

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

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.675/Mum/2024
(Assessment Year: 2012-13)

Deputy Commissioner of Income-tax, Room No.658, 6 th Floor, Aayakar Bhawan, M.K. Road, Mumabi-400 020	vs	Teck Consultancy and Services Private Limited, Kolkata 3 rd Floor, Merlin Chamber, 18, British India Street, Kolkata, West Bengal – 700 069 PAN : AABCT0581B
APPELLANT		RESPONDENT

C.O.No.55/Mum/2024
(Arising out of I.T.A No.675/Mum/2024)
(Assessment Year: 2012-13)

Teck Consultancy and Services Private Limited, Kolkata 3 rd Floor, Merlin Chamber, 18, British India Street, Kolkata, West Bengal – 700 069 PAN : AABCT0581B	vs	Deputy Commissioner of Income-tax, Room No.658, 6 th Floor, Aayakar Bhawan, M.K. Road, Mumabi-400 020
APPELLANT		RESPONDENT

Assessee by : Shri Vijay Mehta
Respondent by : Shri Solgy Jose T Kottaram, CIT, DR

Date of hearing : 24/07/2024
Date of pronouncement : 26/08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the revenue and the cross objection of the assessee are filed against the order of the Learned Commissioner of Income-tax (Appeals)-50, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 10.11.2023. The impugned order was emanated from the order of the LD. Deputy Commissioner of Income-tax, Central Circle 8(2), Mumbai (in short, the Id. AO) passed under section 153A read with section 143(3), date of order 25/03/2022.

2.1 The revenue has taken the following grounds: -

GROUND OF APPEAL:

"1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is correct in holding that the copy of ledger account cannot be treated as incriminating document despite the acceptance of entry provider and director in the sworn statement u/s 132(4) or 131 of the Income Tax Act that the entries appearing in ledger account as loans were accommodation entries provided by the shell companies controlled by them."

2. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is correct in deleting the additions made u/s 68 of the Income Tax Act despite not fulfilling the conditions laid down in clause (a) of 1st proviso to Section 68 of the Act by the assessee and the entry provider."

3. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made by the AO of Rs. 12,90,37,092/- u/s 68 Income-tax Act, 1961 on account of unexplained cash credit and Rs.

1,61,85,352/- u/s 69C of the Income-tax Act, 1961 on account of unexplained interest expenditure respectively."

4. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that there was no income escaping assessment in the form of asset exceeding Rs. 50 lakhs, by disregarding the fact that the assessee's own unaccounted cash was routed to the balance sheet of the assessee in the guise of unsecured loans?"

"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that there was no incriminating material unearthed during the search when it has been clearly established in the assessment order that there was incriminating material unearthed during the search, and such incriminating material was corroborated by the statements of well-known entry operators recorded u/s 132(4) of the Act?"

2.2. In cross objection, the assessee has taken the following grounds: -

"1. On the facts and circumstances of the case and in law the learned CIT(A) ought to have held that the assessment order is invalid and bad in law.

2. On the facts and in circumstances of the case and in law, the CIT(A) ought to have held that approval obtained by the Assessing Officer u/s. 153D of the Act is invalid and bad in law.

3. On the facts and circumstances of the case and in law the learned CIT(A) ought to have held that the addition of Rs. 12,90,37,092/- made u/s. 68 of the Act by Assessing Officer on account of loan taken by assessee is unsustainable as assessee has established that the transaction of loan is genuine.

4. On the facts and circumstances of the case and in law the learned CIT(A) ought to have deleted the disallowance of Rs. 1,61,85,352/- made u/s. 69C of the Act on account of interest paid on loan taken by assessee as the said expenditure is genuine."

