

**IN THE INCOME TAX APPELLATE TRIBUNAL "GUWAHATI" BENCH,
GUWAHATI**

(Through Virtual hearing at Kolkata)

**BEFORE DR. MANISH BORAD, AM
AND
SHRI MANOMOHAN DAS, JM**

**ITA No. 111/GTY/2023
(Assessment Year: 2015-16)**

**ITA No. 115/GTY/2023
(Assessment Year: 2016-17)**

**ITA No. 124/GTY/2023
(Assessment Year: 2017-18)**

**DCIT, Central circle-1,
Room No.507, 5th Floor,
Aaykar Bhavan, G.S. Road,
Ghristian Basti,
Guwahati-781005**

Vs.

**Anupam Nirman Private
Limited
1 Bhasakar Nagar,
Bylane-2, Zoo Narengi
Road, Kamrup Metro,
Guwahati -781021,
Assam**

(Appellant)

(Respondent)

PAN No. AAICA4965B

Assessee by : Shri Sidharth Agarwal, AR

Revenue by : Shri Kausik Ray, DR

Date of hearing: 18.07.2024

Date of pronouncement: 26.08.2024

ORDER

PER DR. MANISH BORAD, AM:

These three appeals filed by Dy. Commissioner of
Income Tax, Central Circle-1, Guwahati are directed



against the appellate orders passed by the Commissioner of Income Tax (Appeals), Central, North-East Region, Guwahati [Ld. CIT(A)] even dated 12th June, 2023, for A.Y. 2015-16, 2016-17, 2017-18, which are arising out of the assessment orders dated 18th December, 2018, 26th March, 2022 & 9th December, 2019, respectively passed by the Central Circle-1, Guwahati (Ld. AO) under section 153A of the Income Tax Act, 1961 (the Act).

01. The learned Assessing Officer has raised following grounds of appeal for A.Ys. 2015-16, 2016-17 and 2017-18 respectively: -

"For A.Y. 15-16

- 1. Learned CIT (A) has erred by deleting the addition to the tune of ₹6,30,00,000/- under the head of unexplained cash credit under Section 68 of the Income Tax Act, by not considering the fact that during the assessment proceedings the assessee has failed to explain, the genuineness and financial credibility of the three entities namely, Akruti Securities Pvt. Ltd., Orchid Finlease Pvt. Ltd. and Sayyam Investments Pvt. Ltd. from whom it had taken unsecured loans.*
- 2. The learned CIT (A) has erred by deleting the addition of ₹9,36,763/- on account of the deletion of the above mentioned addition of ₹6,30,00,000/.*

For A.Y. 2016-17



1. *Learned CIT (A) has erred by deleting the addition to the tune of ₹8,70,91,843/- under the head of unexplained cash credit under Section 68 of the Income Tax Act, by not considering the fact that during the assessment proceedings the assessee has failed to explain, the genuineness and financial credibility of the three entities namely, Akruti Securities Pvt. Ltd., Orchid Finlease Pvt. Ltd. and Sayyam Investments Pvt. Ltd. from whom it had taken unsecured loans.*
2. *The learned CIT (A) has erred by deleting the addition of ₹71,65,820/- on account of the deletion of the above-mentioned addition of ₹8,70,91,843/.*

For A.Y. 2017-18

1. *That on the facts of the case and in law, the learned CIT (A) has erred in deleting the addition to the tune of ₹1,49,10,143/- made on account of disallowance of interest corresponding to the loan taken for purchase of the qualifying assets.*
2. *That on the facts of the case and in law, the learned CIT (A) failed to appreciate the fact that during the assessment proceedings, the assessee has not disputed the use of the borrowed fund to purchase/ made addition to the fixed assets. Further, the tax auditor has duly certified that of the total borrowings, ₹1,49,10,143/- has been made for fixed assets (qualifying assets) and*



hence the same should have been capitalized with the cost of the assets.”

02. Since the issues raised in the instant three appeals are common and pertains to same assessee all these appeals have been taken together and are being disposed off by this common order for the sake of convenience and brevity. For the purpose of adjudication, we will take up the facts for A.Y. 2015-16 for deciding the common issue and our decision shall apply *mutatis mutandis* on the remaining appeal.
03. Facts in brief are that the assessee is a private limited company engaged in construction business. Search and seizure operation under Section 132 of the Income-tax Act, 1961 (the Act) conducted on the Anupam Sharma Group on 22nd December 2020 and assessee company being part of the group also subjected to search action. Subsequently, notice under Section 153A of the Act issued for carrying out the assessment proceedings. The assessee filed its original return under Section 139 of the Act on 21st December, 2016 and as on the date of search no assessment proceedings for A.Y. 2015-16 were pending. After issuance of notice under Section 153A of the Act, the assessee e-filed the return of income on 24th November, 2021, declaring total income of ₹8,26,70,510/-. Valid notice under Section 143(2) and 142(1) of the Act duly served upon the assessee. In the assessment order, the learned Assessing Officer without specifically referring to



any seized material took up the issue of unsecured loans taken by the assessee company from Akruti Securities Pvt. Ltd. and Orchid Finlease Pvt. Ltd. Similar type of issue was taken for consideration for A.Y. 2016-17 for the unsecured loan from Orchid Finlease Pvt. Ltd. and Sayyam Investments Pvt. Ltd. The learned Assessing Officer has thereafter dealt with the financials of the alleged cash creditors and after referring to the poor Revenue from operation and huge security premium received by the alleged cash creditors also referred to the statements of the director of cash creditor companies and came to the conclusion that the alleged cash creditors are paper / shell companies and are engaged in providing accommodation entries and finally observed that the assessee has taken bogus unsecured loans from the alleged cash creditors. The assessee furnished all necessary details to explain the nature and source of alleged unsecured loans by filing various details and also submitting the proof that the loans were taken for business purposes and have been finally repaid in the subsequent period and due interest has been paid on year-to-year basis, but, the learned Assessing Officer was not satisfied and he invoked section 68 of the Act and made the addition for unexplained unsecured loan at ₹6,30,00,000/- for A.Y. 2015-16 and ₹8,70,91,843/- for A.Y. 2016-17. The learned Assessing Officer also disallowed the interest paid on the alleged unsecured loan at ₹9,36,763/-, ₹71,65,820/- and ₹1,49,10,143/- for A.Y. 2015-16, 2016-17 and 2017-18, respectively.



04. Aggrieved assessee preferred appeal before the learned CIT (A) raising legal issue that in absence of any incriminating material, no addition could have been made for the completed and unabated assessment year and secondly, raised grounds on merits stating that genuine unsecured loan was taken and assessee has sufficient evidence to prove the identity and creditworthiness of the cash creditors and the genuineness of the loan transactions. The learned CIT (A) was satisfied with the submissions of the assessee and placing reliance on various judgements mainly on the decision of Hon'ble Delhi High Court in case of *CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi)*, held that in absence of any incriminating material the learned Assessing Officer was not justified in making the addition for the impugned assessment years. Aggrieved Revenue is now in appeal before this Tribunal.
05. The learned Departmental Representative vehemently argued supporting the order of the learned Assessing Officer and submitted that the alleged cash creditors company are Jama Kharchi / Shell company/ paper company and the assessee has taken bogus unsecured loan.
06. On the other hand, the counsel for the assessee referred to the written submissions and stated that the case of the assessee is squarely covered by the recent judgement of the Hon'ble Apex court in case of *PCIT Vs. Abhisar*



Buildwell Private Limited, (2023) 454 ITR 212 (SC), dated 24th April, 2023 and that the learned Assessing Officer was not having the jurisdiction for making the additions without referring to any incriminating material found during the course of search. He further submitted that even on merits assessee deserves to succeed as three ingredients, which assessee is required to satisfy and to explain the nature and source of the alleged sum namely, identity and creditworthiness of the cash creditors and genuineness of the transactions of loan stands dully fulfilled. He also submitted that the unsecured loans were interest bearing and regular interest has been paid after deduction of tax at source and the loans have subsequently been repaid. Reliance placed on the judgement of Hon'ble Jurisdictional High Court in case of *Crystal Networks P. Ltd. v. CIT (2013) 353 ITR 171/216 Taxman 151 (Mag.) (Cal.)(HC), Principal Commissioner of Income-tax Vs. R.M. Commercial (P.) Ltd. [2022] 138 taxmann.com 21 (Calcutta), Commissioner of Income Tax, Kolkata v. Dataware Private Limited ITAT No. 263 of 2011, 21st September, 2011*, and judgement of Hon'ble Apex Court in the case of *Lovely Exports Pvt Ltd vs CIT 216 CTR 295(SC)*.

07. We have heard the rival contentions and perused the records placed before us. Revenue is aggrieved with the findings of the learned CIT (A), deleting addition made under Section 68 of the Act at ₹6,30,00,000/- and ₹8,70,91,843/- for A.Y.



2015-16 and 2016-17, respectively. Revenue is also aggrieved with the deletion of disallowance of interest at ₹9,36,763/-, 71,65,820/- and ₹1,49,10,143/-. We note that the assessee was subjected to search action under Section 132 of the Act on 22nd December, 2020. Prior to the search, assessee had furnished regular returns of income under Section 139 of the Act for the impugned assessment years. Now, during the course of assessment proceedings carried after the issuance of notice under Section 153A of the Act, the learned Assessing Officer observed that the assessee has taken unsecured loans from 3 companies namely, Akruti Securities Pvt. Ltd. (ASPL), Orchid Finlease Pvt. Ltd. (OFPL), Sayyam Investments Pvt. Ltd. (SIPL). The assessee took unsecured loan of ₹2 crores and ₹4.30 crores during A.Y. 2015-16 from ASPL and OFPL respectively and unsecured loan of ₹1,95,91,843/- and ₹6,75,00,000/- during A.Y. 2016-17 from the OFPL and SIPL, respectively. In the assessment order under Section 153A read with section 143(3) of the Act, the learned Assessing Officer has not referred to any incriminating material found during the course of search. He has only referred to the audited financial statements and took the information about the unsecured loans shown therein. In other words, the impugned addition of unsecured loan and disallowance of interest paid on alleged unsecured loans are emanating from the information already made available by the assessee at the time of filing return of income. It is not the case of the Revenue that any



incriminating material was found and seized during the course of search which could have a bearing / direct nexus with the impugned addition or which can indicate that the alleged cash creditor companies are paper companies and that the assessee has given cash against loans taken and has routed its unaccounted income into its books through unsecured loan. Now, in absence of any incriminating material found during the course of search whether the Assessing Officer can make the additions in the assessments of completed/ unabated assessment years. We note that there were plethora judgements of Hon'ble High Courts on this issue but finally the Hon'ble Apex Court has laid down the ratio in the case of *Abhisar Buildwell Private Ltd. (supra)* observing as follows: -

"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 postsearch 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.

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 postsearch 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." 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 subsection (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."

08. Now, examining the facts in the instant case in the light of the above judgement, we find that regular return of income for the impugned assessment years were filed on 21st December, 2016, 31st March, 2017 and 31st January, 2018. The original return filed for A.Ys. 2015-16 and 2016-17 were not selected for scrutiny and so processed under Section 143(1) of the Act. Returns for A.Y. 2017-18, was selected for regular scrutiny and the assessment was completed under Section 143(3) of the Act on 9th December, 2019. Therefore, as on the date of search i.e., 22nd December, 2020, since no assessments were pending for A.Ys. 2015-16, 2016-17 and 2017-18, therefore, these three years are completed and unabated assessment years. As per the judgement of Hon'ble Apex Court in the



case *Abhisar Buildwell Private Ltd. (supra)*, the learned Assessing Officer can make the additions for completed/unabated assessment years only if the learned Assessing Officer is able to refer any incriminating material unearthed during the course of search and such seized material gives rise to make the additions in the hands of the assessee. Since the fact remains uncontroverted, at the end of the learned Departmental Representative that no incriminating material was found during the course of search for the impugned assessment year, we are of the considered view that the impugned additions/disallowances of interest are merely based on the financial statements already filed with the income tax department prior to the search action and therefore, the learned Assessing Officer was not having the jurisdiction of making addition for the completed / unabated assessment years without making any reference to seized incriminating material. We therefore find no infirmity in the findings of the learned CIT (A) deleting the impugned additions for unexplained unsecured loans and deletion of disallowance of interest paid on the alleged unsecured loans for A.Y. 2015-16 to A.Y. 2017-18. As far as merit of the case are concerned, though learned counsel for the assessee has made detailed submissions placing reliance on plethora of decisions in support of his contentions that identity & creditworthiness of the alleged cash creditors and genuineness of loan transactions is proved and no addition under Section 68 of the Act is sustainable but since, we



have confirmed the findings of the learned CIT (A) deleting the impugned additions on the legal grounds, we refrain from dealing with the merits of the case as it, would be merely academic in nature. In the result, all the grounds raised by the Revenue for the impugned assessment years are dismissed.

09. In the result, all the appeals of the Revenue for A.Ys. 2015-16 to 2017-18, are dismissed.

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

Sd/-
(MANOMOHAN DAS)
(JUDICIAL MEMBER)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.08.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata