आयकर अपीलीय अधिकरण, **'बी' न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.799 to 805/Chny/2024**
निर्धारण वर्ष**/Assessment Years: 2013-14, 2014-15, 2016-17 to 2020-21**

M/s. Metal Impex, The Lattice, 4th Floor, No.20 Waddles Road, Kilpauk, Chennai-600 010.	**v.**	The ACIT, Central Circle-1(1), Chennai.
[**PAN: AAMFM 4856 G**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Shri B. Ramakrishnan, FCA Shri Shrenik Chordia, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	08.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	30.09.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

These appeals preferred by the assessee are against the common consolidated order of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter in short 'the Ld.CIT(A)'), Chennai, dated 31.01.2024 for the Assessment Years (hereinafter in short 'AY') 2013-14, 2014-15, 2016-17 to 2020-21. Since several issues involved are common, all the appeals for all the assessment years were heard together. Both the parties also argued them together raising similar arguments on these

issues. Accordingly, for the sake of convenience and brevity, we dispose all the appeals by this consolidated order.

2. Before we advert to the grounds taken in these appeals, it would first be relevant to cull out the basic facts of the case in respect of the AYs before us. Search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted against Shri Kamlesh Jain & Others, on 25-02-2020. The AO has noted that, some excel sheets was extracted from server seized during the course of search, whose path was, E:/Extract-4HDD/ D_Server_Cloud/ G_drive-live-data/ AmithParik f server data/ Amithparik/ PCNAMU and material ID marked ANN/MS/JMG/LS/S1 was seized, which contained information relating to the assessee. It is observed that, the AO had recorded two satisfaction notes both dated 26-03-2022, and on the next date i.e. 27.03.2022, notices u/s 153C of the Act was issued upon the assessee for the AYs impugned before us. According to the AO, ordinarily having regard to the date of search i.e. 25-02-2020, he was within his jurisdiction to issue notices u/s 153C of the Act in respect of six assessment years preceding the assessment year of search i.e. the year in which the original search took place (AY 2020-21). The AO accordingly issued notices u/s. 153C of the Act reopening six preceding assessment years preceding the searched assessment year and those AY's were AYs 2014-15 to 2019-20 and the AO also reopened the AY 2020-21 u/s 153C(2) of the Act. However, in

this case, the AO is noted to have exercised powers conferred under Section 153C of the Act read with fourth proviso to Section 153A of the Act, which was inserted by Finance Act 2017 w.e.f. 01.04.2017, and reopened AY 2013-14, which was beyond six assessment years but, according to the AO, within ten assessment years. It is not in dispute that, the income-tax assessments of the assessee for all AYs before us were either completed u/s 143(1)/143(3) of the Act and/or the time limit for issue of notice u/s 143(2) of the Act had expired, at the time when the notices u/s 153C was issued by the AO. Accordingly, the income-tax assessments for AYs 2013-14, 2014-15, 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21 did not abate consequent to the search. The summary of the additions/disallowances in Rupees made by the AO in the assessments completed u/s 143(3)/153C of the Act, which are in dispute in these appeals are as follows:-

AY	**Addition of unexplained cash credit u/s 68 of the Act**	**Disallowance of loss incurred in derivatives**	**Addition on a/c of unexplained commission**	**Addition on a/c of cash interest income**
2013-14	63,82,48,400	-	-	70,000
2014-15	-	11,55,400	53,836	1,40,000
2016-17	-	-	-	2,00,000
2017-18	-	-	-	3,64,29,253
2018-19	-	-	-	4,36,95,943
2019-20	-	-	-	6,50,93,385
2020-21	-	-	-	56,30,000

3. We first take up the appeal filed by the assessee in ITA No.799/Chny/2024 for AY 2013-14. It is noted that, the AO had recorded a satisfaction note dated 26.03.2022 wherein he expressed his satisfaction that, the seized material in his possession had a bearing on total income of the assessee for AYs 2010-11 to 2020-21 and therefore, he *inter alia* issued notice u/s 153C of the Act for the AY 2013-14. Reading of the satisfaction note reveals that, according to AO, the seized material bearing ID mark ANN/MS/JMG/LS/S1 showed that, M/s KSJ Infrastructure Pvt Ltd had given loan to the assessee in FY 2012-13. The AO found that, in this year, Shri Kamlesh Jain & Smt Geeta Jain (*searched-persons*) had acquired two companies which held shares of M/s KSJ Infrastructure Pvt Ltd, which in turn gave loan to the assessee, in which these individuals were also partners. The AO observed that, there was no business operation in M/s KSJ Infrastructure Pvt Ltd in FY 2012-13 and therefore, the loan transaction appeared to be non-genuine. In light of the foregoing, the AO is noted to have drawn the satisfaction note wherein he was *inter-alia* satisfied that, this seized material had a bearing on total income of the assessee in AY 2013-14.

4. It is noted that, the AO, in the impugned assessment order, has analyzed the bank statements of M/s KSJ Infrastructure Pvt Ltd in light of the statement of Mr. Kamlesh Jain recorded u/s 131 of the Act on 28.09.2020. The AO is noted to have held that, the credits in the bank

statements of M/s KSJ Infrastructure Pvt Ltd was from entry providing entities, which were in turn advanced to the assessee. The AO thus concluded that, it was understandable that, these credits received in bank account of M/s KSJ Infrastructure Pvt Ltd was only for money layering which was credited to the assessee-firm and therefore, added the receipt of loan by way of unexplained cash credit u/s 68 of the Act. Aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A) who by his common order confirmed the same. Being aggrieved by the Ld. CIT(A)'s action, the assessee is now in appeal before us.

5. Assailing the action of the lower authorities, the Ld. AR of the assessee challenged the validity of the notice issued u/s 153C of the Act as well as the consequent order u/s 153C/143(3) of the Act for AY 2013-14 on several legal fronts. The first challenge raised by the Ld. AR was to the usurpation of jurisdiction u/s 153C of the Act by the AO, without first satisfying the essential condition precedent in the fourth proviso to Section 153A read with Explanation (2) of the Act. It was pointed out that, the notice for AY 2013-14 was beyond the period of six (6) assessment years preceding the searched year and therefore the AO could have validly issued notice u/s 153C of the Act only when he had in his possession, any incriminating material, which revealed that income represented in the form of '*asset*' valued at Rs.50,00,000/- or more, had escaped assessment. The Ld. AR of the assessee showed us that, the

term '*asset*' was specifically defined in Explanation (2) and argued that the AO had nowhere identified or averred to any such unexplained asset in the satisfaction note for him to have validly assumed jurisdiction u/s 153C of the Act.