3. The brief facts of the case are that the assessee is a private limited company incorporated under the companies Act, 1956, and also RBI registered NBFC, carrying on its business as NBFC, including during the financial year 2011-12

relevant to the AY 2012-13. Related impugned assessment year the assessee filed the return of income U/s 139(1) of the Act & the assessment U/s 143(3) was completed on dated 23/03/2015 after complete verification of Unsecured loan. No addition was made U/s 143(3) of the Act related to unsecured loan. Further, in impugned assessment year the case reopened U/s 148 of the Act and assessment was completed U/s 147/143(3) of the Act dated 20/12/2019 and the verification of unsecured loans were done. A search and seizure action under section 132 of the Act was carried out on 25/03/2021 at M/s Subhkam Capital Venture Pvt Ltd in its office premises at Mumbai. The office premises of Mumbai is the common registered address of the companies, viz. Subhkama Ventures (I) Pvt Ltd, M/s Teck Consultancy & Services Pvt Ltd, M/s Flowers Valley Pvt Ltd and M/s Subhkam Capital Ventures Pvt Ltd. The assessee is the sister concern of M/s Subhkam Ventures (I) Pvt Ltd which holds 21.60% share in assessee company. After the search, the notice under section 153A was issued and the assessment was completed U/s 153A/143(3) of the Act. The assessee has taken unsecured loan amount of Rs.12,90,37,092/- from 16 companies under different entities. The Ld.AO during assessment has treated the loans received by the assessee as bogus and considered the loan-creditor companies as shell companies. So, the entire unsecured loan of Rs.12,90,37,092/- was added back under section 68 of the Act. The assessee paid the interest amount to Rs.1,61,85,352/- which was also treated as bogus and added back with the total income of the assessee under section 69C of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A). The assessee challenged both the legal grounds and on merit. The Ld.CIT(A) had considered the legal ground and allowed the appeal of the assessee. Being

aggrieved on the appeal order, the revenue filed an appeal before us, and the assessee has filed cross objection against the appeal of the revenue.

4. The Ld DR vehemently argued and fully relied on the impugned assessment order. The Ld.DR invited our attention on page 2 (paragraphs 3.1 to 3.4) of assessment order, which are reproduced as below: -

"3.1: Before discussing the case on merit, it is pertinent to mentioned here that assessee vide its submission filed in this office on dated 22.03.2022 submitted that books of accounts seized or other documents or evidence in course of search do not reveal any income represented in the form of asset as defined under the explanation 2 of the section 1534 of the Act. The assessee further submitted that the current year is the unabated assessment and further there is no incriminating material has been found. Since no incriminating material was found in the course of search proceedings with respect to the unabated assessment year under consideration covered under the notice. The assessee has relied upon the decision of Hon'ble Delhi High Court in the case of Kabul Chawala (2016) 380 ITR 0573(Delhi)

3.2: The above contention of the assessee is not acceptable at all. In this regard, it is submitted that section 153A of the Act is amended by Finance Act 2017, which is reproduced below:

" in order to protect the interest of the revenue in cases where tangible evidence(s) and found during a search or seizure operation (including 132 cases) and the same is represented in the form of undisclosed investment in any asset, it is proposed that section 153A relating to search assessments be amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided upto the tenth assessment year if-

(i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years(falling beyond the sixth year),

(ii) Such income escaping assessment is represented in the form of asset, M/s Tech Consultancy and Services Pvt LED Order u/s 1534 r.w.s. 143(3) of the IT Act 1961 A.Y 2012-13

(iii) the income escaping assessment or part thereof relates to such year or years.

It is however proposed that the amended provisions of section 153A shall apply where search under section 132 is initiated or requisition under section 132A is made on or after the List day of April 2017. It is also proposed to consequentially amend section 153C to provide a reference to the relevant assessment year or years as referred to in section 153A.

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

3.3: From the above explanation 2 of section 153A of the Act, it can be seen that loans are under the definition of assets. The loans taken by the assessee is at Rs. 12,90,37,092/- that is above the Rs. 50 lakhs and hence, it satisfies the provision of section 153A of the Act to issue the said notice beyond the six assessment years.

3.4: Further, during the course of search and seizure action, from the search premise, certain documents were found belongs to M/s Teck Consultancy Pvt Ltd and the same were seized as Page 52 to 69 of seized material Annexure-A4 (from FY 2010-11 TO On perusal of the said seized pages, the issue of buyback of shares by the assessee from the shell entities was found. M/s BSR Finance and Construction Ltd was found one of the above said shell entities. On perusal of the financials of the assessee, it is found that the assessee has claimed unsecured loans from this entity. Therefore, the contention of the assessee that there is no incriminating material was found, has not found any merit and is not acceptable at all."

The Ld.DR further argued that the additions are deleted only on the basis of legal grounds and not on merit. The Ld.DR prayed to uphold the addition made by the Ld.AO.

5. The Ld.AR argued and filed a written submission which is kept in the record (in short APB). The Ld.AR fully relied on the order of the appellate authority. The two legal issues are agitated before the bench by the Ld.AR. Firstly, the issue related to the absence of the incriminating material under section 153A which is contrary to the order of the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell Ltd (2023) 454 ITR 212 (SC)**. The relevant paragraphs of the impugned appeal order are reproduced as below: -

"21.5 I have perused these statements incorporated in the Assessment order. It is seen that these are related to the searches conducted by the Kolkata Investigation Wing on the accommodation entry providers in the year 2015-16. In the statements recorded u/s 132(4) and u/s 131 of the IT Act, these persons have admitted that they have provided accommodation entries through the paper companies. The appellant's name is not appearing in any of the these above mentioned statements.

21.6 As per the various judicial interpretations regarding incriminating material, such incriminating material/evidence has to be found during the course of search conducted on concerned assessee. Notice u/s 153A cannot be issued on the basis of document found in the 3rd party premises. The Hon'ble Supreme Court in its latest decision in the case of Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 has held as under-

"At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate if the

submission on behalf of the Revenue is accepted, in that case, second proviso to section 1534 and sub-section (2) of Section 1534 would be redundant and/or rewriting the said provisions, which is not permissible under the law.”

Thus the incriminating evidence/material has to be found during the course of search conducted on the concerned assessee These statements have not been recorded during the search conducted on the appellant.

*21.7The statement given by the 3rd parties may become incriminating material if the documents/evidences corroborating to the statements recorded are found during the search proceedings. In the present case what is found from the appellant is a part of regular books of accounts **The schedule of regular books of accounts and documents related to buy back of shares cannot be considered as a corroborating evidence with respect to 3rd party statements. The facts shows that no other document corroborating to the statements recorded as mentioned by the A.O is found during the search.***

22.8I have also gone through the statements of Shri Rakesh S. Kathotia Promoter and Director in the appellate company recorded us 132(4) of the IT Act on 27.03.2021. The relevant question regarding the unsecured ban in the appellant's case is question no. 51 and 52. The same is reproduced as under:-“

6. The Ld.AR also argued that the notice under section 153A of the Act is barred by limitation. As the search was conducted under section 132 of the Act on 25/03/2021 and notice U/s 153A for impugned assessment year is the beyond six years, which is barred by limitation. The issue is squarely covered by the impugned order of the appellate authority appearing in paragraphs 25 to 30, which read as under: -

“25. I have perused the order of the AO, the remand reports dated 27.07.2023 and 09.08.2023 and also the submission of the appellant. The AO in para 3.3 of the Assessment order has stated as under-.

"From the above Explanation 2 of section 153A of the Act, it can be seen that loans are under the definition of assets. The loans taken by the assessee are at Rs. 12,90,37,092/- that is above Rs.50 lakhs and hence, it satisfies the provision

of section 153A of the Act for issue of the said notice beyond the six assessment years".

25.2 Vide this office letter dated 14.07.2023, the AO was asked to specifically comment on the appellants contention made on this ground vide paperbook filed stating that the notice beyond 6 years is invalid.

25.3 In response to this, the AO in the remand report dated 27.07.2023 has submitted as under-

"From the above Explanation 2 to Section 153A of the Act, it can be seen that loans fall under the definition of assets. The loans taken by the assessee during the assessment year under consideration amounted to Rs. 12,90,37,092/, which was above Rs. 50 lakhs, and hence it satisfied the condition as laid down in Section 153A of the Act for issuing notice u/s 153A of the Act beyond six assessment years. The same has been mentioned in para 3.3 of the assessment order dated 25.03.2022, passed u/s 153A of the Act.

In view of the above discussion, the ground no. 1 of the assessee is not valid"

26. The relevant provisions of the act are reproduced as under-

4th proviso to section 153A-

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

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

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

Explanation 2- For the purpose of the fourth proviso, "asset' shall include immovable property being land or building or both, shares and securities, loan and advances, deposits in bank account.

26.2 As per para (a) and (b) to fourth proviso to section 153A(1), for issuance of notice u/s.153A(1) beyond the six assessment years, the income which has escaped assessment is to be represented in the form of an asset and such asset should have been detected during search and found to be undisclosed or unaccounted. The A.O cannot assume

jurisdiction unless he possess evidence/material revealing that income represented in the form of an asset valued at Rs.50 lakhs or more has escaped to assessment.

26.3 *In the present case the A.O has issued the notice beyond six assessment years on the basis of documents seized during search as Annexure A-4 (page no 52 to 69). As already discussed these seized documents relate to unsecured loans (Annexure A-4). It can be seen from the Assessment order and remand report that no document seized during the search relates to the Assets.*

26.4 *The Explanation 2 to fourth proviso to section 153A(1) of the Act defines the "asset" The loan can be liability as well as an asset, i.e., loan when availed it becomes liability whereas when loan is given it becomes an asset. In this case the appellant has availed the unsecured loans from the 14 parties. In fact, the A.O himself has made additions u/s 68 of the IT on account of unsecured loans. However, for issuing notice beyond six assessment years these loans taken by the appellant is considered as an asset. Thus the action of the A.O is contrary to the facts.*

The A.O has not discussed anything about the undisclosed assets found during the search. *No addition regarding undisclosed assets has been made. This itself demonstrates that, no document/evidence which reveals that income representing in the form of an asset which has escaped assessment has been detected during search. Thus, the conditions stipulated in the above-mentioned provisions of the IT Act are not satisfied.*

26.5 *In view of the above, I hold that the A.O has misinterpreted the provisions of clause (a) read with Explanation 2 under fourth proviso to Section 153A(1) of the Act. Hence, the notice issued u/s 153A for the A.Y 2012-13 which is beyond the period of six Assessment years is contrary to the provisions of law. The notice issued in the instant case u/s 153A is thus without jurisdiction and hence invalid. Accordingly, the ground of appeal No 1 is allowed.*

27. *In view of the discussion in the foregoing paragraphs, Ground No.1 and 2 taken by the appellant is allowed. The AO is, accordingly, directed to delete the impugned additions made in the assessment order.*

28. *Ground no 3 and 4 -Since the appeal is allowed on the legal grounds, these grounds of appeal raised by the appellant need no separate adjudication. In the result, the appellant's appeal on these grounds is treated as allowed.*

29. *Ground of appeal no. 5 & 6 raised vide Form no. 35 are not pressed for. The same are treated as infructuous.*

30. *Ground No. 7 & 8 are general in nature. Hence not decided.*

In the result, the appeal is allowed."

7. In argument, the Ld. AR relied on the order of the co-ordinate bench of **ITAT, Mumbai** in the case of **DCIT, Central Circle 3(3), Mumbai vs M/s Avaada Ventures Pvt Ltd. ITA No.2749/Mum/2023, dt. of order 05/04/2024.** The relevant paragraphs 18,19, & 20 are reproduced as below: -

“25. Before us, Id. Counsel for the assessee submitted that this company, M/s. Integral Distributors LLP was assessed with the same Assessing Officer who has passed assessment order and he M/s. Avaada Ventures Pvt. Ltd has also filed copy of the assessment order before us for the A.Y. 2018-19, passed by the same Assessing officer on the same date. Further, he submitted that the assessee had furnished confirmation, ITR, Financials, bank statement of the lender to support the transaction. Another important fact was that in the case of the lender, assessment u/s. 143(3) was made for A.Y. 2016-17 and no addition has been made or any adverse inference has been drawn in the case of the lender company. Once the transaction has been done through banking channels which is incorporated in the books of accounts, and all the documents has been furnished including the source of funds in the hands of the lender company and also accepted u/s 143(3), then no addition should be made.

26. On the other hand, Id. DR relying upon the observation of the Id. AO and the remand report and submitted that the creditworthiness of the lender company has not been established at all. Apart from that, Id. AO has pointed out that how the funds were moved through some company and entire source of funds in the hands of the lender company has not been established. Accordingly, the creditworthiness and genuineness of the source of the source of the company is doubtful.

27. We have heard rival submissions and perused the relevant finding given in the impugned order. One very important fact is that in the case of the lender company assessment has been completed u/s.143(3) and no adverse inference has been drawn about the source of the loan given to the assessee company or it M/s. Avaada Ventures Pvt. Ltd has been found to be a fictitious entity. To prove the genuineness of the transaction, the entire bank statements and financial statements of the lender company have been provided and it was also submitted that loan was taken for the purpose of investment to be made in the Welspun group for energy business and same was repaid subsequently. The bank statement of the lender company reflects a huge sufficient balance in the account for giving the advancement of unsecured loans. This company in the balance sheet has declared own funds of Rs.91 Crores for A.Y.2012-13 out of which loan of Rs.28 Crores was passed to assessee. Further, the source of the comments of the letter was also assessee by the AO wherein AO has verified the funds and accepted to be genuine in the order passed u/s.143(3) for A.Y.2012-13. Once the ability of funds have been accepted of Rs.91 Crores in A.Y.2012-13, then it cannot be held that lender company did not have sufficient funds when the loan was given and moreover even for A.Y.2016-17, assessment has been made u/s. 143(3) in the case of lender company and even the present AO has also passed the assessment order in A.Y.2018-19, which goes to prove that it is not a paper company. These facts has not been rebutted before us and in so far as allegation of the Id. AO that lender and shareholders were not found at the address of the Kolkata becomes irrelevant when assessment has been done from the same address and also brought on record that address of the lender company had already shifted to Mumbai which is also evident from the order of the present AO in the case of the lender company wherein he has passed assessment order on M/s. Avaada Ventures Pvt. Ltd 31/12/2019 i.e. the same date of order which has been passed in the case of the assessee. Thus, Id. AO was very well aware that

this company's address has been changed and therefore, stating that this company was not found in Kolkata at the time of enquiry has no relevance. Then how did he pass the assessment in the case of this company without drawing any adverse inference in that case. Apart from that, even in the earlier years, notices u/s. 143(2) and other statutory invoices for the purpose of assessment u/s.143(3) was issued and served u/s.143(3) was issued and served on the same address earlier then how can it be inferred that this company was non-existing.

28. We further find that Id. CIT (A) has also examined the immediate source of funds in the hands of the lender company which was received from sale of unquoted shares of various companies and in support of which, ITR, financial statements and bank statements and confirmation of the parties were submitted, including consideration paid by the lender company for the purchase of unquoted shares and sale were also filed before the Id. AO during the remand proceedings which has been duly examined by the Id. CIT(A). Nowhere, AO has inquired about the source and veracity of the source of the funds of the lender company, albeit it has been accepted in the order passed u/s 143(3). Thus, it cannot be held that source of the source has not been proved by the assessee. Accordingly, the aforesaid finding of the Id. CIT (A) is affirmed.

29. In the result, the appeal of the Revenue is dismissed.

M/s. Avaada Ventures Pvt. Ltd A.Y.2017-18

30. In A.Y.2017-18, Revenue has taken the following grounds: -

1. "i.On facts and in circumstances of the case, the Id. CIT(A) has erred in restricting disallowance made under section 14A to the extent of tax exempt income earned during the year by overlooking the clarification of legislative

intent provided by the CBDT vide Circular No. 5/2014 dated 11.02.2014 and to this effect even an amendment was made by Finance Act, 2022 by way of insertion of Explanation to Section 14A".

2 ii. "On the facts and in the circumstances of the case, the Hon'ble ITAT is correct in law, in directing to delete the disallowance made u/s 14A of the Income Tax Act, 1961 to the book profit of the assessee without appreciating the provisions of clause (f) of explanation 1 to section 115JB(2) of the Income Tax Act, 1961 and the decision of the Hon'ble ITAT Mumbai 'F' Bench in the case of Deputy Commissioner of Income-tax, Central Circle-18 & 19, Mumbai vs. Viraj Profiles Ltd. in ITA No. 4439/ (Mum.) of 2013".

The Id. AR respectfully relied on the order of Hon'ble **Delhi High Court** in the case of **PCIT vs Anand Kumar Jain(HUF) 432 ITR 384**, held.

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

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

8. We heard the rival submission and considered the documents available in the record. The two legal issues are agitated by the rival parties before the bench. The question was raised related to the consideration of incriminating material. The search was conducted by the department in the premises of M/s Subhkam Capital Ventures Pvt Ltd.

We find that the assessee filed its return of income originally for the impugned AY 2012-13 U/s 139(1) of the Act. The assessment for AY 2012-13 was completed by passing order dated 23.03.2015 u/s. 143(3) of the Act. While completing the assessment u/s. 143(3) of the Act, the Id. AO issued notices u/s 143(2) and u/s. 142(1) of the Act containing various requisitions / queries / questionnaires as contained therein and has also made various other requisitions in course of assessment proceedings from time to time. After detailed verification of unsecured loan by pursuing section 68, the Id. AO became completely satisfying completed the assessment u/s. 143(3) of the Act. Thereafter, the assessee's assessment for the impugned assessment year was also reopened u/s.148 of the Act on 28.03.2019, but not on the issue of unsecured loans but on some other issue. However, the assessing officer while making the assessment u/s.147/143(3) of the Act, again took up the matter of unsecured loans by making requisition in the notice dated 23.08.2019 under point No. 4 therein. The assessee again complied with the same to the entire satisfaction of the Id. AO. Thereafter, the

assessing officer passed the assessment order dated 20.12.2019 u/s. 147/143(3) of the Act. The assessment has, thus, attained finality in all respects. There after search and seizure was carried out on dated 25/03/2021. In any case the declared & verified unsecured loans cannot be part of incriminating materials.

We carefully observed that the ledger accounts, bank statement, bank book, audit report, etc. were maintained during the regular course of business and the return was filed before the authority. So, the regular books of accounts of the assessee cannot be treated as incriminating material. We respectfully relied on the order of Hon'ble **High Court of Delhi** in the case **CIT vs Param Diary Limited ITA No.37 of 2021**, Order dated **15/02/2021**, held.

"5. We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by Kabul Chawla supra, which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination, could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act.

Finally, the issue was duly covered by the order of the Hon'ble **Apex Court** in **PCIT vs Abhisar Buildwell Ltd** (supra). So, in any case, the loan-creditors declared in ROI cannot be treated as incriminating material. In case of time barred assessment, the search was conducted on 25/03/2021. So, considering that, the assessment year 2012-13 is barred by limitation. Further, there is absence of incrimination

material for this impugned assessment year. We respectfully relied on the order of **Abhisar Buildwell Ltd** (supra). The Id. DR has not made any strong objection against the observation of the Id. CIT(A). The remand report was called for by the Ld.CIT(A) which is also annexed in **APB pages 48 to 54** and the issue was duly considered by the Id. AO and replied to the remand report against the assessee. But the observation of the Id. AO about legal issue was not correct. We respectfully follow the orders of the coordinate bench of the ITAT-Mumbai and the order of the Hon'ble Apex Court related the legal grounds agitated by the revenue and in favour of the assessee. We find that the appeal order is justified, and we are not interfering in impugned appeal order. So, the grounds of the revenue are dismissed. As the legal issue of the impugned appeal order is succeeded, then the adjudication of merit is only remained for academic purposes.

9. The cross objection of the assessee is dismissed as infructuous.

10. In the result, the appeal of the revenue bearing **ITA No.675/Mum/2024** is dismissed and **cross objection** of the assessee **CO No.55/Mum/2024** is dismissed as infructuous.

Order pronounced in the open court on 26th day of August 2024.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 26/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**

