IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.982 to 987/Bang/2023
Assessment Years: 2011-12 to 2016-17

M/s. John Distilleries Pvt. Ltd. C/o Gowthama & Company, Chartered Accountants No.23/57, 41st Cross, East End C Main Road 9th Block Jayanagar Bangalore 560 069 **PAN NO : AAACJ4322P**	**Vs.**	DCIT Central Circle-1(1) Bangalore
APPELLANT		**RESPONDENT**

ITA Nos.961, 962 & 1012/Bang/2023
Assessment Years: 2015-16, 2016-17 & 2014-15 respectively

DCIT Central Circle-1(1) Bangalore	**Vs.**	M/s. John Distilleries Pvt. Ltd No.401-410, C Wing Mittal Tower, M.G. Road Bangalore 560 001 Karnataka **PAN No.AAACJ4322P**
APPELLANT		**RESPONDENT**

ITA Nos.838 to 843/Bang/2023
Assessment Years: 2011-12 to 2016-17

M/s. Paul Resorts & Hotels Pvt. Ltd. C/o Gowthama & Company, Chartered Accountants No.23/57, 41st Cross, East End C Main Road 9th Block Jayanagar Bangalore 560 069	**Vs.**	DCIT Central Circle-1(1) Bangalore

PAN NO : AACCB3797N		
APPELLANT		**RESPONDENT**

ITA Nos.844/Bang/2023
Assessment Year: 2017-18

M/s. Paul Plathotathil John C/o Gowthama & Company, Chartered Accountants No.23/57, 41st Cross, East End C Main Road 9th Block Jayanagar Bangalore 560 069 **PAN NO : ADCPJ0742K**	**Vs.**	DCIT Central Circle-1(1) Bangalore
APPELLANT		**RESPONDENT**

ITA Nos.845 to 847/Bang/2023
Assessment Years: 2014-15 to 2016-17

M/s. John Developers C/o Gowthama & Company, Chartered Accountants No.23/57, 41st Cross, East End C Main Road 9th Block Jayanagar Bangalore 560 069 **PAN NO : AAJFJ2606A**	**Vs.**	DCIT Central Circle-1(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri T.M. Shivakumar, Sr. A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	19.06.2024
Date of Pronouncement	:	24.07.2024

O R D E R

PER BENCH:

All the appeals by assessee and revenue are directed against different orders of CIT(A) for the respective assessment years noted above. Since the issues in all these appeals is common except for figures, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

ITA Nos.982 to 987/Bang/2023 in the case of M/. John Distilleries Pvt. Ltd. for the AYs 2011-12 to 2016-17:

2. First, we will take up ITA Nos.982 to 987/Bang/2023 for the assessment years 2011-12 to 2016-17.

2.1 These appeals are directed against common order of CIT(A) for the assessment years 2011-12 to 2017-18 dated 31.12.2018. Since the issues in these appeals are common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

3. The assessee filed common additional ground in ITA Nos.984, 986/Bang/2023 for assessment years 2013-14 & 2015-16 under Rule 11 of the I.T. Act along with petition as follows:

> "*Ground no. 9A: Without prejudice to the above, there was no transaction with the said contractors during the Previous Year 2012-13 and hence no addition was called for in this AY and thus the addition made by the AO is liable to be deleted."*

Similar additional ground in assessment year 2015-16.

3.1 With regard to above additional ground, the contention of the assessee counsel is that in this two assessment years 2013-14 & 2015-16, there was no transaction with the said contractors which

is considered as a bogus and there cannot e any disallowance since the main issue has been remitted back to the file of ld. AO to consider the books of accounts of the assessee. This ground is also should go back to the ld. AO if there is no transaction with the said contractors as narrated in the assessment order in AY 2013-14 & 2015-16 and no addition could be made.

4. The ld. D.R. strongly opposed the admission of additional grounds raised by the assessee before us.

5. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional ground for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bona fide.

6. The assessee filed application under Rule 29 r.w.s. Rule 18(4) of the ITAT Rules, 1962 in ITA Nos.982 to 987/Bang/2023 wherein assessee filed following additional evidences for consideration in all these appeals:

(i) ITA Nos - 982/BANG/2023 A.Y 2011-12

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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(ii) ITA Nos - 983/BANG/2023 A.Y 2012-13

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(iii) ITA Nos - 984/BANG/2023 A.Y 2013-14

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6	Copy of bills and vouchers for expenditure under the head 'Promotion-Sales schemes and discounts expenses'.	20-312
7	Copy of bills and vouchers for expenditure under the head 'Carriage outward expenses'.	313-1383

(iv) ITA Nos - 985/BANG/2023 A.Y 2014-15

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5	Revised Computation of Income	12-18
6	Copy of bills and vouchers for expenditure under the head 'Promotion-Sales schemes and discounts expenses'.	19-876
7	Copy of bills and vouchers for expenditure under the head 'Carriage outward expenses'.	877-1825

(v) ITA Nos - 986/BANG/2023 A.Y 2015-16

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7	Copy of bills and vouchers for expenditure under the head 'Carriage outward expenses'.	738-2238

(vi) ITA Nos - 987/BANG/2023 A.Y 2016-17

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	'Promotion-Sales schemes and discounts expenses'.	
7	Copy of bills and vouchers for expenditure under the head 'Carriage outward expenses'.	403-1797

7. The ld. A.R. submitted that the present applications are filed under Rule 29 r/w Rule 18(4) of the Income Tax Appellate Tribunal Rules, 1962 seeking admission of additional evidences in the above matter.

7.1 He submitted that a search and seizure action u/s 132 of the Act was initiated in the case of the Appellant along survey u/s 133A of the Act at its associated concerns on 3rd November 2016. The search team did not find any concealed income that they probably thought the assessee company might be having. In spite of that the search team obtained from the Assessee a declaration of undisclosed income of huge amount of Rs.129 crore u/s 132(4) of the Act spread over seven years (AY 11-12 to 17-18) in the hands of different entities of the Group on the basis of few documents, contents of which had remained to be properly verified and substantiated. It was a lump sum declaration for the entire group which was divided in the hands of different entities and did not have the head-wise break up. The same was done without valid basis and without affording enough time to properly verify from the concerned persons and records which were voluminous. The persons who were queried by the Team were forced to give admissions when they were under tremendous stress and pressure.

7.2 Later on during the post search proceedings, the Management was made to give entity wise head-wise break of the income declared during search by declaring the same under two

heads, namely, (1) Promotion – Sales schemes and discounts expenses and (2) Carriage outward expenses. In the said statement recorded u/s 131(1A) of the Act in the office of the investigation wing of the I T Department, the CMD of the Company had categorically stated that the company has maintained all the bills and vouchers related to Promotion – Sales expenditure as well as Carriage outward expenditure. However he was made to state that to the extent of the amount mentioned therein, the company was then unable to produce the bills / vouchers and hence the same may be disallowed. The said declaration was obtained in in lieu_of the declaration obtained from the management on 4th and 7th November 2016. The final declaration so obtained from the MD is as under:

7.3 He submitted that the CMD had agreed to make the above - mentioned surrender on the basis of the clear understanding and assurance given to him that Company would be given the opportunity to produce the bills/ vouchers before the AO at the time of the assessment and that if he gets satisfied with the same, no disallowance would be confirmed. Accordingly, when the ITRs were filed, the company duly mentioned in the covering letter of the physical ITRs that the additional income was being included in the ITR under protest. Thereafter during the assessment proceedings, it followed it up with a request – both oral as well as written to consider the books of accounts, bills and vouchers etc maintained in respect of all the expenditure incurred and to exclude the additional income included in the ITRs. In this regard reference is firstly invited Appellant's reply dated 25.10.2018 wherein company had duly provided all the relevant documents including the entire

books of accounts, cash book, detailed listing of Transportation (carriage outward) expenses, detailed listing of Sales Promotion and Discount expenses. Second reference is invited to the letter dated 17.12.2018 wherein it had specifically requested the AO to check the bills and vouchers and give necessary credits and refund the excess tax paid. However, Ld. AO did not consider the Appellant's request and passed the assessment order in a hurry. It is submitted that the assessment proceedings were started very late in the day and the AO completed the assessment without considering the Appellant's request in this regard.

7.4 He submitted that before the Ld CIT(A) the appellant took among others, the relevant grounds requesting him to delete the additional income. It was submitted that the company has maintained all the books of accounts, bills / vouchers for the subject expenditures and was ready to submit them even before the Ld. CIT(A) for examination. This plea was rejected and not considered by the Ld. CIT(A). In fact he has made a baseless allegation that the appellant had not made any efforts till the conclusion of assessment to submit the supporting documents for sales promotion and carriage outward expenses and that it had raised the issue for the first time before him by completely ignoring the protest letter of 24.07.2017, replies to notice u/s 142(1) dated 20.10.2028 and 24.07.2017. Ld. CIT(A) has also stated that no retraction statement, no revised computation and no revised return was filed by the appellant without appreciating this fact the assessee has been pleading to examine the books of accounts and all the bills and vouchers and accordingly give credit.

7.5 He submitted that the authorities below have not heeded to the request of the appellant to examine the books of accounts and bills and vouchers in respect of the additional income offered in the ITRs under 'protest' and to exclude the same from total income. Thus, the appellant was not allowed opportunity to substantiate the expenses genuinely incurred for the purpose of business and duly supported by the underlying documents like bills and vouchers. It is submitted that this is a case which is covered by the situations visualized under Rule 29 of the ITAT Rules, 1963. The authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence on the subject disallowances included under protest in the ITR. This is also a case where this Hon'ble Tribunal would require the additional evidence to enable it to pass order. This is also a case where the additional evidences are required to do substantial justice to the case as the 'cause of justice' has taken a big hit in the whole process culminating into the impugned order.

7.6 He submitted that pertinently, the income that can be assessed to tax under section 153A of the Act is only that income which is based on the incriminating material found during the search u/s 132 of the Act as held by the Apex Court in *CIT v. Abhisar Buildwell (P) Ltd., 2023 SCC OnLine SC 481.* However the income that has been assessed by the AO is not based on incriminating material but is based merely on the declaration obtained under pressure without the corresponding incriminating material. As stated earlier, the declaration by way agreeing to disallowance of the expenditure was made with an understanding and assurance that the same would be allowed and deleted when

the company substantiates it during the assessment proceedings. Both the authorities below did no appreciate the spirit behind and the bona fide actions of the Appellant in adhering to the declaration, though given under pressure. The CIT(A) even went on to the extent of holding that the same was an after-thought which, it is humbly submitted, is contrary to the facts on record.

7.7 He submitted that there is tax authorities have no authority to bring to tax income included in the ITR which is otherwise not taxable. It is submitted that CBDT as well as the Courts have time and again held that AO should not take advantage of the actions of the taxpayers and bring to tax that income which is otherwise not-taxable. According to Article 265 of the Constitution of India "No tax can be levied or collected except by authority of law".

7.8 In this background, the ld. A.R. for the assessee submitted that the present application u/r 29 of ITAT Rules, 1962 read with Rule 18(4) of the Rules seeking admission of the following additional evidences:

a. Revised COI (Computation of Income) as pointed out by CIT(A) in his order
b. Bills and vouchers supporting the expenditures under the head Promotion -sales schemes and discount expenses – sample settlements made during the year as a sample lot.
c. Bills and vouchers supporting the expenditures under the head Carriage outward expenses – Sample Journal vouchers with supporting invoices etc for the Previous Year 2010-11 as a sample lot.

d. Further the Appellant prays for permission to submit similar documents for the whole year for verification.

7.9 He prayed that the above documents may kindly be admitted in the interest of justice and fair play. If permitted the Appellant would also submit the balance documents for the entire year for verification. The company follows the system wherein the bills and vouchers of a particular month relating to all kinds of expenditure are bound together in to bound books at the end of the year and stored in godowns. Bills and vouchers etc of a particular head of expenditure cannot be separately taken out without breaking the bound books with a risk of the left margins getting torn. Hence the Appellant has, on sample basis, broken open few volumes of such book for each year for the period as above and producing the same for admission as additional evidence with a prayer to allow production of balance documents of the year on being convinced of the bona fide submission of the Appellant in the interest of justice.

7.10 He submitted that the non-submission of the present additional evidences before the AO or CIT(A) were not willful nor intentional. In this regard the appellant respectfully relies upon the ratio of the decision of the Hon'ble High Court of Delhi in the case *CIT v. Text Hundred India Pvt. Ltd., (2013) 351 ITR 57* wherein at Para-13 of the Judgment, it was held that Rule 29 enables the Tribunal to admit any additional evidence which would be necessary to do substantial justice in the matter. Their Lordships further observed that the various procedures, including that relating to filing of additional evidence, is a handmade of justice and justice should not be allowed to be choked only because of

some inadvertent error or omission on the part of one of the parties to lead evidence.

7.11 Without prejudice to the above, the Appellant submits that ITAT is the last fact finding authority under the Act and hence empowered to look into the question of fact also, even if not raised earlier in order to determine the correct tax liability of the Assessee. In this regard the Appellant respectfully relies upon the ratio of the decision of the Hon'ble Apex Court in *Commissioner Of Income-Tax, Madras vs Mahalakshmi Textile Mills 1968 AIR 101* wherein it has been held that *'all questions whether of law or of fact, which relate to the assessment of the assessee may be raised before the Tribunal'.*

7.12 In light of the above the ld. A.R. respectfully prayed that for admission of the following additional documents / evidences under Rule 29 r/w Rule 18(4) of the ITAT Rules, 1962:

a. Revised computation of income (COI) excluding the additional income included in ITR under protest.
b. Bills and vouchers supporting the expenditures under the head Promotion -sales schemes and discount expenses – Sample settlements made during the year as a sample lot.
c. Bills and vouchers supporting the expenditures under the head Carriage outward expenses –Journal vouchers with supporting invoices etc for the Previous Year 2010-11 as a sample lot.
d. He also prayed that the Appellant may kindly be allowed to submit all the bills and vouchers for entire previous

year relevant to A.Y. 11-12 in support of the subject expenditures namely, 'Promotion – Sales schemes and discounts expenses' and 'Carriage outward expenses' as the same are not being produced along with this application being voluminous and bulky.

8. The ld. D.R. submitted that these additional evidences shall not be admitted and placing of these additional evidences is after thought.

9. We have heard both the parties and perused the materials available on record. Admittedly, the assessee vide letter dated 24.07.2017 (filed on 31.7.2017) written to the DCIT Central Circle-1(1), Bangalore submitted that the additional income has been offered and tax has been paid under protest and in case if they are in a position to explain the bona fides of expenses, the benefit should be given to them. For clarity, we reproduce the said letter as follows:

JOHNS

JOHN

DISTILLERIES PVT.LTD.

24.07.2017

To,

Deputy Commissioner of Income Tax,
Central circle 1(1) Bangalore.

Madam,

Ref: PAN: AAACJ1322P – our own - Submission of Return u/s. 153A of the Income Tax Act.
Financial Year 2012-13 (Assessment Year 2013-14)

With reference to the above, as required by you as per notice u/s. 153A of Income tax Act, we have submitted the ROI under section 153A online as on 24th July 2017 and we are also submitting here by the paper return as well for your kind perusal.

Kindly note that the income declared at the time of filing the return of income u/s. 139(1) has been adopted. To the returned income, we have included additional income as submitted at the time of search as additional income and the taxes due have been paid under protest. This additional income has been declared under protest and in case, we are in a position to explain the bonafides of the expenses, the benefits should be given to us.
Thanking You

Yours faithfully,
For John Distilleries Private Limited

Authorized Signatory

Encl: to this letter

1) Acknowledgment for filing the return online
2) Income tax payment challan (paid under protest)
3) Computation of income under section 153A
4) Paper return

31 JUL 2017

9.1 Further, the assessee on 24.10.2018 (filed on 25.10.2018) written one more letter showing the details of expenditure which is kept on record. The assessee filed one more letter before DCIT Central Circle-1(1), Bangalore on 17.12.2018 filed on (18.12.2018), stating that in the final declaration Shri Paul P. John agreed for certain disallowances under the head trade discounts, repair & maintenance and carriage outwards as they were unable to produce the bills during the time of search and requested extra time which were not provided. Now they are in a position to provide the same and requested the department to check the same and give them necessary credit/refund of taxes paid. On failure to get any relief from ld. AO on this count, the assessee also taken up this issue before ld. CIT(A) in all assessment years. However, the ld. CIT(A) not considered this issue by observing that there was an admission from the employees of the assessee company as well as Paul P. John, MD of the assessee company and stated that business income was not properly accounted by the assessee. Even during the assessment proceedings, the assessee did not file any documents in support of claim of assessee. If the claim of assessee was genuine assessee could have filed the revised computation of income modifying the disclosure made in the return filed u/s 153A of the Act. However, only during the appellate proceedings, the assessee raised ground that undisclosed income pertaining to various disallowances made by ld. AO is not correct as these are supported by the bills and vouchers. According to ld. CIT(A) this is afterthought and the assessee has been contradicting the statements of its employees, key persons and CMD recorded on oath without supporting evidences. As rightly pointed out by the assessee, Rule 29 of ITAT Rules, enable the Tribunal to admit

additional evidence which would be necessary to do substantial justice in the matter. In the present case, there has been continuous attempt by the assessee at every stage before the lower authority to file these evidences to claim correct deduction under the provisions of the Act. However, there was an omission on the part of the revenue authorities to give an opportunity to the assessee to produce the same before the assessment stage as well as first appellate stage, Hence, by placing reliance on the judgement of Apex Court in the case of Mahalakshmi Textile Mills and judgement of Delhi High Court in the case of Text Hundred India Pvt. Ltd. cited (supra), since the assessee has been agitating this issue from the beginning and the lower authorities failed to consider the issues in proper perspectives, we admit these additional evidences under Rule 29 of ITAT Rules for adjudication.

10. Facts of the case are that the Assessee company is engaged in the business of distillation, packing, marketing and sales of Indian Made Foreign Liquor. The Registered Office of the said company is in Bangalore. The details of the original returned income offered to tax by the Assessee for the relevant AYs are as under:

Sl No	AY	Income offered in return u/s 139(1)	Date
1	2011-12	9,73,50,750	29.09.2011
2	2012-13	11,43,81,080	25.09.2012
3	2013-14	9,20,95,180	29.09.2013
4	2014-15	NIL	29.11.2014
5	2015-16	NIL	30.09.2015
6	2016-17	16,21,71,610	17.10.2016
7	2017-18	33,97,88,690	06.11.2017

10.1 On 3rd November 2016, a search and seizure action u/s. 132 of the Act was conducted in the group of John Distilleries and the Assessee company being the flagship company of the Group, the search operation was carried out even in the Office premises of the

Assessee at Bengaluru. During the course of search proceedings at M/s. John Distilleries Pvt. Ltd., Bangalore, certain incriminating documents/materials pertaining to assessee were found and ser-zed. Statements were recorded under oath from the employees, the key persons and the CMD of the Assessee Company. Notice u/s. 153A was issued on 29.06.2017 for the AYs 2011-12 to 2016-17. In response to the notice u/s. 153A, the assessee filed the return of come for the relevant AYs, the details of which are as under:

Sl No	AY	Income offered in return u/s 153A for AYs 2011-12 to 2016-17 /139(1) – only for AY 2017-18	Date
1	2011-12	12,15,61,686	24.07.2017
2	2012-13	15,06,45,614	24.07.2017
3	2013-14	12.38,05,430	24.07.2017
4	2014-15	80,58,430	24.07.2017
5	2015-16	88,09,780	31.07.2017
6	2016-17	28,85,28,450	24.07.2017
7	2017-18	33,97,88,690	06.11.2017

Note: AY 2017-18, being the year of search u/s 132, the return of income was filed u/s 139(1)

10.2 The details of undisclosed income as per the return of income filed by the assessee in response to notice u/s 153A, för the AYs 2011-12 to 2016-17 are as under:

Sl No	AY	Returned income u/s 139.	Details of undisclosed income declared		Returned income u/s 153A
			inflated sales and promotion expenses.	bogus carriage outward expenses.	
1	2011-12	9,73,50,750	1,33,91,943	1,07,76,926	12,15,19,619
2	2012-13	11,43,81,080	2,23,19,384	1,39,45,150	15,06,45,614
3	2013-14	9,20,95,180	2,02,79,561	1,13,95,187	12,38,05,430
4	2014-15	(-)2,53,36,115	2,06,68,805	1,27,25,738	80,58,430
5	2015-16	(-)4,19,04,170	3,39,72,356	1,67,41,590	88,09,780
6	2016-17	22,94,11,895	4,03,73,597	1,87,42,956	28,85,28,450
7	2017-18	33,97,88,690	NA	NA	NA

Note: AY 2017-18, being the year of search u/s 132, the return of income was filed u/s 139(1)

10.3 Pursuant to the issue of notice u/s 153A, the Income assessed in the orders passed by the AO u/s 153A r.w.s. 143(3) r.w.s. 153D, dated 31.12.2018 for the AYs 2011-12 to 2016-17

and u/s 143(3) r.w.s.153D 2017-18 dated 31.12.2018, are as under:

Sl No	AY	Income offered in return u/s 153A	Income Assessed in order passed by AO.	Date of order
1	2011-12	12,15,61,686	12,17,69,270	31.12.2018
2	2012-13	15,06,45,614	15,54,45,700	31.12.2018
3	2013-14	12,38,05,430	13,50,06,858	31.12.2018
4	2014-15	80,58,430	3,74,27,895	31.12.2018
5	2015-16	88,09,780	4,16,71,471	31.12.2018
6	2016-17	28,85,28,450	32,22,19,440	31.12.2018
7	2017-18	33,97,88,690	36,75,25,025	31.12.2018

10.4 The additions made by the AO in the assessment order for the relevant AYs on various issues on which the Assessee has filed appeals, are as under:

AY	Undisclosed Income from Transport business	Undisclosed income from Bogus contractors	Inflated Bogus Purchases and Inflated Transport expenses in Chitali Unit	Commission paid to SLV Enterprises
2011-12	15,517	-	-	-
2012-13	42,91,168	-	-	-
2013-14	47,27,391	64,38,533	-	-
2014-15	49,69,915	63,99,550	1,80,00,000	-
2015-16	37,10,060	1,10,65,726	1,80,00,000	85905
2016-17	40,21,518	1,12,08,242	1,80,00,000	4,61,230
2017-18	-	-	1,80,00,000	9136335

Against this assessee is in appeal before us.

10.5 The assessee has filed a ground-wise chart in these assessment years and the ld. A.R. has limited his arguments to the grounds mentioned in the chart only.

11. First common ground for our consideration in ITA Nos.982 & 983/Bang/2023 is that the assessment framed in these assessment years is bad in law as these assessments are not pending on the date of search on 3.11.2016 and unabated assessment cannot be

framed without any incriminating material found during the course of search action conducted u/s 132 of the Act.

11.1 He submitted that there was no incriminating material in these assessment years found on search action on 3.11.2016. Assessment orders for the assessment years were passed as follows:

Assessment year	Assessment order passed u/s 143(3) of the Act on
2011-12	28.02.2014
2012-13	31.10.2014

11.2 Thus, he submitted that the assessment framed u/s 153A of the Act for these two assessment years to be quashed itself.

12. The ld. D.R. relied on the order of lower authorities.

13. We have heard the rival submissions and perused the materials available on record. In this case, the assessment was already completed u/s 143(3) of the Act vide assessment order dated 28.2.2014 and 31.10.2014 for the assessment years 2011-12 and 2012-13 u/s 153A of the Act.

13.1 The search took place u/s 132 of the Act on 3.11.2016. The scope of provisions of section 153A of the Act could be summarized as follows as per the order of the Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. Vs. Deputy Commissioner of Income-tax (23 taxmann.com 103):-

Scenario	**Scope of Section 153A**
1. No return of income is filed by the assessee (whether or not time limit to file return of income has expired.	Since no return has been filed, the entire income shall be regarded as undisclosed income. Consequently, AO would have the authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3). No requirement to restrict to

	documents found during the course of search.
2. Return of Income just filed by the assessee – return yet to be processed u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.	Since return filed is even pending to be processed, the return would be treated as pending before the AO. Consequently, AO would have authority/jurisdiction to assessee the entire income, similar to jurisdiction in regular assessment u/s 143(3).
3. Return of Income filed by the assessee – return processed and intimation issued u/s 143(1) – Time limit for issue of notice u/s 143(2) not expired.	Since intimation is not akin to assessment and time limit for notice u/s 143(2) hs not expired, even though return has been processed, it will be case where return has not attained finality. Consequently, AO would have authority/jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s 143(3).
4. Return of income filed by the assessee. Intimation passed or not u/s 143(1) and time limit for issue of notice u/s 143(2) has expired.	Return of income of the assessee shall be treated as having being accepted and attained finality. AO loses jurisdiction to verify the return of income Since, no assessment would be pending there would be no abatement of any proceedings. Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.
5. Notice u/s 143(2) issued and assessment pending u/s 143(3)	Pending regular assessment proceedings would abate and would converge/merge in proceedings u/s 153A. Accordingly the scope of assessment under section 153A would cover the pending return

	filed as well and would not be restricted to incriminating material found during the course of search.
6. Assessment u/s 143(3) completed.	Since regular assessment proceedings have been completed & are not pending, there would be no abatement of proceedings. AO loses jurisdiction to review the completed assessment. Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.
7. Proceedings u/s 147 pending where: (a) Assessment originally completed u/s 143(3) OR (b) No assessment earlier completed u/s 143(3)	Pending assessment/reassessment proceedings u/s 147 would abate and would converge/merge in proceedings u/s 153A. Accordingly, the powers of the AO, in both the cases, shall extent to: (a) Assess income that would validly be assessed in the pending proceedings u/s 147, and

13.2 As seen from the above table, if the regular assessment proceedings have been completed and are not pending as on the date of search, there would be no abatement of proceedings without any seized material. Hence, concluded assessment cannot be reopened without any seized/incriminating material. Being so, in the absence of any seized material, assessment cannot be reopened.

14. Contrary to this, ld. D.R. submitted that during the course of search it was noticed that M/S John Distilleries Private Limited was suppressing the profits by booking various bogus expenses in the books of account. In distillery sector, there is only a minimal requirement of promotion expenses. However, in some of the cases the expenses are randomly incurred and payments are made to

proximate vendors in absence of a record for all tentative vendors. Basically, there are two types of Sales promotion expenses. Surrogate advertisement expenses incurred by the company to promote the brand, tasting sessions etc. Trade scheme expenses are paid to retailers for promoting their brands. In Karnataka, distillery companies are making payments to retailers for promoting their brands, referred as 'schemes' in their parlance. Various documents pertaining to sales promotion was found and seized. The assessee's director Sri Paul P John was confronted on 27.02.2017 and 06.03.2017 and he admitted that M/S. JDPL has not maintained proper bills and vouchers for the Promotion - Sales schemes and discounts expenses. She drew our attention to the statement recorded from Sri. Paul P John, Chairman of M/S. JDÅL on 06.03.2017 and relevant portion of the statement is reproduced below:

Q.40 Please furnish the supporting bills/vouchers for the following expenditure claimed (as per the financial) towards sales schemes and discounts expenses for the financial years from 2010-11 to 2016-17.

Sl No	Financial Year	Promotion - Sales schemes and discounts expenses as per books (Rs.)
1	2010-2011	16,11,54,550
2	2011-2012	23,03,34,205
3	2012-2013	20,97,19,771
4	2013-2014	21,59,74,970
5	2014-2015	31,28,20,960
6	2015-2016	34,21,49,126
	Total	1,47,21,53,582

Ans. We have maintained all the bills and vouchers related to schemes and discount expenses. Now we are unable to produce bill/vouchers related to Sales schemes and discounts expenses claimed to the extent as tabulated below. Hence the same can be disallowed

Sl No	Financial Year	Promotion - Sales schemes and discounts expenses as per books (Rs.)
1	2010-2011	1,33,91,943
2	2011-2012	2,23,19,384
3	2012-2013	2,02,79,561
4	2013-2014	2,06,68,805
5	2014-2015	3,39,72,356
6	2015-2016	4,03,73,597
	Total	15,10,05,646

14.1 She submitted that the assessee company has offered a sum of Rs.2,23,19,384/- in its return of income as admitted during the search. From above it is clear case of concealment of income by the assessee and hence penalty proceedings u/s 271(1)(c) of the Act is initiated separately.

14.2 Regarding bogus carriage outward expenses the ld. D.R. submitted that during the course of the search, it was noticed that JDPL was inflating the carriage outwards to certain extent as the same modus followed under the head of sales promotion expenses. During the course of the search the same has been confronted to Sri Krishnan, Director of JDPL on 3.11.2016 and she drew our attention to the relevant portion of the statement which is reproduced below:

5) Please state whether all the receipts are accounted in your books of accounts.
   a) Sir, I admit that the company is generating cash out of the books. These cash are not accounted in the books.

6) I am showing you the sworn statement of Shri. Hugo K Raj, Shri. Johnson, Shri. Mathew Joseph, Shri. Hari babu, Shri. Prakash recorded on 03.11.2016 and 04.11.2016 during the course of Search proceedings at your business premises at M/s John Distilleries Pvt Ltd, NO.110, Panthrapalya, Mysore Road, Bangalore - 560039 u/s 132 of The Income Tax Act, 1961. Please go through all these statements and comment.
   a) Yes Sir, I have gone through all the statements in detail. I agree with whatever they have stated in their respective statements and confirm the modus operandi. I confirm that the company runs parallel business of carrying agricultural goods while the trucks are coming back after the delivery of finished goods. Apart from this, we also generate cash by inflating expenses of Transports, purchases of Molasses at Chitali Unit, by entering accommodation entries in our books against the bogus bills from contractors, transport providers. Entities such as Om Chemicals, Shivam Bulk provide us accommodation entries. Through Shri. Ashok Khurade and Shri. Amol Khurade we get bogus contractors bills. These cash that are generated are routed back to Bangalore through our carriers. This we will use it for multiple purposes such as personal expenses, certain payouts etc. The entire handling of cash is done by me and my assistant Shri. Mathew Joseph.