6. The Ld. AR also took us through the document Annexure ANN/MS/JMG/LS/S-1 found and seized from the premise of Jain Metal Group, which according to him, did not reveal any such '*asset*' of the assessee which had escaped assessment. He also pointed out that, the seized document relied upon by the AO only contained information relating to M/s KSJ Infrastructure Pvt Ltd in as much as the contents thereof had no relation to the assessee. The Ld. AR further showed us that, the ledgers and bank statements referred to in this seized material was relating to M/s KSJ Infrastructure Pvt Ltd, and therefore it could not by any stretch of imagination be construed as unexplained *'asset'* of the assessee. The Ld. AR thus argued that, ordinarily adverse inference *qua* the seized material, if any, could have only been drawn in the hands of M/s KSJ Infrastructure Pvt Ltd, to whom these documents related to, and not the assessee-firm. He further showed us that, the AO had also reopened the assessment of M/s KSJ Infrastructure Pvt Ltd u/s 153C of the Act and added the impugned credits in hands of M/s KSJ Infrastructure Pvt Ltd as well. The Ld. AR thus argued that, the impugned action of reopening the assessment of the assessee u/s 153C of the Act

was erroneous and on wrong assumption of jurisdictional fact and was impermissible being excessive and unsustainable. It was also shown that, the addition impugned before us was made on account of liabilities added as unexplained cash credit u/s 68 of the Act, which cannot be said to have constituted income represented in the form of *'asset'* escaping assessment in terms of fourth proviso to Section 153A of the Act. The Ld. AR thus urged that, the notice issued u/s 153C of the Act, in terms of fourth proviso to Section 153A of the Act and the consequent impugned order, was bad in law for want of jurisdiction.

7. The next legal challenge of the assessee was that, the satisfaction drawn by the AO from the seized material viz., ANN/MS/JMG/LS/S1 for the relevant AY 2013-14 did not relate to or pertain to it. The Ld. AR showed us that, the seized material ANN/MS/JMG/LS/S1 comprised of day-books of M/s KSJ Infrastructure Pvt Ltd and it contained the entries passed by the said entity in its regular books of accounts for FY 2012-13. The Ld. AR thus vehemently contended that, the noting in question pertained to M/s KSJ Infrastructure Pvt Ltd and not the assessee-firm. The Ld. AR thus urged that the initiation of proceedings u/s 153C of the Act and the consequent impugned order was bad in law.

8. The third legal argument of the assessee was that, AY 2013-14 was unabated assessment year and therefore the impugned addition made in

this AY was unsustainable, since it was not based on any incriminating material found in the course of search. The Ld. AR relying upon the decisions of the Hon'ble Supreme Court in the case of **CIT vs Sinhgad Technical Education Society (397 ITR 344)** and Hon'ble Delhi High Court in the case of **CIT vs Kabul Chawla (380 ITR 573)**, which has since been affirmed by the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell Pvt. Ltd. (149 taxmann.com 399)**, urged that the addition made u/s 68 of the Act by way of unexplained bank credit in the unabated AY 2013-14, in absence of incriminating material found in the course of search, deserves to be deleted.

9. Per contra, the Ld. CIT, DR, appearing for the Revenue, supported the action of the lower authorities. The Ld. CIT, DR argued that, there was no such pre-requisite set out in the fourth proviso to Section 153A of the Act that, the AO is required to first record his express satisfaction stating that income represented in form of *'asset'* had escaped assessment, prior to issuing the notice issued u/s 153C of the Act for 'relevant assessment year' i.e. AY 2013-14. The Ld. CIT, DR further contended that, ultimately the addition made by way of unexplained cash credit was in the nature of *'asset'* as defined in fourth proviso to Section 153C of the Act and hence the condition precedent set out in fourth proviso to Section 153A of the Act was met. The Ld. CIT, DR further submitted that, the impugned addition was made with reference to

incriminating material viz., Annexure ANN/MS/JMG/LS/S-1 unearthed in course of search and according to him therefore, the reliance placed by the assessee on the decision of **PCIT vs Abhisar Buildwell Pvt. Ltd. (supra)** was distinguishable. Overall, the Ld. CIT, DR urged that all the legal pleas raised by the assessee deserves to be dismissed.

10. We have heard both the parties and perused the material placed before us. We are inclined to first adjudicate the legal issues raised by the assessee, which if found valid, goes to the root of the matter [*since it challenges the jurisdiction exercised by the AO u/s 153C of the Act*]. The first question before us is, whether the AO had validly assumed jurisdiction to issue notice u/s 153C of the Act upon the assessee for AY 2013-14 in terms of the fourth proviso to Section 153A of the Act, read with Explanation (2) of the Act.

11. Before adverting to the facts of the case, let us have a look at the law relevant to this issue. It is noted that, the fourth proviso of Section 153A of the Act which was inserted by the Finance Act, 2017 with effect from 01.04.2017, enabled an AO of a searched person to issue notices u/s 153A of the Act for *"relevant assessment year or years"* in terms of Explanation 1 of the fourth proviso to Section 153A of the Act i.e. assessment years beyond the six (6) assessment years till tenth (10) assessment year preceding the searched assessment year (i.e. 7th to

10th AY's preceding the searched AY), provided the AO satisfies the essential conditions specified therein. The relevant portion of Section 153A of the Act i.e., fourth proviso to Section 153A of the Act, which has a bearing on the controversy in hand, is being reproduced below:

> "Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—
>
> (a) 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;
>
> (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
>
> (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.
>
> Explanation 2. For the purposes 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."

12. From a reading of the aforesaid fourth proviso to Section 153A of the Act, it can be seen that, the expression used by the Parliament, while enlarging the power of the AO to extend the jurisdiction u/s 153A of the Act from seventh to tenth AY is, first of all, prohibiting the AO to issue the notice u/s 153A/153C of the Act, unless the condition precedent therein is satisfied. The expression used is *"no notice for assessment or reassessment shall be issued by the AO for the relevant AY/AY"s"*; and the relevant AY/AY's has been explained by the aid of Explanation 1

appended to it. Therefore, it is noteworthy that, the fourth proviso to section 153A bars the AO to issue notice u/s. 153A/153C of the Act for the assessment or reassessment of the 7th - 10th AY's unless, he has in his possession evidence/material which revealed that income represented in the form of *'asset'* valued Rs. 50 lakhs or more has escaped assessment. So, the AO, in order to assume jurisdiction for the extended period i.e. 7th to 10th AY preceding the searched year, should have in his possession income represented in the form of *'asset'* valued Rs. 50 Lakhs or more which has escaped assessment, which is the *'jurisdictional fact'*, which if present/or in possession of AO will then only enable the AO to assume jurisdiction u/s. 153A r.w. 153C of the Act to issue notice for these extended AYs'. According to the Ld. AR, this *'jurisdictional fact'* was absent in the facts of the present case and hence, the action of AO reopening the assessment for AY 2013-14 u/s 153C of the Act was bad in law for want of jurisdiction. So, the issue to be examined in the present case is whether the AO was in possession of this *'jurisdictional fact'* prior to issuance of notice u/s. 153C for AY 2013-14 i.e., existence/possession of undisclosed/unaccounted '*assets*' valued at Rs. 50 lakhs or more, as defined in Explanation 2 to fourth proviso of Section 153A *qua* the assessee qua the 7th to 10th AY un-earthed from search, without which the AO cannot issue notice u/s 153C of the Act for this AY 2013-14.

