

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH
VIRTUAL HEARING AT KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. Nos.76 to 78/GTY/2023

Assessment Years: 2019-20 to 2021-22

ACIT, Central Circle-2, Guwahati **Appellant**

Vs.

Atlanta Marketing **Respondent**
(PAN: ABMFA2719D)

&

C.O. Nos. 30 to 32/GTY/2023

In I.T.A. Nos.76 to 78/GTY/2023

Assessment Years: 2019-20 to 2021-22

Atlanta Marketing **Cross Objector**

Vs.

ACIT, Central Circle-2, Guwahati **Respondent**

Appearances by:

*Shri Sanjay Mody, FCA, FCA appeared for Assessee/Cross Objector
Shri Soumendu Sekhar Das, DR appeared for Revenue.*

Date of concluding the hearing : 19.06.2024

Date of pronouncing the order : 23.08.2024

ORDER

Per Bench:

All these appeals and Cross Objections filed by the revenue and assessee pertaining to the Assessment Years (in short "AY") 2019-20 to 2021-22 are directed against the separate orders

passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeal), Central, North-East Region, Guwahati [in short Ld. “CIT(A)”] dated 27.03.2023 arising out of the assessment order framed u/s 153A of the Act by ACIT, Central Circle-2, Guwahati eveny dated 29.03.2022.

2. Since issues are mostly common and facts are identical and all the appeals and Cross Objection have been heard together we dispose of all the appeals and Cross Objection by this consolidated order for the sake of brevity and convenience.

3. First we take up revenue’s appeal wherein common issues have been raised against the finding of Ld. CIT(A) deleting the addition for unexplained sundry creditors u/s. 68 of the Act.

4. Facts in brief are that the assessee is a partnership firm engaged in business. A search action u/s. 132 of the Act conducted on Anil Jain Group on 11.02.2021 and assessee firm was also subjected to the search. Subsequent to search notice u/s. 153A of the Act was issued followed by validly serving notices u/s. 143(2) and 142(1) of the Act. Assessee filed various details in compliance to the notices. Ld. AO further asked the assessee to explain the genuineness of the sundry creditors standing in the books as on 31.03.2019, 31.03.2020 and 31.03.2021 amounting to Rs.4,51,61,688/-, Rs.7,48,59,135/- and Rs.5,04,21,826/- respectively. This common issue was raised during all the assessment proceedings for all the three impugned years. Ld. AO referred to the sales and purchase register as well as sundry creditors and asked the assessee to submit confirmation, purchase bills, bank statement highlighting the payments made to vendors but

the assessee failed to appear on the given dates of hearing. Ld. AO thus, invoked the provisions of section 68 of the Act applicable to unexplained cash credit and made the addition for unexplained sundry creditors u/s. 68 of the Act for the following amounts:

<u>Assessment year</u>	<u>Amount</u>
2019-20	Rs.4,51,61,688/-
2020-21	Rs.7,48,59,135/-
2021-22	Rs.5,04,21,826/-

5. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and filed an application for admission of additional evidence under Rule 46A of the Income Tax Rules, 1962 (in short "Rules"). Ld. CIT(A) asked the AO to file a remand report with regard to the additional evidence and further gave opportunity to the assessee to rebut to the remand report. The additional evidence filed by the assessee for all the three impugned years are as follows:

- (i) Bank Statements of the Appellant firm reflecting the receipt of advances (vide Annexure-B).
- (ii) List of Sundry Creditors/Other Liabilities as sought by the learned Assessing Officer (vide Annexure-C).
- (iii) Confirmations of Accounts/Ledger copies of Sundry Creditors/Other Liabilities (vide Annexure-D).
- (iv) Copies of all the Purchase and sales Bills relevant to outstanding payables along with the copies of the Ledgers of the parties (vide Annexure-E).

6. Ld. CIT(A) has extensively dealt with the issue for admission of additional evidence. Even assessee has also relied on plethora of decisions in support of its contention that additional evidence should

be admitted for adjudication of issues. The additional evidences were sent to the AO and he has not pointed out any defect in these additional evidences and has stated in the remand report that *“the additional evidences/documents as submitted by the assessee before Ld. CIT(A) are perused. In view of the above cited facts of the case, the additional evidences/documents as submitted by the assessee before the Ld. CIT(A) may kindly be considered if deem fit under rule 46A.”* This being the crux of the remand report of the AO, Ld. CIT(A) came to the conclusion that Ld. AO has gone through the additional evidence and had not found any discrepancy and is satisfied with the correctness of the outstanding sundry creditors at the close of the impugned assessment years. Ld. CIT(A) has further given relief to the assessee on two counts, firstly, stated that sec. 68 of the Act cannot be applied on the sundry creditors because no amount has been received through banking channel from the alleged sundry creditors and, therefore, section 68 has no application. Ld. CIT(A) also granted relief on the ground that when the AO has accepted the corresponding purchases because books of account have not been rejected then the AO cannot dispute the genuineness of sundry creditors. For coming to this finding, Ld. CIT(A) has also referred to plethora of decisions.

7. Aggrieved, revenue is now in appeal before this Tribunal raising issue of deletion of addition of unexplained sundry creditors made by Ld. AO u/s. 68 of the Act.

8. Ld. DR vehemently argued supporting the order of the AO but he could not controvert the fact that assessee filed the additional evidence to explain the genuineness of sundry creditors before Ld.

CIT(A) and Ld. AO in his remand report has not pointed out any discrepancy.

9. On the other hand, Ld. Counsel for the assessee stated that so far as the assessment year 2019-20 is concerned the impugned addition has been made only on the basis of financial statement which already stood filed along with the regular return of income and there being no incriminating material found during the course of search, therefore, in view of the recent judgment of Hon'ble Apex Court in the case of *Pr. CIT Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)* no addition could have been made by the AO in the proceeding u/s. 153A r.w.s. 143(3) of the Act. As regards the addition in dispute for AYs 2020-21 and 21-22 the Ld. Counsel for the assessee vehemently argued supporting the finding of the Ld. CIT(A).

10. We have heard the rival contentions and perused the material available on record and also the orders of the lower authorities. Common issue for our consideration is regarding the deletion of addition by Ld. CIT(A) which was made by AO u/s. 68 of the Act for unexplained sundry creditors at the close of each of the impugned assessment year. So far as AY 2019-20 is concerned where the AO has made the addition of Rs.4,51,61,688/-, we note that the search was conducted u/s. 132 of the Act on the assessee on 11.02.2021. Prior to the date of search the original return for AY 2019-20 stood filed on 30.10.2019 disclosing income of Rs.12,38,560/-. There is no dispute to the fact that as on the date of search assessment

proceeding for AY 2019-20 were not pending. In absence of any pending assessment, AY 2019-20 falls in the category of completed and unabated assessment year and addition for such assessment year can be made only if the Ld. AO is able to establish direct nexus of the alleged addition with any incriminating material found during the course of search. However, perusal of the assessment order indicates that there is no reference to any incriminating material. Ld. AO has himself stated that on examination of audited financial statement vis-à-vis records available and then referred to the figure of sales and purchase and the sundry creditors as on 31.03.2019. Thereafter, in absence of any specific details to explain the alleged sum the impugned addition was made. Under these given facts and circumstances, following ratio laid down by the Hon'ble High Court in the case of *Abhisar Buildwell (P) Ltd.(supra)* is squarely applicable.

"5. We have heard learned counsel for the respective parties at length.

The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, i.e., whether any 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 Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under section 132 or requisition under section 132A, the assessment has to be done under section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into

consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr. CIT v. Mehndipur Balaji 2022 SCC Online All 444/[2023] 147 taxmann.com 201/ [2022] 447 ITR 517 has taken a contrary view.