14.3 The same facts were confronted to the Chairman of M/s. JDPL, Sri Paul P. John on 27.2.2017 and on 6.3.2017 and he admitted that M/s. JDPL had not maintained the proper bills and vouchers for carriage outwards. Statement was recorded from Sri Paul P John on 6.3.2017 and she drew our attention to the relevant portion of statement which is reproduced below:

Q.41 Please furnish the supporting bills/vouchers for the following expenditure claimed (as per the financial) towards Carriage outward expenses for the financial years form 2010-11 to 2016-17.

Sl No	Financial Year	Carriage outward as per books (Rs.)
1	2010-2011	14,74,27,173
2	2011-2012	14,12,88,246
3	2012-2013	12,14,83,868
4	2013-2014	13,74,26,981
5	2014-2015	16,15,98,363
6	2015-2016	17,19,53,725
	total	88,11,78,356

Ans. We have maintained all the bills and vouchers related to carriage outward expenses. Now we are unable to produce bill/vouchers related to Carriage outward expenses claimed to the extent as tabulated below. Hence the same can be disallowed.

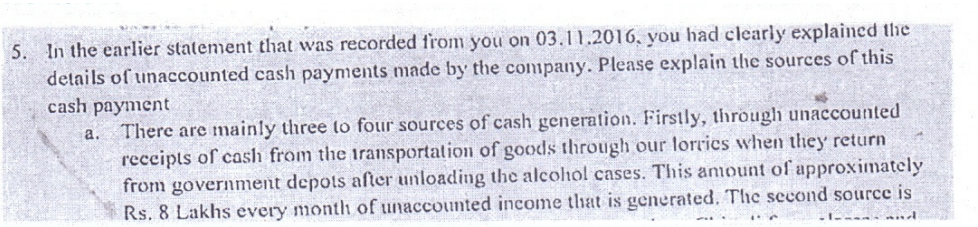
Sl No	Financial Year	Carriage outward expenses disallowed (Rs.)
1	2010-2011	1,07,76,926
2	2011-2012	1,39,45,150
3	2012-2013	1,13,95,187
4	2013-2014	1,27,25,738
5	2014-2015	1,67,41,590
6	2015-2016	1,87,42,956
	Total	8,43,27,548
	2016-2017	45,50,00,000*

* As on the date of search John Distilleries Private Limited dint pay any advance tax and post search it has paid the advance tax.

14.4 She submitted that the assessee company has offered a sum of Rs.1,39,45,150/- in its return of income as admitted during the search. From above it is clear case of concealment of income by the assessee and hence penalty proceedings u/s 271(1)(c) of the Act is initiated separately.

14.5 With regard to Undisclosed income from transport business the ld. D.R. submitted that during the course of search, a document A/JDPL/12 was found and seized. It contained entries relating to income earned by the assessee while returning from the various

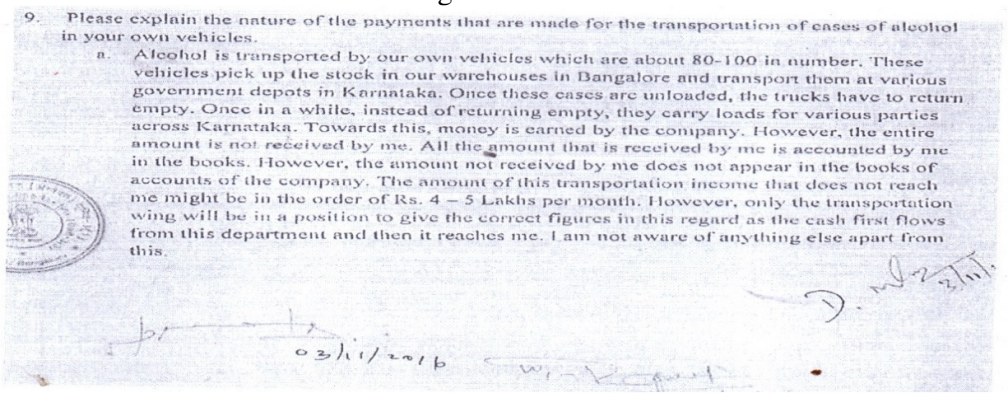
depots of KSBCL. The alcohol manufactured at the plants of M/s. JDPL is bottled and transported to the Karnataka State Beverages Corporation Limited (KSBCL) warehouses for storage. The liquor cases are loaded onto the trucks owned by M/S. JDPL and is transported to KSBCL warehouse. At the warehouses, they are unloaded and stored in warehouses. After unloading of the cases at warehouses, the trucks will not return empty to the plants of M/S. JDPL. Instead they provide transport services to the outside parties on their return journey. In this way, some income was generated which was not accounted in the books of M/S. JDPL. The income so generated will be on an average Rs. 8 Lakhs per month as per the statement given by Sri. Mathew (Cashier). She drew our attention to the relevant portion of his statement which is reproduced below:



5. In the earlier statement that was recorded from you on 03.11.2016, you had clearly explained the details of unaccounted cash payments made by the company. Please explain the sources of this cash payment

a. There are mainly three to four sources of cash generation. Firstly, through unaccounted receipts of cash from the transportation of goods through our lorries when they return from government depots after unloading the alcohol cases. This amount of approximately Rs. 8 Lakhs every month of unaccounted income that is generated. The second source is

14.6 She submitted that the same facts have been confronted to Sri. Mohan Duraiswamy, Transport manager, Karnataka operations, M/S. JDPL. He admitted that cash receipts from the return journey of trucks are not fully accounted for. She drew our attention to the relevant portion of his statement recorded on 03.11.2016 U/s 132(4) of the Act, which is reproduced below:



9. Please explain the nature of the payments that are made for the transportation of cases of alcohol in your own vehicles.

a. Alcohol is transported by our own vehicles which are about 80-100 in number. These vehicles pick up the stock in our warehouses in Bangalore and transport them at various government depots in Karnataka. Once these cases are unloaded, the trucks have to return empty. Once in a while, instead of returning empty, they carry loads for various parties across Karnataka. Towards this, money is earned by the company. However, the entire amount is not received by me. All the amount that is received by me is accounted by me in the books. However, the amount not received by me does not appear in the books of accounts of the company. The amount of this transportation income that does not reach me might be in the order of Rs. 4 – 5 Lakhs per month. However, only the transportation wing will be in a position to give the correct figures in this regard as the cash first flows from this department and then it reaches me. I am not aware of anything else apart from this.

03/11/2016

14.7 She submitted that same facts have been confronted to Sri. Paul P John on 06.03.2017. However, he disputed that transport income from the transport business is accounted in the books of accounts, the relevant portion of his statement recorded on 6.3.2017 u/s 131 of the Act and she drew our attention to the same which is reproduced below:

Q.33 I am showing you a document A/JDPL/12 containing pages from 1 to 89 found and seized during the course of search U/s. 132 of IT Act, 1961 at the premises of M/s. JDPL no.110, Pantharapalya, Bangalore on 04.11.2016. Please explain the contents of page numbered 63.

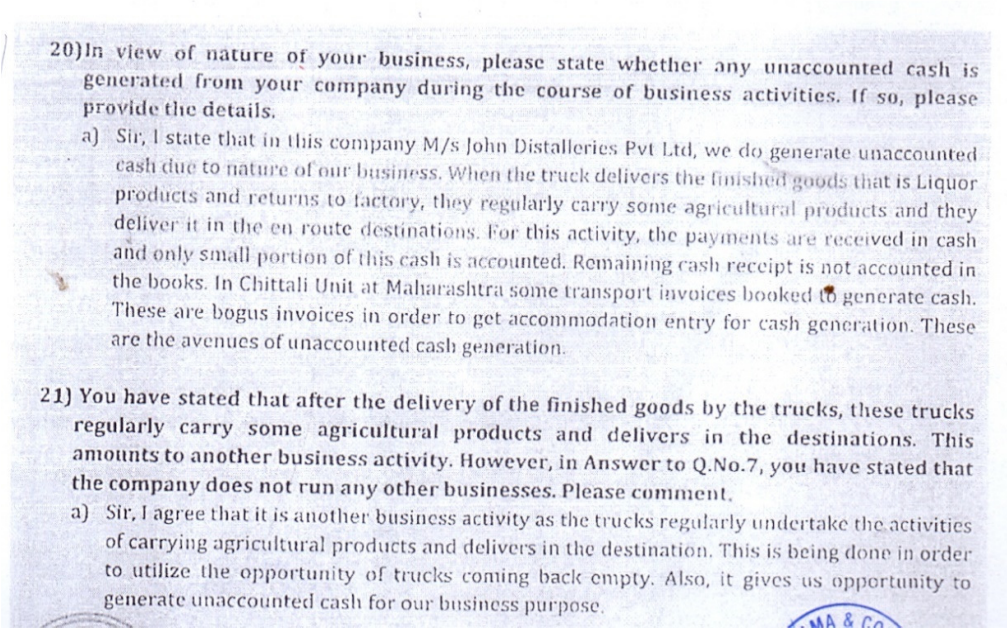
Ans. This page pertains to JDPL. This page contains the details of advance taken by the transport driver towards his onward trip while carrying the finished goods from factory to distributor warehouse and also the details of his return income, trip expenditure. These details are already accounted in our books of accounts.

Q.34 I am showing you a document A/JDPL/12 containing pages from 1 to 91 found and seized during the course of search U/s. 132 of IT Act, 1961 at the premises of M/s. JDPL no.110, Pantharapalya, Bangalore on 04.11.2016. Please explain the contents of page numbered 07.

Ans. This page pertains to JDPL. This page contains the details of advance taken by the transport driver towards his onward trip while carrying the finished goods from factory to distributor warehouse and also the details of his return income, trip expenditure. These details are already accounted in our books of accounts.

14.8 She submitted that during the course of the search the same facts have been confronted to Sri Srinivasan, CFO of M/s. JDPL on

3.11.2016 and admitted that return income earned out of trucks owned by JDPL has not accounted in the books of accounts. She drew our attention to the relevant portion of the statement which is reproduced below:



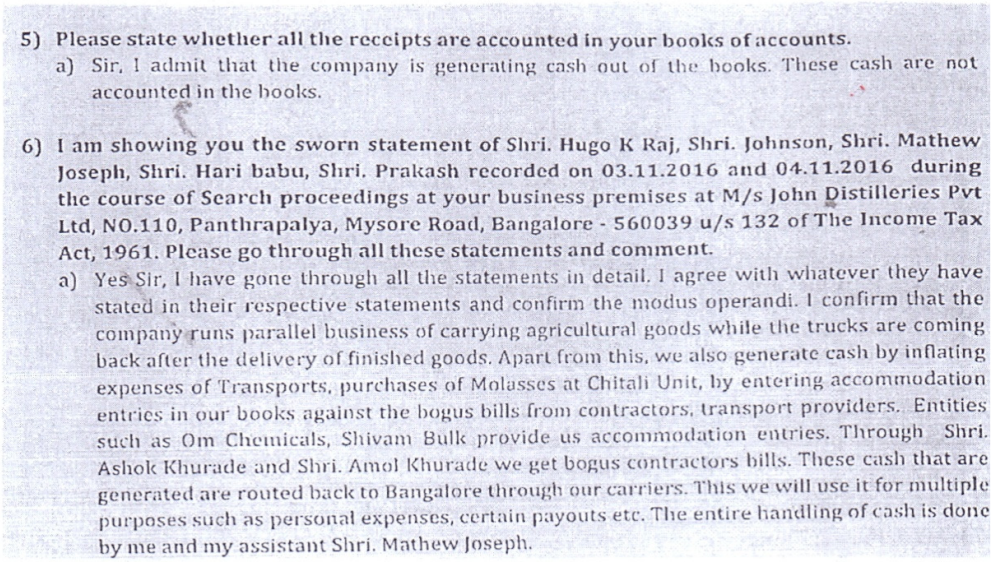
20) In view of nature of your business, please state whether any unaccounted cash is generated from your company during the course of business activities. If so, please provide the details.

a) Sir, I state that in this company M/s John Distalleries Pvt Ltd, we do generate unaccounted cash due to nature of our business. When the truck delivers the finished goods that is Liquor products and returns to factory, they regularly carry some agricultural products and they deliver it in the en route destinations. For this activity, the payments are received in cash and only small portion of this cash is accounted. Remaining cash receipt is not accounted in the books. In Chittali Unit at Maharashtra some transport invoices booked to generate cash. These are bogus invoices in order to get accommodation entry for cash generation. These are the avenues of unaccounted cash generation.

21) You have stated that after the delivery of the finished goods by the trucks, these trucks regularly carry some agricultural products and delivers in the destinations. This amounts to another business activity. However, in Answer to Q.No.7, you have stated that the company does not run any other businesses. Please comment.

a) Sir, I agree that it is another business activity as the trucks regularly undertake the activities of carrying agricultural products and delivers in the destination. This is being done in order to utilize the opportunity of trucks coming back empty. Also, it gives us opportunity to generate unaccounted cash for our business purpose.

14.9 She submitted that like Sri. Srinivasan, CFO of M/S. JDPL Sri. Krishnan, Director of JDPL has been admitted that, income earned from return trip transport income was not properly accounted in the books of accounts. She drew our attention to the relevant portion of Sri Krishnan's statement which is reproduced below:



5) Please state whether all the receipts are accounted in your books of accounts.
a) Sir, I admit that the company is generating cash out of the books. These cash are not accounted in the books.

6) I am showing you the sworn statement of Shri. Hugo K Raj, Shri. Johnson, Shri. Mathew Joseph, Shri. Hari babu, Shri. Prakash recorded on 03.11.2016 and 04.11.2016 during the course of Search proceedings at your business premises at M/s John Distilleries Pvt Ltd, NO.110, Panthrapalya, Mysore Road, Bangalore - 560039 u/s 132 of The Income Tax Act, 1961. Please go through all these statements and comment.
a) Yes Sir, I have gone through all the statements in detail. I agree with whatever they have stated in their respective statements and confirm the modus operandi. I confirm that the company runs parallel business of carrying agricultural goods while the trucks are coming back after the delivery of finished goods. Apart from this, we also generate cash by inflating expenses of Transports, purchases of Molasses at Chitali Unit, by entering accommodation entries in our books against the bogus bills from contractors, transport providers. Entities such as Om Chemicals, Shivam Bulk provide us accommodation entries. Through Shri. Ashok Khurade and Shri. Amol Khurade we get bogus contractors bills. These cash that are generated are routed back to Bangalore through our carriers. This we will use it for multiple purposes such as personal expenses, certain payouts etc. The entire handling of cash is done by me and my assistant Shri. Mathew Joseph.

14.10 She submitted that the director of the company Sri. Paul P John did not accept that income earned out of return trips of trucks was not accounted. However, the facts are different from the statement recorded from Sri. Mohan Duraiswamy, Sri. Mathew, Sri. Srinivasan, Sri. N Krishnan of M/S. JDPL. Considering the above facts, it is understood that Rs. 8 lakhs per month was being earned from these unaccounted transport services.

14.11 She submitted that it could be seen from the profit and loss account enclosed to the return of income filed by the assessee that the assessee was offering certain incomes under the head other income. The assessee was given a show cause letter on 11.12.2018 to bring to tax a sum of Rs.96,00,000/- and was asked to furnish the breakup of the other income. The assessee produced the breakup of the other income along with ledger copy. It could be seen from the documents produced that the assessee had admitted a sum of Rs. 53,08,832/- as income from the return trip. The

return trip income was received in cash from the drivers who have while returning from the various depots of KSBCL after delivering the products of the assessee, have transported goods mainly agricultural products. Based on the statement referred above a sum of Rs. 96,00,000/- is the actual return trip income of the assessee. However, considering the return trip income offered by the assessee, the ld. AO brought to tax a sum of Rs.42,91,168/- (Rs.96,00,000 – Rs.53,08,832). Further, she submitted that there was seized material A/JDPL/12 which has been considered along with statement recorded u/s 132(4) of the Act from the MD Shri Paul P. John and also on the basis of statement recorded u/s 131 of the Act from various key employees of the company for these two assessment years 2011-12 & 2012-13.

14.12 In our opinion, at this stage, we cannot quash the assessment u/s 153A of the Act is bad in law. However, the ld. AO has to examine whether the seized material referred in these two assessment years marked as A/JDPL/12 is having any relevance to for making addition in these two assessment years. If this seized material has no relevance in these assessment years 2011-12 & 2012-13, in such circumstances, these two assessments are being concluded assessments and these assessments cannot be reopened u/s 153A of the Act. In other words, if the assessee's case falls under below category for these two assessment years, the assessment cannot be reopened u/s 153A of the Act without any seized material found during the course of search action.

Assessment u/s 143(3) completed.	Since regular assessment proceedings have been completed & are not pending, there would be no abatement of proceedings.

	AO loses jurisdiction to review the completed assessment. Accordingly, the scope of assessment u/s 153A would be restricted to incriminating material found during the course of search.

14.13 The ld. AO is directed to examine this issue in the light of above observation and decide accordingly. This ground of appeal in ITA Nos.982 & 983/Bang/2023 is partly allowed for statistical purposes.

15. Next ground in all these assessee's appeals is with regard to assuming jurisdiction u/s 132(1) of the Act is bad in law as there was no valid satisfaction recorded for conducting search action. In our opinion, this ground cannot be entertained at this stage in view of the insertion of explanation to section 132(1) with retrospective effect from 1.4.1962 by Finance Act, 2017. The said explanation prefers the appellate authorities to go into the reasons recorded by the concerned Income Tax authority for directing the search against the assessee. This view is fortified by Hon'ble Karnataka High Court in the case of Pratibha Jewellery House Vs. CIT 88 taxmann.com 94 (Karn.), wherein held as follows:

"That even the law has been amended by insertion of the aforesaid Explanation by Parliament in Section 132 of the Act by the Finance Act, 2017 with retrospective effect from 1.4.1962. That Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer.
(iii) That this Amendment came after both, ITAT passed the order in the present case on 21.11.2014 as also the learned CIT(A) passed the impugned order on 11.2.2015. Nonetheless, retrospective effect of the said Amendment, will have its effect on the present case as well so long that the said Amendment holds the field. Therefore, the Appellate Authorities of the Department Date of Order 07-11-2017 W.P.Nos.24646-24651/2015 Prathiba Jewellery House Vs. The Commissioner of Income-Tax (Appeals) & Ors., cannot be expected to go into the said question. It is only for the Constitutional Courts to examine the vires and validity of such Amendment and for that, a separate writ petition is already said to be pending. However, no such challenge to the Amendment has been made in the present case.

11. In these circumstances, the impugned order Annexure-A dated I l .2.2015 passed by the learned CIT(A) cannot be faulted and it stands to the reason for the learned CIT(A) to have followed the Chattisgarh High Court's decision and refused to do so.

12. The assessee-petitioner obviously had an alternative, adequate and efficacious remedy against the said order passed by the learned CIT(A) before the Income Tax Tribunal again under Section 253 of the Act. There appears to be no justification for cutting Date of Order 07-11-2017 W.P.Nos.24646-24651/2015 Prathiba Jewellery House Vs. The Commissioner of Income-Tax (Appeals) & Ors., short that regular remedy at this stage and to entertain these writ petitions on merits."

15.1 Being so, this ground in ITA Nos.982 to 987/Bang/2023 in assessment years 2011-12 to 2016-17 is dismissed.

16. Next common ground in all these six appeals in ITA Nos.982 to 987/Bang/2023 is that the order of lower authorities is bad in law in view of the violation of principles of natural justice and the order of the lower authorities prevails.

17. Before us, ld. A.R. is not able to substantiate how the opportunity of hearing has not been given to the assessee. Hence, this ground of appeal in ITA Nos.982 to 987/Bang/2023 in assessment years 2011-12 to 2016-17 is dismissed.

18. Ground Nos.5 to 8 & 10 and 11 in all appeals in ITA Nos.982 to 987/Bang/2023 and additional ground No.9A in ITA No.984 & 986/Bang/2023 in assessment years 2013-14 & 2015-16 are with regard to ignoring the retraction statement and persisting with the income offered under protest in the income tax return in respect of following:

(a) Illegal confirmation of additional income offered in return u/s 153A of the Act under protest:

(i) Inflated sales and promotion expenses,

(ii) Bogus carriage expenses,

(b) Addition made in the assessment order:

(i) Undisclosed income from transport business,

(ii) Undisclosed income from bogus contractors,

(iii) Inflated bogus purchase and inflated transport expenses

(c) The additional ground is that there is no transaction with the said contractors during the assessment year 2013-14 and 2015-16 and hence no addition called for in these assessment years.

18.1 The ld. A.R. submitted that there was no incriminating material found during the course of search action. The ld. AO exclusively relied on the statement recorded u/s 132(4)/131 of the Act from the employees as well as from the MD of the assessee company, as such, the assessee retracted the same before the ld. AO and also offered the additional income not produced which shall be deleted. Further, it was submitted that even otherwise, assessee could produce all the necessary bills, vouchers and receipts in support of the various claims of expenditure made in the books of accounts of the assessee. For this purpose, he relied on various judgements as follows:

A. Claim to be entertained even if not made in ITR and income to be assessed and tax to be collected as per Art 265 of Constitution: For this proposition, he relied on the following judgements:-

1. *CIT v. Abhinitha Foundation P. Ltd. 2017 396 ITR 251*
2. *DCIT V. CMS Securities Ltd., (2016) 47 ITR (Trib) 378*
3. *Srikant G. Shah vs. ITO (ITAT)(Mum) (2008) 300 ITR (AT) 324*
4. *M/s. Maruti Enterprise, Amreli Vs. The ADIT (CPC), Bangalore (2023) ITA No.10/Rjt/2023 dated 20 March, 2024 (ITAT, Rajkot)*

5. *Sharp Tools vs. Principal Commissioner of Income Tax (2020) 421 ITR 90 (HC-Madras)*

B. **132(4) Statement per se is not an incriminating material - :** For this proposition, he relied on the following judgements:-

1. *CIT v. Harjeev Aggarwal, 2016 (2016) 290 CTR 263l (2016) 229 DLT 33, ITA 8 of 2004 (HC, Delhi)*
2. *CIT vs. Kuber Khadyan Pvt. Ltd., 2021 ITA No.4223/4225/4226/Del/2018 (ITAT, New Delhi)*

C. **No addition without incriminating material:** For this proposition, he relied on the following judgements:-

1. *CIT vs. Abhisar Buildwell (P) Ltd. (2024) 2 Supreme Court cses 433, 149 taxmann.com 399 (SC), Civil appeal No.6580 of 2021*

D. **Tribunal has discretion to admit additional evidence in the interest of justice:** For this proposition, he relied on the following judgements:-

1. *Goetze (India) Ltd. vs. Commissioner of Income-tax (2006) 284 ITR 323*
2. *Goetz India CIT vs. Text Hundred India Pvt. Ltd. (2013) 351 ITR 57*
3. *Fibres & Fabrics International (P) Ltd. vs. ACIT, Circle-11(3), Bangalore (2013) 33 taxmann.com 90 (Bangalore Trib)*
4. *HL Malhotra & Co. (P) Ltd. vs. DCIT, Circle12(1), New Delhi(2021) 125 taxmann.com 70 (Delhi)*

E. **Extrapolation not permitted in S&S assessment**

1. *CIT v. B. Nagendra Baliga, (2014) 363 ITR 410*
2. *A. Shivashankar v. DCIT ITA Nos.617 to 620/Chny/2017 Dated 31.05.2022 (ITAT, Chennai)*
3. *Sri Devraj Urs Education Trust for Backward Classes v. ACIT, Bangalore ITA No.500 to 506/Bang/2020 (TAT, Bangalore)*

18.2 Further, he submitted that the assessee has filed various letters before ld. AO seeking opportunity to produce evidence in support of the claim of expenditure, which are not considered by him even the assessee has retracted the statement which was observed by the ld. AO after thought. Further, he relied on the following judgements:

19. The ld. D.R. relied on the order of lower authorities and submitted as follows:

19.1 According to Ld DR, the evidences found are self-speaking, self- explanatory, unambiguous and incriminating against the appellant.No explanation offered by the appellant justifies the claim and does not stand in the way of the evidences found and the assessment made in this regard.

19.2 Further, she relied on the following case laws:

(i) Judgement of Hon'ble Supreme Court of India in the case of Video Master Vs. JCIT reported in (2015) 378 ITR 374 (SC), wherein held as under:

> *"A search and seizure operation was carried on at premises of the assessee' firm and others where in partner of the assessee disclosed certain undisclosed income. Accordingly, an addition was made to the income of the assessee. The Tribunal held that statement made by partner could be used as evidence and accordingly upheld the assessment order. The High Court dismissed appeal of the assessee.*
>
> *Held that it is not possible to say that this is a case of no evidence at all inasmuch as evidence in the form of the statement made by the assessee himself and other corroborative material are there on record."*

(ii) Judgement of Hon'ble High Court of Kerala in the case of CIT, Kozhikode Vs. O. Abdul Razak reported in (2013) 350 ITR 71 (Kerala) where held as follows:

"As self-serving retraction, without anything more cannot dispel statement made under oath under section 132(4)".

(iii) Judgement of Hon'ble High Court of Jharkhand in the case of Mahabir Prasad Rungta Vs. CIT, Ranchi reported in (2014) 266 CTR 175 (Kharkhan) (9.1.2014) wherein held as under:

"Where assessee has not adduced any rebuttal evidence to show that entries made in diary/loose sheets recovered during search are not income in hands of assessee, addition is to be upheld."

(iv) Judgement of Hon'ble Supreme Court of India in the case of Roshanlal Sanchiti Vs. PCIT reported in (2023) 150 taxmann.com 228 (SC), wherein held that "*retraction of statement recorded u/s 132(4) of the Act has to be made within reasonable time or immediately after statement of assessee is recorded and hence where retraction of statement recorded u/s 132(4) and later confirmed in statement recorded u/s 131 had been made by assessee after almost 8 months same was to be disregarded."*

(v) Judgement of Hon'ble Delhi High Court in the case of CIT Vs. Chetan Das Lachman Das wherein held as follows:

"13. Coming to the order of the Tribunal, we are of the view that the reasons given by it to distinguish the judgment of the Supreme Court cited (supra) are not sound. Firstly, there was seized material in the present case to show that the assessee has been indulging in off-record transactions. The observation of the Tribunal that no evidence was found to show that the actual turnover of the assessee was more than the declared turnover is hair splitting. The Tribunal lost sight of the fact that all was not well with the books of account maintained by the assessee and it has been keeping away its income from the books. That should have been sufficient for the Tribunal to examine the estimate made by the Assessing Officer, having regard to the principles laid down in the judgment of the Supreme Court (supra). The Tribunal also failed to note the difference between Section 158BB appearing in the Chapter-XIVB and the assessment made by virtue of the provisions of Section 153A of the Act. Secondly, the Tribunal expects the purchasers from the assessee to come forward and declare that they have paid more than what was appearing in the sale bills issued to them and has commented upon the lack of any inquiry

from the purchasers on this line. Suffice to say that this throws an impossible burden on the Assessing Officer, having regard to the observations of the Supreme Court that the assessee cannot be permitted to take advantage of his own illegal acts, that it was his duty to place all facts truthfully before the assessing authority, that if he fails to do his duty She cannot be allowed to say that assessing authority failed to establish suppression of income, that the facts are within his personal knowledge and therefore it was the burden of the assessee to prove that there was no suppression. Thirdly, the Tribunal has stated that there was no corroborative material to substantiate the contents of the loose papers found during the search. We are not impressed by this reason at all. The papers are not denied or disputed by the assessee. The CIT (Appeals) has found that the partners of the assessee firm had admitted to the practice of suppressing the profits. The papers themselves show two different rates, one higher and the other lower and on comparison with the sale bills it has been found that the sale bills show the lower rate and these findings have not been denied by the assessee. The Tribunal, therefore, erred in looking for some other corroboration to substantiate the contents of the loose papers, overlooking that the loose papers needed no further corroboration and the sale bills compared with the seized papers themselves corroborated the suppression of income. Fourthly, the Tribunal has relied on the observations of the CIT (Appeals) that no serious consideration can be given to the loose papers and has held that this shows that there is "nothing more in Revenue s kitty apart from those said loose papers pertaining to November, 2005 (financial year 2005-06) to support suppression of sales receipts on the part of the assessee firm". The Tribunal, with respect, has misread the observations of the CIT (Appeals) and has relied on a single observation without reading the order of the CIT (Appeals) as a whole. Moreover, in such cases, it is expected of the Tribunal to also independently examine the decision of the CIT (Appeals) which is impugned before it. In such cases it would be more appropriate to find out or ascertain whether there is any positive material which is in support of the assessee's case or anything upon which the assessee can rely in order to discharge the burden placed upon him in the light of the judgment of the Supreme Court in H M Esufali H. M. Abdulali (supra). Mere negative findings should not be made use of to throw out the case of the department. Lastly, the reliance placed by the Tribunal on the judgment of this Court in CIT v. Anand Kumar Deepak Kumar, (2007) 294 ITR 497 does not seem appropriate. There it was held that there was no presumption that unaccounted sales in the pre-search period would continue in the post search period also. This judgment has no application to the present case because the search took place on 13.12.2005 which falls in the year relevant to the assessment year 2006-07. The assessments under Section 153A of the Act have been completed up to and including the assessment year 2006-07. Even if there can be no presumption that after 13.12.2005 there could have been unaccounted sale of Hing or compound Hing, it is hardly

material since only a period of 31/2 months were left aft e date of search till the end of the previous year i.e. 31.3.2006."

(vi) Further, she relied on the judgement of Madras High Court in the case of CIT Vs. T. Rangroopchand Chordia (241 Taxmann 221) wherein held that loose sheets recovered from the premises of the assessee constitute document within the meaning of explanation under sub-section 4 of section 132 of the Act.

20. We have heard the rival submissions and perused the materials available on record. The lower authorities made the addition by observing as under:

As seen from the above, during the course of search action, statement was recorded from Shri Paul P. John on 27.2.2017 and 6.3.2017and he has admitted that assessee has not maintained proper bills and vouchers for the promotion of sales schemes and discount expenses and on 6.3.17 as answer to question No.40, he submitted that total expenditure incurred from assessment years 2010-11 to 2016-17 is as follows:

Sl No	Financial Year	Promotion - Sales schemes and discounts expenses as per books (Rs.)
1	2010-2011	16,11,54,550
2	2011-2012	23,03,34,205
3	2012-2013	20,97,19,771
4	2013-2014	21,59,74,970
5	2014-2015	31,28,20,960
6	2015-2016	34,21,49,126
	Total	1,47,21,53,582

20.1 Out of this, he agreed that the following expenditure for these assessment years to be disallowed:

Sl No	Financial Year	Promotion - Sales schemes and discounts expenses as per books (Rs.)
1	2010-2011	1,33,91,943
2	2011-2012	2,23,19,384
3	2012-2013	2,02,79,561
4	2013-2014	2,06,68,805
5	2014-2015	3,39,72,356
6	2015-2016	4,03,73,597
	Total	15,10,05,646

20.2 Further, vide statement recorded from Shri Krishna, Contractor of the assessee company on 3.11.2016 admitted in question no.6 that assessee is engaged in inflating carriage outward expenditure under head sales promotion expenses in these assessment years. This has been confirmed by Paul P. John in his statement recorded on 27.2.2017 and 6.3.2017 as answer to question no.41

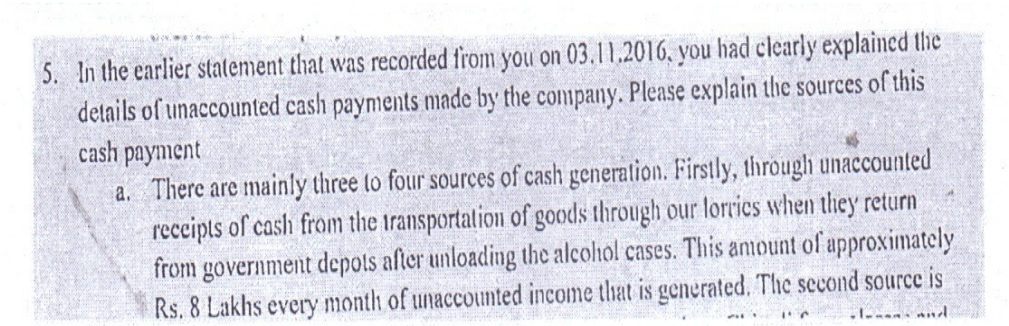
Sl No	Financial Year	Carriage outward as per books (Rs.)
1	2010-2011	14,74,27,173
2	2011-2012	14,12,88,246
3	2012-2013	12,14,83,868
4	2013-2014	13,74,26,981
5	2014-2015	16,15,98,363
6	2015-2016	17,19,53,725
	total	88,11,78,356

Ans. We have maintained all the bills and vouchers related to carriage outward expenses. Now we are unable to produce bill/vouchers related to Carriage outward expenses claimed to the extent as tabulated below. Hence the same can be disallowed.

Sl No	Financial Year	Carriage outward expenses disallowed (Rs.)
1	2010-2011	1,07,76,926
2	2011-2012	1,39,45,150
3	2012-2013	1,13,95,187
4	2013-2014	1,27,25,738
5	2014-2015	1,67,41,590
6	2015-2016	1,87,42,956
	Total	8,43,27,548
	2016-2017	45,50,00,000*

* As on the date of search John Distilleries Private Limited dint pay any advance tax and post search it has paid the advance tax.

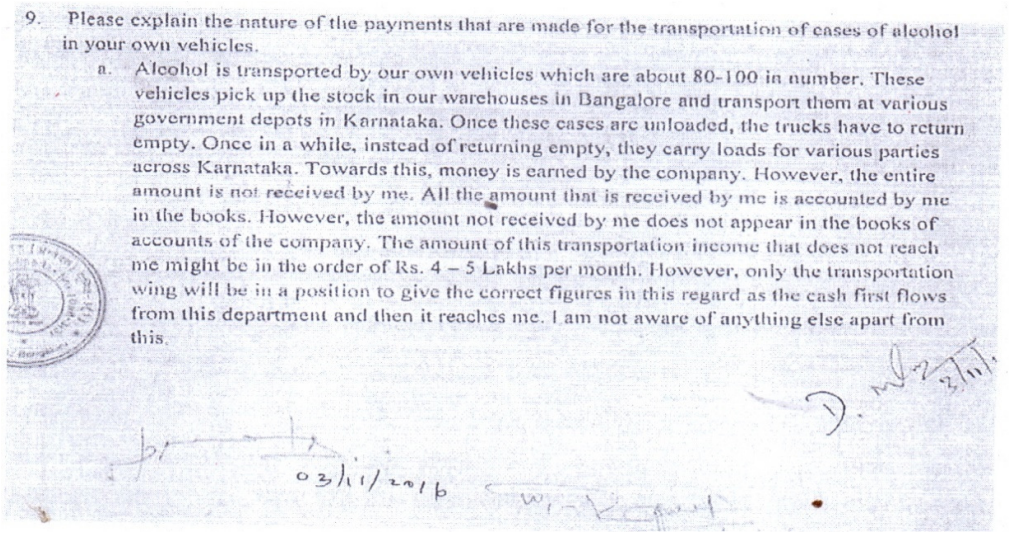
20.3 Further, there was seized material marked as A/JDPL/12 which was put to the assessee cashier Shri Mathews who has stated as follows:



5. In the earlier statement that was recorded from you on 03.11.2016, you had clearly explained the details of unaccounted cash payments made by the company. Please explain the sources of this cash payment

a. There are mainly three to four sources of cash generation. Firstly, through unaccounted receipts of cash from the transportation of goods through our lorries when they return from government depots after unloading the alcohol cases. This amount of approximately Rs. 8 Lakhs every month of unaccounted income that is generated. The second source is

20.4 This fact has been confronted to Mohan Duraiswamy, Transport Manager, Karnataka vide statement recorded u/s 132(4) of the Act on 3.11.2016 and stated as follows:



9. Please explain the nature of the payments that are made for the transportation of cases of alcohol in your own vehicles.

a. Alcohol is transported by our own vehicles which are about 80-100 in number. These vehicles pick up the stock in our warehouses in Bangalore and transport them at various government depots in Karnataka. Once these cases are unloaded, the trucks have to return empty. Once in a while, instead of returning empty, they carry loads for various parties across Karnataka. Towards this, money is earned by the company. However, the entire amount is not received by me. All the amount that is received by me is accounted by me in the books. However, the amount not received by me does not appear in the books of accounts of the company. The amount of this transportation income that does not reach me might be in the order of Rs. 4 – 5 Lakhs per month. However, only the transportation wing will be in a position to give the correct figures in this regard as the cash first flows from this department and then it reaches me. I am not aware of anything else apart from this.

03/11/2016

20.5 This was confronted to Shri Paul P. John, Chairman of the assessee company on 6.3.2017 who has stated as follows:

Q.33 I am showing you a document A/JDPL/12 containing pages from 1 to 69 found and seized during the course of search U/s. 132 of IT Act, 1961 at the premises of M/s. JDPL no.110, Pantharapalya, Bangalore on 04.11.2016. Please explain the contents of page numbered 63.

Ans. This page pertains to JDPL. This page contains the details of advance taken by the transport driver towards his onward trip while carrying the finished goods from factory to distributor warehouse and also the details of his return income, trip expenditure. These details are already accounted in our books of accounts.

Q.34 I am showing you a document A/JDPL/12 containing pages from 1 to 91 found and seized during the course of search U/s. 132 of IT Act, 1961 at the premises of M/s. JDPL no.110, Pantharapalya, Bangalore on 04.11.2016. Please explain the contents of page numbered 07.

Ans. This page pertains to JDPL. This page contains the details of advance taken by the transport driver towards his onward trip while carrying the finished goods from factory to distributor warehouse and also the details of his return income, trip expenditure. These details are already accounted in our books of accounts.

20.6 Further, Shri Srinivasan, SFO was confirmed in his statement on 3.11.2016 as follows:

20) In view of nature of your business, please state whether any unaccounted cash is generated from your company during the course of business activities. If so, please provide the details.

a) Sir, I state that in this company M/s John Distalleries Pvt Ltd, we do generate unaccounted cash due to nature of our business. When the truck delivers the finished goods that is Liquor products and returns to factory, they regularly carry some agricultural products and they deliver it in the en route destinations. For this activity, the payments are received in cash and only small portion of this cash is accounted. Remaining cash receipt is not accounted in the books. In Chittali Unit at Maharashtra some transport invoices booked to generate cash. These are bogus invoices in order to get accommodation entry for cash generation. These are the avenues of unaccounted cash generation.

21) You have stated that after the delivery of the finished goods by the trucks, these trucks regularly carry some agricultural products and delivers in the destinations. This amounts to another business activity. However, in Answer to Q.No.7, you have stated that the company does not run any other businesses. Please comment.

a) Sir, I agree that it is another business activity as the trucks regularly undertake the activities of carrying agricultural products and delivers in the destination. This is being done in order to utilize the opportunity of trucks coming back empty. Also, it gives us opportunity to generate unaccounted cash for our business purpose.

20.7 Further, Srinivasan, SFO stated as follows

5) Please state whether all the receipts are accounted in your books of accounts.
a) Sir, I admit that the company is generating cash out of the books. These cash are not accounted in the books.

6) I am showing you the sworn statement of Shri. Hugo K Raj, Shri. Johnson, Shri. Mathew Joseph, Shri. Hari babu, Shri. Prakash recorded on 03.11.2016 and 04.11.2016 during the course of Search proceedings at your business premises at M/s John Distilleries Pvt Ltd, NO.110, Panthrapalya, Mysore Road, Bangalore - 560039 u/s 132 of The Income Tax Act, 1961. Please go through all these statements and comment.
a) Yes Sir, I have gone through all the statements in detail. I agree with whatever they have stated in their respective statements and confirm the modus operandi. I confirm that the company runs parallel business of carrying agricultural goods while the trucks are coming back after the delivery of finished goods. Apart from this, we also generate cash by inflating expenses of Transports, purchases of Molasses at Chitali Unit, by entering accommodation entries in our books against the bogus bills from contractors, transport providers. Entities such as Om Chemicals, Shivam Bulk provide us accommodation entries. Through Shri. Ashok Khurade and Shri. Amol Khurade we get bogus contractors bills. These cash that are generated are routed back to Bangalore through our carriers. This we will use it for multiple purposes such as personal expenses, certain payouts etc. The entire handling of cash is done by me and my assistant Shri. Mathew Joseph.

20.8 However, it is noted by the ld. AO that the Chairman of the company Shri Paul P. John has not accepted income earned out of trips of trucks was not accounted, which is in variance of the statement of the employees of the assessee company. Without agreeing with the contention of the assessee, the ld. AO made addition in these assessment years. Now the contention of the assessee's counsel is that the income offered by assessee in the return of income filed u/s 153A as well as addition made by ld. AO in these assessment years to be relooked into in the light of **additional evidence** filed by the assessee. For clarity we reproduce herein the details of return filed u/s 153A and addition made by ld. AO on different count as follows:

Sl No	AY	Income offered in return u/s 153A	Income Assessed in order passed by AO.	Date of order
1	2011-12	12,15,61,686	12,17,69,270	31.12.2018
2	2012-13	15,06,45,614	15,54,45,700	31.12.2018
3	2013-14	12,38,05,430	13,50,06,858	31.12.2018
	2014-15	80,58,430	3,74,27,895	31.12.2018

5	2015-16	88,09,780	4,16,71,471	31.12.2018
6	2016-17	28,85,28,450	32,22,19,440	31.12.2018
7	2017-18	33,97,88,690	36,75,25,025	31.12.2018

The additions made by the AO in the assessment order for the relevant AYs on various issues on which the Assessee has filed appeals, are as under:

AY	Undisclosed Income from Transport business	Undisclosed income from Bogus contractors	Inflated Bogus Purchases and Inflated Transport expenses in Chitali Unit	Commission paid to SLV Enterprises
2011-12	15,517	-	-	-
2012-13	42,91,168	-	-	-
2013-14	47,27,391	64,38,533	-	-
2014-15	49,69,915	63,99,550	1,80,00,000	-
2015-16	37,10,060	1,10,65,726	1,80,00,000	85905
2016-17	40,21,518	1,12,08,242	1,80,00,000	4,61,230
2017-18	-	-	1,80,00,000	9136335

20.9 In our opinion, the assessment procedure in the case where search is conducted u/s 132 of the Act has been amended w.e.f. 1.6.2023. and in such search cases assessment shall be completed as per the provision of section 153A of the Act. The section 153A reads as under:

"153A. Assessment in case of search or requisition – (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years;

Provided further that assessment or reassessment, if any relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) of section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner;

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation – For the removal of doubts, it is hereby declared that,--

(i) Save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) In an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

20.10 Now the question before us is whether the assessee is entitled to revise its position in departure with the original stand that is taken in the return filed u/s 139 of the Act prior to search or filed u/s 153A of the Act. In other words, whether assessee entitled to revise its claim and alter its original position in accordance with law or not. The Hon'ble Gujarat High Court in the case of CIT Vs. Mitesh Impex 225 Taxmann 168 wherein inter-alia held that "Income tax proceedings are not adversarial in nature and the object of the revenue would be to tax real income. The Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT (229 ITR 383)

noted that there is no reason why assessee should be prevented from raising a question of law before the Tribunal for the first time so long as relevant facts are on record in respect of item concerned. From reading of lying alone of judicial proceedings relied by the assessee counsel, it is apparent that authorities under the Income tax are not sacrosanct obligation to act in accordance with law. Tax could be collected as provided under the Act. If an assessee on a mistake, misconception are not being properly instructed is either assessed or over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This view which flows from enumerable judgements including CIT Vs. Shelly Products 261 ITR 367 (SC), S.R. Kosti Vs. CIT 276 ITR 165 (Guj.), CIT Vs. Prithvi Brokers and Shareholders 349 ITR 336 (Bom) and so on. Therefore, the assessee is within legitimate right to alter wrong position taken earlier in the course of proceedings. In the instant case, assessee wanted to alter its position in the return filed u/s 153A of the Act filed in pursuance to such proceedings, wherein assessee has offered certain additional income in respect of issue raised before us and assessee prayed before us that the assessment in the case of assessee to be completed on the basis of audited books of accounts and not on the basis of admission or offer made in the course of search action vide statement recorded u/s 132(4)/131 of the Act.

20.11 In our opinion, these additions cannot be based alone on statement recorded u/s 132(4) of the Act, it should be corroborated by seized material/incriminating material suggesting impugned additions. Now we will consider various decisions for the above proposition.

20.12 In the case of CIT Vs. Dr. N. Thippa Setty (322 ITR 525) (Karn.), the jurisdictional High Court has held as under:

> *"Held, dismissing the appeals, that it was clear that the statements made by the assessee under section 132(4) of the Act were retracted not once but twice and that the Department had accepted the retraction. No cogent and valid reasons had been assigned by the Assessing Officer for reopening the assessment. There were no good or sufficient reasons for reopening of the assessment under section 148 of the Act against the assessee."*

20.13 Further, the ld. AO cannot solely rely on the statement recorded u/s 132(4) of the Act without appropriate corroborative materials as recently held by Hon'ble Delhi High Court in the case of PCIT Vs. Pavitra Realcon Pvt. Ltd. reported in ITA No.579/2018 dated 29.5.2024, wherein held as under:

> *"17. We have heard the learned counsels appearing on behalf of the parties and perused the record.*
>
> *18. The primary grievance which arises in the present appeals pertains to whether the ITAT was right in deleting additions made under Section 68 of the Act by holding that no assessment could have been made on mere presumption of existence of incriminating material.*
>
> *19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.*
>
> *20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.*

*21. In the case of **Kailashben Manharlal Chokshi v. CIT**[1], the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -*

> *26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority**. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission.** We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary state ment, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retrac tion made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has com mitted an error in ignoring the retraction made by the assessee.*
>
> *[Emphasis supplied]*

*22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of **CIT v. Harjeev Aggarwal**[2], wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below: -*

> ***"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 stand alone 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.***

[Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of ***CIT v. Sinhgad Technical Education Society***[1] *and held as follows: -*

"18. Further, while writing the order it has come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the impugned assessment year.

19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And M/s Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from

adjudicating the issue on merit as far as these two cases are concerned."

*25. Also, the Supreme Court in the case of **CIT v. Abhisar Buildwell (P) Ltd.**[4], has clarified that in case no incriminating material is found during the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -*

> *"36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."*
>
> *[Emphasis supplied]*

*26. This Court in the case of **CIT v. Kabul Chawla**[5], has explicitly noted that the information/material which has been relied upon for assessment has to relate with the assessee. The relevant portion of the said decision is extracted herein below: -*

> *(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 Assessing Officer 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 the seized material."*
>
> *[Emphasis supplied]*

*27. Recently, this Court, in the case of **Saksham Commodities Limited v. Income Tax Officer, Ward 22(1), Delhi & Anr**[6], while relying upon the*

decision of the Supreme Court in Abhisar Buildwell (supra) and this Court's decision in the case of ***CIT v. RRJ Securities Ltd.***[7]*, upheld the position of law that the AO would not be justified to assess income in case no incriminating material is found during the search. The relevant paragraph is reproduced herein below: -*

> ***"54. In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C.*** *Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C ex abundanti cautela. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated*
>
> *****
>
> *56. We also bear in mind the pertinent observations made in RRJ Securities when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to "necessarily" be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income.* ***This aspect was again emphasised in para 38 of RRJ***

Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforenoted judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY."

[Emphasis supplied]

28. So far as the submission made by the learned counsel for the Revenue that the AO acted on a bona fide belief that the date of search has to be taken as the date of initiation of proceedings under Section 153C of the Act is concerned, it is apposite to refer to our decision in the case of ***CIT v. Ojjus Medicare (P) Ltd.***[8] *This Court, in the said case, reiterated the already settled law that the date of initiation of assessment proceedings under Section 153C would be calculated from the date of handing over of the books of accounts, documents or assets seized to the jurisdictional AO of the non-searched person. The relevant paragraphs of the said decision are extracted herein below: -*

"K. SUMMARY OF CONCLUSIONS

119. *We thus record our conclusions as follows:*

A. Prior to the insertion of Sections 153A, 153B and 153C, an assessment in respect of search cases was regulated by Chapter XIVB of the Act, comprising of Sections 158B to 158BI and which embodied the concept of a block assessment. A block assessment in search cases undertaken in terms of the provisions placed in Chapter XIVB was ordained to be undertaken simultaneously and parallelly to a regular assessment.

Contrary to the scheme underlying Chapter XIVB, Sections 153A, 153B and 153C contemplate a merger of regular assessments with those that may be triggered by a search. On a search being undertaken in terms of Section 153A, the jurisdictional AO is enabled to initiate an assessment or reassessment, as the case may be, in respect of the six AYs' immediately preceding the AY relevant to the year of search as also in respect of the "relevant assessment year", an expression which stands defined by Explanation 1 to Section 153A. Of equal significance is the introduction of the concept of abatement of all pending assessments as a consequence of which curtains come down on regular assessments.

B. *Both Sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override Sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in Section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of "relevant assessment year" and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to ten AYs'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant assessment year". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "likely to amount to" INR 50 lakhs or more in the "relevant assessment year" or in aggregate in the "relevant assessment years".*

C. *Section 153C, on the other hand, pertains to the non-searched entity and in respect of whom any material, books of accounts or documents may have been seized and were found to belong to or pertain to a person other than the searched person. As in the case of Section 153A, Section 153C was also to apply to all searches that may have been undertaken between the period 01 June 2003 to 31 March 2021. In terms of that provision, the AO stands similarly empowered to undertake and initiate an assessment in respect of a non-searched entity for the six AYs' as well as for "the relevant assessment year". The AYs', which would consequently be thrown open for assessment or reassessment under Section 153C follows lines pari materia with Section 153A.*

D. ***The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by***

the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. *The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.*

F. *While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."*

[Emphasis supplied]

29. It is thus seen that in order to determine block of six AYs, one must first identify the FY in which the search occurred, leading to the identification of the AY relevant to the previous year of the search. The block of six AYs will then be those immediately preceding the AY relevant to the

search year. For a search assessment under Section 153C of the Act, the only difference is that the previous year of the search is replaced by the date or year in which the seized books of accounts, documents, and assets are handed over to the jurisdictional AO, rather than the year of the search, which is the basis for an assessment under Section 153A of the Act. Therefore, the relevant AY in the present case would come under the block of six AYs immediately preceding the AY in which the satisfaction note was recorded by the AO of the respondent-assessee companies.

30. Further, in the case of M/s Design Infracon Pvt. Ltd., the ITAT held that there is violation of principles of natural justice as neither the statement of owner of Jain group of companies was provided to the said company, nor the opportunity of cross-examination was given. The ITAT in paragraph no. 23 has held as under: -

> *"23.Now, coming to Design Infracon (P) Ltd., we find from the material available on record that there is brazen violation of principles of natural justice inasmuch as neither the statement of Mr. Jain recorded at the time of search nor his cross-examination was provided to the assessee by both the lower authorities despite specific and repeated requests made by the assessee in this regard. The Hon'ble Supreme Court in the case of M/s Andaman Timber Indusgies vs. CCE reported in 281 CTR 241 has held that not giving opportunity of cross-examination makes the entire proceedings invalid and nullity. The Co-ordinate Bench of the Tribunal in the case of Best City Infrastructure Ltd. (supra) has also held that not providing opportunity of cross-examination makes the addition invalid. It has come to our notice that the Hon'ble Delhi High Court recently has upheld the said decision as reported in 397 ITR 82."*

31. On this aspect, it is beneficial to refer to the decision of the Supreme Court in the case of ***Andaman Timber Industries v. CCE***[9]*, wherein, it was held that not providing the opportunity of cross- examination to the assessee amounts to gross violation of the principles of natural justice and the same will render the order passed null and void. The relevant paragraph of the said decision is extracted herein below: -*

> ***"6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order***

> ***nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.*** *It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exfactory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to crossexamine those dealers and what extraction the appellant wanted from them."*
>
> *[Emphasis supplied]*

32. Additionally, the Supreme Court in the case of ***State of Kerala v. K.T. Shaduli Grocery Dealer***[2]*, held that tax authorities being quasi- judicial authorities are bound by the principles of natural justice. The relevant paragraph is extracted herein below: -*

> *"2**. Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions.** It is true, as pointed out by this Court in Dhakeswari Cotton Mills Ltd. v. CIT [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal*

application. It was pointed out by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317
: (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in Russel v. Duke of Norfolk [(1949) 1 All ER 109] :"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

[Emphasis supplied]

33. Further, the argument of learned counsel for the Revenue that this mistake is curable under Section 292B of the Act lacks merit as the plain language of the said Section makes it abundantly clear that this provision condones the invalidity which may arise merely by mistake, defect or omission in notice. The said Section reads as under: -

292-B. Return of income, etc., not to be invalid on certain grounds.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

*34. Reliance can also be placed upon the decision in the case of **CIT v. Micron Steels P. Ltd.**[11], whereby, it was held that the jurisdictional defects cannot be cured under Section 292B of the Act and they render the entire proceedings null and void.*

35. In the present case, it is seen that the Revenue has failed to allude to any steps which were taken to determine that the seized material belonged to the respondent-assessee group. Notably, the satisfaction note has also been prepared in a mechanical format and it does not provide any details about the incriminating material. Therefore, a failure on the part of the Revenue to manifest as to how the material gathered from the search of Jain group of companies belonged to the respondent-assessee group and the same is incriminating, vitiates the entire assessment proceedings.

36. Accordingly, we find no reason to intermeddle with the order of the ITAT which has rightly set aside the assessment order and deleted the additions made therein.

37. In view of the aforesaid and on the basis of the findings of fact arrived at before the authority, these appeals do not raise any substantial question of law and consequently, they stand dismissed. Pending applications, if any, are also disposed of."

20.14 Further, Hon'ble Supreme Court in the case of Common Cause (A registered Society) Vs. Union of India in Writ Petition (Civil) No.505 of 2015 dated 2.7.2018 *[2017]* 394 ITR *220* (SC) wherein considered and observed that the entries in the loose papers/sheets are not "books of accounts" and has no evidentiary value u/s 34 of the Indian Evidence Act. The Hon'ble Supreme Court dismissing the writ petition filed by Common Cause, a registered society, refused to give nod to investigate against the Sahara and Birla Groups in the alleged payoff scandal. The factual setting of the case are that, a search was conducted by the CBI in the premises of Birla Groups, as a result of which, certain incriminating materials and an amount of Rs.25 crores were recovered. CBI referred the matter to Income Tax Department. In another search, the IT department recovered certain incriminating materials and unaccounted money of Rs.135 crores from Sahara Group of Companies. Allegedly the department recovered certain print out of excel sheets showing that Rs.115 crores were paid to

several public figures. The settlement commission granted immunity to the Sahara Group of Companies on ground that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives, etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disks and pen drives, etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. The Income Tax Settlement Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. The petitioner, Common Cause, impugned the orders before the Hon'ble Supreme Court. Dismissed the petition Supreme Court clarified that the evidence that had surfaced was not credible and cogent. The Attorney General contended that documents which have been filed by the Birla as well as Sahara Group are not in the form of Account books maintained in the regular course of business. They are random sheets and loose papers and their correctness and authenticity even for the purpose of income mentioned therein have been found to be unreliable having no evidentiary value, by the concerned authorities of Income Tax. Analysing the veracity of the evidences procured from the companies, the Supreme Court, relied upon the ratio laid in V.C. Shukla case and observed that the entries in loose sheets of papers are not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible u/s 34 of Indian Evidence Act, and that only where the entries are in the Books of Accounts regularly kept depending on the nature of the occupation, that those are admissible.

20.15 Tribunal in the case of ACIT Vs. Manchukonda Shyam in ITA 87/Viz/2020 dt.23.09.2020 wherein the Tribunal at paras 6 and 6.1 has held as under:

"6. We have heard both the parties, gone through the orders of the authorities below. Shri Lanka Anil Kumar is an employee of M/s Navaratna Estates Ltd. A search u/s 132 was conducted in the residence of Shri Lanka Anil Kumar and certain sums were found in whatsapp messages in digits. When asked to explain, Shri Anil Kumar stated that the amounts were written in thousands represent lakhs and the total sum of Rs.1,05,00,000/-was taken as loan from the assessee in cash for his business purposes. When confronted with the assessee, he explained that the amounts mentioned in thousands are correct and the total amount would be in the range of Rs.5,000/- and Rs.10,000/- given to Shri Anil Kumar to meet the petty cash or miscellaneous expenses from M/s Navaratna Estates during registration of properties. A search u/s 132 was conducted in the case of Shri Lanka Anil Kumar as well as the assessee and the survey u/s 133A was conducted in the case of M/s Navaratna Estates. No evidence was found by the department either in the premises of the assessee or in the premises of M/s Navaratna Estates, having given loan to Sri Anil Kumar to the extent of Rs.1,05,00,000/-. In the search proceedings in the residence of Shri Anil Kumar also, no evidence with regard to unaccounted investment or expenditure representing the loan supposed to be taken from the assessee was found. Merely on the basis of the statement given by Shri Lanka Anil Kumar, which was subsequently retracted, the AO made the addition on the presumption that the assessee had advanced the sums to Shri Lanka Anil Kumar without bringing any evidence on record. The AO has neither given opportunity to the assessee to cross examine the third party nor disproved the explanation given by the assessee. As found from the order of the AO Sri Lanka Anil Kumar is an employee of M/s Navaratna Estates and drawing the salary of Rs.25000/- per month. He explained that the sums mentioned in the whatsapp messages were related to the amounts given to Sri Lanka Anil Kumar in the range of Rs.5,000/- to Rs.10,000/- to meet the petty cash and miscellaneous expenses. No evidence was found with regard to the investment made by Shri Anil Kumar in his own business out of the loans stated to have given by the assessee. In the above facts and circumstances there is no reason to disbelieve the statement given by the assessee that the payments were given for meeting petty cash or miscellaneous expenses. The Ld.CIT(A) following the decisions of Hon'ble Jurisdictional High Court as well as this Tribunal held that on the

basis of notings and loose sheets found from third parties and the statement of third parties, the additions cannot be made without having corroborative / independent evidences. For the sake of clarity and convenience, we extract relevant part of the order of Ld.CIT(A) in para No.6.2 of page No.13 which reads as under :

"6.2. I have considered the assessment order and submissions of the appellant. It is seen that the addition made by the AO is solely based on the social media (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L, Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and 'details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The low or the issue is laid down by the jurisdictional High Court, and followed by ITAT consistently in the following cases.

- *K. V. Lakshmi Savitri Devi Vs ACT 148 ITJ 517 (Hyd).*
- *K. V. Lakshmi Savjtri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)*
- *Jawahar Bhai Atmaram Hathiwala Vs ITO 128 ITJ 36 (Ahd)*
- *DCIT Vs B. Vijaya Kumar ITA No.930 & 931 of 2009 (Hyd).*
- *CIT Vs R. Nalini Devi ITTA 232 of 2013 (A. P)*
- *CIT Vs P. V Kalyana Sundaran (2007) 294 ITR 49*
- *Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.*
- *P. Venkateshwar Rao Vs DCIT ITA 25/825/Vizag/2012.*

The ratio laid down is that solely on the basis evidences such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidences and independent enquiries. Applying the above ratio to the facts of the case, it is held that the addition made is not warranted, the same is deleted."

6.1. No evidence was found by the department to establish that assessee has given loans to Shri Lanka Anil Kumar during the course of search and no evidence was found regarding utilization of purported advances by Shri Lanka Anil Kumar. Shri Anil Kumar also subsequently retracted from the statement and clarified that he has not received any cash loans from the assessee. Addition was made merely on the basis of whatsapp messages and the statement recorded from section 132(4) from Shri Lanka Anil Kumar which was subsequently retracted. Therefore we are of the view that the addition made by the AO is unsustainable and the Ld.CIT(A) rightly deleted the addition. Accordingly, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed."

20.16 In the light of the above decisions, statements recorded u/s 132(4) of the I.T. Act, 1961 solely cannot constitute as incriminating material so as to make these additions.

20.17 The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) held as follows:-

"Not allowing the assessee to cross-examine the witness by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the

assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. (para 6)

Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. (para 7)

If the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice. (para 8)"

20.18 The Delhi Tribunal in the case of *Veena Gupta v. ACIT in ITA No.5662/Del/2018 dated 27.11.2018* relying on the above judgment of Hon'ble Supreme Court in the case of *Andaman Timber Industries (supra)* quashed the assessment order on the reason of not providing cross-examination of witnesses whose statements were recorded.

20.19 The Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. CIT, 30 ITR 181 held as under:-

"In the instant case a mere calculation of the nature indulged in by the ITO or the AAC was not enough, without any further scrutiny, to dislodge the position taken up by the assessee, supported as it was, by the entries in the cash book and the affidavits put in by the assessee before the AAC.

The Tribunal also fell into the same error. It could not negative the possibility of the assessee being in possession of a substantial number of these high denomination currency notes. It, however, considered that it was impossible for the assessee to have had 61 such notes in the cash balance in their hands on 12-1-1946, and then it applied a rule of

the thumb treating 31 out of such 61 notes as within the bounds of possibility, excluding 30 such notes as not covered by the explanation of the assessee. This was pure surmise and had no basis in the evidence, which was on the record of the proceedings.

Facts proved or admitted may provide to support further conclusions to be deduced from them, which conclusions may themselves be conclusions of fact and such inferences from facts proved or admitted could be matters of law. The court would be entitled to intervene if it appears that the fact finding authority has acted without any evidence or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question.

The High Court treated this finding of the Tribunal as a mere finding of fact and recognised this position in effect but went wrong in applying the true principles of interference with such findings of fact to the present case. Really speaking the Tribunal had not indicated upon what material it held that Rs. 30,000 should be treated as secret profit or profits from undisclosed sources and the order passed by it was bad. The assessee had furnished a reasonable explanation for the possession of the high denomination notes of the face value of Rs. 61,000 and there was no justification for having accepted it in part and discarded it in relation to a sum of Rs. 30,000.

The High Court ought to have held that there were no materials to justify the assessment of Rs. 30,000 from out of the sum of Rs. 61,000, for income-tax and excess profits tax and business profits tax purposes, representing the value of the high denomination notes which were encashed."

20.20 The Hon'ble Calcutta High Court in the case of *CIT v. Eastern Commercial Enterprises, 210 ITR 103 (Cal)* held as follows:-

"8. We have considered the contesting contentions of the parties. It is true that Shri Sukla has proved to be a shifty person as a witness. At the earlier stages, he claimed all his sales to be genuine but before the Assessing Officer in the case of the assessee, he disowned the sales specifically made to the assessee. This statement can at the worst show that Shri Sukla is not a trustworthy witness and little value can be attached to what he stated either in his affidavits or in his examination by the Assessing Officer. His conduct neutralises his value as a witness. A man indulging in double-speaking cannot be said by any

means a truthful man at any stage and no court can decide on which occasion he was truthful. If Shri Sukla is neutralised as a witness what remains is the accounts, vouchers, challans, bank accounts, etc. But, we would observe here that which way lies the truth in Shri Sukla's depositions, could have been revealed only if he was subjected to a cross-examination by the assessee. As a matter of fact, the right to cross-examine a witness adverse to the assessee is an indispensable right and the opportunity of such cross-examination is one of the corner-stones of natural justice. Here Shri Sukla is the witness of the Department. Therefore, the Department cannot cut short the process of taking oral evidence by merely having the examination-in-chief. It is the necessary requirement of the process of taking evidence that the examination-in-chief is followed by cross-examination and re-examination, if necessary.

9. It is not just a question of form or a question of giving an adverse party its privilege but a necessity of the process of testing the truth of oral evidence of a witness. Without the truth being tested no oral evidence can be admissible evidence and could not form the basis of any inference against the adverse parties. We have also examined the records and we find that this Shri Sukla was examined by a number of officers. The Assistant Director of Investigation examined him on August 4, 1987, and in reply to question No. 2 in that deposition he confirmed that he was a dealer in lubricating oil since 1977. In reply to question No. 3, he confirmed having been assessed to income-tax. Again, in reply to question No. 4, he explained that he used to purchase lubricating oil from different garages as well as through various brokers. Such lubricating oil was processed by him in his factory for sale. All payments were received by him through account payee cheques. In reply to question No. 5, he stated that he had seven full-time employees whose names are mentioned by him. He also claimed to have maintained books of account like sales books, purchase books, cash books and sale bills. In reply to question No. 18, he, on his own, stated that his big customers were the Reliance Oil Mills and Eastern Commercial Enterprises, the assessee, in the present reference. As for his cash withdrawals, he explained that his business required ready cash for purchase of raw materials which explained his large drawings of cash from the bank. Learned counsel then cited a host of decisions to bring home the point that no evidence or document can be relied upon unless it is shown to the assessee. Kishanchand Chellaram v. CIT. Similarly, the requirement of cross-examination as the requirement of the rules of natural justice has been underlined by the Bombay High Court in Vasanji Ghela and Co. v. CST [1977] 40 STC 544. It is trite law that cross-examination is the sine qua non of

due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him.

10. In any case, we have nothing to rely upon to come to a decision this way or the other. The first thing is that which of the statements of Shri Sukla is correct, is anybody's guess. Therefore, it is necessary to delve out the truth from him and for that matter a cross-examination is necessary. Secondly, if the statement of Shri Sukla as a witness against the adverse party, the assessee, is relied upon as truthful, still remains the question of estimation of the profit. The assessee no doubt has given a comparative instance of gross profit rate but it is also necessary for the Department to come to a finding as to the norm of the gross profit on the basis of comparative cases. Therefore, it is the duty of the Assessing Officer to counter the comparative statement cited by the assessee before he can have the option to estimate the gross profit. Again, it is the comparative instance that alone can be the foundation of such estimate in case the accounts are really found to be unreliable and requiring to be rejected. Therefore, in the interest of justice for both the parties, the assessee and the Revenue, it is necessary for us to direct the Tribunal to remand the case to the Assessing Officer for reconsidering the whole matter in the light of the observations made by us in the foregoing and redo the assessment accordingly. All opportunities should be given to the assessee in order to lead any evidence that the assessee may feel necessary to rebut the case against him. As a result we decline to answer the question."

20.21 As held by the Hon'ble Calcutta High Court in the above judgment, in the present case, evidence collected by the department from employees cannot be considered as a reliable unless it is substantiated.

20.22 Reliance on this incomplete statement cannot be appreciated as held by the Hon'ble Supreme Court in the case of *Kishinchand Chellaram v. CIT, 125 ITR 713 (SC)* as follows:-

"Held, reversing the decision of the High Court, (i) on the facts, that the two letters dated February 18, 1955 , and March 9, 1957 did not constitute any material evidence which the Tribunal could take into account for the purpose of arriving at the finding that the sum of

Rs.1,07,350 was remitted by the assessee from Madras, and if these two letters were eliminated, there was no material evidence at all which could support its finding. The statements of managers in those two letters were based on hearsay, as in the absence of evidence, it could not be taken that he must have been in charge of the Madras office on October 16, 1946, so as to have personal knowledge. The department ought to have called upon the manager to produce the documents and papers on the basis of which he made the statement and confronted the assessee with those documents and papers. It was true that proceedings under the income-tax law were not governed by the strict rules of evidence, and, therefore, it might be said that even without calling the manager of the bank in evidence to prove the letter dated February 18, 1955, it could be taken into account as evidence. But before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. Nor was there any explanation regarding what happened when the manager appeared in obedience to the summons referred to in the letter dated March 9, 1957, and what statement he had made."

20.23 For this purpose we place reliance on the judgement in the case of ICT Vs. Abhinitha Foundation Pvt. Ltd. (2017) (396 ITR 251), wherein held as under:

"8. We have heard the learned counsel for the parties and perused the record.

9.According to us, what clearly emerges upon perusal of the record and, in particular, the impugned judgment and order of the Tribunal, is as follows:

i.That, in the original return as filed by the assessee company, no claim for deduction under Section 80 IB (10) of the Act had been made.
ii.That the assessee company, as observed in paragraph 3 of the impugned judgment and order of the Tribunal, had made a claim for deduction under Section 80 IB (10) of the Act at the stage, when, the assessment proceedings were on. At that point in time, details with regard to the project, qua which, claim was made, were filed along with requisite information, in the prescribed format, i.e., Form 10CCB.

iii.The CIT (A), even while recognizing the fact that the claim made by the assessee company for deduction under Section 80 IB (10) of the Act had been allowed both in the preceding and succeeding years, rejected the same, solely, on the ground that it did not form part of the original return.

10.Having regard to the aforesaid facts, what is required to be considered is : whether the conclusion reached by the Tribunal that the appellate authorities, (which included the CIT (A) and itself), had the necessary power to consider the claim for deduction, if, the assessee company was otherwise entitled to in law, given the fact that the relevant material was already available on record.

11.Mr.Ravikumar, in support of the appeal, contended to the contrary and in this behalf, placed great emphasis on the judgment of the Supreme Court in GOETZE's case. A perusal of the said judgment would show that the issue which arose for consideration before the Supreme Court, was, as to whether a claim for deduction could be made by way of a letter before the Assessing Officer, if, it did not form part of the original return. The Supreme Court ruled and, while doing so, to our minds, carefully noted that, though the Assessing Officer did not have the power to entertain the claim for deduction made after the return was filed, otherwise than by filing a revised return, it did not exclude the power of the Tribunal to consider the claim in exercise of its appellate power under Section 254 of the Act. This aspect of the matter is quite clearly brought to light in the operative paragraph of the judgment, i.e., paragraph 4.

11.1.For the sake of convenience, the said observations are extracted hereafter:

> *"4.The decision in question is that the power of the Tribunal under S.254 of the IT Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the AO to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Tribunal under s.254 of the IT Act, 1961. There shall be no order as to costs." (Emphasis is ours)*

12.To be noted, the Supreme Court, while rendering its judgment in the case of Goetze, had noticed its own judgment in National Thermal Co. Ltd. vs. CIT, (1998) 229 ITR 383 (SC). In the said case, the Supreme Court was called upon to adjudicate as to whether a claim made by way of a letter before the Tribunal for the first time could have been entertained by the Tribunal. Briefly, the facts which obtained in the said case are as follows:

12.1.The assessee, in that case, had available with it surplus funds, which it chose to deposit with banks on a short term basis. Qua the said short term deposits, the assessee earned interest during the relevant previous year amounting to Rs.22,84,994/-. The said interest was offered for levy tax by the assessee, based on which, assessment proceedings were completed. The assessee, however, challenged the assessment order before the CIT (A) qua grounds other than the inclusion of the interest earned on short term deposits in the total income. Consequently, this aspect of the matter was not considered by the CIT (A). The assessee, however, carried the matter in appeal to the Tribunal. The appeal, as originally filed with the Tribunal, did not object to the inclusion of interest in the sum of Rs.22,84,994/-. The assessee, however, as indicated above, for the first time, by way of a letter dated 16.07.1983, raised additional grounds, whereby, a challenge was laid to the inclusion of interest in the total income. The basis of the challenge was that, since, the sum of Rs.22,84,994/- had been deducted from the expenditure incurred during construction period, it could not have been included in the total income.

12.2.The Supreme Court, after examining the matter threadbare, made the following observations:

> *"Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have aright to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

12.3 In the case of Jute Corporation of India Ltd. v. CIT (1991) 187 ITR 688, this court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any

statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal (vide, e.g., CIT v. Anand Prasad (1981) 128 ITR 388 (Delhi), CIT v. Karamchand Premchand P. Ltd. (1969) 74 ITR 254 (Guj) and CIT v. Cellulose Products of India Ltd. (1985) 151 ITR 499 (Guj) (FB). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee." (Emphasis is ours) 12.3.In the said judgment, the Supreme Court also noticed its own judgment in the case of Jute Corporation of India Ltd. v. CIT (1991) 181 ITR 688. This view has been adopted by two Division Benches of this Court in the matter of Ramco Cements Ltd. vs. DCIT (2015) 55 taxmann.com 79 (Madras) and, in the judgment rendered in: T.C. (A) No.878 of 2014 dated 18.11.2014, titled CIT vs. Malind Laboratories P. Ltd. As a matter of fact, the Delhi High Court has also, in two separate judgments, come to the same conclusion. These judgments are rendered in: CIT vs. Sam Global Securities Ltd., (2013) 38 taxmann.com 129 (Delhi) and CIT vs. Jai Parabolic Springs Ltd., (2008) 306 ITR 42 (Delhi).

12.4.Furthermore, a Division Bench of the Bombay High Court has also taken the same view in the judgment rendered in CIT vs. Pruthvi Brokers & Shareholders P. Ltd., (2012) 349 ITR 336 (Bom.). The issue, with which, the Bombay High Court was grappling, was, that a claim for deduction under Section 43B of the Act had not been made qua the relevant assessment year in the original return, but was made via a letter. The Division Bench of the Bombay High Court held even while assuming and, in that sense, accepting the argument of the Revenue, that though, an amendment to the original return could not be made by filing a letter - it would be open to the appellate authorities to consider the claim and adjudicate upon the same. In this behalf, the Bombay High Court made the following observations:

"14. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims to wit claims not made in the return filed by it. It is necessary for us to refer to some of these decisions only to deal with two submissions on behalf of the department. The first is with respect to an observation of the Supreme Court in Jute Corporation of India Limited v. Commissioner of Income Tax, 1991 Supp (2) SCC 744 = (1991) 187 ITR 688. The second submission is based on a judgment of the Supreme Court in Goetze (India) Limited v. Commissioner of Income Tax, (2006) 157 Taxman 1.
(A). In Jute Corporation of India Limited v. CIT, for the assessment year 1974-75 the appellant did not claim any deduction of its liability towards purchase tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as it entertained a belief that it was not liable to pay purchase tax under that Act. Subsequently, the appellant was assessed to purchase tax and the order of assessment was received by it on 23rd November, 1973. The appellant challenged the same and obtained a stay order. The appellant also filed an appeal from the assessment order under the Income Tax Act. It was only during the hearing of the appeal that the assessee claimed an additional deduction in respect of its liability to purchase tax. The Appellate Assistant Commissioner (AAC) permitted it to raise the claim and allowed the deduction. The Tribunal held that the AAC had no jurisdiction to entertain the additional ground or to grant relief on a ground which had not been raised before the Income Tax Officer. The Tribunal also refused the appellant's application for making a reference to the High Court. The High Court upheld the decision of the Tribunal and refused to call for a statement of case. It is in these circumstances that the appellant filed the appeal before the Supreme Court.

15.The Supreme Court held as under (page 693) :-

"In CIT v. Kanpur Coal Syndicate, a three Judge bench of this Court discussed the scope of Section 31(3)(a) of the Income Tax Act, 1922 which is almost identical to Section 251(1)(a). The court held as under: (ITR p. 229) If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant

Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do.(emphasis supplied) The above observations are squarely applicable to the interpretation of Section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is coterminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer.[emphasis supplied]" (B) It is clear, therefore, that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. They have the jurisdiction to entertain the new claim. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction.

16. At page 694, after referring to certain observations of the Supreme Court in Additional Commissioner of Income-tax v. Gurjargravures P. Ltd., (1978) 111 ITR 1, the Supreme Court observed at Page 694 as under :-

The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose.[emphasis supplied]

17. The underlined observations in the above passage do not curtail the ambit of the jurisdiction of the appellate authorities stipulated earlier. They do not restrict the new/additional grounds that may be taken by the assessee before the appellate authorities to those that were not available when the return was filed or even when the assessment order was made. The sentence read as a whole entitles an assessee to raise new grounds/make additional claims :-

if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made.... or if the ground became available on account of change of circumstances or law

18.The appellate authorities, therefore, have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The first part viz. if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made... clearly relate to cases where the ground was available when the return was filed and the assessment order was made but could not have been raised at that stage. The words are could not have been raised and not

were not in existence. Grounds which were not in existence when the return was filed or when the assessment order was made fall within the second category viz. where the ground became available on account of change of circumstances or law. (Emphasis is ours)

12.5. A reading of the aforesaid observations would clearly establish that the arguments advanced by Mr.Ravi that the assessee company could only raise an additional ground and not make a new claim or additional claim is not sustainable. As indicated by us hereinabove, this power of entertaining the claim vests with the appellate authorities based on the facts and circumstances of the case. The power of the appellate authorities to consider claims made based on material already on record is co-terminus with the power of the Assessing Officer. The failure to advert to the claim in the original return or the revised return cannot denude the appellate authorities of their power to consider the claim, if, the relevant material is available on record and is otherwise tenable in law. Any other view, in our opinion, will set at naught the plenary powers of appellate authorities.

13.The judgment of the Division Bench of this Court rendered in T.C. (A) No.344 of 2005, dated 16.06.2011, titled CIT vs. M/s.Shriram Investments, which is relied upon by the learned counsel for the Revenue, is clearly distinguishable, as in that case, the assessee had sought assessment of tax by disclosing a lower taxable income, albeit, by filing a second revised return. It is in that context that the Division Bench came to the conclusion that the second revised return, which was filed beyond the period of limitation, being non est in law, would not be considered for the purposes of ascertaining the taxable income.

14.In so far as the judgment of the Supreme Court in the matter of Stepwell is concerned, according to us, it has no applicability to the issue raised in the instant appeal. In that case, the Tribunal appears to have allowed the claim of the assessee for deduction under Section 35 B of the Act without examining the facts of the case. The assessee, evidently, had neither made a claim before the ITO nor the AAC nor, had he, furnished particulars of the expenditure incurred by it. It is in this context that the Supreme Court observed that the onus of proving facts and obtaining the benefit of a deduction lay on the assessee. It was further observed that since the assessee failed to prove its claim before the ITO or the AAC, the Tribunal could not have allowed the claim on assumption of facts.

15. As indicated above, the ratio on the said judgment is entirely different and therefore, has no applicability to the facts of the instant case.

16.Similarly, the judgment of the Allahabad High Court in the matter of G.S. Rice Mills is distinguishable, inasmuch as the assessee had neither made a claim before

the ITO nor was any material placed on record in support of the claim. The High Court, in this context, held that the Tribunal was not justified in entertaining the claim made under Section 80G of the Act and thereupon, issuing a consequent direction to the ITO to examine the same on merits.

16.1.As would be evident from the narration of facts set out above, in the present case, the Tribunal has noted that relevant material was placed by the assessee company before the Assessing Officer during the course of the assessment proceedings. Therefore, in our view, the said judgment is also distinguishable.

17. A similar situation arose in the case of ACIT vs. Gurjargravures P. Ltd. In this case as well, it was noticed that neither was any claim made before the ITO nor was any supporting material placed on record. It is in this background that no relief was granted. The Supreme Court, in this case, disagreed with the High Court, inasmuch as it sustained the direction of the Tribunal issued to the ITO to grant appropriate relief qua claim made under Section 84 of the Act.

18.In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in GOETZE's case and National Thermal Power Co. Ltd.'s case, and those, rendered by the Division Bench of this Court in Ramco Cements Ltd. and CIT vs Malind Laboratories P. Ltd., as also the judgments of the Delhi High Court in Sam Global Securities Ltd.'s case and Jai Parabolic Springs Ltd.'s case, that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record, either by the appellate authorities, (which includes both the CIT (A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal, on perusal of the record, found that the relevant material qua the claim made by the assessee company under Section 80 IB (10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer.

18.1.In our opinion, the view taken by the Tribunal is unexceptionable and therefore, does not merit any interference.

19.Consequently, the Tax Case Appeal is dismissed, leaving the parties to bear their own costs."

20.24 In the case of DCIT Vs. CMS Securities Ltd. (2016) (47 ITR 378), the Tribunal held as under:

"3. We have gone through the orders of the lower authorities as well as order of the Tribunal for A.Y 2008-09. The solitary issue involved in the Revenue's

appeal is that in the return of income the assessee had made claim on account of bad debts written off for Rs.96,35,224/-. During the course of assessment it was found by the assessee that the assessee had by mistake claimed lesser amount on account of bad debts, and therefore, it made further claim on account of bad debts written off of Rs. 40,81,493/- u/s. 36(1)(vii) of the Act. The additional claim made by the assessee was rejected by the AO in view of the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT, 284 ITR 323. Being aggrieved, the assessee filed an appeal before the Tribunal, wherein the claim of the assessee on account of bad debts made during the course of the assessment proceedings was allowed on the ground that the aforesaid judgment of the Hon'ble Supreme Court was not applicable on the appellate authority. The CIT(A) also relied 3 M/s. CMS Securitas Ltd. upon the circular issued by the Central Board of Direct Taxes no. 14 dt. 11.4.1955, wherein it was guided by the Board to the revenue officers of the Income Tax Department that they must not take advantage of the ignorance of the assessee and that it was one of the duties of the officers to assist the tax payers in determination of correct amount of tax payable, as per law. Ld. CIT(A) also followed the judgment of Mumbai Bench of ITAT in Chicago Pneumatic (India) Ltd. v. DCIT, 15 SOT 252, wherein relying upon the said circular the Hon'ble Bench had observed that assessing authorities are bound to compute the correct income, and merely for a procedural lapse on technicalities, the assessee should not be compelled to pay more taxes than what is due from him.

4. It is further noted by us that in A.Y 2008-09 an identical claim was made by the assessee during the course of the assessment proceeding with respect to additional claim on account of bad debts. The AO in that year had had rejected the claim in an identical manner by relying upon the judgement of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (supra) as has been done in this year. The said claim was allowed by the ld. CIT(A) and Department carried the matter in appeal before the Tribunal.

5. The Tribunal in A.Y 2008-09 considered the entire gamut of facts and the position of law on this issue and decided the appeal in favour of the assessee by upholding the order of the ld. CIT(A) in allowing the revised claim made by the assessee during the course of the assessment proceedings. Relevant findings of the order of the Tribunal are reproduced hereunder for the sake of ready reference:

"3. Ld. CIT(A) has stated that the assessee has filed the statement of account of provision for doubtful debts which he has extracted in para 4 of the impugned order. Assessee stated before ld. CIT(A) that actual debts written off in the financial year relevant to the assessment year under consideration is Rs. 1,87,70,011/ and there is a mistake in the return of income. Ld. CIT(A) considered the submissions of the assessee and held that even if the claim is not made in the return of income and it is made before the first appellant authority, the claim can be entertained. The First Appellate Authority referred the decision of the Third

Member of Delhi Bench of the Tribunal in the case of JCIT V/s Hero Honda Finlease Ltd reported in 115 TTJ (Del) TM 752, wherein the Tribunal has held as under:

"I have carefully considered the questions, the orders of the IT authorities and the rival contentions. The precise difference between the two learned Members is regarding the question whether the CIT(A) ought to have first decided the question of entertainability of the assessee's higher claim of depreciation by a letter and not by a revised return, before deciding the merits of the claim. In Goetze (India) Ltd. v. CIT (2006) 204 CTR (SC) 182 : (2006) 284 ITR 323 (SC), the Supreme Court held that the assessee can make a claim for deduction, which has not been claimed in the return, only by filing a revised return within the time allowed. In the same decision, it was made clear that the power of the Tribunal to admit an additional ground under s. 254 is not affected by its decision. It was however clarified that the case was concerned with only the power of the assessing authority and not the appellate authority. Under s. 250(5), the CIT(A) has the power to allow the appellant to go into any ground of appeal not specified in the grounds of appeal if he satisfied that the omission of the ground from the form of appeal was not willful and unreasonable. Dealing with such a power, the Bombay High Court in CIT v. Prabhu Steel Industries (P) Ltd. (1988) 171 ITR 530 (Bom), held that where a claim for special deduction was made by the assessee not in his return but in the course of the assessment proceedings and the ITO failed to consider the same, it was open to the AAC to entertain the claim. In CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC), it was held by the Supreme Court that the powers of the CIT(A) sitting in appeal over an assessment were plenary and conterminous with those of the AO and that he can do what the ITO can do and also direct him to do what he has failed to do. In the light of the law laid down in this judgment by the Supreme Court, it was open to the CIT(A) to consider the assessee's claim on merits by virtue of his coextensive power over the assessment proceedings and also by virtue of s. 250(5). That apart, the judgment of the Supreme Court in Goetze (supra) is distinguishable on facts because in that case the claim was made for the first time in the letter filed by the assessee in the course of the assessment proceedings whereas in the present case the claim of depreciation on the trucks @ 20 per cent was already made in the return of income and it was merely enlarged to 40 per cent on the footing that the assessee was running the trucks on hire. It cannot be said to be an entirely new claim made for the first time in the letter filed by the assessee in the course of the assessment proceedings. The CIT(A) therefore committed no error in dealing with the assessee's appeal on merits. Moreover, the AO himself has examined the claim on merits though he earlier held that the claim was not entertainable and the letter was non est. A decision having been given by him on merits it was open to the CIT(A) to deal with the merits. I, therefore, agree with the learned AM that the CIT(A) was not precluded from dealing with the assessee's claim for higher depreciation on merits."

4. Ld CIT(A) has stated that the facts in the case before him are similar to the above mentioned decision and accordingly allowed the claim of Rs.1,87,70,011/- as bad debts amount actually written off by the assessee. Hence department is in appeal before the Tribunal.

5. During the course of hearing ld.DR relied on the order of the AO and whereas ld.AR relied on the order of ld. CIT(A). He further submitted that the assessee actually written of amount of Rs.1,87,70,011/- as bad debts and the provisions made in the earlier year of the aggregate amount of Rs.82,91,575/- had been disallowed in the earlier year.

6. The above facts have not been disputed by ld. DR that the assessee has actually written off in the assessment year under consideration as bad debts of Rs.1,87,70,011/-. The Honble Apex Court in the case of T.R.F. Ltd. V/s CIT (2010) 323 ITR 397 (SC) has held that "w.e.f. 1-4-1989, it is enough if bad debt is written off as irrecoverable in accounts of assessee to satisfy the condition of Section 36(1)(vii) of the Income-tax Act, 1961". In view of the above amendment w.e.f. 1-4-1989 the assessee is entitled to claim deduction as it would satisfy the purpose of the Act. In view of above, in the facts of case, we uphold the order of ld. CIT(A) and reject ground of appeal taken by the department. Hence, appeal of the department is dismissed."

6. We have gone through the aforesaid judgment of the Tribunal and other judgments relied upon by the Tribunal in its order. The claim on account of bad debts written off is now settled on the basis of judgment of the Hon'ble Supreme Court in the case of T.R.F Ltd. v. CIT, 323 ITR

397. There is no dispute on facts that bad debts have been written off. Thus, as per law, the assessee is undisputedly eligible for the claim. The only hurdle created by the AO was that since the claim was not made in the return of income, therefore, the claim could not have been allowed to the assessee. We do not respectfully agree with the views of the AO. In our considered view, if the assessee is entitled for a deduction, as per law and facts, same should not have been denied to itr merely because the claim was not made in the return of income. That would, in our considered opinion, amount to collecting taxes without authority of law. It is further noted by us that it is well settled position of law that assessee can resile from its return of income during the course of assessment proceedings if he is able to show that the return filed was not in accordance with the law or if some income was wrongly offered to tax, which was as per law, not liable to tax, or if the assessee finds that there was omission to make a claim in the return of income. The only 7 M/s. CMS Securitas Ltd. precaution to be taken here would be that fresh claim of the assessee should be strictly within the four corners of law. If it is so, the claim made even for the first time during the assessment proceedings should not be rejected.

7. In our view, there are no estoppels on legal issues under the income tax law. Even if, assessee agrees or consents for something contrary to law, the A.O. is obliged under the law, to discharge his duty of making fair assessment of income and to compute amount of tax payable as per law. As per Article 265 of the Constitution of India, "No tax can be collected except by authority of law". Hon"ble Supreme Court in the case of Ramlal vs Rewa Coalfield Ltd (AIR 1962 SC 361), held that the state authorities should not raise technical pleas if the citizens have a lawful right, which is being denied to them merely on technical grounds. The state authorities cannot adopt the attitude which private litigants might adopt. Further, we place our reliance on the judgment of Hon"ble Delhi High Court in the case of CIT vs Bharat General Reinsurance Co Ltd 81 ITR 303 (Del.) Relevant portion is reproduced below:

"It was true that the assessee itself had included that dividend income in its return for the year in question, but there was no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quite apart from it, it was incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it could not confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. Therefore the income from dividend was not assessable during the assessment year 1958-59, but it was assessable in the assessment year 1953-54. It could not, therefore, be taxed in the assessment year 1958-59."

8. Further reliance is placed by us on another judgment of Hon"ble Gujarat High Court, in the case of, S.R. Koshti 276 ITR 165 (Guj) in which relief was granted to assessee with following observations:

"The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected."

9. In the case of Snehlata 192 CTR 50, Hon'ble J&K High Court held that "when the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. It is settled proposition of law that no tax can be levied or recovered without authority of law. Article 265 of the Constitution of India and section 114 of the State (J&K) Constitution imposes an embargo on imposition and collection of tax if the same is without authority of law."

10. Lastly, we find it useful to refer to judgment of Hon'ble Bombay High Court in the case of Central Provinces Manganese Ore 112 ITR 734, holding that, the mere fact that a deduction was not claimed before the Income-tax Officer, was not of much importance, since if the liability arises then a claim can be made in a bonafide manner at any stage before the higher authority, who is competent to grant relief.

11. As far as the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (supra) is concerned, it is respectfully stated that it has been observed in the said judgment by the Hon'ble Supreme Court that this embargo is not applicable on the appellate authorities. In this regard, the Hon'ble Delhi High Court in the case of CIT v. Jai Parabolic Springs Ltd., 306 ITR 42, explaining the judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. v. CIT (supra), has held that the Tribunal has powers to allow fresh claim made by the assessee during the course of assessment proceedings. The relevant observations of Hon'ble High Court are reproduced below :-

"12. As clear from the abovesaid facts, there is no dispute that customer introduction charges did not (sic) represent revenue expenditure. The principal ground taken by the Revenue in this appeal is that if no claim for deduction of the amount was made in the return of income then deduction would not be allowed.

13. Sec. 254 of the Act says that the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

14. Reference may be made to National Thermal Power Co. Ltd. vs. CIT (1999) 157 CTR (SC) 249 (1998) 229 ITR 383 (SC), where the Supreme Court observed that:

"The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. We do not see any reason to restrict the power of the Tribunal under s. 254 only to decide the grounds which arise from the order of the CIT(A). Both the assessee as well as the Department have a right to file an appeal/cross-objection before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

15. Reference may also be made to Gedore Tools (P) Ltd. vs. CIT (2000) 161 CTR (Del) 472 : (1999) 238 ITR 268 (Del), wherein the apex Court decision in National Thermal Power Co. Ltd. (supra) has been followed.

16. In the case of Jute Corporation of India Ltd. vs. CIT (1990) 88 CTR (SC) 66 : (1991) 187 ITR 688 (SC) while dealing with the powers of the AAC, the Supreme Court observed that :

"An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. in the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the AAC in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the ITO. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The AAC must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The AAC should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also."

17. In Goetze (India) Ltd. vs. CIT (2006) 204 CTR (SC) 182 : (2006) 284 ITR 323 (SC), wherein deduction claimed by way of a letter before AO, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal.

18. Further, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. Reliance can be placed on Madras Industrial Investment Corporation Ltd. vs. CIT (1997) 139 CTR (SC) 555 : (1997) 225 ITR 802 (SC).

19. In view of the above discussion, it is very clear that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case. Therefore, there is no infirmity in the order of the Tribunal."

12. Further, similar view has been addressed by the Tribunal also in A.Y 2008-09 by relying upon another judgment of coordinate Bench in the case of JCIT v. Hero Honda Finlease Ltd., 115 TTJ 752 (Delhi) (TM). Thus, respectfully following these judgments, and in the given facts of the case, we find that the ld. CIT(A) has rightly

allowed the claim made by the assessee during the course of assessment proceedings and that the order passed by him is within the provisions of law, and nothing wrong therein could be pointed out by the ld. DR, and therefore, we uphold the same.

13. As a result, the appeal of the revenue is dismissed."

20.25 In the case of Srikanth G. Shah v. ITO (ITAT Mum) (2008) (300 ITR 324) (AT) it was held as under:

"18. We have given a careful consideration to the rival submissions made before us. We have also carefully gone through the relevant facts and the judicial pronouncements cited before us. In our view, the grounds raised by the assessee in appellate proceedings to the effect that the interest income disclosed by him in the returns of income filed in response to notices issued Under Section 148 must be excluded from his total income, has to be entertained and dealt with on merits. The Hon'ble Jurisdictional High Court's decision in the case of Nirmala L Mehta (supra) squarely applies to the facts of this case. In that case also the Hon'ble Bombay High Court observed that merely because the assessee offered the prize money won in the lottery of the Sikkim Government, that would not take away her right to contend that the prize money was not chargeable to tax under Income tax Act, 1961. In this case also, having conditionally offered the income for tax, the assessee raised the issue before the learned CIT(A) that such income is not legally includible in his total income. The learned CIT(A) rejected this plea on the ground that having already voluntarily disclosed the income, the assessee cannot raise such ground. This finding of the learned CIT(A) is not in consonance with the Hon'ble Bombay High Court decision referred above. Another basis on which the learned CIT(A) did not entertain the ground of appeal raised by the assessee is the provisions contained in proviso (b) of Section 240. The relevant section has already been reproduced above. A plain reading of the provision shows that Clause (b) of proviso applies only to a case where the assessment is annulled. In the present case, admittedly, the assessment is not annulled. The assessments have been partly confirmed by the learned CIT(A). Therefore, it cannot be said that in the present case, relevant assessments have been annulled. This is substantiated from the exposition of the word "annulment" as contained in the judgment of Hon'ble Bombay High Court in the case of M/s Ratanbai N.K. Dubhash referred to above. We, therefore, hold that the grounds of appeal raised by the assessee regarding taxability of interest income must be admitted and decided on merits.

19. Coming to the merits, there is no dispute about the factual position. The moneys have been received by the assessee in his capacity as a solicitor by way of deposits and to be utilized for meeting obligations of the clients. These moneys were put in a separate bank account and the interest accruing on this bank account

was also apportioned by the assessee to various clients. All these amounts were shown in the accounts of the assessee as liability payable to the clients. The Hon'ble Bombay High Court decision in the case of Tanubai D. Desai (supra) is fully applicable to the facts of the assessee's case. In that case, the assessee had even appropriated the interest income for his own benefit. Nevertheless, the High court held that the income cannot be brought to the tax in the hands of the solicitor. Any other action can be taken against the assessee for unauthorisedly converting the clients money for his own benefit but such income cannot be brought to the charge of tax. The case of the assessee is on a better footing. The assessee has maintained separate account and has also apportioned the interest income to the respective accounts of the clients. It is notable that even the learned CIT(A) held on merits that the interest income was not taxable legally in the hands of the assessee. At para 4.2 of his order, the learned CIT(A) held as under:

From the facts of the case, the Rules of Hon'ble Bombay High Court and the judgments relied upon by the appellant, it is clear that interest accrued on bank account referred above, would not belong to the appellant as long as the appellant apportioned the interest accrued to the respective clients' account.

20. Thus, while accepting the claim of the assessee on merits, the learned CIT(A) refused to allow any relief to the assessee on the ground that the income was voluntarily disclosed by him. It is true that when the assessee did not disclose the interest income in the original returns of income filed by him, he wrongly claimed deduction for TDS. As per the provisions of Section 199 of the Act, credit for TDS shall be allowed for assessment year for which the relevant income is brought to the charge of the tax. When the income itself, was not shown by the assessee, in the original return of income, the claim for TDS was patently wrong. However, that should not be reason for bringing to the charge of tax such income, which is not chargeable to tax at all in the hands of the assessee as per the provisions of law. The assessing officer is within his right to deny credit for the TDS but he cannot bring to the charge of tax the income, which is not assessable in the hands of the assessee.

21. In view of the above discussion, we hold that the relevant interest income is not chargeable in the hands of the assessee and we direct the assessing officer to exclude such income from the assessee's total income for all the assessment years under appeal. The assessing officer is also directed to withdraw the credit in respect of TDS allowed to the assessee for all the assessment years.

22. The last ground raised by the assessee pertains to partial disallowance sustained by the learned CIT(A) from out of disallowance made by the assessing officer in respect of motor car expenses, depreciation on motor car, telephone expenses and printing and stationery expenses. Briefly stated the facts are that the assessing officer disallowed 20% from out of above expenses for personal use of

the assessee. The learned CIT(A) restricted the disallowance to 10% in respect of motor car expenses, depreciation on motor car and telephone expenses. The disallowance from out of printing and stationery expenses was deleted by the learned CIT(A) for all the assessment years under appeal except for the assessment year 95-96, where he has upheld the disallowance to the extent of 10%.

23. The learned Counsel for assessee did not seriously contend regarding the merits of the disallowance sustained by the learned CIT(A), but he forcefully contended that in an assessment made by the assessing officer Under Section 147 of the Act, he cannot make such disallowances in respect of matters which have reached finality in the original assessment and which arc not in the nature of any escapement of income within the meaning of Section 147. The learned Counsel for assessee pointed out that the original assessment was made Under Section 143(1) and thereafter no notice Under Section 143(2) was issued. Notices for the relevant assessment years were issued Under Section 148 for the limited purpose of bringing to the charge of tax the interest income. However, during the course of re assessment proceedings, the assessing officer made enquiries regarding various expenses and thereafter he made disallowances. It is argued that this is not permissible under law. The learned Counsel strongly relied on the decision of Hon'ble Punjab & Haryana High Court in the case of Vipan Khanna v. CIT 255 ITR 220 (P&H). The relevant part of the ratio of this case is reproduced from the head notes as under:

According to the law laid down by the Hon'ble Supreme Court in CIT v. Sun Engineering works p. ltd 198 ITR 297, when proceedings Under Section 147 of the Act are initiated, the proceedings are open only qua items oj under assessment. The finality of assessment proceedings on other issues remains undisturbed. It makes no difference whether the assessment proceedings have become final on account of framing of an assessment Under Section 143(3) oj the Act or on account of non-issue of a notice Under Section 143(2) of the Act within the stipulated period. The amendments made in Sections 143 to 147 of the Act with effect from April 1, 1989, do not in any manner negate this proposition of law as enunciated by the Hon'ble Supreme Court in the case of CIT v. Sun Engineering Works P. ltd. 198 ITR 297.

24. The learned Counsel pointed out that the Hon'ble Punjab & Haryana High Court also considered decision of Hon'ble Supreme Court in the case of V. Jagan Mohan Rao v. CIT 75 ITR 373 (SC). The learned Counsel argued that once the proceedings Under Section 147 are validly initiated, the jurisdiction of the assessing officer is confined to only income, which has escaped assessment and the entire assessment cannot be made denovo after making enquiries. The learned DR relied on the provisions of Section 147.

25. We have considered the rival submissions in the light of the legal position as emerging from the provisions of law and the eases cited before us. Section 147 is applicable with effect from 01.04.1989 reads as under:

Income escaping assessment.
147 If the [Assessing] Officer /has reason to believe/ that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):
Provided that where an assessment under Sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to lax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Sub-section (1) of Section 112 or Section 118 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.
Explanation 1. Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.
Explanation 2. For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:
(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understood the income or has claimed excessive loss, deduction, allowance or relief in the return;
(c) where an assessment has been made, but
(i) income chargeable to lax has been under assessed; or
(ii) such income has been assessed at too low a rate; or
(iii) such income has been made the subject of excessive relief under this Act; or
(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

26. From the above, it may be seen that once re-assessment proceedings have been validly initiated Under Section 147, the assessing officer is authorized to assess or

reassess such escaped income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of assessment proceedings Under Section 147, it is clear that the jurisdiction of the assessing officer Under Section 147 is not merely confined to bringing to charge of tax the income referred to in the reasons recorded for issue of notice Under Section 148, but it also extends to bringing to charge of tax any other income which has escaped assessment and which comes to his notice during the re-assessment proceedings. The Hon'ble Punjab & Haryana High Court, in the case of Vipan Khanna (supra) held that it is only such income which has escaped assessment which can be brought to the charge of tax in the re-assessment framed Under Section 147. If during the course of re-assessment proceedings, the assessing officer notices that any other income chargeable has also escaped assessment, he is within his power to bring to charge of tax such income. However, the assessing officer cannot make any roving or fishing enquiries and he cannot proceed in a fashion as if entire proceedings are open before him. In that case, in response to the notice issue Under Section 148, the assessee filed returns of income for the relevant assessment years declaring same income as had been shown in the original returns. The assessing officer, thereafter, issued notices Under Section 143(3) and 142(1) requiring the assessee to produce the books of account and to furnish information specified in the letter issued by the assessing officer. Making of such enquiries was not approved by the Hon'ble High Court.

27. This issue arose before the Hon'ble Supreme Court in the case of V. Jaganmohan rao v. CIT (supra) and the ratio of this case may be reproduced from the head notes:

Once proceedings Under Section 34 are validly initiated the jurisdiction of the ITO is not restricted to the portion of the income that escapes assessment. Section 34 in terms says that once the ITO decides to re-open the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice Under Section 22(2) and may proceed to assess or re assess such income, profits or gains. Therefore, once ass4essment is reopened by issuing a notice under Sub-section (2) of Section 22, the previous under assessment is set aside and the whole assessment proceedings start afresh. Once valid proceedings are started Under Section 34(1)(b) the ITO not only had the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year.

28. The Hon'ble Supreme Court was concerned with the interpretation of Section 34 of the Indian Income tax Act, 1922, which is now replaced by Section 147 of the Income Tax Act, 1961. It was observed by the Hon'ble Supreme Court that once valid proceedings arc started Under Section 34(1)(b), the ITO not only had jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year. The scope and ambit of the aforesaid Hon'ble

Supreme Court decision has been explained by the Hon'ble Supreme Court in the case of ITO v. Sun Engineering works Pvt. Ltd. 198 ITR 297 (SC). We deem it proper to reproduce below the relevant part of the decision as under from pages 319 to 321 of the report:

The principle laid down by this court in V. Jaganmohan Rao's case, therefore, is only to the extent that once an assessment is validly reopened by issuance of a notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act), the previous underassessment is set aside and the Income-tax Officer has the jurisdiction and duty to levy lax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous underassessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not affect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in case of "underassessment" based on Clauses (a) to (d) of Explanation 1 to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in V. Jaganmohan Rao's case , therefore, cannot be read to imply as laying down that, in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim re-computation of the income or redoing of an assessment and be allowed a claim, which he either failed to make or which was otherwise rejected at the time of original assessment, which has since acquired finality. Of course, in the reassessment proceedings, it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in v. Jaganmohan Rao's case , as laying down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "underassessment" but to the entire assessment for the year and starts the assessment proceedings be novo giving the right to an assessee to re-agitate matters, which he had lost during the original assessment proceedings, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the question arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions, which were before this court. A decision of this court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the court must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the

judgment, divorced from the context of the questions under consideration by this court, to support their reasonings. In Madhav Rao Jwaji Rao Scindia Bahadur v. Union of India , this court cautioned (at page 578 of AIR 1971 SC):
It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even all to be answered in that judgment.

Although Section 147 is a part of a taxing statute, it imposes no charge on the subject but deals merely with the machinery of assessment and in interpreting a provision of that kind, the rule is that construction should be preferred under Section 147 of the Act are for the benefit of the Revenue and not an assessee and are aimed at garnering the "escaped income" of an assessee, the same cannot be allowed to be converted as "revisional" or " review" proceedings at the instance of the assessee, thereby making the machinery unworkable.
As a result of the aforesaid discussion, we find that, in proceedings under Section 147 of the Act, the Income tax Officer may bring to charge items of income, which had escaped assessment other than or in addition to that item or items, which have led to the issuance of the notice under Section 148 and where reassessment is made under Section 147 in respect of income, which has escaped tax, the Income-tax Officer's jurisdiction is confined to only such income, which has escaped tax or has been under assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to re-agitate questions, which have been decided in the original assessment proceedings. It is only the underassessment, which is set aside and not the entire assessment when reassessment proceedings are initiated. The Income-tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters, which are not the subject matter of proceedings under Section 147. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been assessed originally was at too high a figure except in cases under Section 152(2). The words "such income" in Section 147 clearly refer to the income, which is chargeable to tax but has "escaped assessment" and the Income-tax Officer's jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceedings cannot be permitted to be re-agitated on the assessment being reopened for bringing to tax certain income, which had escaped assessment because the controversy on reassessment is confined to matters, which are relevant only in respect of the income, which had not been brought to tax during the course of original assessment. A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as "escaped income". Indeed, in the reassessment proceedings for bringing to lax items, which had escaped assessment, it would be

opened to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under Section 117 of the Act, which are for the benefit of the Revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items not claimed in the original assessment proceedings, unless relatable to "escaped income", and re-agitate the concluded matters.

29. The legal position which emerges from the decisions of Hon'ble Punjab & Haryana High Court and Hon'ble Supreme Court referred to above may summarised as follows:

Once the re-assessment proceedings are validly initiated, it is a statutory duty of the assessing officer to bring to the charge of tax, the entire income, which has escaped assessment. His jurisdiction is not confined to the matters on the basis of which re-assessment proceedings were initiated. Section 147 is primarily for the benefit of the revenue and during the course of the reassessment proceedings, the assessee cannot claim any deduction or any benefit with regard to the matters which have already reached finality at the time of original assessment. The assessee cannot be permitted to convert the re-assessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected or claim relief in respect items not claimed in the original assessment proceedings. The assessing officer can bring to the charge of tax any income which has escaped assessment and which comes to his notice during the course of re-assessment proceedings, but he cannot make roving and general enquiries as if the entire assessment was open before him.

30. Let us now examine the facts of the assessee's case, in the light of the legal position enunciated above. The returns of income originally filed by the assessee were accepted Under Section 143(1). The assessee is an advocate and a solicitor and claimed expenditure in respect of use of motor car, telephone, printing & stationery. These expenses stood allowed as the returns were accepted Under Section 143(1). The relevant assessments were re-opened for the purpose of bringing to the charge of tax, the relevant interest income. During the course of re-assessment proceedings, the assessing officer noticed that the assessee had claimed the entire expenditure Under Section 37(1) and no part of the expenditure was disallowed by the assessee for personal use. He, therefore, asked the assessee to furnish the details. However, the assessee neither furnished any details nor any satisfactory explanation. In these circumstances, the assessing officer estimated the expenditure for personal use at around 20%. In these facts, it would be too far fetched to hold that the assessing officer made any roving, fishing or general enquiries so as to make the assessment denovo The assessing officer only observed that personal use cannot be ruled out and therefore he asked the assessee to furnish the details In our view, under Section 147 and in the light of the legal

position as discussed above, the assessing officer is within his jurisdiction to disallow part of the expenses which are not wholly and exclusively incurred for the purpose of the assessee s profession

31. Coming to the merits of the disallowances, no material was produced before us to controvert the finding of the learned CIT(A) or to show that no part of the expenditure is in the nature of personal expenditure of the assessee The learned CIT(A) has sustained disallowance merely at 10% of the telephone expenses, motor car and depreciation on motor car In the facts of the case, this cannot be said to be un reasonable or excessive The disallowance of printing and stationery expenses have been deleted by the learned CIT(A) except for the assessment year 95 96 We fail to understand as to why such disallowance shoald be sustained for the assessment year 95 96 when for all the assessment years there is a consistency finding by the learned CIT(A) that this expenditure was entirely for professional purpose Therefore, for the assessment year 95-96, we modify the order of the learned CIT(A) to the extent that the disallowance from out of the printing and stationery expenses is directed to be deleted With regard to the disallowances from out of other expenses as mentioned above, orders of the learned CIT(A) are upheld."

20.26 In the case of M/s. Maruti Enterprise, Amreli Vs. The ADIT (CPC), Bangalore (2023) ITA No.10/Rjt/2023 dated 20.3.2024, the Rajkot Bench of this Tribunal held as under:

"8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the basis of making the disallowance is that such deduction was not claimed in the tax audit report. To our understanding, the tax audit report is a significant piece of evidence/ document but based on that the genuine claim of the assessee cannot be denied especially in the circumstances when other details are available on records. As such the assessee has claimed deduction u/s 43B of the Act on payment basis and therefore in our considered view, the same should have been allowed by the authorities below. We note that the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

> 18. *The position is, therefore, that, regardless of whether the revised return was filed or not, once an assessee is in a position to show that the assessee has been over-assessed under the provisions of the Act, regardless of whether the over-assessment is as a result of assessee's own mistake or otherwise, the CIT has the power to correct such an assessment under section 264(1) of the Act. If the CIT refuses to give relief to the assessee, in such circumstances, he would be acting de hors the powers under the Act*

and the provisions of the Act and, therefore is duty-bound to give relief to an assessee, where due, in accordance with the provisions of the Act.
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20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being proper/y instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that on/y legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandu/a/ Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the fo//owing terms:

> *'The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coa/fie/ds Ltd. AIR 1962 SC 361, State of West Benga/ v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt. "*

9. From the above, it is revealed that the income of the assessee should not be over assessed even if there is a mistake made by the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining the taxable income. In view of the above and after considering the facts in totality, we are of the view that the claim of the assessee cannot be denied as it was not reported in the tax audit report especially in the circumstances where other evidence is available on record suggesting the deduction in pursuance to the provisions of section 43B on payment basis is available. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed."

20.27 Sharp Tools (421 ITR 90), Hon'ble Madras High Court held as under:

8. *Heard both sides and perused the materials placed before this Court.*
9. *The petitioner is an Assessee under the respondent-Department. For the assessment year 2013-2014, the petitioner filed their return on 30.09.2013. While filling up the columns therein, the petitioner, in Column No.14, under the head "Debits to Profit and Loss Account", "Compensation to Employees" and "Total Compensation to Employees", has entered the figure of Rs.1,38,59,509/, which according to the petitioner is incorrect figure and on the other hand, the actual figure towards the "Total Compensation to*

Employees" ought to have been entered is Rs.1,87,82,244/-. The break up details is also given by the petitioner as to how such sum is arrived as follows:

(i) Labour Charges	*Rs.*	*56,12,426/-*
(ii) Wages	*Rs.*	*75,14,652/-*
(iii) Salary & Bonus	*Rs.*	*56,55,166/-*
Total	***Rs.1,87,82,244/-***	

Therefore, it is contended that the above mistake is pure and simple typographical error.

10. The above claim of the petitioner is not without any material support. On the other hand, it is not in dispute that the profit and loss account filed along with the return of income supports the above claim of the petitioner. Therefore, it is evident that only due to typographical error, lessor figure was entered, in column "Total Compensation to Employees" as Rs.1,38,59,509/-, instead of Rs.1,87,82,244/-. No doubt, such error can be rectified by filing a revised return as contemplated under Section 139(5) of the IT Act, any time before the end of the relevant assessment year or before completion of the assessment, whichever is earlier. Though the petitioner has not filed any revised return within such time, however, on receipt of an intimation under Section 143(3) of the IT Act, dated 04.05.2014, the petitioner had realized the mistake and filed a rectification return on 09.01.2016. It is true that rectification return was filed nearly after two years from the date of receipt of Section 143(1) intimation. The said rectification return was rejected by the Assessing Officer by proceedings dated 24.10.2017 on the reason that the same was not filed within the time and thus, it is not valid and cannot be sustained. Thereafter, the Assessee filed an application under Section 264 of the IT Act on 25.01.2018, admittedly, within one year from the date of the order rejecting the rectification return. The respondent before whom, the said revision was filed, passed the impugned order, wherein at Paragraph Nos.9, 10, & 11 he observed as follows:

> *"9. The Assessee in its P&L account had claimed expenditure under the grouping "Compensation to Employees" inclusive of labour charges of Rs.56,12,426/- wages of Rs.75,14,652/- and salary and bonus of Rs.56,55,166/-. However, as against the total of Rs.1,87,82,244/- the Assessee had entered an amount of Rs.1,38,59,509/-. The difference on account of the wrong entry being Rs.49,22,735/- the amount that was reckoned as the income of the Assessee for the assessment year in question.*

10. It would be of significance to mention that the Assessee had in the certified copy of P&L account uploaded along with the return of income, placed on records and perused by me, has booked the expenditures on account of labour charges at Rs.56,12,426/-, wages at Rs.75,14,652/- and Salary & bonus at Rs.56,55,166/-.

11. From the aforesaid it would be clear that the Assessee had committed an error, though inadvertent, for which he would be fully responsible, in its return of income which had resulted in the adoption of income by CPC at Rs.49,22,738/- and the consequent raising of demand of tax."

11. Perusal of the above findings of the respondent would show that he in fact, found that the error committed by the Assessee was inadvertent and that the expenditure shown under the head "Compensation to Employees" are genuine, since such expenditures are supported by the certified copy of the Profit and Loss Account uploaded along with the return of income. However, after finding so, the respondent, though advised the Assessee to file a suitable revised return, has also made an observation that the time stipulated for filing such revised return had already expired. Thus, in effect, the respondent though found that the mistake is inadvertent and that the claim is bona fide, has not granted any relief to the petitioner.

12. Under the above stated facts and circumstances, it is to be seen as to whether the respondent is justified in passing the impugned order without granting any relief to the petitioner. Section 264 of the IT Act, deals with the procedure for filing revision and the power and scope of the respondent herein to consider such revision, which reads as follows:

Section 264 : Revision of other orders

a. *In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the 4[Principal Commissioner or Commissioner] may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.*

b. *The [Principal Commissioner or Commissioner] shall not of his own motion revise any order under this section if the order has been made more than one year previously.*

c. *In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:*

Provided that the [Principal Commissioner or Commissioner] may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

d. *The [Principal Commissioner or Commissioner] shall not revise any order under this section in the following cases -*

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

(c) where the order has been made the subject of an appeal to the 4[Principal Commissioner or Commissioner] (Appeals) or to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by 1[a fee of five hundred rupees].

[(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

Explanation: In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.]

[(7) Notwithstanding anything contained in sub-section (6), an order in revision under subsection (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, 3[National Tax Tribunal,] the High Court or the Supreme Court.]

Explanation 1: An order by the 4[Principal Commissioner or Commissioner] declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2: For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the 4[Principal Commissioner or Commissioner].

13. *A careful perusal of the above provision of law would undoubtedly show that it empowers the Principal Commissioner or the Commissioner to exercise the revisional jurisdiction over "any order" other than the order to which Section 263 applies, and that such power is wider and conferred on such authority to set right things, wherever he finds that an injustice has been done to the Assessee. No doubt before passing any order under Section 264 of the IT Act, it is open to the said authority to make such enquiry or cause such enquiry to be made. However, such order should not be prejudicial to the Assessee.*

14. *The power and scope under Section 264 of the IT Act, have been considered by the Courts. In a decision rendered by the High Court of Kerala, reported in* ***[2016] 75 taxmann.com 298 (Ker), Transformers & Electricals Kerala Ltd., Vs. Deputy CIT.****, observed at Paragraph No.8 as follows:*

> *In fact the judgment in Goetze (India) Ltd. (supra) was with reference to the power of the Tribunal under Section 254 of the IT Act which can have no basis for the power to be exercised by the Commissioner under Section 264 of the IT Act. Very wide powers have been conferred on the Commissioner under Section 264 of the IT Act to conduct an enquiry to be made and to pass such orders, as he thinks fit. In the impugned order, the Commissioner proceeds on the basis that the petitioner had not filed a revised return for the year 2008-09. It is pointed out by the petitioner that the time for filing a revised return had already expired and once the said period has expired, revised return cannot be filed. The question is whether, in the absence of filing a revised return, a claim for deduction for the aforesaid amount is permissible for the assessment year 2008-09. As held by a Division Bench in Parekh Brothers (supra), there is no limit to exercise the jurisdiction under Section 264 of the IT Act. That was also a case in which the claim was not made by the assessee in the return or at the time of arguments when the assessment was made. In such an instance, the Division Bench held that, even assuming that the assessment order was correct, still it is open for the assessee to seek the revisional jurisdiction in respect of an item which was not made by way of a mistake. Therefore, the jurisdiction of the Commissioner to pass orders even if a revised return is not filed, is very much available.*

15. *In **[2017] 394 ITR 247 (Mad), Sri Selvamuthukumar Vs. CIT,** the Division Bench of this Court has observed at Paragraph Nos.9 & 13 as follows:*

> *Mr. Swaminathan would refer to the judgment of the Division Bench of the Andhra Pradesh High Court in M.S. Raju Vs. Deputy Commissioner of Income Tax (MANU/AP/0956/2007 : 298 ITR 373) which has expressed a view to the effect that the import of the word 'record' as set out in the Circular (supra) would be restricted to the power under section 263 only and not section 264. The distinction noted by the Division Bench in that case was that the power of revision under section 263 of the Act was intended to be exercised in cases where the interests of revenue were prejudiced and it was for this reason that the inquiry of the Commissioner of Income Tax was not limited only to material available before the assessing officer, but also material obtained subsequently. The power under section 264 of the Act is, in fact as wide a power, and one that is intended to prevent miscarriage of justice. Courts have consistently taken a view that the conferment of powers under section 264 of the Act is to enable the Commissioner to provide relief to an assessee, where the law permits the same. Reference may be made to the decisions of the Gujarat High Court in C.Parikh and Co. Vs. Commissioner of Income Tax (MANU/GJ/0013/1979 : 122 ITR 610); Ramdev Exports Vs. Commissioner of Income Tax (MANU/GJ/0313/2001 : 251 ITR 873); Kerala High Court in Parekh Brothers Vs. Commissioner of Income Tax and Calcutta High Court in Smt. Phool Lata Somani Vs. Commissioner of Income Tax (MANU/WB/0081/2005 : 276 ITR 216). In this view of the matter, we see no reason to take a different view on the interpretation of the word 'record' occurring in section 264 of the Act from that expressed by the Central Board of Direct Taxes in the Circular extracted above. The order under section 144A dated 31.12.2007 is thus part of the record and ought to have been take into consideration in deciding the petition under section 264 of the Act.*
>
> *The relief provided in terms of section 139(5) is specific to the correction of a wrong statement or an omission in the original return by way of a revised return. The power under section 264 of the Act extends to passing any order as the Principal Commissioner or Commissioner may think fit after making an inquiry and subject to the provisions of the Act, either suo-moto or on an application by the assessee. Though the remedies over lap, power under section 264 is significantly wider and the wisdom of choosing one over the other would really depend on the facts and legal position of each case.*

16. *In **[2018] 402 ITR 271 (Mad), M/s.Bali Trading Pvt. Ltd., Vs. Principal CIT.**, the learned Single Judge of this Court observed that power under Section 264 of the IT Act, is a wider power and intended to prevent miscarriage of justice. It is also observed therein that the powers under Section 264 of the IT Act, is to enable the Commissioner to provide relief to an Assessee, where the law permits the same.*

17. *In **[2016] 386 ITR 643 (Del.), Vijay Gupta Vs. CIT,** the Division Bench of the Delhi High Court, after referring to the Circular No.14/1955 dated 11.04.1955 has observed at Paragraph Nos. 22, 35, 36 & 39 as follows:*

> *Circular No. 14(XL-35) : MANU/DTCR/0004/1955 of 1955, dated 11.4.1955, issued by the Central Board of Direct Taxes and relied upon by the Petitioner reads as under:*
>
> *"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assesses on whom it is imposed by law, officers should -*
>
> (a) *draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*
>
> (b) *freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".*
>
> *From the various judicial pronouncements, it is settled that the powers conferred under section 264 of the Act are very wide. The Commissioner is bound to apply his mind to the question whether the petitioner was taxable on that income. Since section 264 uses the expression "any order", it would imply that the section does not limit the power to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assesses. It would even cover situations where the assessee because of an error has not put forth a legitimate claim at the time of filing the return and*

the error is subsequently discovered and is raised for the first time in an application under Section 264.