13. In this regard, we first gainfully refer to the decision of this Tribunal at Guwahati in the case of **ACIT Vs Fortune Vanijya Pvt Ltd (ITA No. 21/Gau/2021) dated 10.12.2021** wherein the facts involved are noted to be similar to the present case. In the decided case, the AO had seized regular books and ledgers of the assessee from the premises of third person (searched person) and referring to these ledgers the AO recorded his satisfaction note that, it had a bearing on the determination of total income of the assessee for the 7th AY (relevant assessment year) and therefore reopened the same u/s 153C read with fourth proviso to Section 153A of the Act. The AO completed the assessment u/s 153C/143(3) wherein the bank credits out of which loans were advanced in the regular books of accounts was added to the total income. On appeal this Tribunal explained the meaning of the term '*asset*' as defined in Explanation (2) to Section 153A of the Act and the condition precedent set out in fourth proviso to Section 153A, which was required to be met prior to issuance of notice u/s 153C of the Act. The Tribunal held that, the contents of seized material viz., regular books of accounts, were neither incriminating in nature nor in any manner revealed income represented in form of *'asset'* which had escaped assessment and therefore, in absence of this *'jurisdictional fact'*, quashed the notice issued u/s 153C and the consequent order passed by the AO. The relevant findings taken note of by us, are as follows:-

"On a reading of the fourth proviso to Section 153A of the Act along with Explanation 2 to it which defines 'Asset', we find considerable merit in the contention of Shri Dudhwewala that in order to invoke jurisdiction u/s 153A of the Act for the seventh to tenth AY preceding the searched year, the AO should have in his possession the jurisdictional fact i.e. existence/possession of undisclosed/unaccounted assets valued at Rs. 50 lakhs or more as defined in Explanation 2 to fourth proviso of Section 153A qua the assessee qua the 7th to 10th AY un-earthed from search, without which the AO cannot issue notice u/s 153A/153C of the Act for these extended AY's. It is only when there exists this jurisdictional fact the AO can validly reopen those extended AYs; and then only AO can validly assume jurisdiction and then only he is empowered to issue notice. In other words, unaccounted asset valued at Rs. 50 lakhs or more which were discovered during search qua the assessee qua the assessment year (7th 10th years) preceding the searched assessment year is the jurisdictional fact; and if the jurisdictional fact is in the possession of the AO, [and possession means physical possession; or personal knowledge of the existence of the undisclosed asset which need to be spelled out in clear terms (not vaguely) qua assessee qua AY 2011-12 discovered during search.] then he can assume jurisdiction u/s. 153C/153A of the Act and issue notice to assess the assessment of the escaped income for these assessment year's (7th to 10th year) which is the 'fact in issue' or 'adjudicatory fact'. On the other hand if the AO did not have in his possession the jurisdictional fact, then he is debarred from invoking/issuance of notice u/s 153C/153A of the Act for the 7th-10th AY preceding the search.

……..

27. In the present case, perusal of the satisfaction note shows that, the AO had referred to Pages 61 to 69 of seized material bearing identification mark SST-01 for assuming jurisdiction u/s 153C read with the fourth proviso to Section 153A of the Act. The satisfaction note however does not reveal the 'asset' which escaped assessment, and which was discovered from the aforementioned seized material. We find that, the AO himself has observed that these pages comprise journal ledger and bank ledger which evidenced that the assessee had liquidated its investments in shares and proceeds were received in bank. The Ld. AR, Shri Dudhwewala, has shown us that these ledgers were print outs from the regular books of accounts of the assessee maintained in computerised system and all the entries mentioned therein formed part of regular books of accounts. We find ourselves in agreement with him, that the contents of these seized material were neither incriminating in nature nor did it in any manner reveal income represented in form of 'asset' which had escaped assessment.

28. It is also not the AO's case that these investments in shares found mentioned in the seized material, were unaccounted or their source of acquisition was unexplained so as to constitute 'asset' escaping assessment. Rather the AO stated that these documents have a bearing on the total 'income' of the assessee for assuming jurisdiction u/s 153C of the Act, which clearly does not meet the essential condition precedent in the fourth proviso to Section 153A of the Act. From this assertion/averment/admission, it is clear that AO did not have in his possession the jurisdictional fact [on or prior 05.12.2019] to invoke and issue notice u/s. 153C of the Act. The extended jurisdiction to invoke/assess 7 th – 10th AY is conferred on the AO by authority of law and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact. It is imperative that before issuance of notice u/s 153C [for the extended period], the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in his possession qua the assessee for AY 2011-12 valued Rs. 50 lakhs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s 153A of the Act for 7th to 10th AY. For this, we rely upon the dictum of the Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253(which has since been accepted and later followed by Hon'ble Supreme Court), that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. As discussed at Para 13 (supra), the language of the fourth proviso to section 153A of the Act show that issuance of notice can be resorted to by the AO only after he is in possession of the jurisdictional fact, which is found to be absent in the present case. Therefore according to us, the AO only after having in his possession the jurisdictional fact could have assumed jurisdiction and issued notice u/s. 153C of the Act or else he could not have issued notice, as done in this case. For the reasons elaborately discussed by us in the foregoing, we thus hold that the notice u/s. 153C dated 05-12-2019 was issued by the AO for AY 2011-12 without authority of law and without satisfying the essential jurisdictional fact, and hence the issuance of notice u/s. 153C of the Act is held to be bad in law."

14. It is noted that the above decision of this Tribunal has since been upheld by the Hon'ble Gauhati High Court which is reported in 459 ITR 72, by observing as follows:-

"16. From the rival contentions, we note that, the assessee had specifically objected to the AO's action of reopening the unabated

assessment for AY 2011-12 u/s 153C of the Act and had requested the AO to give details of the purported 'assets' which had escaped assessment. The AO however did not provide the details of the undisclosed/unaccounted assets of the assessee, which he claims were in his possession before the issuance of notice u/s 153C of the Act for AY 2011-12. The AO was however duty bound to decide the said question as to his jurisdiction, and record finding as to whether he had in his possession, details of any undisclosed/unaccounted assets valued as Rs. 50 lacs and more, *qua* the assessee *qua* the assessment year (7th to 10th year) preceding the searched assessment year, and thereby state clearly as to how the case of assessee was being brought under the 4th proviso of section 153A read with explanation 2. Only upon valid assumption of jurisdiction, the AO could have proceeded against the assessee for assessment of escaped/undisclosed assets.

….

19. As a consequence, we have no hesitation in holding that the AO did not have in his charge, any "Jurisdictional fact "(on or prior to 5-12-2019) to invoke and issue notice u/s 153C of the Act to the respondent assessee. The extended jurisdiction to invoke/assess 7th to 10th AY is conferred on the AO by authority of law and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact. It is imperative that before issuance of notice u/s 153C (for the extended period) the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in possession *qua* the assessee for AY 2011-12 valued at Rs. 50 lacs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s 153A of the Act for 7th to 10th AY. At the cost of repetition, it is pertinent to mention that the assessee had disclosed the sale transactions and liquidation of shares in his regular books of accounts and the liquidation of shares were received in bank. Thus the aforementioned assets cannot be termed as undisclosed assets. It has been appositely concluded in the concurrent decisions of the CITA and ITAT that it cannot be held that the allegedly undisclosed assets have escaped assessment."

15. Having regard to the above position of law, we now re-capitulate the facts involved in the present case, as already noted by us earlier. It is not in dispute that, the AY 2013-14 before us is an unabated assessment. In the present case, search had been conducted upon the Jain Metal

Group (searched person) on 25-02-2020. The satisfaction note was however drawn out by the AO satisfying himself that, the assets/documents found in the course of search belongs/pertains to *"the other person"* (third party i.e. the assessee in this case). Pursuant thereto, the AO of the assessee recorded the following satisfaction note on 26-03-2022, which is extracted below:

> "A search operation u/s.132 of the Income-tax Act, 1961 was conducted in the premises on 25.02.2020 in the case of M/s.Jain Metal Rolling Mills, M/s Jain FGL Metal Industries, Shri. Kamlesh Jain, Shri.Shantilal Jain, Smt. Geetha Jain and Shri.Sanchit Jain
>
> Documents seized during search u/s 132 of the act and received along with the satisfaction note from the assessing officer of M/s.Jain Metal Rolling Mills, M/s. Jain FGL Metal Industries, Shri.Kamlesh Jain, Shri. Shantilal Jain, Smt. Geetha Jain and Shri.Sanchit Jain have been perused. Documents seized vide ANN/RR/JMG/ED/S-4 have been examined.
>
> During the course of search proceedings conducted at the head office of Jain Metal group at the Lattice, No. 20, 4th floor, Waddles Road, Kilpauk, Chennai, one 'D-Server' which contains the actual books (accounted & unaccounted) of accounts of Jain Metal group was found which was imaged and seized vide ANN/RR/JMG/ED/S-4.
>
> M/s Metal Impex is a partnership firm which predominantly deals in money lending business. Mr. Kamlesh Jain is active partner in the firm. On verification of the D-Server, some excel sheets(.xlsx format) which were found in the following pathway of the D-Server:
>
> E: ->> EXTRACT -4 HDD ->>D_Server_Cloud ->>G_drive- Live-data- >>AmithParak f server data ->>AmithParik ->> PCNAMU
>
> It contains the Interest computation workings pertained to the advances given by the M/s Metal Impex, a partnership firm, to various parties, date of advancement of loan and date of recovery of Interest and loan etc. The workings contains the columns like loan amount, interest, TDS, cheque, DD, Cu, Copper, Cash etc.
>
> The entries pertaining to cash interest received by M/s Metal Impex Partnership firm, from various parties (as recorded against "DD", "Cu" "Copper" and 'Cash') were consolidated year-wise which is reproduce below for reference:

F.Y	AMOUNT
2012-13	70,000
2013-14	1,40,000
2015-16	2,00,000
2016-17	3,64,29,253
2017-18	4,36,95,943
2018-19	6,50,93,385
2019-20	56,30,000
Total	15,12,58,581

On verification of the seized material seized ANN/MS/JMG/LS/S1 from the Corporate Office of Jain Metal Group, it is found vide Annexure that KSJ infrastructure Pvt Ltd has given a loan of Rs.63,82,48,400/- to M/s Metal Impex in the FY 2012-13. In FY 2012-13, it is found that Shri Kamlesh Jain and Smt Geeta Jain has purchased the shares of the holding companies namely Jackpot Commodeal Pvt Ltd and Salputri Dealers Pvt Ltd of the M/s KSJ Infrastructure Pvt. Ltd. thereby indirectly becoming the shareholders of M/s KSJ Infrastructure Pvt. Ltd. M/s KSJ Infrastructure Pvt. Ltd. has given loan to M/s Metal Impex in which Shri Kamlesh Jain is one of the Partner and Shri Kamlesh Jain is also the Director of M/s KS) Metal Impex another partner of M/s Metal Impex. It is found that there is no operation in the company KSJ infrastructure Pvt Ltd and the transaction appears to be not genuine. From the Balance Sheet it is seen that the assesse firm has total assets of Rs. 51,25,64,272/- and the partner Shri Kamlesh Jain has made capital drawings during the financial year.

Therefore, I am satisfied that the above referred seized material seized from head office of Jain Metal group at the Lattice, No. 20, 4th floor, Waddles Road, Kilpauk, Chennai, seized vide ANN/RR/JMG/ED/S-4 and Annexure ANN/MS/JMG/LS/S1 In the case of M/s. Jain Metal Rolling Mills, M/s.Jain FGL Metal Industries, Shri. Kamlesh Jain, Shri. Shantilal Jain, Smt. Geetha Jain and Shri.Sanchit Jain has information relating to M/s Metal Impex and has a bearing on the total income of the assessee.

Therefore, I am satisfied that M/s Metal Impex, Partnership firm is covered under section 153C of the Income Tax Act. Accordingly, notices u/s 153C of the act are issued for A.Ys 2010-11 to A.Y. 2019-20 and u/s 153C(2) for A.Y. 2020-21."

16. Having perused the satisfaction note (supra), it is noted that, the satisfaction note does not reveal or point out the *'asset'* which had escaped assessment in the relevant AY 2013-14. The AO has only made a sweeping reference to the seized material bearing ID mark ANN/MS/JMG/LS/S1 and averred that the information contained therein

had a bearing on total income of the assessee. It is common knowledge that, seized material may contain both disclosed & undisclosed assets, liabilities, expenses & income etc. It was therefore imperative for the AO to set out the specific details of the *'asset'* unearthed from this seized material which represented income escaping assessment. We however find that, the AO has not done so. Rather the AO usurped the extended jurisdiction to invoke/assess in respect of 7th to 10 AYs particularly AY 2013-14 in a casual manner by simply referring to the seized material, without specifying the *'jurisdictional fact'* necessary for assumption of jurisdiction, as noted above.

17. Reading of the satisfaction note further shows that, the AO has simply set out the contemporaneous details of acquisition of shares of certain bodies corporate by Shri Kamlesh Jain & Smt Geeta Jain and the loans advanced by its subsidiary i.e. M/s KSJ Infrastructure Ltd to the assessee, all of which are noted to be transactions forming part the regular books of accounts. There is no whisper of any unaccounted or undisclosed asset which was unearthed from the seized material mentioned in the satisfaction note. The Ld. AR also took us through the contents of the seized material Annexure - ANN/MS/JMG/LS/S1, and we agree with him that, the said material also did not refer to any *'asset'* pertaining or relating to the assessee which had escaped assessment. Instead, it is noted that, the AO in the penultimate part of the paragraph,

doubted the genuineness of loan received by the assessee from the group entity i.e. M/s KSJ Infrastructure Pvt Ltd on an apprehension that, there was no business operations in M/s KSJ Infrastructure Pvt Ltd. In light of the foregoing, we find ourselves in agreement with the assessee that, the noting referred by the AO in the satisfaction note were contemporaneous facts, which were forming part of the regular books of accounts and there was nothing contained therein which could suggest that any unexplained or undisclosed asset of the assessee had escaped assessment. Even at the time of hearing, the Ld. CIT, DR was unable to point out to us the relevant material contained in the seized material, basis which the AO could have stated that, the income represented in the form of *'asset'* had escaped assessment. According to us, the AO only after having in his possession this *'jurisdictional fact',* could have assumed jurisdiction, and issued notice u/s. 153C r.w. 153A of the Act or else he could not have issued notice, as done in this case. Hence the issuance of notice u/s. 153C of the Act for AY 2013-14 is held to be bad in law.

18. In this context, we also gainfully rely on decision of this Tribunal in the case of **ACIT Vs Goldstone Cement Ltd (ITA No. 126 to 131/Gau/2020)** which has since been affirmed by the Hon'ble Gauhati High Court reported in 156 taxmann.com 529. In the decided case, the Tribunal held that, it is imperative that, the AO sets out his objective satisfaction from the seized material regarding the details of the income

represented by the specific/undisclosed 'assets', in his possession *qua* the assessee valued Rs. 50 lakhs or more, prior to issuance of notice in terms of fourth proviso to Section 153A of the Act. In absence of the same, the issuance of notice u/s 153A under the fourth proviso shall be rendered bad in law. The relevant findings of this Tribunal, as taken note of by us, is as follows:-

> "8.18 Be that as it may, we further note another interesting aspect that, the AO while denying the details of assets for AY 2011-12 observed that, "at this point of time i.e. [04-11- 2019] the undersigned has recorded reasons there is seized material available on the basis of which the case of assessee for AY 2011-12 has been covered u/s 153A", This factual assertion made by the AO while making the order-sheet entry dated 04.11.2019 shows that, he had not recorded his satisfaction prior to issuance of notice dated 11.09.2019 in terms of the fourth proviso to Section 153A of the Act, but did so only subsequent to reopening of the assessment on 04.11.2019. His own admission in the noting sheet reveals that he has recorded satisfaction only on 04.11.2019 to cover the case of assessee in respect of AY 2011-12 on the strength of the seized material. From this assertion/averment/admission, it is clear that AO did not have in his possession the jurisdictional fact [on or prior to 11.09.2019] to invoke and issue notice u/s. 153A of the Act. Here, one should bear in mind that the fourth proviso was inserted by the Parliament w.e.f. 1.04.2017 by Finance Act, 2017, thereby extending the jurisdiction of the AO to assess/re-assess beyond six AY's to ten AY preceding the searched year. And as discussed at para 8.5, the fourth proviso clearly bars the AO to issue notice for the extended period (7th – 10th AY) unless the AO is in possession of the jurisdictional fact of undisclosed asset valued Rs. 50 lakh or more qua the assessee qua the extended assessment year. So the Legislative intent is very clear that AO would be empowered to issue notice u/s 153A only if he is in possession of the jurisdictional fact otherwise he cannot issue notice u/s 153A of the Act. No such bar can be seen in the case of six AY's preceding the searched AY. So the Parliament while extending the jurisdiction of AO by Finance Act, 2017, for 7th – 10th AY has prescribed this particular safe guard against arbitrary exercise of power by the AO u/s 153A of the Act. It is thus prescribed in the fourth proviso that, no notice shall be issued by AO, unless the AO is in possession of the undisclosed assets valued Rs. 50 lakh or more qua the assessee qua the AY. Hence, the admission made by the AO in the order sheet on 04.11.2019, that "at this point of time" he was recording his satisfaction for covering AY 2011-12 u/s 153A of the Act as he had seized material with him, clearly shows that the AO had not applied his mind to the seized material prior to issuance of notice u/s 153A on 11.09.2019. The AO had not gone through the seized material to gather details/information which would suggest discovery of undisclosed assets qua the assessee qua the AY 2011-12 and even if something was found, then whether the undisclosed

asset was valued Rs 50 lakhs or more? This exercise was not carried out by the AO. Instead, he simply made a sweeping statement that since seized material is there with him, so he is covering the case of AY 2011-12. This action of the AO cannot be accepted. According to us, the AO's bald assertion/dependence on the seized material before him, does not fulfil the requirement of law to confer on himself jurisdiction u/s. 153A of the Act. The extended jurisdiction to invoke/assess 7th – 10th AY is conferred on the AO by authority of law and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact to encompass all seized material. It is common knowledge that, seized material may contain both disclosed &undisclosed assets, liabilities, expenses & income. So, it is imperative that before issuance of notice u/s 153A [for the extended period], the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in his possession qua the assessee for AY 2011-12 valued Rs. 50 lakhs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s 153A for 7th to 10th AY. For this, we rely upon the dictum of the Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253(which has since been accepted and later followed by Hon'ble Supreme Court), that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. As discussed at Para 8.5 (supra), the language of the fourth proviso to section 153A of the Act show that issuance of notice can be resorted to by the AO only after he is in possession of the jurisdictional fact, which is found to be absent in the present case. Therefore according to us, the AO only after having in his possession the jurisdictional fact could have assumed jurisdiction and issued notice u/s. 153A of the Act or else he could not have issued notice, as done in this case. For the reasons elaborately discussed by us in the foregoing, we thus hold that the notice u/s. 153A dated 11.09.2019 was issued by the AO without authority of law and without satisfying the essential jurisdictional fact, and hence the issuance of notice u/s. 153A is held to be bad in law.

8.19. Even though we are fortified with our above view, that prior to issuance of notice u/s 153A for the 7th – 10th AY, the AO should be in possession of the jurisdictional fact, we deem it fit to further examine the facts as to whether ultimately the AO, while addressing the request of the assessee to provide the details of the undisclosed assets qua the assessee for AY 2011-12,did at all make any endeavour to discover any undisclosed asset qua assessee for AY 2011-12. It is noted that the AO even in the impugned order did not bother to bring on record the jurisdictional fact nor did he even whisper anything about any undisclosed asset in the order nor did he make any addition in respect of undisclosed assets u/s 69 or 69A or 69B of the Act, which clearly shows not only did the AO not havein his possession the jurisdictional fact before invoking or while assumption of jurisdiction u/s 153A for AY 2011-12 but it remained absent even when he framed the impugned assessment order. The Hon'ble Supreme Court has categorically held that, if the jurisdictional fact does not exist, the AO/quasi-judicial authority or authority cannot act on the erroneous supposition that it exists. Further the Hon'ble Supreme Court held that, if a quasi judicial authority or authorities wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. [Here in this case, it may be noted that AO refused to divulge the details of the undisclosed Assets discovered during search qua assessee for AY 2011-12 and asked the assessee to await the

outcome of the reassessment order, which action of AO tantamounts to deny the assessee an opportunity to approach the Hon'ble High court for issue of writ of certiorari, which action of AO cannot be countenanced.] The Hon'ble Supreme Court further laid down the principle that, by erroneously assuming existence of jurisdictional fact, no authority/AO in this case can confer upon itself jurisdiction which it otherwise does not possess. From the facts narrated in the foregoing, it is evident that at no point of time did the AO have in his possession the evidence regarding the undisclosed/unaccounted assets as defined in Explanation (2) to the 4th proviso qua the assessee qua the assessment year 2011-12 and therefore he could not have conferred upon himself the jurisdiction under section 153A of the Act. Thus, on these admitted facts as discussed (supra), and for other defects and contention noted (infra), we find merit in the submission of Shri Dudhwewala that, the notice u/s 153A for AY 2011-12 had been issued by the AO in an arbitrary and casual manner, without first satisfying himself that he was in possession of incriminating material which revealed that income represented in form of asset had escaped assessment for AY 2011-12 which was the essential jurisdictional fact found to be absent in this case. In our considered view therefore, the AO's failure to do so, rendered the very act of usurpation of jurisdiction and issuance of notice dated 11.09.2019 under the fourth proviso to Section 153A of the Act for AY 2011-12 to be null in the eyes of law."

19. Our above view is further strengthened by the fact that, the AO even in the impugned order did not bother to bring on record the *'jurisdictional fact'* viz., he did not mention or specify any undisclosed asset in the order nor did he make any addition in respect of undisclosed assets u/s 69 or 69A or 69B of the Act, which clearly shows not only did the AO not have in his possession the jurisdictional fact before invoking or while assumption of jurisdiction under the fourth proviso to Section 153A of the Act for AY 2013-14, but it remained absent even when he framed the impugned assessment order.

20. It is also noted that the impugned addition which was made on account of loan obtained from M/s KSJ Infrastructure Pvt Ltd by way of unexplained cash credit u/s 68 of the Act, cannot be said to constitute,

'asset' which had escaped assessment in terms of the fourth proviso to Section 153A of the Act. Taking us through the definition of the term *'asset'* as defined in Explanation 2 to the fourth proviso to Section 153A of the Act, the Ld. AR of the assessee has rightly contended that, the impugned addition represented loan/liability of the assessee and thus it did not fall within the term *'asset'* as defined in Explanation 2 to the fourth proviso to Section 153A of the Act. We find that the meaning of the term *'asset'* as defined in Explanation 2 to fourth proviso of Section 153A of the Act has been explained by the Tribunal in the case of **ACIT Vs Goldstone Cements Ltd (supra)**, which has been affirmed by the Hon'ble Gauhati High Court. The relevant extracts of the decision, as noted by us, is as follows :-

> "8.11. Having held so, let us examine the next argument of Shri Dudhwewala that, the Parliament by specifying the jurisdictional fact as undisclosed asset valued Rs. 50 Lakhs or more, has impliedly excluded other items of income viz., liabilities/credit, unexplained expenditure etc. A reading of the fourth proviso to section 153A of the Act and Explanation (2) to fourth proviso to section 153A of the Act which defines 'Asset' for the purpose of fourth proviso to section 153A of the Act, clarify the intention of the Parliament to permit the AO to enlarge the assessment u/s. 153A after search u/s. 132 of the Act beyond six assessment years to ten assessment years preceding the searched assessment year, provided the AO has in his possession the essential jurisdictional fact i.e. —undisclosed/unaccounted asset valued Rs 50 lakhs or more of the assessee discovered during search pertaining to 7th to 10th Assessment Year preceding the searched assessment year. Since the Parliament has used the expression income in the form of asset' and the definition of asset has been spelled out in the fourth proviso, this itself necessarily implies that the liability/items falling in the left side of the Balance Sheet stands excluded. For this view of ours, we rely on the legal Maxim for interpretation —Expressio Unius Est Exlcusio Alterius which principle states that, express mention of one is the

exclusion of other and this maxim has been accepted by the Hon'ble Supreme Court in GVK Industries Ltd. Vs. ITO [197 Taxman 337] (Constitution bench of 5 Supreme Court Judges). By express mention of 'Assets' and definition given to it specifically, it is implied that the Parliament silently excluded the items of 'revenue', 'expenditure' & liabilities' from its jurisdictional fact for invoking/assumption/usurpation of jurisdiction u/s. 153A of the Act for the seventh to tenth assessment year preceding the searched assessment year.

8.12 It is a rudimentary accounting concept, that —debit denotes —asset and —credit denotes —liability. An asset represents an economic resource, either immovable or movable, having value, such as immovable property viz., land or building, investment held in shares and securities, loans & advances given and deposits in bank account. On the other hand, 'Liability' includes items such as share capital, reserves, loans obtained (secured as well as unsecured) etc. which cannot be characterized or classified as 'Asset'. Similarly, items of 'expenses' or revenues in form of 'sales' / 'turnover' does not constitute 'asset'. This can be illustrated in the following manner ('Asset' below falls within the ambit of the fourth proviso to Section 153A of the Act):

Profit & Loss Account	
Particulars (Debit)	Particulars (Credit)
Expenses	Revenues

Balance Sheet	
Liabilities (Credit)	Assets(Debit)
Share capital / Reserves/ Loan/ Current Liabilities	Immoveable Property/ Loans & Advances/ Shares/ Bank Balance

8.13 The above view of ours get bolstered from reading of Explanation 2 appended to the fourth proviso, which defines 'asset', for the purpose of fourth proviso to Section 153A,to include i) immovable property, ii) shares and securities , iii) loans and advances & iv) Deposit in bank. Hence, where search action u/s 132 of the Act reveals that, (i) the assessee owns an undisclosed immovable property, or (ii) information has been gathered which shows that the assessee had given loans or advances outside the regular books or (iii) search has revealed unaccounted investments held by assessee in shares & securities, which do not form part of regular books of accounts or (iv) if undisclosed bank accounts having deposits, have been found in the course of search, pertaining to the 7th-10th AY preceding the search; then having in his possession this jurisdictional fact, the AO may assume jurisdiction under the fourth proviso to Section 153A of the Act for the relevant seventh to tenth assessment year preceding the searched assessment year. Hence,

the most important aspect is that, these 'assets' must have been found to be undisclosed or unaccounted, in the regular books of account maintained by the assessee, and discovered during the course of search, which otherwise would not have seen the light of the day but for the search, resulting in escapement of income.

8.14 As per our discussion, is to be kept in mind that, the term 'deposits in bank account' has to be considered with the term 'asset'. The term 'deposits in bank account' and 'asset' are to be understood in their cognate sense, as it takes their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. Hence, the term 'deposits in bank account' denotes discovery of an 'asset' in the form undisclosed bank deposits, say fixed deposit bank a/c, savings deposit bank a/c, foreign deposit bank a/c etc. which is found to have escaped assessment in the 7th-10th AY preceding the search. It does not suggest or include any or all credits in bank accounts, which is disclosed and forms part of the regular books of accounts. To say, if any credits in a regular bank account, like sale proceeds/ loan / share capital etc. is found to be unexplained, then it may be a case of discovery of undisclosed 'income' / 'cash credit' but it does not suggest discovery of an undisclosed 'asset' by the Revenue so as to bring it within the teeth of the fourth proviso to Section 153A of the Act for invoking jurisdiction u/s 153A for the extended period.

8.15 Hence, from the above discussion, it is thus clear that Section 153A of the Act can be invoked only if the AO comes to a positive conclusion that he has in his possession documents or information revealing an undisclosed asset of the assessee qua the assessment year (7th to 10th) which is valued Rs. 50 lakhs or more. This, in our judgment is a foundational, fundamental or jurisdictional fact.

.....

8.21. The Ld. A.R Shri Dudhwewala in the alternate also pointed out that, even in the assessment order, the AO had singularly failed to identify and spell out such —asset‖, as defined in Explanation 2 to the fourth proviso to Section 153A of the Act, which had escaped assessment for AY 2011-12 and did not make any addition to the income of the assessee u/s. 69, 69A or 69B of the Act. So, therefore, according to Shri Dudhwewala, since the AO did not make any addition on account of escaped income represented in form of undisclosed/unaccounted asset, the AO could not have made any other addition like, in respect of credit entry u/s. 68 of the Act. For this, he relied on the decisions rendered by the case of Hon'ble High court of Bombay in Jet Airways (supra) and Hon'ble Delhi High Court in Ranbaxy Laboratories (supra) though in the context of reopening u/s. 147 of the

Act. So, according to Shri Dudhwewala, the AO's action of making addition u/s. 68 of the Act, was even otherwise, legally impermissible.

8.22. From our discussion (supra) it is clear that, only if any of specified 'asset/s' as defined in Explanation (2) is unearthed during the course of search and the acquisition of such an 'asset' being unexplained or undisclosed, which is valued Rs. 50 Lakhs or more, that the AO can be said to be in possession of the jurisdictional fact to initiate proceedings u/s 153A for 7th-10th AY (AY 2011-12, in the instant case). Now, to understand the alternate ground of argument of Shri Dudhwewala, let us for the sake of argument, assume that the AO had validly invoked the jurisdiction u/s 153A for AY 2011-12.Then in such an event, it has to be borne in mind that, first the AO had to make addition in respect of the purported undisclosed asset valued at Rs. 50 lakhs or more; and only thereafter the AO can venture to make any other additions/disallowance which are not in the nature & character of 'Asset' but represents undisclosed/unexplained income/expenditure/credit etc. Perusal of the assessment order impugned before us, shows that that AO did not make any addition/s in respect of escaped/undisclosed asset in the relevant AY 2011-12. We therefore find ourselves in agreement with Shri Dudhwewala that, unless the AO made addition/s of Rs. 50 Lakhs or more in relation to escaped/undisclosed asset, he could not assume jurisdiction to make addition/s on other items (viz. liabilities like credit entry etc.) The reason is simple, because in such a scenario, it bellies the claim of the AO in issuing notice u/s 153A of the Act, that he is in possession of the jurisdictional fact i.e. undisclosed asset valued Rs. 50 lakhs or more has escaped assessment, which constitutes the key to open the lock and then re-assess the income of the assessee for the 7th to 10th AY. It is therefore incumbent upon the AO to show that the key used for opening the lock for the concluded 7th to 10th AY is the most appropriate key to unlock and thereby reopen the proceedings for bringing to charge any other items of escaped/unexplained income unearthed in the course of search. However in a case where, either the assessee demonstrates that the key used by the AO for reopening the assessment is either incorrect or where the AO himself abandons the jurisdictional fact in the course of assessment proceedings, then as a corollary, it has to be held that the key used by the AO for opening the lock was incorrect and thereby the lock placed earlier on the concluded assessment remained unopened and therefore the AO could not enter upon the arena of reassessing the income of the assessee. So, when the AO fails to make any addition for the 'undisclosed asset', then it tantamount to admission that there was no jurisdictional fact present before the AO in the first place, and the necessary corollary is that he has wrongly assumed jurisdiction u/s. 153A for AY 2011-12 and therefore AO cannot proceed further to make other items of additions/disallowances. In such a scenario, the AO has no other option

but to drop the assessment proceedings. He may however proceed again, if there is any new/fresh jurisdictional fact before him, of course, subject to limitation. For this conclusion of ours, we rely on the ratio laid down in the judgments of CIT Vs Jet Airways (supra) & Ranbaxy Laboratories Ltd. vs. CIT (supra).Though these judgments were rendered in the context of reopening u/s. 147 of the Act, however the ratio decidendi will apply in the present case, because, like Section 147/148 of the Act, the AO gets the authority to assess/reassess the income of a searched person or other person u/s 153A/153C for the extended assessment years (7th to 10th AYs) only if he has in his possession the jurisdictional fact, as discussed. If the AO is found to have assumed jurisdiction erroneously on mistaken belief about the existence of jurisdictional fact or ultimately drops it (after making enquiries in the course of assessment) while framing the reassessment order; then the AO cannot legally proceed further with the assessment/reassessment and/or make any other items of additions/disallowances, because the jurisdictional fact on the strength of which he assumed section 153A jurisdiction is absent or not in existence. In the light of the aforesaid discussion, and in our considered opinion, this alternate plea of Shri Dudhwewala is well founded and deserves to be accepted.

8.23. In view of the above and on perusal of the impugned re-assessment order, we note that the only addition made by the AO in AY 2011-12 was on account of unexplained cash credit represented by share application monies of Rs.5,38,35,000/- u/s 68 of the Act. According to the AO, the source of source of the monies received from shareholder, M/s Hari Trafin Pvt Ltd was not properly explained, and therefore the same was added as unexplained cash credit u/s 68 of the Act. As noted above, the additions on account of unexplained cash credit and that too share capital, which is in the nature of 'liability' could not have been made by AO, unless he first made an addition of undisclosed 'asset' valued at Rs. 50 Lakhs or more. So in this case, as there was no addition made by AO on account of undisclosed asset, we can safely infer that there was no jurisdictional fact in the AO's hand or in his possession when he assumed jurisdiction u/s 153A for AY 2011-12 in the first place itself. As, the very usurpation of jurisdiction u/s. 153A of the Act is found to be bad in law for want of jurisdiction, the AO was precluded from making any other addition in the assessment for AY 2011-12. Hence, the AO's action of making addition u/s 68 of the Act in the relevant AY 2011-12 is held to be unsustainable for want of jurisdiction and is therefore is quashed. The assessee thus succeeds on this ground raised in the cross objections and the same is allowed."

21. In light of the *ratio decidendi* laid down above, which we find to be squarely applicable to the present case, it is held that the addition made on account of the unsecured loan by way of unexplained cash credit does not suggest discovery of any income represented in form of *'asset'* escaping assessment so as to bring it within the teeth of the fourth proviso to Section 153A of the Act.

22. For the above reasons, according to us, the AO was not in possession of any evidence / material which suggested that income represented in form of an *'asset'* had escaped tax in the AY 2013-14 and therefore the jurisdictional fact as prescribed under the fourth proviso to Section 153A of the Act is found to be absent and the AO is noted to have usurped jurisdiction u/s 153A r.w. 153C of the Act on wrong assumption of jurisdictional fact. Accordingly, the impugned order passed u/s 153C/143(3) of the Act for AY 2013-14 is held to be *ab initio* void and bad in law for want of jurisdiction and the same is hereby directed to be quashed.

23. The next legal challenge raised by the assessee is that, the satisfaction note prepared by the AO also does not satisfy the requirement of law as stipulated u/s. 153C of the Act, as the relevant seized material did not pertain to the assessee, thereby rendering the issuance of notice u/s 153C and the consequent order to be bad in law.

24. We find that, it is now a settled position of law that, the AO of the non-searched person (assessee, in this case) can issue notice u/s 153C read with 153A of the Act, only when he is satisfied, from a perusal of the books of account or documents or assets seized or requisitioned from the premises of searched person (Jain Metal Group, in this case), that it had a bearing in the determination of the total income of the non-searched person, i.e. the assessee. The satisfaction of Assessing Officer should be objective and has to be based upon cogent material. The reason for it is that, section 132(4A)(i) of the Act clearly stipulates that, when *inter alia* any document is found in the possession or control of any person in the course of a search, it may be presumed that such document belongs to such person (the searched person). The presumption as to asset, books of accounts, etc. is governed by section 292C(1)(i) of the Act which presumes that the same belong or belongs to the person from whom the said assets/documents were found during the course of search u/s. 132 or survey u/s. 133A of the Act. In other words, whenever an asset/document is found from a person who is being searched, the normal presumption is that the said asset/document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the asset/document in fact belongs/pertains/relates to somebody else (third party like assessee in this case). There must be some cogent material available with the Assessing Officer, which was

unearthed during search, basis which he/she arrives at the satisfaction that the seized asset/document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction' and the same interpretation has been given by various courts.