7.1 In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

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

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

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

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years

in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A 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 AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

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

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

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

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) and after considering the entire scheme of block assessment under section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of

decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961. The erstwhile scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Section 153A of the Act 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 132-A 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 132-A, 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) or 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 153-B and section 153-C, 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."

11. As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years 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. As per sub-section (2) of Section 153A, 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) or 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. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case

of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A 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 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. *In view of the above and for the reasons stated above, it is concluded as under:*

(i) *that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

(ii) *all pending assessments/reassessments shall stand abated;*

(iii) *in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

(iv) *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 132A of the Act, 1961. 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.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

11. Examining the facts of the instant case as well as law and the ratio laid down by the Hon'ble Apex Court, we find that the same is squarely applicable and, therefore, Ld. AO erred in making the impugned addition for AY 2019-20 without making any reference to incriminating material. Finding of Ld. CIT(A) to this extent of deleting the addition for completed assessment year on the ground of absence of incriminating material is hereby

affirmed. Thus, grounds of appeal raised by the Revenue for AY 2019-20 are dismissed.

12. Now taking up the revenue's appeal for AYs 2020-21 and 2021-22 where the grounds have been raised challenging the finding of ld. CIT(AO deleting the addition for alleged unexplained sundry creditors outstanding as on 31.03.2020 and 31.03.2021 at Rs.7,48,59,135/- and Rs.5,04,21,826/- respectively, we find that before Ld. CIT(A) assessee has furnished following details to prove that the sundry creditors balance appearing at the year end are correct and genuine.

- (i) Bank Statements of the Appellant firm reflecting the receipt of advances (vide Annexure-B).
- (ii) List of Sundry Creditors/Other Liabilities as sought by the learned Assessing Officer (vide Annexure-C).
- (iii) Confirmations of Accounts/Ledger copies of Sundry Creditors/Other Liabilities (vide Annexure-D).
- (iv) Copies of all the Purchase and sales Bills relevant to outstanding payables along with the copies of the Ledgers of the parties (vide Annexure-E).

13. We notice that all these details were sent to AO for his comments and no adverse comments was received from his end. Therefore, whatever the credit balance was appearing in respect of sundry creditors in the Balance Sheet, assessee has successfully discharged its primary onus by filing confirmation of account, ledger copies, copies of purchase and sale bills and

bank statement, ld. CIT(A) has granted relief to the assessee on two counts.

14. Firstly, the AO erred in invoking the provisions of sec. 68 of the Act on the sundry creditors balances and consequently the impugned addition is uncalled for as the charges have been accepted by the AO. We, however, are not in agreement with this view of the Ld. CIT(A) that “section 68 of the Act was not applicable on the sundry creditors issue because there is no amount received during the year from these parties”. In our humble understanding, section 68 applies to any sort of credit appearing in the books of account during the year and such credit can be either through banking mode, journal entry or books/other liabilities/expenses. Books of accounts are admittedly maintained on mercantile system of accounting where journal entries are also made in the books and, therefore, if any credit entry has taken place during the year the same comes under the scanner of section 68 of the Act. Therefore, this finding of the Ld. CIT(A) that section 68 of the Act cannot be applied on the sundry creditors balance is hereby reversed.

15. As regards second finding of the Ld. CIT(A) observing that when the purchases have been accepted then how can the AO dispute the genuineness of sundry creditors balance, we note that Ld. CIT(A) has dealt with this issue in impugned order in the following manner:

“7. That, even though the Assessing Officer had made addition on account of outstanding balance of Sundry Creditors, the Assessing Officer had accepted the corresponding purchases made by the Appellant from these very parties. Thus, by accepting the purchases made from these parties on one hand and by making addition in respect of the outstanding balances of these very parties at the year end on another hand, the Assessing Officer had adopted two different yardsticks and had self-contradicted himself. This is akin to 'blowing hot and cold together' which is impermissible under the Law.

A man should not be permitted to blow hot and cold with reference to the same factor insisted, at different times, on the truth of two conflicting allegations, according to the promptings of his own/private interest. This legal principle incorporated in the common law dictum "allegans contra non est audiendus" (one making contrary statements is not to be heard) is applicable to the issue, of the Appellant, at hand.

Thus, two diametrically opposite stands have been taken by the same AO by making addition in respect of the outstanding balance payable to the Sundry Creditors on one hand and by acceptance of purchases made by the Appellant from these very Sundry Creditors on another hand.

It is settled law that the Department cannot blow hot and cold together at the same time or adopt inconsistent positions. On this count/proposition, I derive support from the judicial pronouncements cited below.

Deoniti Prasad Singh vs. CIT [(1947) 15 ITR 165 (Patna)]

C.T. Narayanan Chettiar vs. CIT [(1966) 60 ITR 690 (Mad)]

Bajnath Brijmohan and Sons P. Ltd. vs. CIT [(1986) 161 ITR 234 (Bom)]

CIT vs. Chemmeens [(1994) 207 ITR 909 Kerala HC]

Tivoli Investment & Trading Co. Vs. ACIT [(2004) 90 ITD 163 Bombay HC]

Therefore, even on each of the above counts too, the impugned sole addition is liable to be deleted and is accordingly, hereby, deleted. Accordingly, the impugned sale addition of Rs. 4,51,61,688/- is hereby deleted and the instant grounds of appeal raised by the Appellant are, hereby, allowed.”

16. On perusal of the above finding of the Ld. CIT(A) as well as the judgment and decision referred and relied on, we are in agreement with this finding of the Ld. CIT(A) because in the assessment order Ld. AO has nowhere rejected the books of accounts. Before us, Ld. DR failed to controvert this fact that the purchases made by the assessee and claimed in the P & L Account has been accepted. The closing balance of sundry creditors for goods and for expenses can have two elements, firstly, the outstanding dues for more than a year and secondly, the purchases/expenses incurred during the year for which payments were not made and liability created in the books. So far as the outstanding balance for more than one year, revenue cannot make any addition because the purchases were made in the preceding year and balance is the increase in sundry creditors balance on account of fresh purchases/expenses incurred during the year. Now, Ld. AO has not rejected the book results and has not disallowed the purchases. It means that purchase transactions have been found to be correct and genuine. But on the other hand, Ld. AO treated the outstanding sundry creditors as unexplained. Further, Ld. AO after perusing the additional evidence filed by the assessee has not raised any dispute which means that Ld. AO was satisfied with the genuineness of the sundry creditors balance. Thus, under the given facts and circumstances, in our considered view Revenue cannot blow hot and cold at the same time, therefore, in absence of making any disallowance for purchase, the action of the AO making addition of Rs.7,48,59,135/- and Rs.5,04,21,826/- for

AY 2020-21 and Ay 2021-22 on account of unexplained sundry creditors is wholly unjustified. To this extent, finding of the Ld. CIT(A) deleting the impugned additions is confirmed. Accordingly, the grounds of appeal raised by the revenue for AYs 2019-20, 2020-21 and 2021-22 are dismissed.

17. So far as the cross objection filed by the assessee for all the three impugned years raising certain legal issue about the approval order u/s. 153D not having DIN and notice u/s. 143(2) not being served upon the assessee, we find that dealing with this issue is merely academic in nature as we have already decided against the revenue on merits of the case and affirmed the finding of Ld. CIT(A) deleting the impugned addition. Thus, grounds raised in the Cross Objections are rendered infructuous.

18. In the result, all the appeals of the revenue as well as the Cross Objections of the assessee for AYs 2019-20 to 2021-22 are dismissed.

Order is pronounced in the open court on 23rd August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
(Dr. Manish Borad]
Accountant Member

Dated: 23rd August, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – ACIT, Central Circle-2, Guwahati**
2. **Respondent – Atlanta Marketing, Room No. 306, 3rd Floor, AAC Commercial Complex, Athgaon, Guwahati-781001.**
3. CIT(A), Central, North-East Region, Guwahati.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata