any addition could be made qua the assessment year under consideration without the aid of incriminating material. Regarding the dispute, we may like to refer to the decision of the Hon'ble Bombay High Court in the case of **CIT V. Continental Warehousing Corporation (supra)** where in it is held that in the case of unabated assessment years, no addition could have been made without the aid of incriminating material. The ratio of the decision of the Hon'ble Bombay High Court (supra) has been further upheld by the Hon'ble Supreme Court in **Abhisar Buildwell (P) Ltd. (supra)**. In the instant case, it is not disputed that AY 2011-12 is unabated in respect of the search action dated 20.10.2016. Therefore, the only dispute left is whether the addition made by the AO is based on any incriminating material or not. For examining the said issue it is relevant to reproduce paragraph 12 of the AO, which reads as under:

"12. It is seen from the AIR that the assessee has incurred credit card expenses of Rs.3,59,713/- through ICICI Bank. During the

course of assessment proceedings the assessee was asked to give the details of card held and also requested to give the evidence explaining the source of expenditure made through credit card Rs.3,59,713/-. However, the assessee has not explained the source of the same with supporting documents. Accordingly, the same is added to the total income as unexplained expenditure u/s. 69C. Having regard to the nature of addition I am satisfied that the concealed the particulars of his income and therefore penalty proceedings u/s 271(1)(c) are attracted in the case of the assessee. Accordingly notice u/s. 274 rws 271(1)(c) is being issued separately.”

8. It is evident from the above that the AO has made addition for credit card expenses only on the basis of the Annual Information Return available with the Income Tax Department and there is no reference of any incriminating material found during the course of search action at the premises of the assessee. Therefore, following the ratio of the Hon'ble Bombay High Court in the case of **Continental Warehousing Corporation(supra)** and the Hon'ble Supreme Court in the case of **Abhisar Buildwell (P) Ltd. (supra)**, no addition could have been made in the year under consideration without the aid of incriminating material. The addition made by the AO and sustained by the Id. CIT(A) is accordingly deleted. Additional Ground No. 1 of the assessee is accordingly allowed.

9. Since we have already held that no addition could have been made in the instant assessment year without the aid of incriminating material, therefore, the other additional grounds as well as the regular grounds raised by the assessee are rendered merely academic and not required to be adjudicated upon at this stage.

ITA Nos. 240 -244/Mum/2023 for AY 2013-14 to 2017-18

10. Now, we take up the second set of appeals from AYs 2013-14 to 2017-18. Identical grounds have been raised in above set of the assessment years and therefore for sake of brevity, we only reproduce the grounds raised by the assessee in AY 2013-14:

1. *Under the facts and circumstances of the case and in law, the CIT (A) has erred in confirming the order passed by the AO being bad in law on various ground in law and in equity and the same should be annulled.*
2. *Under the facts and circumstances of the case and in law, the CIT (A) has grossly erred in not allowing access to the incriminating material relied upon by AO for the appellant to rebut it and thereby has violated the principles of natural justice and as such order passed should be annulled and or set aside.*
3. *Under the facts and circumstances of the case and in law the CIT (A) has erred in confirming the estimation made by the AO based on conjecture, surmise and capris without there being any material to suggest that the appellant had ever earned such income and as such addition made by the AO should be deleted.*
4. *Under the facts and circumstances of the case and in law the CIT (A) has erred in confirming the addition made by the AO mechanically by taking trade value of alleged scripts and that to without bringing on record the role of the appellant in entire alleged trade and thereby addition made by the AO is devoid of laid down law of real income theory and as such the addition made by the AO as confirmed by CIT (A) should be deleted.*
5. *Under the facts and circumstances of the case the CIT (A) has erred in confirming the addition made by the Assessing Officer amounting to ₹ 9,58,14,350/- as income of the appellant without there being any incriminating material or either corresponding cash or unexplained assets to show that the appellant had ever indeed received such income and hence the same should be deleted being merely based on a predisposition to a purported theory for making an addition to income.”*

11. The assessee also raised additional grounds in respect of AYs 2013-14 to 2017-18, which are identical to the additional grounds raised in AY 2011-12. For sake of brevity, the additional grounds raised in 2013-14 are reproduced as under:

“1. Additional Ground No. 01

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding the assessment order passed by the Assessing Officer u/s 153A r.w.s. 143(3) of the Act as valid without appreciating the fact that the assessment made by the Ld. AO u/s 153A of the Act was beyond jurisdiction as no incriminating material was found during the course of search u/s 132 of the Act with respect to the addition made by the Ld. AO.

2. Additional Ground No. 02

2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in dismissing the appeal of the assessee without appreciating fact that the Assessment order passed by the Ld. Assessing Officer is void ab intio since it does not bear any Document Identification Number (DIN) on its assessment order body as mandated by the Circular No. 19/2019 issued by the CBDT.

2.2 On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in dismissing the appeal of the assessee without appreciating fact that the notice issued under section 143(2) of the Act by the ld. Assessing Officer is void ab intio since it does not bear any document Identification Number (DIN) on it Notice body as mandated by the circular No. 19/2019 issued by the CBDT.

Additional Ground No. 03

On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition made by ld. AO, without providing any opportunity of cross examination on whose statements the Ld. AO relied in the assessment order and also without providing copies of statements relied upon.”

11.1 The additional grounds raised being legal in nature and not requiring investigation of fresh facts ,therefore, after considering the

rival submissions of the parties, we admitted the additional grounds for adjudication in view of the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. vs. CIT [1998] 229 ITR 383 (SC)**.

12. The brief facts of the case are that the assessee filed return of income for AY 2013-14 on 26.07.2013 declaring total income at Rs.11,92,490/-. In the case of the assessee, a search and seizure action u/s. 132 of the Act was carried out on 19.03.2019 along with searches on other individuals, which the Assessing Officer (AO) has alleged to be associates of the assessee in business of providing accommodation entries in the form of long term capital gains/losses to various beneficiaries across the country. Consequent to the search, notice u/s. 153A of the Act was issued and assessment u/s. 153A r.w.s. 143(3) of the Act was completed on 23.04.2021, whereby the AO estimated 3% commission on the entire trade volume carried out in 12 scrips on stock exchange platform amounting to Rs.314,38,11,692/-. The said commission income has been determined by the AO at Rs.9,58,14,350/-. In the assessment order, the AO has extensively referred to the process of giving accommodation entry of bogus long term capital gain(LTCG) or bogus short term capital losses (STCL) or business losses. The AO has referred to the role of the operator/ promoters of 'Penny Stock Companies', share brokers and also mentioned in detail the modus operandi of the syndicate of all those involved in the process of providing accommodation entries. The AO has also given a detailed note on the basic modes of providing bogus long term capital gain *interalia* (i) amalgamation of unlisted companies with listed entities, (ii) preferential allotment of equity shares, (iii) allotment of bonus shares, (iv) splitting the shares and (v) initial public offer. The AO referred to pre-search enquiries in the case of the assessee and mentioned the analysis of the

price movement in the scrip of 'Shantanu Sheorey Acqua P. Ltd'. The AO has further referred to the finding in the case of the assessee observed in search action carried out on 20.10.2016 along with the case of 'Ranka Jewellers', which was conducted by the Director of Investigation, Pune. The AO thereafter referred to the statement of assessee u/s 132(4) of the Act during search action dated 20.10.2016. The AO also referred to the state of Shri Bhupesh Rathod during the course of search action dated 20.10.2016 in the case of the assessee. He also referred to the statement of the assessee in survey operations in the case of 'PFL Infotech Ltd' which was carried out along with the search dated 20.10.2016. Thereafter, the AO has made his observation on the analysis of the seized material and submissions during the present search, which is the genesis of this assessment proceedings u/s. 153A of the Act.

13. The AO referred to the statement of Shri Bhupesh Rathod and statement of Sh Jigar Ghogari , recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019. The AO further referred to the following statements as under:

- i. Statement of Shri Hemant Sheth recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019 at 39A, Orbit Height Tower, Nana Chowk, J.D Marg, Mumbai 400007.*
- ii. Statement of Shri Rakesh Shah recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019 at C-2, Arihant Society, Ashok Road, Kandivali East, Mumbai 400101.*
- iii. Statement of Shri Bhavesh Pabari recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019 at Flat No. 61, Sant Namdo Krupa Building, Gamdevi, Mumbai 400007.*
- iv. Statement of Shri Bhavesh Pabari recorded u/s. 131 of the Act on 29.05.2019 at Room No. 1818, Air India Building, Nariman Point, Mumbai where he was asked regarding digital data found during the course of search on 19.03.2019 from his premises.*

- v. *Statement of Shri Sunil Palecha, claimed to be an associate of Shri Shirish Shah, recorded u/s. 132(4) of the Act on 20.03.2019 at office No. 7, 5th Floor, Block A. Aidum Building, Dhobi Talao, Mumbai.*
- vi. *Statement of Shri Shirsh C. Shah recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019 at office No. 7, 5th Floor, Block A. Aidum Building, Dhobi Talao, Mumbai.*
- vii. *Statement of Shri Rasvikant M. Choudhary recorded u/s. 132(4) of the Act during the search proceedings on 08.05.2019 at Flat No. 311 & 312, Vaibhav Apartments, No. 62 EVK Sampath Road, Vepery, Chennai.*
- viii. *Statement of Shri Mahesh Meetal recorded u/s. 132(4) of the Act during the search proceedings on 19.03.2019 at Vinay Khand, Gomti Nagar Lucknow.*

13.1 The AO also referred to certain digital data of pre-arranged nature of the transaction on the stock exchange.

14. In view of these observations, the AO issued a show cause notice to the assessee as he was involved in providing bogus entries of LTCG/STCL/business loss etc in 12 scrips and asked as to why 3% commission on entire trade volume in those 12 scrips carried on stock exchange of Rs.319,38,11,692/- for the year under consideration be computed as commission earned by the assessee, which was worked out at Rs.9,58,14,350/-. The assessee filed detailed objections which have been reproduced by the AO from pages 86 to 130 of the impugned assessment order. The AO rejected the retraction of the assessee from the statement recorded on oath during search action. He further observed that certain email account namely kaamdenu@gmail.com was retrieved from the office of the assessee, where he had been communicating with his associates. The AO further referred to the statement of Shri Manoj Honawar and Shri Abhinandan Jain, who are claimed to be staff of Shri Naresh Jain's office engaged in operating the email having address of

kaamdenu@gmail.com. In view of the above finding and observations the AO computed the commission income of the assessee for the year under consideration as under:

“Shri Naresh Jain has provided mainly three type of accomodation entries namely Bogus LTCG, Bogus STCL/Business Loss and Circular trading. He himself has stated to have earned 3% commission for circular trading of various scrips on the stock exchange. Since, the assessee has not provided the accurate bifurcation of entries pertaining to the above three categories of accomodation entires, the definitive value is not ascerainable. In veiw of the same, the undisclosed commission income of Shri Naresh Jain is at least 3% of the entire trade value/containg element of transactions of LTCG/STCL/Circular trading) of Rs. 319,38,11,692/-effected during the year and thus commission income is computed at Rs. 9,58,14,350/-.”

15. Further, the Id. CIT(A), also upheld the commission income observing as under:

“7.21 Besides, the confessional statements, a large number of incriminating documents/digital data have been found during the course of search, which conclusively prove that the appellant and the various group concerns have been used as conduits for providing accommodation entries.

7.22 In view of the above detailed discussion, it is clear that Shri Naresh M. Jain is the main person operating with his several associates to rig the stock market and to provide accommodation entries (in the form of bogus LTCG, bogus short term loss/gain) to various beneficiaries who intended to bring their unaccounted income into their books of without paying taxes,

8. Further, I find that appellant has mainly provided three types of accommodation entries namely Bogus LTCG, Bogus STCL/Business Loss and Circular trading.

8.1 Cash was deposited in various Dummy bank accounts and then layered through several pass-through bank accounts and then would reach the bank accounts linked to dummy trading accounts. This cash is the unaccounted cash of the beneficiaries that is routed through various bank accounts to reach the bank accounts that are linked to the dummy trading accounts controlled, operated and managed by Shri Naresh Jain.

8.2 Once the pre-arranged transaction between beneficiary and dummy trading account is executed on the stock exchange, the

beneficiary receives his cash into his bank account and books of account.

8.3 The accounting of the above explained pre-arranged transactions were maintained meticulously and the same is explained in detail in the statements of appellant and his associates.

*8.4 The main motive was to bring unaccounted cash of various beneficiaries to the main stream books of accounts by claiming long term capital gain. **In this whole process Shri Naresh jain played a very crucial role by interlinking the beneficiaries, brokers, intermediaries and exit providers for which he charged a specific commission. The appellant himself has stated to have earned 3% commission for circular trading of various scripts on the stock exchange***

*8.5 Hence, I am of the considered view that the impugned addition made by AO of Rs. 9,58,14,350/- for the year under consideration deserved to be confirmed. Thus, the ground no. 2 of appellant is hereby **Dismissed***

(emphasis supplied externally).

16. Before us the assessee has raised regular grounds as well as additional grounds. The additional ground No. 1 of the assessee relates to existence of incriminating material qua the addition of commission income. The Id. Counsel filed a paper book containing pages 1-63, which is combined for AYs 2013-14 to 2017-18.

17. On the contrary, the Id. D.R. also filed various reports from the AO in support of the contentions that commission income has been estimated not only on the basis of the statements of the assessee and its associates, but also in view of the incriminating material which was found during the course of search.

18. We have heard the rival submissions of the parties and perused the material on record. As far as the additional ground No. 1 of the appeal is

concerned, the moot issue in dispute is whether the addition in dispute of commission income amounting to Rs.9,58,14,350/- has been made based on 'incriminating material' found during the course of search dated 20.03.2019. In the case of **Continental Warehousing Corporation (supra)**, the Hon'ble Bombay High Court held that if the assessments of any years is pending as on date of search, the same stands abated due to search action and AO can make any addition in those assessment years based on the facts and circumstances of the case and not limited to the additions based on incriminating material. But in assessment years in relation to which the assessments were already completed as on the date of search action, those are unabated assessments and in those cases no addition could have been made except based on incriminating material found during the course of search action. However, as far as any incriminating material related to the any other person found during the course of search of searched person, action in the case of the other person can be taken in terms of s. 153C of the Act if the said material is either belonging to the assessee or books of account or documents pertaining to him or any information contained thereof is relating the assessee. In the instant case assessments have been completed u/s. 153A of the Act and not u/s. 153C of the Act. Therefore only incriminating material which is found during the course of search action at the premises of assessee could be considered for making addition u/s. 153A of the Act and no addition could have been made based on any incriminating material found during the course of search of another person in the absence of invoking provisions of s. 153C of the Act. Thus, now the question which is left before us is whether any incriminating material has been found during the course of search from the premises

of the assessee qua the addition in dispute of commission income of Rs.9,58,14,350/-.

19. In the preceding paragraphs, we have referred to various statements and observations made by the AO for making the addition of commission income. The AO has referred extensively to the statements of various persons. The question now arises is whether the statement of the assessee or the statements of third persons could constitute an incriminating material found during the course of search of assessee. In this regard, we would like to refer to the decision of the Hon'ble Madras High Court in the case of **B Kishore Kumar Vs DCIT (2014) 52 taxmann.com 449(madras)**, wherein the Hon'ble High Court held that when there is a clear and categorical, voluntary admission of the undisclosed income by the assessee himself, there is no necessity for a scrutinizing the documents and that would be good piece of evidence. In the instant case the admission of assessee engaged in providing accommodation entry has been retracted subsequently by the assessee, and therefore, the statement of assessee was voluntary or not is not free from doubts. Further, Hon'ble Delhi High Court in the case of **CIT vs Harjeev Aggarwal reported in (2015) 62 taxmann.com 215**, held that a statement recorded under section 132(4) of the Act by itself would not be sufficient to assess the income and it could be used for making the assessment but only to the extent it is related to the incriminating evidence/material unearthed or found during such. The relevant finding of the Hon'ble High Court is reproduced as under:

"20. 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 AO to make a block assessment merely because any admission was made by the Assessee during search operation.

21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, 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 to for an assessment to be based on the statement recorded.”

19.1 Thus, without relating the statements recorded under section 132(4) of the Act with any incriminating material found during the course of search, no addition could have been made on the basis of the statement on the stand-alone basis.

19.2 Further, regarding the statement of third parties recorded in the course of the search, the Hon'ble Delhi High Court in the case of **PCIT (Central) vs Anand Kumar jain (HUF) in ITA No. 23/2021**, held that without corroborating with the incriminating material, the statement cannot be made basis for addition u/s 153A of the Act. Further the

coordinate bench of the Tribunal in the case of **DCIT Vs Skyway Infra Projects P ltd in ITA No. 2665/Mum/2022** and others observed that statement of supplier parties (third parties), along with additional facts of lack of evidence in support of transport/delivery of material and nonexistence of the parties during verification, constitute existence of incriminating material.

19.3 In view of decisions discussed above, it is evident that the statement of assessee recorded under section 132(4) except voluntarily, cannot constitute incriminating material on standalone basis without corroboration of any incriminating material found during the course of the search. Similarly statement recorded of third parties under section 132(4) of the Act also cannot constitute an incriminating material unless same is corroborated with any incriminating material seized from the premises of the assessee. Therefore, in the instant case, we hold that the statements of the assessee or the various third-party mentioned by the Assessing Officer in the impugned assessment order could not be made the basis of addition, unless those statements are corroborated with any incriminating material found during the course of search. Thus, the issue now precipitated is whether any incriminating material was found during the course of the search of the assessee qua the addition of commission income computed on value of trade volume on the stock exchange in 12 Scrips, which the Assessing Officer has mentioned in the impugned assessment order.

19.4 As far as existence of incriminating material is concerned, the learned Assessing Officer in impugned assessment order has referred to seized material as under:

“2.3 Analysis of seized material and statements:-

The analysis of seized material, the findings and extracts from the statements of various persons covered during and after the search-action presented in the following manner: -

- 1. Establishing the role of intermediaries in creating bogus accounts the purpose of rigging various scrips on the stock exchange.*
- 2. Establishing that the persons whose accounts were created by the intermediaries are in fact persons of no-means and had neither understanding nor knowledge of the transactions carried in their accounts. Also, establishing role of Shri Shirish Shah in using his various entities for providing exit to the beneficiaries on stock exchanges.*
- 3. The role of Share Brokers in facilitating the transactions of bogus entities on stock exchanges is established.*
- 4. The bank accounts of exit providers have been traced several layers downwards and **a cash trail** has been established along with the direct link to the trading of scrips.*
- 5. Also, the trading in the scrips and cash movement has been clearly corroborated with the accounts that were maintained by Shri Naresh Jain and his associates. Essentially linking the cash to the bank accounts of bogus entities and in turn linking to the trading done by these bogus entities and eventually matching these transactions the accounts maintained by Shri Naresh Jain and his associates.”*

20. On perusal of above finding of Assessing Officer, we do not find reference of any seized material in making the analysis. The AO

concluded that *the role of Share Brokers in facilitating the transactions of bogus entities on stock exchanges is established*, but he has not referred to any seized material for arriving that conclusion. Similarly, he concluded that *the bank accounts of exit providers have been traced several layers downwards and a cash trail has been established along with the direct link to the trading of scrips*. But, we find that AO has not referred to any seized material which could indicate cash trail between the assessee and alleged beneficiary of LTCG or exit provider except relying on statements of third parties. Further, regarding the email of kaamdenu@gmail.com also the AO has not pointed out the incriminality in correspondence through email.

21. The Id CIT(A) also concluded that *Cash was deposited in various Dummy bank accounts and then layered through several pass-through bank accounts and then would reach the bank accounts linked to dummy trading accounts*. He further concluded that *said cash was the unaccounted cash of the beneficiaries that was routed through various bank accounts to reach the bank accounts that were linked to the dummy trading accounts controlled, operated and managed by Shri Naresh Jain*. But, the Id CIT(A) has not referred to any seized material for this conclusion except relying on investigation in the case of Kolkata entry providers. The Id CIT(A) further concluded that *Once the pre-arranged transaction between beneficiary and dummy trading account is executed on the stock exchange, the beneficiary receives his cash into his bank account and books of account*. The Id CIT(A) further observed that *the accounting of the above explained pre-arranged transactions were maintained meticulously and the same was explained in detail in the statements of appellant and his associates*. But, the Id CIT(A) has not referred to any seized material to substantiate that accounting of such

transaction was maintained meticulously. Further the Id CIT(A) observed *that in this whole process Shri Naresh jain played a very crucial role by interlinking the beneficiaries, brokers, intermediaries and exit providers for which he charged a specific commission.* The Id CIT(A) has not referred to any single incriminating material interlinking the beneficiaries, brokers, intermediaries and exit providers except statement of assessee.

22. Thus, we are of the opinion that either in the assessment order or in the order of Id CIT(A), there is no express reference of any seized material much less incriminating material found from the premises of the assessee in support of allegation of assessee being involved in business of accommodation entry of LTCG .

23. As far as the 'digital data' found from the premises of persons other than Shri Naresh Jain is concerned, same cannot be taken into consideration in the present proceedings u/s. 153A of the Act without invoking s. 153C of the Act.

24. During the course of hearing before us, the Id. D.R. referred to 'loose' papers marked as Annexure-A, which were seized from the premises of the assessee located at 602, Raheja Chambers, 213, Nariman Point, Mumbai. The Id. D.R. referred to the written submission of the Assessing officer dated 9/3/2024 and submitted that pages 172 to 145 of the said Annexure refer to shareholder agreement as entered among three parties namely, 52 Weeks Entertainment Ltd., Four Lions Films Private Limited and Mrs Gule Nagma Khan. He further submitted that Ms Karisma Jain (daughter of the assessee) is a Director of 52 Weeks Entertainment Limited , therefore, the assessee and his family are hand in glove in manipulation of shares of 52 Weeks Entertainment ltd. He further referred to the statement of the assessee dated 19.03.2019

recorded u/s. 132(4) of the Act and submitted that the assessee had admitted that 52 Weeks Entertainment Ltd. is one of the shares rigged by him and, therefore, this is one of the incriminating material. The Ld Counsel for the assessee however responded that the said agreement was in respect of acquisition of the shares of Four Lions Pvt. Ltd. by M/s 52 Weeks Entertainment Ltd. The daughter of the assessee being director of 52 Weeks Entertainment Ltd. from 23.08.2014 and who subsequent became director of Four Lions P. Ltd. on 01.07.2015 , therefore, same was maintained as part of routine business practice, devoid of any incriminating content regarding share manipulation. Further, page Nos. 144-120 are in relation to pledge of shares of M/s Four Lions Films Pvt. Ltd. in lieu of convertible loan of 500 lacs given by M/s 52 Week Ltd. to Four Lions Ltd. Those documents were part of chain of documents in continuation to share of agreement available on page No. 72-145 of the said annexure. Regarding pages 119 to 112, which is a list of share allotment made on 18.09.2014 along with full address PAN etc. The Ld. Counsel for the assessee submitted that same is a public document downloaded from the Ministry of Company Affairs (MCA) Site. Regarding the loose papers seized at Serial No. 111 to 93 the Ld. DR submitted that those empty stamp papers in the name of M/s 52 Weeks Entertainment Ltd. are clinching evidences in support of the statement of the assessee that he was involved in front running and manipulation of scrip to accommodate bogus LTCG. The Ld. Counsel for the assessee however responded that those stamp papers were related to a film project that was to be produced by Shri Abbas Mastan and financed by M/s 52 Weeks Entertainment Ltd. and those papers were brought for execution of a specific contract for film production among the parties in whose name the stamp paper belonged. According to the Ld. Counsel there was

nothing incriminating in respect of those stamp papers. The Ld. DR could not controvert his submissions. Similarly the page No. 90 to 91 of the annexure is a resolution copy of the shareholder agreement which has been already referred in page No. 172 to 145 of the annexure. Regarding the page No. 89 to 86 the Ld. DR submitted that those documents indicate involvement in the shares of M/s 52 Weeks Entertainment Ltd. however, the Ld. Counsel responded that the documents relate to agreement for purchase of the property by Mono Type India Ltd. from Cosmos Infrastructure Ltd. and thus is was not even remotely connected with the allegation of bogus LTCG. Regarding pages 85 to 41 the Ld. Counsel for the assessee responded that same were official documents for allotment of the shares by M/s 52 Weeks Entertainment Ltd. and those documents had nothing to do with the allegation of rigging and front running of shares. Regarding the pages 40-26 the Ld. DR submitted that those blank cheques were used for rigging the stock market. However, the LD. Counsel for the assessee given details submission in respect of the each black cheque. According to him, black cheque available on page 40-39 is a blanck cheque of Pranjali Pvt. Ltd. in which assessee is a director and in respect of that company no share trading activity had taken place nor a demat account had been opened and therefore, allegation of manipulation in shares was only presumption of ld DR. The page 38 to 35 was personal guarantee given to Nova Logistics Pvt. Ltd. and those cheques were taken as a counter guarantee to protect the assessee against the default by the borrower. Other pages are also similar guarantee and not in relation to any allegation of accommodation entry of LTCG. The other documents from 25 to 1 were also not found to be related to any of the allegation of providing accommodation entry of the LTCG.

25. The documents referred above, mainly pertain to 52 Weeks Entertainment Limited, a company where Ms. Karishma Jain, the daughter of the Assessee, was serving as a director. But none of, those seized materials qualify as incriminating in nature by collating with those 12 scrips. In view of detailed rebuttal by the Id Counsel for the assessee, it is evident that the documents seized alleged by the Id DR as incriminating material are general documents and nowhere suggest any kind of link with the allegation of accommodation entry business or commission income earned there on. The documents in any manner does not lead to the allegation of the lower authorities that cash was received from accommodation entry seeker by the assessee and after deposit into some personal accounts it was routed to the accounts of buyers of such scrip i.e. exit provider, and the assessee earned commission on such accommodation entry transactions. The above documents do not corroborate the statement recorded of the assessee as well as of the third parties under section 132(4) of the Act.

26. Ultimately, after meticulous consideration and rebuttal of each document by the counsel for the assessee, we find that none of the materials seized from Annexure-A substantiate the allegations of accommodation entries or commission income from such transactions, as posited by the lower authorities. The documents reviewed do not support the assertion that the assessee facilitated cash transactions from accommodation seekers, subsequently depositing funds into personal accounts and then redirecting them to buyers of the securities for a commission.

27. In conclusion, based on the comprehensive arguments presented before us, we are of the opinion that the documents contained in Annexure-A do not establish any nexus with the alleged modus operandi of generating bogus Long Term Capital Gains or Short Term Capital Losses. The contentions raised by the Departmental Representative regarding the incriminating nature of the seized materials have not been substantiated, thereby failing to uphold the additions made by the Assessing Officer concerning commission income.

28. The learned DR further submitted that the loose papers folder marked as Annexure A-1 seized from the premises of the assessee located 602, Raheja Chambers , Nariman Point, Mumbai comprises of phone call records of beneficiaries in excel format. However on verification, same is found to be a list of phone numbers only, which does not lead to any link with the allegations by the Assessing Officer.

29. The learned DR further submitted that from the office of the assessee, emails have been retrieved from the email account kaamdenu@gmail.com, in which assessee was communicating with his associates regarding scrips under reference. According to the learned DR the email correspondence indicates his active involvement/anchoring in the modus operandi of providing bogus LTCG/STCL. Before us learned DR filed a copy of letter dated 26/02/2024 addressed by the Assessing Officer to the Bench, which is placed on record. The said letter contains print out of the

email correspondence as Annexure U-1 and Annexure U-2. On perusal of Annexure U-1, we find that same contain a table with heading as 'steel Exchange India Limited' and subheading as 'buyers list 24/11/2017 INE503B01013'. The various columns of the table contain SNO. Folio, Name, holding as on 31/10/2017, shares bought, holding as on 24/11/2017. There are three more tables having similar columns i.e. details of the names and No. of shares. We do not understand as how above list indicate or give lead to support the allegation that assessee was engaged in providing accommodation entries in the shares of steel exchange of India Ltd. The first page of annexure U-2 refers to email related to annual report of Divine Multimedia (India) Ltd., second page refers to some name of shares and their numbers, third page refers to notice for annual general meeting of Nyssa Corporation Ltd. , other pages refers to annual general meeting or ledger account etc. These mails are on behalf of Monotype India Ltd. We find that no efforts have been made by the lower authorities that those email correspondence corroborate to statement of assessee of having engaged in providing accommodation entries. It seems that lower authorities have first concluded that assessee was engaged in providing accommodation entries and thereafter they have referred to certain pages claiming to be incriminating material, without actually analysing those documents.

30. Similarly, the image of logo of Monotype India Ltd. or other images which have been referred by the ld. D.R. as part of data

seized, does not establish that those documents are incriminating in nature.

31. Further, the ld DR submitted that cash of Rs. 1,11,790/- found from the premises of the assessee was incriminating material. We find the Assessing Officer in the impugned order has nowhere mentioned that the cash found was incriminating in nature. We also find that no addition has been made by the AO for unexplained cash found. Any way such small amount found can't support the huge addition of more than Rs. 9 crores made in hands of the assessee as commission income for the year under consideration. The Ld DR further referred to the material seized from premises of other persons, but same can't be taken into consideration under present proceedings u/s 153A of the Act because same could have been only considered u/s 153C proceedings of the Act.

32. We have perused the entire assessment order and submissions of the ld. D.R., but we find that the documents seized in Annexure A-1 from Raheja Chambers including e-mail correspondence etc. does not show any kind of incriminality in itself. Those documents could not be considered as incriminating material corroborating to the statement of the assessee. The ld CIT(A) held that besides confessional statement of assessee, a large number of incriminating material /digital data have been found during the course of search, which conclusively prove that the group concern of assessee were used as conduit for providing accommodation entries, but he has nowhere mentioned any single

such incriminating material. In paragraph 8.4 of the impugned order, which has been reproduced above, the Ld. CIT(A) observed that main motive of the assessee was to bring unaccounted cash of various beneficiaries to the mainstream of books of accounts by claiming the same as long-term capital gain and in this whole process the assessee played a very crucial role by interlinking beneficiaries, brokers, intermediaries and exit provider for which he charged a specific commission. But the analysis of the seized document submitted by the learned departmental representative before us do not indicate any such lead regarding the role of the assessee in interlinking of beneficiaries, brokers, intermediaries and exit provider. In the entire seized documents there is no reference of any commission charged by the assessee. This entire addition made by the Assessing Officer is merely based on the confessional statement of the assessee, statement recorded in earlier search and addition proposed in earlier assessment years. The said statements cannot be held to be incriminating material in view of the decisions of the various Hon'ble High Courts discussed above.

33. In view of the above, the addition of commission income made by the AO merely relying on the statement of the assessee as well as the statements of other parties, cannot be sustained in absence of an incriminating material corroborating those statements, in view of the decision of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (supra) which has been upheld by the Hon'ble Supreme Court in *Abhisar Buildwell (P) Ltd.*

(supra). The additional ground No. 1 of the appeal of the assessee is accordingly allowed.

34. Before us the learned counsel for the assessee has raised another additional ground challenging that the Assessing Officer had not followed direction of the CBDT issued by way of circular for citing document identification Number (DIN) on the assessment orders. The learned counsel for the assessee extensively argued in support of this additional ground. Since, we have already allowed the first additional ground in favour of the assessee, therefore adjudication of the additional ground on the issue of the DIN is merely rendered academic and thus, we are not adjudicating upon the same. The other grounds raised by the assessee also rendered academic in view of our finding on the additional ground No. one of the appeal. Accordingly, we are not adjudicating upon those remaining grounds of the assessee challenging merit of addition etc.

35. Similar additional ground have been raised by the assessee in other appeals from assessment year 2014-15 to 2017-18. In view of discussion in AY 2013-14, the additional grounds raised in AYs 2014-15 to 2017-18 are admitted for adjudication. Following our finding in assessment year 2013-14, the additional ground challenging validity of the addition in absence of an incriminating material, is allowed in favour of the assessee. The other grounds and additional rounds raised in those appeals are rendered academic and therefore same not adjudicated upon.

36. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 27.06.2024.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(OM PRAKASH KANT)
Accountant Member

Place: Mumbai

Date: 27.06.2024

n.p

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 DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

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