An assessee is liable to tax only upon such receipt as can be included in his total income and is assessable under the Income-tax Act. There is nothing in S.264, which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detracts mistakes because of which he was over-assessed after the assessment was completed. Once it is found that there was a mistake in making an assessment, the Commissioner had power to correct it under s. 264(1). When the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. It is settled proposition of law that no tax can be levied or recovered without authority of law. Article 265 of the Constitution of India and section 114 of the State Constitution imposes an embargo on imposition and collection of tax if the same is without authority of law.

When the commissioner was called upon to examine the revision application under section 264 of the Act, all the relevant material was already available on the record of the assessing officer. The commissioner instead of merely examining whether the intimation was correct based on the material then available should have examined the material in the light of the Circular No. 14(XL-35) : MANU/DTCR/0004/1955 of 1955, dated 11.4.1955 and Article 265 of the Constitution of India. The commissioner has erred in not doing so and in failing to exercise the jurisdiction vested in him on mere technical grounds.

18. *Perusal of the above decisions would show that the powers conferred on the Commissioner under Section 264 of the IT Act, is not only wider in its scope and also intended for the purpose of preventing miscarriage of justice and for providing relief to an Assessee, which he is otherwise entitled to, but for the order under challenge in revision.*

19. No doubt Section 139(5) provides for filing a revised return within one year for correcting any mistake. It is true that the petitioner has not exercised such option within such time. However, the petitioner filed a rectification return after receipt of intimation under Section 143(1). It is true that there is a delay in filing such return. But the said rectification return was rejected on 24.10.2017 and immediately, within one year, the petitioner approached the Commissioner under Section 264 of the IT Act, and filed the revision. Since the Commissioner is empowered to entertain the revision under Section 264 of the IT Act, against any order other than the order to which Section 263 applies, the revision filed by the

petitioner herein within one year from the date of rejection of their rectification return, is certainly maintainable and consequently, the Commissioner ought to have exercised his power and considered the relief sought for by the petitioner and pass the order to that effect, more particularly, when he has found that the Assessee had committed the error inadvertently and that the expenditure claimed by the Assessee under the head "Total Compensation to Employees" is also supported by the certified copy of "Profit and Loss Account". Therefore, when the Commissioner is approached by the Assessee within one year from the date of an adverse order passed against the Assessee, the Commissioner is empowered and entitled to look into the grievance of the Assessee and pass such order thereon notwithstanding the fact that the Assessee has not approached the Assessing Officer within the time stipulated for filing the revised return. If such technical objection is allowed to stand in the way of the Commissioner in exercising his jurisdiction/power under Section 264 of the IT Act, it would certainly, result in defeating the very purpose and object of granting such ample and wider power to the Commissioner under Section 264 of the IT Act. An apparent injustice or miscarriage of justice need to be set right, notwithstanding the technical objections, if any. While the substantial justice is the King, technicalities are only his soldiers. Certainly, the King can do no wrong and thus, let the soldiers do not stand in his way.

20. At this juncture, it is very relevant and useful to quote the observation of the Apex Court reported in ***[2013] 4 SCC 97, Laxmibai (Dead) through LRs and another Vs. Bhagwantbuva (Dead) through LRs and others,*** *that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. The Apex Court has also gone to the extent of saying that the Courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties. The relevant observation made at Paragraph 49, is extracted hereunder:*

> *"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the Courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best."*

21. Likewise, the Apex Court in ***[2013] 4 SCC 186, Union of India and others Vs. Ex-Gnr Ajeet Singh,*** *has observed at Paragraph Nos. 24 & 26 as follows:*

> *24. The expression "failure of justice" would appear, sometimes, as an etymological chameleon. The Court has to examine whether there is really a failure of justice or whether it is only a camouflage. Justice is a virtue which transcends all barriers. Neither the rules of procedure,*

nor technicalities of law can stand in its way. Even the law bends before justice. The order of the court should not be prejudicial to anyone. Justice means justice between both the parties.
26. Justice is the virtue by which the Society/Court/Tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the Court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law.

22. *It is contended by the learned counsel appearing for the Revenue by that exercise of power and granting the relief to the Assessee under Section 264 of Income Tax Act, 1961, is subject to the provision of the Income Tax, Act and therefore, the Assessee herein, having not filed revised return within the time stipulated under Section 139(5) of the IT Act, is not entitled to the relief even under Section 264 of the IT Act.*

23. I am unable to appreciate the above contention, as it appears that the Revenue by making such contention, is sought to justify the collection of excess tax over and above the tax payable by the Assessee, even though they admit that only due to inadvertent mistake, a wrong entry was made by the Assessee with lessor figure of the relevant expenses than the actual expenses met out. At this juncture, it is relevant to note that Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law. Therefore, both the levy and collection must be done with the authority of law, and if any levy and collection, later are found to be wrong and without authority of law, certainly, such levy and collection cannot withstand the scrutiny of the above constitutional provision and thus, such levy and collection would amount in violation of Article 265 of the Constitution of India.

24. Therefore, it is apparent on the facts and circumstances of the present case, that a mere typographical error committed by the Assessee cannot cost them payment of excess tax as collected by the Revenue. Certainly, the denial for repayment of such excess collection would amount to great injustice to the Assessee.

25. Even though the Statute prescribes a time limit for getting the relief before the Assessing Officer by way of filing a revised return, in my considered view, there is no embargo on the Commissioner to exercise his power and grant the relief under Section 264 of the IT Act. In other words, for granting the relief to an

Assessee, which the Commissioner finds that the Assessee is entitled to otherwise, no time restriction is provided under Section 264 of the IT Act, if such revisional jurisdiction is invoked by the Assessee by making an application under Section 264 of the IT Act. However, the Commissioner is not entitled to revise any order under Section 264 on his own motion, if the order has been made more than an year previously. Thus, it is manifest that only suo-motu power of the Commissioner under Section 264 of the IT Act, is restricted against an order passed within one year, whereas no such restriction is imposed on the Commissioner to exercise his power in respect of an order, which has been passed more than on year, if such revisional power is sought to be invoked at the instance of the Assessee by making an application under Section 264 of the IT Act.

26. Considering the above stated facts and circumstances, this Court is of the firm view that the order of the respondent impugned in this writ petition cannot be sustained. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for considering the claim of the petitioner and pass appropriate orders in the light of the observations and findings rendered supra. The respondent shall, accordingly, pass such fresh order within a period of six weeks from the date of receipt of a copy of this order. No costs."

20.28 In our opinion, as seen from the above judgements, even if such income is offered for taxation under protest/under wrong advice/or by mistake, the assessment and income should be assessed according to the Income-tax Act read with the court decisions and taxes should be collected or paid according to the rules of law and any taxes paid or by mistake under protest or wrong advice be refunded to the appellant and the revenue cannot be enriched at the cost of the assessee.

20.29 Further, third party statement cannot be relied upon without proper enquiry and providing proper cross-examination to the assessee. In *CIT v. P.V. Kalyana Sundaram, 294 ITR 49 (SC),* the Hon'ble Supreme Court observed that no reliance could be placed on loose sheets seized during the course of search and third party statements unless provided cross-examination.

20.30 Further, we place reliance on the CBDT Circular in F.No.286/98/2013-IT(Inv.II) dated 18.12.2014 which is as under:

BY SPEED POST /
ON WEBSITE OF THE DEPARTMENT

F.No. 286/98/2013-IT (Inv.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Room No. 265A, North Block
New Delhi, the 18th December, 2014

To

1. All Principal Chief Commissioners of Income Tax
2. All Chief Commissioners of Income Tax
3. All Directors General of Income Tax (Inv.)
4. Director General of Income Tax (I & CI), New Delhi

Subject: **Admissions of Undisclosed Income under coercion/pressure during Search/Survey - reg.**

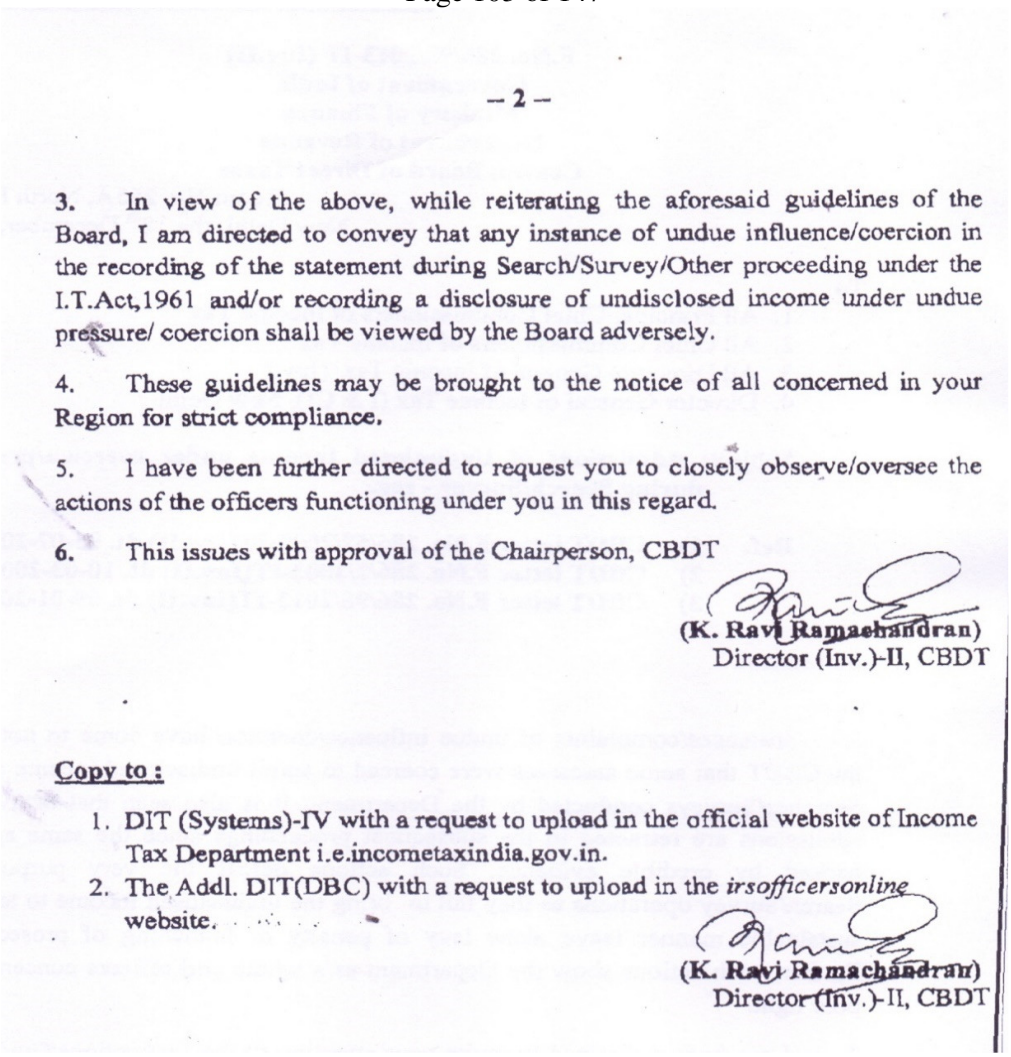
Ref: 1) CBDT letter F.No. 286/57/2002-IT(Inv.II) dt. 03-07-2002
2) CBDT letter F.No. 286/2/2003-IT(Inv.II) dt. 10-03-2003
3) CBDT letter F.No. 286/98/2013-IT(Inv.II) dt. 09-01-2014

Sir/Madam,

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

... 2/-



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3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

4. These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

5. I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.

6. This issues with approval of the Chairperson, CBDT

(K. Ravi Ramachandran)
Director (Inv.)-II, CBDT

Copy to :

1. DIT (Systems)-IV with a request to upload in the official website of Income Tax Department i.e.incometaxindia.gov.in.
2. The Addl. DIT(DBC) with a request to upload in the *irsofficersonline* website.

(K. Ravi Ramachandran)
Director (Inv.)-II, CBDT

In our opinion, this circular is binding on the department and it is to be followed in true spirit.

20.31 Thus, assessee submitted that even the admitted income admitted by the assessee in the return of income should be confined to the seized material found during the course of search action. If any additional income is offered by the assessee without incriminating material same to be inquired and the computation of income filed and disclosed in the return of income filed in response to notice u/s 153A of the Act to be corrected. He also drew our attention to the additional

evidence filed before us to substantiate that there were all evidences in support of claiming of expenditure which could be examined at the end of ld. AO, if necessary. We accede to the request of the assessee counsel in the interest of justice that this is the assessment consequent to search action and the income returned u/s 153A of the Act consequent to search and addition made by ld. AO shall be based on the incriminating material found during the course of search as held by Hon'ble Supreme Court in the case of PCIT Vs. Abhisara Buildwell Pvt. Ltd. in ITA No.454 ITR 212 wherein it was held that no addition can be made in respect of assessment framed u/s 153A of the Act without any seized material supporting such additions.

20.32 Accordingly, we direct the ld. AO to determine the income of the assessee in these assessment years only on the basis of seized material/incriminating material in the assessment year 2011-12 to 2016-17 and not solely on the basis of statement recorded u/s 132(4) of the Act. More so, assessee has been continuously before the ld. AO as well as ld. CIT(A) requesting to do the assessments on the basis of books of accounts and evidence found during the course of search since the declaration made by assessee during the course of search was lumpsum basis as there was no enough time to verify the correctness of the records which were voluminous. Before us, assessee filed additional evidence, those are admitted as discussed in the earlier para of this order and it is required to be examined by the authorities as they have vital impact on the computation of income of the assessee. Hence, the issue relating to the admission of additional income by the assessee in the returns filed u/s 153A of the Act and addition made by ld. AO while framing assessment u/s 153A of the Act is required to be re-examined in the light of additional evidences filed by the assessee. Therefore, by placing reliance on the order of the

Tribunal in the case of Fibres & Fabrics International (P) Ltd. Vs. ACIT in ITA Nos.1242, 1243, 1269 & 1270 /Bang/2010 and ITA No.141/Bang/2011 dated 30.11.2012, wherein held that where the assessee has filed additional evidence in support of the claim, matter was to be remanded back for disposal afresh in the light of additional evidences. Further, we also place reliance on the judgement of Hon'ble Delhi High Court in the case of CIT Vs. Textr Hundred India Pvt. Ltd. (2011) 239 CTR 263. Further, we place reliance in the case of H.L. Malhotra & Co. (P) Ltd. (2021) 125 taxmann.com 70 (Delhi). Further, we place reliance on ACIT Vs. Kuber Khadyan Pvt. Ltd. (2021) SCC Online ITAT 224, we remand the issues in dispute in all these appeals in all these ground nos.5 to 8 & 10 & 11 to the file of ld. AO for reconsideration to examine the issue in the light of additional evidence filed by the assessee before us as listed in earlier para of this order. We also make it clear that assessee is at liberty to produce any further evidence in support of the claim made by assessee in these grounds. At the same time, the ld. AO is also at liberty to carry on the requisite enquiry on this issue in accordance with law after giving opportunity of hearing to the assessee. Similarly, the additional ground raised by the assessee in ITA No.984 & 986/Bang/2023 in assessment years 2013-14 & 2015-16 also remitted to the file of ld. AO to decide the issue afresh on the basis of seized/incriminating material found, if any during the course of search action conducted on 3.11.2016. All these grounds of appeals in ground Nos.5 to 8, 10 & 11 in all these appeals in ITA Nos.982 to 987/Bang/2024 and also additional ground no.9A in ITA Nos.984 & 986/Bang/2023 are remitted to the file of ld. AO to decide the same in the light of our above observations.

21. Next ground No.9 in this appeal is with regard to approval given u/s 153D of the Act is mechanical. For this purpose, he relied on the judgement in the case of PCIT Vs. Sapna Gupta (2022) SCC Online (Allahabad) 1294 of Hon'ble Allahabad High Court and in the case of CIT Vs. Anju Bansal (2022) SCC Online (Delhi) 4159 of Delhi Bench of Tribunal. However, the assessee was not able to demonstrate how there was no subjective satisfaction recorded for granting approval u/s 153D of the Act by competent authority. Hence, this ground of appeals is dismissed.

22. In the result, all the appeals of the assessee in ITA Nos.982 to 987/Bang/2023 for the AYs 2011-12 to 2016-17 are partly allowed for statistical purposes.

ITA Nos.961, 962 & 1012/Bang/2023 (AYs 2015-16, 2016-17 & 2014-15) (M/s. John Distilleries Pvt. Ltd.) (Revenue's appeals):

23. The grounds raised by the revenue in all these appeals are common, which reads as follows:

i. *Whether the CIT(A) was correct on law and facts in holding that no specific evidence existed for the AYs 2014-15, 2015-16 & 2016-17 in respect of the inflated purchases and inflated transportation expenses and consequently deleted the additions.*

ii. *Whether the CIT(A) was correct on law and facts in not considering the sworn statements of Shri Mathew Joseph and other employees recorded u/s 132(4) of the IT Act, 1961 in which they had clearly outlined the modus operandi adopted by the assessee company for evasion of tax through inflated booking of purchases and inflated transportation expenses.*

iii. *Whether the CIT(A) was correct on law and facts in not getting the claims made by the assessee vis-à-vis lack f documentary evidence either by himself or from the AO as per the mandate of section 250(4) of the I.T Act, 1961.*

24. The issue in all these appeals is common. The assessee is also in appeal before us that similar issue for these three assessment years, where we remitted the issue to the file of ld. AO in these assessment years to frame the assessment only on the basis of seized material/incriminating material and not solely on the basis of uncorroborated statement recorded u/s 132(4) of the Act. Being so, these grounds become infructuous and accordingly, all the appeals raised by the revenue are dismissed.

25. In the result, all the appeals raised by the revenue in ITA Nos.961, 962 & 1012/Bang/2023 are dismissed.

26. Now we will take up ITA Nos.838 to 843/Bang/2023 for the assessment years 2011-12 to 2016-17 in the case of M/s. Paul Resorts & Hotels Pvt. Ltd. (Assessee's appeals):

The assessee herein appeal for the assessment years 2011-12 to 2016-17 against the order of CIT (A), wherein he has confirmed the assessment order passed u/s 153C r.w.s. 153A r.w.s. 143(3) of the Act.

26.1 The assessee has filed a ground-wise chart in these assessment years and the ld. A.R. has limited his arguments to the grounds mentioned in this chart only.

26.2 The assessee filed additional evidences in this case in ITA Nos.838 to 843/Bang/2024.

ITA Nos - 838/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT,CC(1)(1), Bengaluru

A.Y 2011-12

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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ITA Nos - 839/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT,CC(1)(1), Bengaluru

A.Y 2012-13

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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ITA Nos - 840/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT, CC(1)(1), Bengaluru

A.Y 2013-14

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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ITA Nos - 841/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT, CC(1)(1), Bengaluru

A.Y 2014-15

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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ITA Nos - 842/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT,CC(1)(1), Bengaluru

A.Y 2015-16

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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ITA Nos - 843/BANG/2023

M/s. Paul Resorts and Hotels Pvt Ltd. vs DCIT,CC(1)(1), Bengaluru

A.Y 2016-17

Application under Rule 29 of Income Tax Appellate Tribunal Rules, 1962

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27. With regard to admission of additional evidences, the contention of the ld. A.R. is that the present application is filed under Rule 29 r/w Rule 18(4) of the Income Tax Appellate Tribunal Rules, 1962 seeking admission of additional evidences in the above matter vide applications dated 6.5.2024.

27.1 The ld. A.R. submitted that a survey under section 133A of the Act was initiated in the case of the Assessee along with seizure action u/s 132 of the Act initiated in the case of John Distilleries Pvt Ltd, a group company of the Assessee on 3rd November 2016. The search and survey teams did not find any concealed income that they probably thought the assessee company might be having. In spite of that the search team obtained from the Assessee group a declaration of undisclosed income of huge amount of Rs.129 crore u/s 132(4) of the Act spread over seven years (AY 11-12 to 17-18) in the hands of different entities of the Group on the basis of few documents, contents of which had remained to be properly verified and substantiated. It was a lump sum declaration for the entire group which was divided in the hands of different entities and did not have the head-wise break up. The same was done without valid basis and without affording enough time to properly verify from the concerned persons and records which were voluminous. The persons who were queried by the Team were forced to give admissions when they were under tremendous stress and pressure.

27.2 Later on during the post search proceedings, the Management was made to give entity wise head-wise break of the income declared during search by declaring the same under three heads, namely, (1) Travelling Expenses, (2) Repairs and Maintenance and (3) Commission expenses. In the said statement recorded u/s 131(1A) of the Act in the office of the investigation wing of the I T Department, the Director of the Assessee had categorically stated that the Assessee has maintained all the bills and vouchers related to the said three heads of expenditure. However he was made to state that to the extent of the amount mentioned therein, the company was unable to produce the bills /

vouchers and hence the same may be disallowed. The said declaration was obtained in in lieu of the declaration obtained from the management on 4th and 7th November 2016 in the case of the Group entities.

27.3 He submitted that the Director had agreed to make the above mentioned surrender on the basis of the clear understanding and assurance given to him that Company would be given the opportunity to produce the bills/ vouchers before the AO at the time of the assessment and that if he gets satisfied with the same, no disallowance would be confirmed. Accordingly, when the ITRs were filed the additional income was included in the ITR and taxes were paid the it was conveyed in the covering letter for AY 2011-12 that the same was done under protest. A letter dated 30.10.2018 accompanied the Physical ITR filed u/s 153C of the Act for AY 2011-12. The same was reiterated in the Reply to notice u/s 142(1) of the Act vide letter dated 30.10.2018 for all the AYs involved. Thereafter during the assessment proceedings, it followed it up with a request – both oral as well as written to consider the books of accounts, bills and vouchers etc maintained in respect of all the three subject heads of expenditure and to exclude the additional income included in the ITRs. Kind reference is invited to the letter dated 17.12.2018 wherein after giving background of the declaration obtained during search and survey action, it was submitted that the Assessee was in a position to furnish all the bills and vouchers in respect of all the three heads of expenditure and the AO was requested to check the same and give credit to the expenses incurred and refund the taxes paid under protest.

27.4 However he submitted that the Ld. AO did not consider the Assessee's request and passed the assessment order in a hurry. It

is submitted that the assessment proceedings were started very late in the day and the AO completed the assessment without considering the Assessee's request in this regard.

27.5 The ld. A.R. submitted that before the Ld CIT(A) the assessee took the relevant grounds stating that the search team as well as the AO did not give opportunity to produce the bills and vouchers relating to the said expenses and that the disallowance confirmed by him was unwarranted. This plea duly noted by the CIT-A in his para 6.1 of his order but rejected it by relying solely on the statements of the employees and the Director made during the search without the corresponding documents supporting such declaration. In fact he has made a baseless allegation that the assessee had not made any efforts till the conclusion of assessment to submit the supporting documents for sales promotion and carriage outward expenses and that it had raised the issue for the first time before him by completely ignoring the protest letter of 30.10.2018 and replies to notice u/s 142(1) dated 30.10.2018 and 17.12.2018. Ld.CIT(A) has also stated that no retraction statement, no revised computation and no revised return was filed by the assessee without appreciating that the assessee has been pleading before each authority below including himself to examine the books of accounts and all the bills and vouchers and give credit– which was not allowed by the authorities.

27.6 He submitted that the authorities below have not heeded to the request of the assessee to examine the books of accounts and bills and vouchers in respect of the additional income offered in the ITRs under 'protest' and to exclude the same from total income. Thus, the assessee was not allowed opportunity to substantiate the expenses genuinely incurred for the purpose of

business and duly supported by the underlying documents like bills and vouches. It is submitted that this is a case which is covered by the situations visualized under Rule 29 of the ITAT Rules, 1963. The authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence on the subject disallowances included under protest in the ITR. This is also a case where this Hon'ble Tribunal would require the additional evidence to enable it to pass order. This is also a case where the additional evidences are required to do substantial justice to the case as the 'cause of justice' has taken a big hit in the whole process culminating into the impugned order.

27.7 Pertinently, the income that can be assessed to tax under section 153C of the Act is only that income which is based on the incriminating material found during the search u/s 132 of the Act as held by the Apex Court in *CIT v. Abhisar Buildwell (P) Ltd., 2023 SCC OnLine SC 481.* However, the income that has been assessed by the AO is not based on incriminating material but is based merely on the declaration obtained under pressure without the corresponding incriminating material. As stated earlier, the declaration by way agreeing to disallowance of the expenditure was made with an understanding and assurance that the same would be allowed and deleted when the company substantiates it during the assessment proceedings. Both the authorities below did no appreciate the spirit behind and the bona fide actions of the Assessee in adhering to the declaration, though given under pressure. The CIT(A) even went on to the extent of holding that the same was an after-thought which, it is humbly submitted, is contrary to the facts on record.

27.8 He submitted that tax authorities have no authority to bring to tax income included in the ITR which is otherwise not taxable. It is submitted that CBDT as well as the Courts have time and again held that AO should not take advantage of the actions of the taxpayers and bring to tax that income which is otherwise not-taxable. According to Article 265 of the Constitution of India "No tax can be levied or collected except by authority of law".

27.9 He submitted that in this background, the Assessee has submitted the present application u/r 29 of ITAT Rules, 1962 read with Rule 18(4) of the Rules seeking admission of the following additional evidences:

a) Revised COI (Computation of Income) as pointed out by CIT(A) in his order
b) Bills and vouchers supporting the expenditures under the head Travel Expenditure – Eight vouchers with supporting document for the year as a sample lot.
c) Bills and vouchers supporting the expenditures under the head Repairs and Maintenance– Eight vouchers with supporting document for the year as a sample lot.
d) Bills and vouchers supporting the expenditures under the head Commission Expenses– Twelve vouchers with supporting document for the year as a sample lot.
e) Further the Assessee prays for permission to submit similar documents for the whole year for verification.

27.10 He prayed that the above documents may kindly be admitted in the interest of justice and fair play. If permitted the Assessee would also submit the balance documents for the entire year for verification.

27.11 He submitted that the company follows the system wherein the bills and vouchers of a particular month relating to all kinds of expenditure are kept together in to bound books, files etc at the end of the year and stored in godowns. Bills and vouchers etc of a particular head of expenditure cannot be easily taken out without breaking the bound books/ files with a risk of them getting torn. Hence the Assessee has, on sample basis producing few vouchers with supporting bills etc for admission as additional evidence with a prayer to allow production of balance documents of the year on being convinced of the bona fide submission of the Assessee in the interest of justice.

27.12 He submitted that the non-submission of the present additional evidences before the AO or CIT(A) were not willful nor intentional. In this regard the assessee respectfully relies upon the ratio of the decision of the Hon'ble High Court of Delhi in the case *CIT v. Text Hundred India Pvt. Ltd., (2013) 351 ITR 57* wherein at Para-13 of the Judgment, it was held that Rule 29 enables the Tribunal to admit any additional evidence which would be necessary to do substantial justice in the matter. Their Lordships further observed that the various procedures, including that relating to filing of additional evidence, is a handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence.

27.13 Without prejudice to the above, the Assessee submitted that ITAT is the last fact finding authority under the Act and hence empowered to look into the question of fact also, even if not raised earlier in order to determine the correct tax liability of the Assessee. In this regard the Assessee respectfully relies upon the ratio of the

decision of the Hon'ble Apex Court in *Commissioner Of Income-Tax, Madras vs Mahalakshmi Textile Mills 1968 AIR 101* wherein it has been held that *'all questions whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal'.*

27.14 In light of the above the ld. A.R. respectfully prayed for admission of the following additional documents / evidences under Rule 29 r/w Rule 18(4) of the ITAT Rules, 1962:

a) Revised computation of income (COI) excluding the additional income included in ITR under protest.
b) Bills and vouchers supporting the expenditures under the head Travel Expenditure – Eight vouchers with supporting document for the year as a sample lot.
c) Bills and vouchers supporting the expenditures under the head Repairs and Maintenance– Eight vouchers with supporting document for the year as a sample lot.
d) Bills and vouchers supporting the expenditures under the head Commission Expenses– Twelve vouchers with supporting document for the year as a sample lot.
e) He also prayed that the Assessee may kindly be allowed to submit all the bills and vouchers for entire previous year relevant to A.Y. 11-12 in support of the subject expenditures as the same are not being produced along with this application being voluminous and bulky.

28. The ld. D.R. submitted that the assessee has not placed these additional evidences on earlier occasion, which shall not be admitted at this stage. She made similar arguments as in the case

of M/s. John Distilleries Pvt. Ltd. as mentioned in earlier paras (supra) of this order.

29. We have heard the rival submissions and perused the materials available on record. The assessee has taken the plea of ground Nos.2 to 6 pertaining to ld. AO coming to the conclusion that Travel expenses and repairs & maintenance are bogus in nature. Further, in ground Nos.7 & 8 in assessment year 2013-14 to 2016-17, the assessee has taken a ground that the ld. AO wrongly coming to the conclusion that commission paid is bogus in nature. The ld. CIT(A) while adjudicating this issue relied on the statement recorded u/s 132(4) and 131 of the Act and not examined whether this expenditure is properly supported by the bills, vouchers and receipts. Now the contention of the ld. A.R. is that all the expenditure were properly supported by the bills, vouchers and receipts and there cannot be any bogus expenditure in nature and admission of assessee in statement recorded u/s 132(4) of the Act or u/s 1321 of the Act cannot be basis for addition in the assessment year framed u/s 153C r.w.s. 153A & 143(3) of the Act. In our opinion, we find force in the argument of ld. A.R. These are the searched assessments framed u/s 153A/153C of the Act and which was based on the seized material in case of concluded assessments. Being so, in our opinion, it is appropriate to admit these additional evidences as discussed in the case of M/s. John Distilleries Pvt. Ltd. for the assessment years 2011-12 to 2016-17 in ITA Nos.982 to 987/Bang/2023. Ordered accordingly.

30. The assessee has raised very lengthy grounds, however at the time of hearing, filed a concise ground in the form of chart making

the same as many as 12 grounds. Accordingly, we confined to our adjudication to the grounds mentioned in the chart only.

31. First ground in these appeals is general in nature, which do not require any adjudication.

32. Next ground for our consideration is that no assessment could be made in the case of unabated assessment without any incriminating material found during the course of search action. This is common ground in all these appeals. The assessee raised this ground in ITA No.838 to 843/Bang/2023 for the assessment years 2011-12 to 2016-17.

33. Next common ground in all these appeals is that assessment in these assessment years u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 (in short "The Act"), which is bad in law as the ld. AO assessed the income already offered for taxation by the assessee in the regular assessment, as such framing assessment u/s 153C of the Act in case of unabated assessment is bad in law as there was no seized/incriminating material found during the course of search.

34. The ld. A.R. for the assessee submitted that search was took place in these cases on 3.11.2016 u/s 132 of the Act in case of M/s. John Distilleries Pvt. Ltd., M/s. Amrut Distilleries Pvt. Ltd., M/s. Madhuloka Liquor Pvt. Ltd. and Others. The search and survey was carried out in the office premises of the assessee at Bangalore and Kottayam. After recording the satisfaction in the file of M/s. John Distilleries Pvt. Ltd., notice u/s 153C of the Act dated 7.9.2018 was issued. In response to the notice u/s 153C of the Act, assessee filed a return of income on 28.12.2018. The contention of the ld. A.R. is that assessee filed return of income for these assessment years as follows:

Assessment year	Date of filing return u/s 139(1) of the Act	Date of notice u/s 143(1) & 143(3) of the Act	Search Date
2011-12	29.09.2011	16.05.2012*	03.11.2016
2012-13	25.09.2012	26.03.2015*	03.11.2016
2013-14	29.09.2013	31.03.2016*	03.11.2016
2014-15	29.11.2014	01.11.2016*	03.11.2016
2015-16	30.09.2015	12.12.2017	03.11.2016
2016-17	17.10.2016	--	03.11.2016

34.1 Further, he submitted that there was no seized material for all these assessment years to reopen the concluded assessment as these assessments are already concluded and to reopen the concluded assessment, there should be an independent seized material found during the course of search action and since there was no incriminating material found in the course of search action, concluded assessment cannot be reopened. Thus, he submitted that framing assessment in all these assessment years is bad in law for the assessment years 2011-12 to 2015-16 without any seized material.

35. The ld. D.R. submitted that during the course of search, some vouchers/bills relating to the various expenses were found, specifically travelling and repairing & maintenance expenses. When these were cross checked with the assessee's books of accounts, discrepancies were found and on being confronted with the same with Shri Shelly Thayil, C.O.O. of the assessee company has admitted that company is making some bogus expenses and the same has been utilized for making inadmissible business payments. Thus, she submitted that this is the reason for initiating the proceedings u/s 153C of the Act. She further submitted produced a copy of satisfaction note recorded u/s 153C of the Act in this

case, where it has mentioned the document at sl.no.5 clearly show that the assessee M/s. Paul Hotels and Resorts Pvt. Ltd. has bogus commission payments to travel agents, inflated repairs and maintenance expenses, inadmissible business expenses for AY 2011-12 to 2017-18. Hence, notice u/s 153C of the Act was issued. Further, she submitted that the following seized material relating to the present assessee found during the course of search action in the case of M/s. John Distilleries Pvt. Ltd. and examining the same notice u/s 153C of the Act has been issued.

1. A1/TPB-01- Commission payment page no.17
2. A1/TPB-01-Cash payment page no.1 to 54
3. A/PRH/06-Commission payment page nos.1 to 26
4. A/PO/PRH/02 page 2 Payment to KGA.
5. A/PO/PRH/02 page 6 – Cash payment to Sudhir Appachu
6. A/PO/PRH/02 page 9 & 11 Cash payment to Joy.

36. We have heard the rival submissions and perused the materials available on record. The scope of provisions of section 153A of the Act was summarized in para 13.1 of this order as per the order of the Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. Vs. Deputy Commissioner of Income-tax (23 taxmann.com 103).

36.1 In the present case, in these assessment years 2011-12 to 2015-16, the assessment has been already concluded either by issue of notice u/s 143(3) of the Act or by lapse of time. The concluded assessment cannot be basis for reopening assessment u/s 153C of the Act as discussed in the case of M/s. John Distilleries Pvt. Ltd. in earlier part of this order, we remit this issue to the file of ld. AO and if there is seized material in respect of completed assessment, the assessment could be reopened as held

by Hon'ble Supreme Court in the case of *CIT v. Singhad Technical Education Society, 397 ITR 344 (SC),* wherein held as under:-

> *"17. First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.*
>
> 18. *The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.*
>
> 19. *We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.*

20. *Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.*

21. *Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons:*

> *"8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in case of SSP Aviation Ltd. v. Deputy Commissioner of Income Tax [2012] 346 ITR 177 is misplaced. There, search was carried out in the case of "P" group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from "P" group of companies. Based thereon, the satisfaction was recorded by the Assessing Officer and he issued notice in terms of Section 153C. Thereupon the proceedings were initiated under section 153A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessees filed returns for those years but disclosed Nil taxable income. These returns were accepted by the Assessing Officer, however, in respect of the assessment year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for the assessment year 2007-08. Thus, the receipt of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 and later on became subject matter of the writ petition before the*

Delhi High Court. That was challenging the validity of notice under section 153C read with section 153A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under section 153C read with section 153A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further."

We, thus, do not find any merit in these appeals.

22. *We now advert to the implication of the fact which has been emphasised in para 15. As pointed out in the said para, the assessment order passed by the AO covers eight Assessment Years. Assessment done in six Assessment Years is under Section 153C of the Act. Assessment order is set aside only in respect of four such Assessment Years that too on the technical ground, noted above. This objection pertaining to the four Assessment Years in question does not relate to the other two Assessment Years, namely, 2004-05 and 2005-06. Likewise, this decision has no bearing in respect of assessment done qua Assessment Year 1999-2000 as well as Assessment Year 200607. The necessary consequence would be that insofar as the conclusions of the AO in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of Sections 11 and 12 etc. are concerned, the same would not be affected by this judgment. It is, thus, clarified that this Court has not dealt with the matter on merits insofar as incriminating material found against the assessee or Mr. Navale is concerned. Pithily put, this Court has not given any clean chit to the assessee insofar as the finding of the AO to the effect that the assessee had been indulging in profiteering and collecting capitation fee is concerned. Whatever other repercussions are there, based on these findings, they can follow. This Court was not informed and, therefore, unaware of any challenge to the assessment order in respect of other four Assessment Years and outcome thereof. Wherever any such proceedings are pending,*

same would be considered without being affected by the outcome of these proceedings.

23. *The appeals are dismissed with the aforesaid observations."*

36.2 In view of the above, in respect of assessment years 2013-14 to 2016-17, we hold that the completed assessment cannot be reopened for framing assessment u/s 153C of the Act, unless there is a seized material found during the course of search conducted in the group of cases mentioned in earlier part of this order. Accordingly, this issue is remitted to the file of ld. AO to examine the same afresh and to frame assessment u/s 153C of the Act in these assessment years if there is a valid seized material found during the search action in the case of M/s. John Distilleries Pvt. Ltd. conducted on 3.11.2016 as held by Hon'ble Supreme Court in the case of Singhad Technical Education Society cited (supra) and in the case of Abhisara Buildwell Pvt. Ltd. reported in 454 ITR 212 wherein held that only when during the course of search undisclosed income was found on unearthing incriminating material during the search, the ld. AO assumed jurisdiction to assess or reassess the total income even in case of completed or unabated assessments. In other words there should be seized material relating to each assessment year found during the course of search to reopen completed assessment, if there is no valid seized material the concluded assessment cannot be reopened. With this observation, we remit this ground relating to framing assessment of unabated assessments consequent to search action to the file of ld. AO for reconsideration.

36.3 In respect of assessment year 2011-12 & 2012-13, ld. A.R. submitted that notice u/s 153A of the Act was issued on 7.9.2018. The order was passed u/s 153C of the Act on 28.12.2018 as the

time limit to issue notice for those assessment years has been already lapsed, as such no notice u/s 153C of the Act to be issued for the assessment years 2011-12 & 2012-13.

36.4 In our opinion section 153C of the Act is to empower the Assessing Officer of the person searched to handover the money, gold, jewellery or other relevant articles/things or books of account or documents belonging to the other person to the Assessing Officer of that other person and the Assessing Officer of that other person is empowered to proceed against such other person to assess undisclosed income resulting from such money, bullion, jewellery and valuable articles or things, books of account or other documents. The proviso introduced by the Finance Act, 2005 with effect from 1-6-2003 makes a change in the date for reckoning the initiation of the assessment proceedings of the earlier year in the case of other person. In the case of person searched provisions of section 153A are applicable. Provisions of sub-section (1)(b) empower the Assessing Officer to assess or reassess total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Accordingly, the Assessing Officer can issue notice under section 153A for the six preceding assessment years following the previous year in which search is conducted. In the instant case search of ''JDPL" was conducted on 03.11.2016, then in his case, the Assessing Officer was empowered to initiate the proceedings for assessment/reassessment for the assessment years 2016-17, 2015-16, 2014-15, 2013-14, 2012-13 & 2011-12. It was because the assessment year relevant to previous year in which search took place was the assessment year 2017-18 (previous year 2016-17), but when provisions of proviso to section

153C are applied, then date of search is substituted by date of handing over of the documents by the Assessing Officer of the person searched to the Assessing Officer of the other person (present assessee). Even if we consider the issue of notice u/s153C of the Act was on 7.9.2018, which fell in the assessment year 2019-20. The Assessing Officer could reopen the assessment for six assessment years preceding this assessment year. They were assessment years 2018-19, 2017-18, 2016-17, 2015-16, 2014-15 & 2013-14. Thus, the assessment for the assessment years 2011-12 & 2012-13 was barred by limitation, so far as the present assessee was concerned. In any case, the instant issue was raised for the first time before the Tribunal and, thus, it had not been examined by the lower authorities, therefore, the matter was to be restored to his file for considering the date when the relevant documents were handed over by the Assessing Officer of the person searched to the Assessing Officer of the present assessee and decide this issue accordingly, in the light of our above observations.

37. Next ground in ITA Nos.838 & 839/Bang/2023 relating to assessment years 2011-12 & 2012-13 is that the assessments are time barred. Since this ground is akin to the earlier ground with regard to framing assessment in case of unabated assessment, this issue is also remitted to the file of ld. AO as discussed in immediate earlier para herein above.

38. Next common ground in all these appeals is with regard to carrying of search action u/s 132 of the Act without according proper satisfaction.

38.1 This common ground in all these appeals of this assessee is dismissed on similar lines as discussed in similar ground in earlier part of this order in the case of M/s. John Distilleries Pvt. Ltd. by

placing reliance on the judgement of jurisdictional High Court in the case of Pratibha Jewellery House Vs. CIT 88 taxmann.com 94 (Karn.). This ground of appeals in all these appeals is dismissed.

39. Next ground in all these appeals is with regard to violation of principles of natural justice and perversity in the orders of the lower authorities.

39.1 This ground of appeals of the assessee is dismissed on similar lines as discussed in the case of M/s. John Distilleries Pvt. Ltd. as discussed in earlier part of this order.

40. Next common grounds in all these appeals is ground nos.7 & 9 are with regard to addition merely on statement recorded u/s 132(4) /131(1A) of the Act and in violation of CBDT Circular F.No.286/2/98/2013-IT (Inv.) dated 10.3.2003 and No.286/2/98/2013-IT(Inv.) dated 18.10.2014 on the reason that:

(a) Inflating of expenses under bogus travelling expenses

(b) Undisclosed income under the head bogus repairs and maintenance

(c) Undisclosed income under the head bogus commission expenses, which the income has been included in the ITR due to pressure, mistaken belief and on the false assurance.

41. The ld. A.R. made same submissions as in the case of M/s. John Distilleries Pvt. Ltd.

41.1 Further submitted that assessment in case of search assessment to be made on the basis of incriminating material/seized material as held in the case of PCIT Vs. Abhisara Buildwell Pvt. Ltd cited (supra) and in the case of CIT vs. Sinhgad Technical Education Society cited (supra).

41.2 Further, some of the statements have been recorded under section 131 by the authorized officer subsequent to

completion of search and these statements cannot be considered as conclusive evidence in view of the below mentioned CBDT Circular in file no.286/98/2013-IT (Inv.II) dated 18.12.2014 cited (supra)

41.3 He also submitted that the above circular is binding on the department and it is to be followed in true spirit.

41.4 At the cost of repetition, we reproduce his arguments:

A. 132(4) Statement per se is not an incriminating material: For this proposition, he relied on the following judgements:-

1) *CIT v. Harjeev Aggarwal, 2016 (2016) 290 CTR 263l (2016) 229 DLT 33, ITA 8 of 2004 (HC, Delhi)*
2) *CIT vs. Kuber Khadyan Pvt. Ltd., 2021 ITA No.4223/4225/4226/Del/2018 (ITAT, New Delhi)*

B. No addition without incriminating material **:** For this proposition, he relied on the following judgements:-

1) *CIT vs. Abhisar Buildwell (P) Ltd. (2024) 2 Supreme Court cses 433, 149 taxmann.com 399 (SC), Civil appeal No.6580 of 2021*

C. Tribunal has discretion to admit additional evidence in the interest of justice: For this proposition, he relied on the following judgements:-

1) *Goetze (India) Ltd. vs. Commissioner of Income-tax (2006) 284 ITR 323*
2) *Goetz India CIT vs. Text Hundred India Pvt. Ltd. (2013) 351 ITR 57*
3) *Fibres & Fabrics International (P) Ltd. vs. ACIT, Circle-11(3), Bangalore (2013) 33 taxmann.com 90 (Bangalore Trib)*
4) *HL Malhotra & Co. (P) Ltd. vs. DCIT, Circle12(1), New Delhi(2021) 125 taxmann.com 70 (Delhi)*

D. Extrapolation not permitted in S&S assessment: He relied on the following judgements:

1) *CIT v. B. Nagendra Baliga, (2014) 363 ITR 410*
2) *A. Shivashankar v. DCIT ITA Nos.617 to 620/Chny/2017 Dated 31.05.2022 (ITAT, Chennai)*
3) *Sri Devraj Urs Education Trust for Backward Classes v. ACIT, Bangalore ITA No.500 to 506/Bang/2020 (TAT, Bangalore)*

41.5 Further, he submitted that the assessee has filed various letters before ld. AO seeking opportunity to produce evidence in support of the claim of expenditure, which are not considered by

him even the assessee has retracted the statement which was observed by the ld. AO after thought.

A. He submitted that claim to be entertained even if not made in ITR and income to be assessed and tax to be collected as per Art 265 of Constitution:

For this proposition, he relied on the following judgements:-

1. *CIT v. Abhinitha Foundation P. Ltd. 2017 396 ITR 251*
2. *DCIT V. CMS Securities Ltd., (2016) 47 ITR (Trib) 378 wherein held that "the authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.*
3. *Srikant G. Shah vs. ITO (ITAT)(Mum) (2008) 300 ITR (AT) 324*
4. *M/s. Maruti Enterprise, Amreli Vs. The ADIT (CPC), Bangalore (2023) ITA No.10/Rjt/2023 dated 20 March, 2024 (ITAT, Rajkot)*
5. *Sharp Tools vs. Principal Commissioner of Income Tax (2020) 421 ITR 90 (HC-Madras)*

41.6 He submitted that the claim of the assessee to be entertained even if claim was not made in ITR as held by above judgements.

42. On the other hand, ld. D.R. submitted that the assessee has accepted statement recorded u/s 132(4) of the Act and filed return of income. Accordingly, now assessee cannot agitate this. Further, she submitted that on account of the evidence unearthed during the search and based on admissions of key employees and the CMD, the Assessee filed return of income in response to notice u/s 153C declaring the undisclosed income in relation to travel expenses, following the admission made in the statements recorded under oath during the search.

42.1 She submitted that para 6 of the assessment order for the relevant AYs pertains to "Undisclosed income under the head Bogus repairs and maintenance". During the course of search, some vouchers/bills relating to travelling expenses were found. When these were cross checked in the assessee's books of account, discrepancies were found and on being confronted with the same,

Sri Shelly Thayil, COO of the assessee company, has admitted that the company are making some bogus expenses and the same has been utilized for making inadmissible business payments. She drew our attention to the relevant part of the order of the AO which is reproduced below:

6. Undisclosed income under the head Bogus Repairs and Maintenance:

6.1 During the course of search, some vouchers/ bills relating to repairs and maintenance were found. When these were cross checked in their books of account, discrepancies were found and on being confronted with Sri Shelly Thayil, COO of M/s Paul Resorts and Hotels Pvt. Ltd, admitted that they are making some bogus expenses in the books of accounts and the same has been utilized for making the inadmissible business payments.

6.2 The company was inflating the expenses by booking common name of billing payments for the easy reference. Sri Nisar Mohammed Ali, was asked to produce complete bills/ vouchers for the travelling expenses and in his statement dated 06.03.2017 has stated that he was unable to produce the bills.

Q.23. Please furnish the supporting bills/vouchers for the following expenditure claimed (as per the financial) towards Commission, Travelling expenses, repair and maintenance for the financial years from 2010-11 to 2016-17.

S.No	Financial years	Repair and maintenance (Rs.)
1	2010-11	1,50,98,459
2	2011-12	1,78,55,918
3	2012-13	1,41,90,365
4	2013-14	2,51,12,484
5	2014-15	2,25,00,136
6	2015-16	2,18,54,660
7	2016-17	-

Ans. We have maintained all the bills and vouchers related repairs and maintenance expenses. We are unable to produce bill/vouchers related to the repairs and maintenance expenditure claimed to the extent as tabulated below. Hence the same can be disallowed.

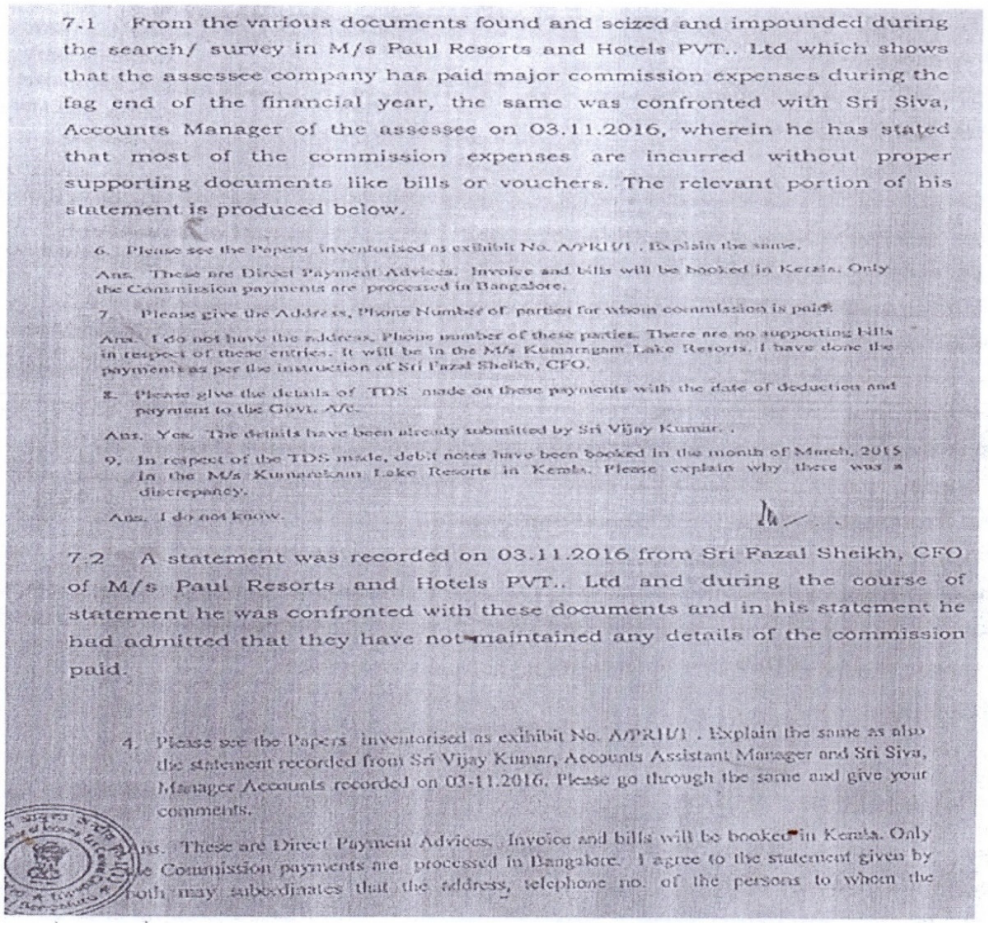
6.3 The assessee company has admitted a sum of Rs. 74,41,275/- for AY 2011-12as bogus repairs and maintenance expenses. The assessee in its return of income in response to 153C notice for AY 2011-12 has offered a sum of Rs. 74,41,275/- to tax as additional income by the assessee. From the above it is a clear case of concealment of income by the assessee and penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately.

42.2 She submitted that it is evident from the above paragraphs of the order of the AO, that the assessee admitted:

a) to claiming bogus expenses in books of accounts, which were accommodation entries
b) that the bills and vouchers for such expenses claimed, were not available and could not be produced.

42.3 She submitted that on account of the evidence unearthed during the search and based on admissions of key employees and

the CMD, the Assessee filed return of income in response to notice u/s 153C, declaring the undisclosed income in relation to repairs and maintenance, following the admission made in the statements recorded under oath during the search proceedings. Para 7 of the order for the AYs (2013-14 to 2016-17) pertains to "Undisclosed income under the head Bogus commission expenses". During the course of search, various documents were found and seized and impounded, which shows the assessee has paid major commission expenses. The same was confronted with Sri Siva, Accounts Manager and Sri Fazal Sheikh, CFO. Both have admitted in statement recorded u/s 132(4) that they have not maintained any details of the commission paid. She drew our attention to the relevant part of the order of the AO in para 7.1 to 7.5 which is reproduced below:



7.1 From the various documents found and seized and impounded during the search/ survey in M/s Paul Resorts and Hotels PVT.. Ltd which shows that the assessee company has paid major commission expenses during the tag end of the financial year, the same was confronted with Sri Siva, Accounts Manager of the assessee on 03.11.2016, wherein he has stated that most of the commission expenses are incurred without proper supporting documents like bills or vouchers. The relevant portion of his statement is produced below.

6. Please see the Papers inventorised as exhibit No. A/PRI/1 . Explain the same.

Ans. These are Direct Payment Advices. Invoice and bills will be booked in Kerala. Only the Commission payments are processed in Bangalore.

7. Please give the Address, Phone Number of parties for whom commission is paid.

Ans. I do not have the address, Phone number of these parties. There are no supporting bills in respect of these entries. It will be in the M/s Kumarngam Lake Resorts. I have done the payments as per the instruction of Sri Fazal Sheikh, CFO.

8. Please give the details of TDS made on these payments with the date of deduction and payment to the Govt. A/c.

Ans. Yes. The details have been already submitted by Sri Vijay Kumar. .

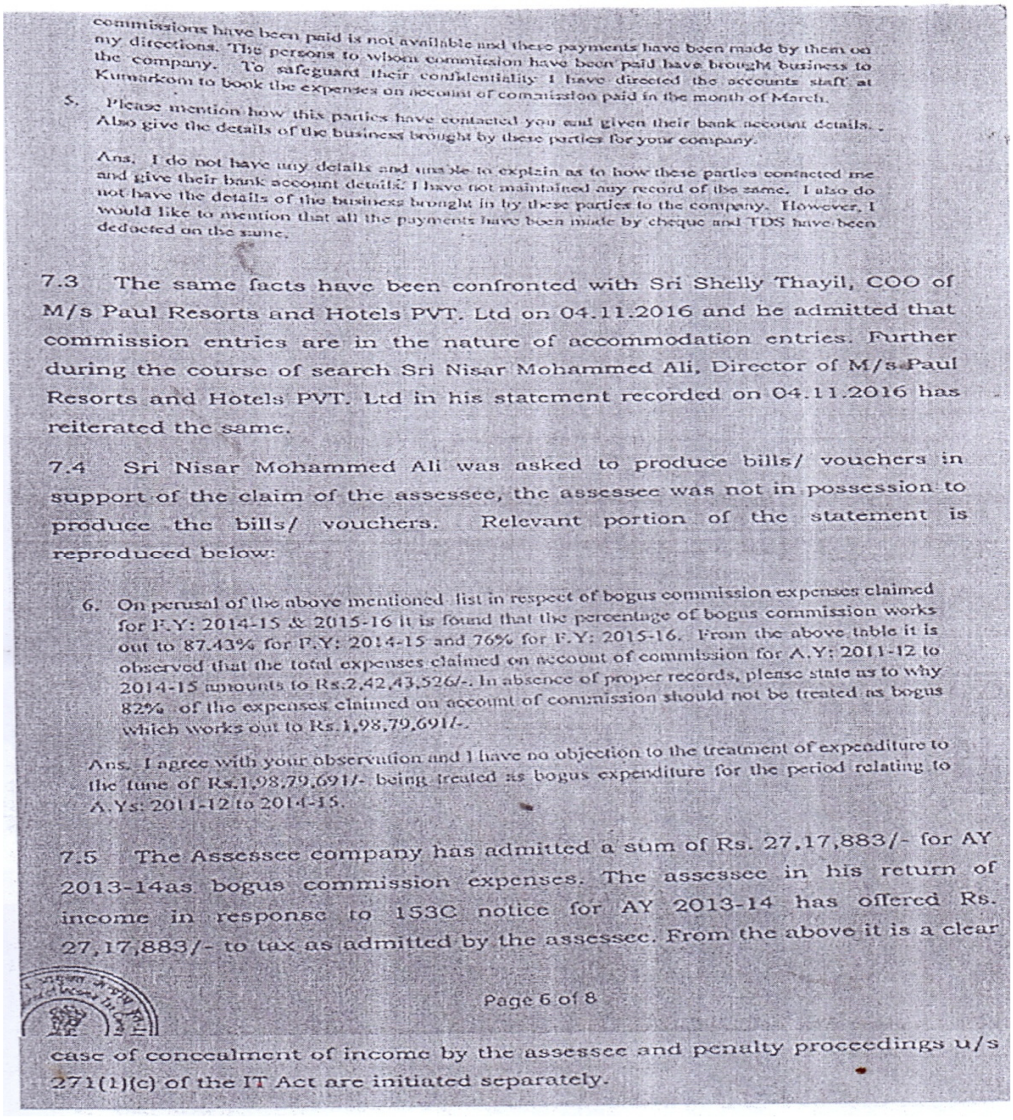
9. In respect of the TDS made, debit notes have been booked in the month of March, 2015 in the M/s Kumarakam Lake Resorts in Kerala. Please explain why there was a discrepancy.

Ans. I do not know.

7.2 A statement was recorded on 03.11.2016 from Sri Fazal Sheikh, CFO of M/s Paul Resorts and Hotels PVT.. Ltd and during the course of statement he was confronted with these documents and in his statement he had admitted that they have not maintained any details of the commission paid.

4. Please see the Papers inventorised as exhibit No. A/PRI/1 . Explain the same as also the statement recorded from Sri Vijay Kumar, Accounts Assistant Manager and Sri Siva, Manager Accounts recorded on 03-11.2016. Please go through the same and give your comments.

Ans. These are Direct Payment Advices. Invoice and bills will be booked in Kerala. Only the Commission payments are processed in Bangalore. I agree to the statement given by both may subordinates that the address, telephone no. of the persons to whom the



commissions have been paid is not available and these payments have been made by them on my directions. The persons to whom commission have been paid have brought business to the company. To safeguard their confidentiality I have directed the accounts staff at Kumarkom to book the expenses on account of commission paid in the month of March.

5. Please mention how this parties have contacted you and given their bank account details. Also give the details of the business brought by these parties for your company.

Ans. I do not have any details and unable to explain as to how these parties contacted me and give their bank account details. I have not maintained any record of the same. I also do not have the details of the business brought in by these parties to the company. However, I would like to mention that all the payments have been made by cheque and TDS have been deducted on the same.

7.3 The same facts have been confronted with Sri Shelly Thayil, COO of M/s Paul Resorts and Hotels PVT. Ltd on 04.11.2016 and he admitted that commission entries are in the nature of accommodation entries. Further during the course of search Sri Nisar Mohammed Ali, Director of M/s Paul Resorts and Hotels PVT. Ltd in his statement recorded on 04.11.2016 has reiterated the same.

7.4 Sri Nisar Mohammed Ali was asked to produce bills/ vouchers in support of the claim of the assessee, the assessee was not in possession to produce the bills/ vouchers. Relevant portion of the statement is reproduced below:

6. On perusal of the above mentioned list in respect of bogus commission expenses claimed for F.Y: 2014-15 & 2015-16 it is found that the percentage of bogus commission works out to 87.43% for F.Y: 2014-15 and 76% for F.Y: 2015-16. From the above table it is observed that the total expenses claimed on account of commission for A.Y: 2011-12 to 2014-15 amounts to Rs.2,42,43,526/-. In absence of proper records, please state as to why 82% of the expenses claimed on account of commission should not be treated as bogus which works out to Rs.1,98,79,691/-.

Ans. I agree with your observation and I have no objection to the treatment of expenditure to the tune of Rs.1,98,79,691/- being treated as bogus expenditure for the period relating to A.Ys: 2011-12 to 2014-15.

7.5 The Assessee company has admitted a sum of Rs. 27,17,883/- for AY 2013-14as bogus commission expenses. The assessee in his return of income in response to 153C notice for AY 2013-14 has offered Rs. 27,17,883/- to tax as admitted by the assessee. From the above it is a clear

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case of concealment of income by the assessee and penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately.

42.4 She submitted that it is evident from the above paragraphs in the order of the ld. AO that the assessee admitted:

a) to claiming bogus commission expenses in books of accounts, which were in the nature of accommodation entries

b) that the bills and vouchers for such expenses claimed, were not available and could not be produced.

42.5 She submitted that on account of the evidence unearthed during the search and based on admissions of key employees and the CMD, the Assessee filed return of income in response to notice u/s 153C declaring the undisclosed income in relation to bogus commission expenses and following the admissions made in the statements recorded under oath during the search. Reference is made to the sworn statement of Shri Paul P John, Chairman and Managing Director ("CMD") of John Distilleries Group, recorded on 4.11.2016, 7.11.2016, 27.02.2017 and 6.3.2017. These statements were submitted by the Assessee on 24th August 2023, in the case of John Distilleries Pvt Ld.

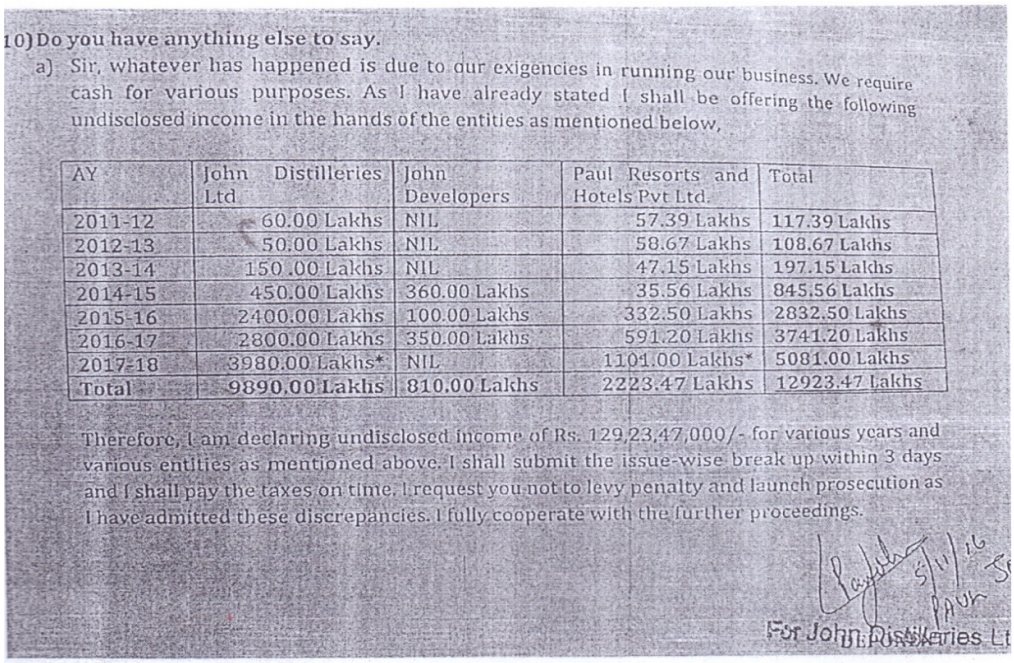
42.6 She drew our attention to Q. No. 7 and Q. No. 10 of statement dt 4.11.2016 which is reproduced below:

7) I am showing you the sworn statement of Mr. Mohammed Ali, Director of M/s Paul Resorts and Hotels Pvt Ltd recorded on 04.11.2016 during the course of Search proceedings in your case. Please go through the statement and comment.

a) Yes Sir, I have gone through all these statements in detail. I agree with whatever he has stated in his statement and I confirm the same. I understand that for various years, evidence with respect to inflation with respect to expenditure and generation of cash through various means was found and accordingly, year wise break up of the undisclosed income in the hands of the company, i.e., Paul Resorts and Hotels Pvt Ltd was arrived at. I agree to this break up. The total undisclosed income is as shown below,

S.No.	AY	Amount of undisclosed income (Rs)
1	2011-12	57.39 Lakhs
2	2012-13	58.67 Lakhs
3	2013-14	47.15 Lakhs
4	2014-15	35.56 Lakhs
5	2015-16	332.50 Lakhs
6	2016-17	591.20 Lakhs
7	2017-18	1101.00 Lakhs*
8	Total	2223.47 Lakhs

* In the case of AY 2017-18, as on date, no Advance Tax has been paid by the Company. We disclose an amount of Rs. 4,01,00,000 as undisclosed income for the period 01.04.2016 to 02.11.2016. I also wish to state that we shall be offering income amounting to Rs. 7,00,00,000/- as income for the period 03.11.2016 to 31.03.2017. I wish to state that I agree to the aforementioned break up of undisclosed income and I shall be paying the taxes within time. The modus of generation of this income has already been explained by Mr Mohammed Ali which is correct.



10) Do you have anything else to say.

a) Sir, whatever has happened is due to our exigencies in running our business. We require cash for various purposes. As I have already stated I shall be offering the following undisclosed income in the hands of the entities as mentioned below,

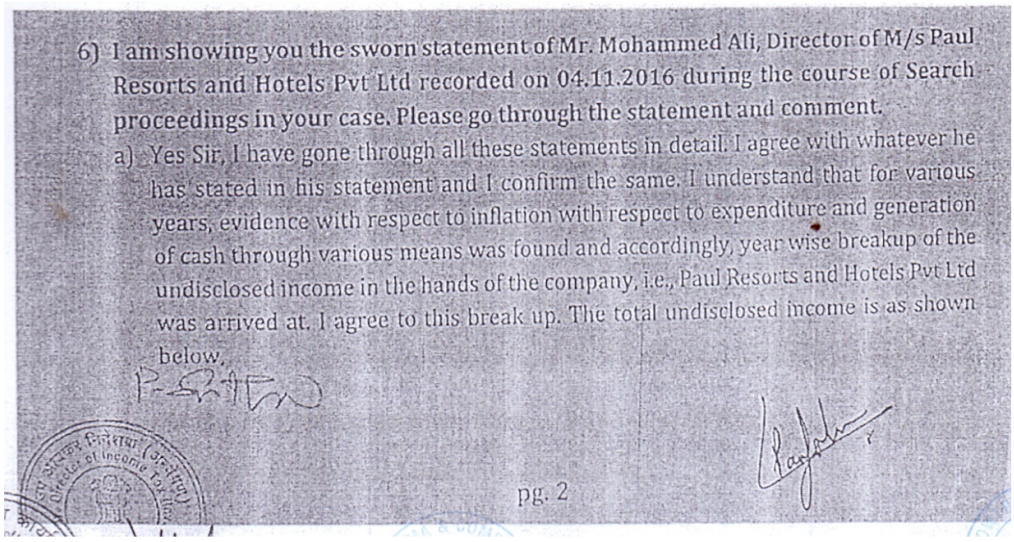
AY	John Distilleries Ltd	John Developers	Paul Resorts and Hotels Pvt Ltd.	Total
2011-12	60.00 Lakhs	NIL	57.39 Lakhs	117.39 Lakhs
2012-13	50.00 Lakhs	NIL	58.67 Lakhs	108.67 Lakhs
2013-14	150.00 Lakhs	NIL	47.15 Lakhs	197.15 Lakhs
2014-15	450.00 Lakhs	360.00 Lakhs	35.56 Lakhs	845.56 Lakhs
2015-16	2400.00 Lakhs	100.00 Lakhs	332.50 Lakhs	2832.50 Lakhs
2016-17	2800.00 Lakhs	350.00 Lakhs	591.20 Lakhs	3741.20 Lakhs
2017-18	3980.00 Lakhs*	NIL	1101.00 Lakhs*	5081.00 Lakhs
Total	9890.00 Lakhs	810.00 Lakhs	2223.47 Lakhs	12923.47 Lakhs

Therefore, I am declaring undisclosed income of Rs. 129,23,47,000/- for various years and various entities as mentioned above. I shall submit the issue-wise break up within 3 days and I shall pay the taxes on time. I request you not to levy penalty and launch prosecution as I have admitted these discrepancies. I fully cooperate with the further proceedings.

5/11/16

For John Distilleries Lt

42.7 She drew our attention to Q.No.6 and Q.No.11 of statement dated 7.11.2016 which is reproduced below:



6) I am showing you the sworn statement of Mr. Mohammed Ali, Director of M/s Paul Resorts and Hotels Pvt Ltd recorded on 04.11.2016 during the course of Search proceedings in your case. Please go through the statement and comment.

a) Yes Sir, I have gone through all these statements in detail. I agree with whatever he has stated in his statement and I confirm the same. I understand that for various years, evidence with respect to inflation with respect to expenditure and generation of cash through various means was found and accordingly, year wise breakup of the undisclosed income in the hands of the company, i.e., Paul Resorts and Hotels Pvt Ltd was arrived at. I agree to this break up. The total undisclosed income is as shown below.

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S. No.	AY	Amount of undisclosed income (Rs)
1	2011-12	57.39 Lakhs
2	2012-13	58.67 Lakhs
3	2013-14	47.15 Lakhs
4	2014-15	35.56 Lakhs
5	2015-16	332.50 Lakhs
6	2016-17	591.20 Lakhs
7	2017-18	1101.00 Lakhs*
8	**Total**	**2223.47 Lakhs**

*In the case of AY 2017-18, as on date, no Advance Tax has been paid by the Company. We disclose an amount of Rs. 4,01,00,000 as undisclosed income for the period 01.04.2016 to 02.11.2016. I also wish to state that we shall be offering income amounting to Rs. 7,00,00,000/- as income for the period 03.11.2016 to 31.03.2017. I wish to state that I agree to the aforementioned break up of undisclosed income and I shall be paying the taxes within time. The modus of generation of this income has already been explained by Mr. Mohammed Ali which is correct.

11) I am showing you the provisions of 132(4) of IT Act, 1961. Do you have anything else to say.

a) Sir, whatever has happened is due to our exigencies in running our business. We require cash for various purposes. As I have already stated I shall be offering the following undisclosed income in the hands of the entities as mentioned below,

AY	John Distilleries Ltd	John Developers	Paul Resorts and Hotels Pvt Ltd.	Total
2011-12	60.00 Lakhs	NIL	57.39 Lakhs	117.39 Lakhs
2012-13	50.00 Lakhs	NIL	58.67 Lakhs	108.67 Lakhs
2013-14	150 .00 Lakhs	NIL	47.15 Lakhs	197.15 Lakhs
2014-15	450.00 Lakhs	360.00 Lakhs	35.56 Lakhs	845.56 Lakhs
2015-16	2400.00 Lakhs	100.00 Lakhs	332.50 Lakhs	2832.50 Lakhs
2016-17	2800.00 Lakhs	350.00 Lakhs	591.20 Lakhs	3741.20 Lakhs
2017-18	3980.00 Lakhs*	NIL	1101.00 Lakhs*	5081.00 Lakhs
Total	**9890.00 Lakhs**	**810.00 Lakhs**	**2223.47 Lakhs**	**12923.47 Lakhs**

*In the case of AY 2017-18, as on date, no Advance Tax has been paid by the Company.

Therefore, as I already state I am declaring undisclosed income of Rs. 129,23,47,000/- for various years under section 132(4) of IT Act, 1961 and various entities as mentioned above. This may be taken as my declaration in the above said entities. I

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shall submit the issue-wise break up within 7 days and I shall pay the taxes on time. I request you not to levy penalty and launch prosecution as I have admitted these discrepancies. I fully cooperate with the further proceedings.

Kindly allow me one week time, I will produce the issue wise declaration on M/s. John Distilleries Private Limited, M/s. John Developers and M/s. Paul Resorts and Hotels Private Limited.

7/3/17

DEPONENT

42.8 She drew our attention to Q.No.74 of statement dated 6.3.2017, which is reproduced below:

Q.74 Kindly go through the above questions and answers once again and offer your comments.

Ans. I am summarizing the declaration in John Group as follows:

Financial year	John Distilleries Private Limited	Paul Hotels private limited	John Developers	Paul P John	Total
2010-2011	241,68,869	92,92,737	-	-	3,34,61,607
2011-2012	362,64,534	109,94,627	-	-	4,72,59,161
2012-2013	316,74,748	112,61,989	-	-	4,29,36,737
2013-2014	333,94,543	177,63,029	360,00,000	-	8,71,57,572
2014-2015	507,13,947	278,35,171	100,00,000	-	8,85,49,118
2015-2016	591,16,553	350,99,446	650,00,000	-	20,02,30,888
2016-2017	4550,00,000	1300,00,000	100,00,000	*26,98,66,806	82,38,51,917
Total	69,03,33,194	24,22,47,000	12,10,00,000	*26,98,66,806	132,34,47,000

* For FY 2016-17 Paul P John Individual income includes salary – Rs. 42,00,000/-, Capital Gains – Rs.22,46,51,917/- and other income – Rs. 4,10,14,889/-(additional income).

42.9 She submitted that it is clear from the above statements that the Shri Paul P John confirmed the statements given by the Key employees of the Assessee i.e. Paul Resorts and Hotels Pvt Limited with regard to

bogus expenses and generation of cash and admitted undisclosed income for the relevant AYs.

42.10 She also submitted that it is evident from the above sequence of events that the Assessee had ample opportunities earlier to substantiate its claim made in the appellate proceedings. Assessee, after admitting to the details of undisclosed income in the statement recorded under oath from key employees including the statement of CMD, Chairman during the search and post search, on different dates, did not file the supporting documents for the travel expenses, repairs and maintenance and commission paid to establish that the admission of undisclosed income is incorrect. It is also noted that Assessee also did not file any retraction statement at all. This proves the fact that the admission of undisclosed income was correct as it was based on incriminating materials and evidence detected during the search proceedings. Even at the stage of filing of return in response to notice u/s 153C, the Assessee consciously chose to file the return, adhering to the admissions of undisclosed income made in the statements recorded under oath. This again proves the fact that the admission of undisclosed income was based on incriminating material which was declared only due to the search proceedings.

42.11 Further she submitted that even during the assessment proceedings Assessee did not file any documents in support of travel expenses, repairs and maintenance and commission paid before the AO. A revised computation contradicting the disclosure made in the return u/s 153C was not filed and neither did the Assessee file a revised return u/s 153C. Thus in the time period from 3.11.2016, when the search was carried out till 31.12.2018, i.e date of passing of order u/s 143(3) rws 153C, Assessee never contested the admission of undisclosed income. However only during the appellate proceedings, it has raised the ground that the undisclosed income pertaining to travel expenses, repairs and maintenance and commission paid, is not correct as these expenses are

supported by bills and vouchers. It is only an afterthought on part of the Assessee, to raise the issue during appellate proceedings that opportunity was not given to produce bills and vouchers relating to undisclosed income under travel expenses, repairs and maintenance and commission paid, when such undisclosed income was offered by the Assessee in response to notice u/s 153C. She also submitted that it is also noticed that the assessee has failed to make a case that any declaration of undisclosed income during the search and post search proceedings, was made under duress or that the declaration made was incorrect based on additional evidence furnished. The fact remains that the declarations were made on account of bogus expenses claimed to generate cash funds, which is clearly discussed in the assessment order passed. The assessees claim that the TDS is deducted on commission payments claimed does not hold ground as the core issue to be decided is genuinity of the expenses claimed. Once it is proved that the expenses claimed itself is bogus, any colorable device/methodology used to legitimise it, cannot suffice the genuineness of the claims made.

43. We have heard the rival submissions and perused the materials available on record. As seen from the facts of the case, assessee has filed return of income for these assessment years in respect of notice u/s 153C of the Act and disclosed the income as accepted by the assessee in his statement recorded u/s 132(4) and 131(1A) of the Act. As seen from the assessment orders for these assessment years, assessee has admitted the additional income stating that there were bogus booking of expenditure in respect of repairs & maintenance and travelling expenses. However, the same has been agitated before the ld. CIT(A). The ld. CIT(A) observed that assessee has not placed any evidence to show that the statement recorded by department under pressure or declaration made incorrect that was made under duress. As such ld. CIT(A) dismissed the ground of the assessee.

43.1 In our opinion, the above issues are similar to the issues considered in the case of M/s. John Distilleries Pvt. Ltd. in ITA Nos.982 to 987/Bang/2023 for the AYs 2011-12 to 2016-17, which has been remitted to the file of ld. AO for fresh consideration to decide the same only on the basis of seized/incriminating material found during the course of search action and not on stand-alone basis of statement recorded u/s 132(4)/131(1A) of the Act. Accordingly, in this case of assessee also the impugned issues in all these appeals is remitted to the file of ld. AO on similar direction to decide the same after considering the additional evidence filed by the assessee before us. Hence, the ld. AO has to relook into the additional income offered in the return filed in response to notice u/s 153C of the Act as well as addition made by him in the course of framing assessment u/s 153C of the Act as discussed in ITA Nos.982 to 987/Bang/2024 in the case of M/s. John Distilleries Pvt. Ltd. Accordingly, these impugned issues remitted to the file of ld. AO for reconsideration in the light of above observation.

44. Next ground No.9 is with regard to approval granted u/s 153D of the Act as mechanical and without application of mind. The assessee has not placed any material to show that approval u/s 153D of the Act was granted in a mechanical manner. Hence, this ground is dismissed.

45. Ground No.11 is with regard to charging of interest u/s 234A of the Act, which is consequential and mandatory in nature to be computed accordingly.

46. In the result, assessee's appeals in ITA Nos.838 to 843/Bang/2023 are partly allowed for statistical purposes.

ITA Nos.845 to 847/Bang/2023 (AYs 2014-15 to 2016-17) (M/s. John Developers) (Assessee's appeals):

47. The assessee filed lengthy grounds in these cases of assessee also. However, the assessee filed concise ground-wise chart which has been considered for adjudication, herein below.

47.1. The assessee filed a ground-wise chart in these appeals, the same is considered for adjudication.

48. Brief facts of the case; since the facts are common, we consider the facts in the assessment year 2014-15 for brevity.

48.1 The assessee is in the business of development of residential Sites near Bangalore. The Assessee is a Partnership Firm engaged in the business of development of land and sale thereof For the Asst. Year 2014-15 originally the Assessee had filed return of income, declaring an income of Rs.43,24,914/-. There was a Survey in the month of Sept.,2016 in the case of the Assessee and at the time of Survey the Assessee had voluntarily agreed to add a sum of Rs.60,00,000/- as additional income offered and also Rs.20,56,553/- as inadmissible expenditure, with a result there was addition Rs.80,56,553/- for the assessment. The assessment was completed u/s. 143(3) vide Order dated 24.10.2016. Subsequently, on 3rd November 2016, a search and seizure action u/s. 132 of the Act was conducted in the case of M/s. John Distilleries Pvt. Ltd., and Assessee being a group concern, search was also carried out in the office premises of the Assessee. During the course of search proceedings, documents / materials pertaining to assessee were found and seized. Thereafter, a notice u/s 153C of the Act was issued to the assessee firm calling for the return of income. The assessee filed return of income in response to notice u/s 153C of the Act, wherein income declared was Rs.4,03,24,910/- This amount of Rs.4.03 crores includes the additions made u/s 143(3) of the Act which was based on Survey conducted in September, 2016.

49. First common ground in these appeals is general in nature, which do not require any adjudication.

50. Second ground in these appeals is with regard to addition made without any seized/incriminating material. As discussed in the case of

M/s. John Distilleries Pvt. Ltd., in earlier part of this order, we remit this impugned issue in all these appeals on similar lines to the file of ld. AO to confine the addition only to the extent of incriminating material/seized material found during the course of search and not to make any addition, if there is no seized material solely relying on the statement recorded u/s 132(4)/131(1A) of the Act.

51. Next common ground in these appeals is ground No.3 which is with regard to assessment which is already concluded and no assessment could be made without any seized material. The ld. A.R. submitted that in assessment years 2014-15 & 2015-16, the assessee has filed return u/s 139(1) of the Act on 26.11.2014 and 30.9.2015 for the assessment years 2014-15 & 2015-16. The assessment has been already concluded u/s 143(3) on 24.10.2016 and 20.11.2017. As such, these assessments are not pending as on date of search on 3.11.2016. In our opinion, only for the assessment year 2014-15, the assessment was completed before date of search that was 24.10.2016. Being so, in case of assessments is concluded and being unabated assessment which assessment cannot be made u/s 143(3) r.w.s. 153C of the Act without any seized material. Accordingly, this issue also remitted to the file of ld. AO to reconsider it as we have discussed in the case of M/s. John Distilleries PVt. Ltd. in ITA Nos.982 to 987/Bang/2023, as the assessment cannot be framed without any seized material for the assessment years if they are already concluded on the date of search on 3.11.2016. Ordered accordingly.

52. In ground No.4 the assessee included the income in these assessment years i.e. 2014-15 to 2016-17 due to wrong belief and also accompanied with pressure and false assurance and he submitted that assessment in these assessment years to be made only on the basis of seized material and he drew our attention to the additional evidences filed before us and submitted that all the evidences are available with the assessee to demonstrate various expenditure claimed by assessee.

52.1. The ld. D.R. strongly opposed the argument of assessee's counsel.

52.2. The assessee has taken this ground before the ld. CIT(A) also, however, he relied on the statement recorded u/s 132(4)/131 of the Act. In our opinion, the assessment to be framed in accordance with law after considering the available evidences as discussed in earlier para. Accordingly, we remit this issue to the file of ld. AO to frame fresh assessment only basing on the statement recorded u/s 132(4)/131(1A) of the Act unless it is supported by corroborative materials. Accordingly, even if the assessee admitted the ld. AO cannot tax the same. The right income has to be taxed in the hands of right person in right assessment year. Accordingly, as discussed in this order in the case of M/s. John Distilleries Pvt. Ltd. in ITA Nos.982 to 987/Bang/2023 all the issues in dispute are remitted to the file of ld. AO in these assessment years in this case of assessee also to frame assessment orders in accordance with law after considering the incriminating/seized material and not solely basing on statement recorded u/s 132(4)/131 of the Act. Ordered accordingly.

52.3 Without prejudice to the above 4 grounds, the assessee raised the 5th ground in these appeals that the assessee had declared amount during survey conducted on 23.9.2016 which should have been reduced from the total income. While filing the return u/s 153C of the Act, the firm has not considered the amount declared during survey separately and included it in the overall declaration made subsequently during the search.

52.4. After hearing both the parties, we direct the ld. AO to give appropriate deduction towards the income already declared in the survey conducted on 23.9.2016 in accordance with law. Ordered accordingly.

53. Appeals filed by the assessee in ITA Nos.845 to 847/Bang/2023 are partly allowed for statistical purposes.

ITA No.844/Bang/2023 (AY 2017-18) (M/s. Paul Plathotathil John, Coorg) (Assessee's appeals)

54. The assessee in this appeal is aggrieved against the addition of Rs.4,10,889/- made towards undisclosed income on account of unaccounted cash transaction.

55. Facts of the case are that during the course of search and seizure action carried out in the entities of the assessee, incriminating documents revealing unaccounted cash transactions were found. These facts have been discussed in para 6.1 to 6.3 of the Assessment order passed. The assessee was confronted with the information's received and his statement on oath was recorded on 06.03.2017. The assessee after going through the documents admitted the cash transactions and declared additional income of Rs. 4,10,14,889/- in the above referred statement recorded. The relevant para of the statement recorded is reproduced in the assessment order passed at para 6.1 & 6.2. The assessee has not filed any retraction statement, however as against additional income admitted of Rs. 4,10,14,889/- declared only an amount of Rs.3,58,71,002/- resulting in short declaration of income to the tune of Rs.51,43,887/- brought to tax in the assessment order passed.

55.1 During the course of appellate proceedings, it is claimed by the assessee that the income declared on account of cash transaction and additions made are already added in the case of M/S John Distilleries Pvt. Limited. These declaration and additions made are claimed as double taxation. Further, it is also claimed that the declaration made amounting to Rs. 4,10,14,889/- included share of profit from partnership firm of Rs.52,82,110/- and since the books were not finalized, the declarations were made on estimated income. The submissions made during the course of appellate proceedings are in line with the grounds of appeal raised in the appeal filed.

55.2 The ld. CIT(A) observed that the contentions raised by the AR are not acceptable. He observed that the assessee has been contradicting his own statements recorded on oath without any supporting corroborative evidences. During the course of post search proceedings, the statement of the assessee is recorded on oath on 06.03.2017, where he confirmed the transactions and admitted additional income of Rs. 4,10,14,889/- on account of such transactions. The assessee has also declared the income admitted in the return of income filed on 29.07.2017 and 08.05.2018. The only short coming is that additional income to the tune of Rs. 3,58,71,002/- is only declared resulting in short declaration of income to the tune of Rs. 51,43,887/-, which has been correctly brought to tax in the assessment order passed.

55.3 He further observed that the assessee has failed to make a case that any declaration was made in duress or declaration made was incorrect based on additional evidences furnished. Additionally, the assessee on one hand is stating that the income is being double taxed and on the other hand it is being claimed that the difference amount not declared is on account of share of profit of partnership firm not taken into account while making the admission. The claims of the assessee are contradictory, not supported with any corroborative evidences and just an after-thought. The fact remains that the declaration were made on account of unaccounted cash transaction, which is clearly discussed in the assessment order passed. As such, he observed that the claims made by the assessee vide Ground no. 3 to 5 are found to be devoid of any' corroborative evidences and contradictory to the statement given on oath by the assessee himself. The additions made by the A.O towards undisclosed income admitted amounting to Rs. 51,43,887/- are found to be reasoned. Further, the other additions being contested are on account of income declared and admitted by the assessee himself in the return of income filed. These issues raised clearly reveal the contradictory stands being taken by the assessee to suppress the correct income. As such, the

ld. CIT(A) concluded that no interference is called for on the above additions made and dismissed the grounds raised by the assessee. Against this assessee is in appeal before us.

56. We have heard the rival submission and perused the materials available on record. As discussed in earlier para in the case of M/s. John Distilleries Pvt. Ltd. in ITA Nos.982 to 987/Bang/2023, the issue in dispute in this ground is remitted to the file of ld. AO to frame assessment only on the basis of incriminating/seized material found during the course of search and not on the basis of statement recorded u/s 132(4)/131(1A) of the Act and even income admitted by the assessee in the course of search action cannot be brought to tax in view of the Circular of the department in F.No.286/98/2013(IT) (Investigation.II) dated 18.12.2014, as discussed in para 40.2 of this order.

56.1 Accordingly, this issue is also remitted to the file of ld. AO to frame assessment in accordance with law as discussed in this order in the case of M/s. John Distilleries Pvt. Ltd. in ITA Nos.982 to 987/Bang/2023 cited (supra).

57. In the result, appeals of the assessee in ITA No.844/Bang/2023 is partly allowed for statistical purposes.

Order pronounced in the open court on 24th July, 2024

Sd/-	Sd/-
(Keshav Dubey)	(Chandra Poojari)
Judicial Member	Accountant Member

Bangalore,
Dated 24th July, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.