25. In this context, we gainfully rely on the decision of the Hon'ble Apex Court in the case of **CIT Vs Singhad Technical Education Society (397 ITR 344)**, wherein the Hon'ble Supreme Court upheld the decision of the Hon'ble Bombay High Court reported in **378 ITR 84** by observing that, unless and until the AO can establish document-wise (or asset wise) correlation between what has been seized from the 'Searched person' - and - how the same is incriminating in nature qua each of the assessment years in question for which jurisdiction u/s. 153C is sought to be invoked for the 'other Person' - then the notice issued under section 153C to the assessee qua the said assessment year would be without the satisfying the jurisdictional fact required to invoke section 153C of the Act. We draw our attention in this regard to the following excerpts of the decision of the Hon'ble Supreme court in **Sinhgad Technical Education Society's case (supra)**, wherein their Lordships took note of the Hon'ble High Court's findings while confirming Tribunal's view, which is as under:—

> "6. The tribunal has found that incriminating material seized and stated to be pertaining to all six assessment years did not establish any co-

relation document-wise with the assessment year in question. In other words, the tribunal concluded that the present matter indicates that the issue of notice could be on the basis that there is specific incriminating information in possession of the Assessing Officer. It is in these circumstances that the tribunal found and as indicated in paragraph 8 of the impugned order that the revenue's assertion that the Assessing Officer is empowered under the statute to 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 and therefore the satisfaction which is recorded in the satisfaction note is enough, is erroneous. Therefore, the notice cannot be upheld and such stand of the revenue cannot be accepted. The reasons, therefor are to be found in paragraph 9 and 10 of the impugned order. If certain items pertain to assessment year 2004-05 or thereafter then it cannot be assumed, that the documents seized or incriminating material giving information are specific and to all assessment years. The tribunal found that they were concluded assessments. They could not have been disturbed. The documents in question are neither incriminating ones nor unaccounted transactions of the assessee. They also did not relate to the four assessment years. It is in these circumstances that the tribunal found that it will not be possible to uphold the stand of the revenue that overall approach in matters of concealment by the group assessee and all the discoveries of the search on Shri Navale and it concerns, will have to be taken into account while forming the satisfaction. The satisfaction note was very closely examined and the reasons assigned by the Assessing Officer were found to be silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note is not enough. The tribunal has found that with regard to cash and jewellery, the explanation of the assessee was that he had agricultural properties and derived agricultural income. That income was utilised to acquire jewellery that was belonging to him and his family. With regard to cash and stated to be recovered from the students for granting admissions, we do not find that any inquiries were made. There is absolutely nothing to indicate as to in which educational courses, the education is imparted and institution-wise. Whether the admissions are granted to the technical courses merit-wise or on the basis of marks obtained in XIIth standard HSC exam. If any fee structure is approved and cash component is therefore collected over and above the sanctioned fees are matters which ought to have been gone into and there cannot be a general or vague satisfaction as is relied upon.

9. We are of the opinion that the tribunal's conclusion cannot be termed as perverse and given the above-noted factual background. None of

these appeals raises any substantial question of law. They are accordingly dismissed. No costs."

26. And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court by observing as under:

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy." (Emphasis supplied)

27. In the light of the above legal position, we now revert back to the facts of the present case. In order to test the validity of the jurisdiction of AO to legally usurp the jurisdiction u/s. 153C against a third party who

has not been searched, we have to ascertain whether Assessing Officer satisfied the condition-precedent before issue of notice u/s. 153C of the Act, for which we need to examine the contents of the satisfaction note (supra).

28. It is noted that, the foundational premise of the satisfaction note was the seized material marked as Annexure - ANN/MS/JMG/LS/S1. Having perused these documents (portions of which has also been reproduced in the assessment order), it is noted that, these are day book/ ledgers of M/s KSJ Infrastructure Pvt Ltd (non-searched person), which was seized from the premises of Jain Metal group (searched person). It contains the entries passed regarding their sale of investments, in their journal day book, in the course of regular business and the bank ledger reflected the payments received through banking channel upon sale of investments. These seized documents are therefore noted to contain information relating to M/s KSJ Infrastructure Pvt Ltd and not the assessee.

29. It was also brought to our notice that, relying upon this very same seized material, the AO of the searched person had recorded another satisfaction stating that the information contained therein related to M/s KSJ Infrastructure Pvt Ltd and that the AO of M/s KSJ Infrastructure Pvt Ltd had also reopened its assessments *inter-alia* including AY 2013-14 u/s

153C of the Act. The Ld. AR also showed us that, the amounts found mentioned in these seized material were adversely inferred by the AO of M/s KSJ Infrastructure Pvt Ltd who made addition u/s 69 of the Act in the hands of M/s KSJ Infrastructure Pvt Ltd as well. The assessee has thus rightly contended that, this very same seized material cannot now in the same breath be alleged to contain information relating/pertaining to the assessee, when clearly the title of these documents and entries therein suggests otherwise i.e., it relates/pertains to M/s KSJ Infrastructure Pvt Ltd.

30. The above facts noted by us, considered cumulatively, in our considered view, shows that, the satisfaction recorded by the AO of the assessee was based on incorrect assumption of fact that, the purported seized material related to the assessee, which as noted in the foregoing, is factually erroneous. This is also corroborated by the fact that, the last portion of the satisfaction note read as, *"..M/s KSJ Infrastructure Pvt. Ltd. has given loan to M/s Metal Impex in which Shri Kamlesh Jain is one of the Partner and Shri Kamlesh Jain is also the Director of M/s KSJ Metal Impex another partner of M/s Metal Impex. It is found that there is no operation in the company KSJ infrastructure Pvt Ltd and the transaction appears to be not genuine.",* which clearly reveals that, this satisfaction stating that he was in possession of information having a bearing on total income of the assessee, was not based on the seized material but was

based on apprehension and suspicion of the AO. Hence, the assertion of the Revenue that the seized document Annexure - ANN/MS/JMG/LS/S1 mentioned in the satisfaction note was incriminating material *qua* the assessee does not have any basis whatsoever.

31. For the above discussed reasons and in light of the decision of Hon'ble Apex Court (supra), we hold that the satisfaction note prepared by the AO does not satisfy the requirement of law as stipulated u/s. 153C of the Act, as the relevant seized material did not pertain to the assessee nor did it contain anything incriminating against the assessee. Accordingly, the notice issued under section 153C of the Act without satisfying the condition precedent as discussed (supra), the very assumption of the jurisdiction in the AY 2013-14 is held to be bad in the eyes of law and hence the consequent impugned order is hereby quashed.

32. The next legal contention of the assessee is that, the addition impugned in unabated AY 2013-14 was not based on any incriminating material found in the course of search and therefore has urged that the same be deleted. On this aspect, we find that, the settled legal position is that, in unabated assessments u/s 153C of the Act, the AO is empowered to only make those additions which are based on incriminating material found/unearthed during search. In support of this proposition, we gainfully refer to the decision of the Hon'ble Supreme Court in the case of

Pr. CIT v. Abhisar Buildwell (P.) Ltd. (supra) wherein it was held as under:-

> "In case where 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 assessment, no addition can be made by the AO in absence of any incriminating material found during the course of search u/s 132 or requisition u/s 132A of the Act, 1961."

33. Following the above judgement (supra), it is noted that the Hon'ble Supreme Court in the case of **DCIT vs U.K. Paints (Overseas) Limited (454 ITR 441)** has held that, in absence of any incriminating material which was found from the premise of the third party (searched person), no addition/s is permissible in an unabated assessment u/s 153C of the Act of the assessee (other person). The relevant findings taken note of by us are as follows:

> "1. In this batch of appeals, the assessments in case of each assessee were under section 153-C of the Income-tax Act, 1961 (for short, `the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of Pr. CIT v. Abhisar Buildwell (P.) Ltd.[2023] 149 taxmann.com 399 (SC), more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under section 153-A of the Act have been saved.

> 2. As observed hereinabove, as no incriminating material was found in case of any of the Assessees either from the Assessee or from the third party and the assessments were under section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court. Hence, all these appeals deserve to the dismissed and are accordingly dismissed."

34. In light of the above judicial precedents, we hold that in the case of unabated assessments of an assessee, no addition is permissible in the order u/s 153C of the Act unless it is based on any incriminating material found during the course of search.

35. Having regard to this legal position, we now revert back to the facts of the present case to ascertain whether the income which the AO assessed in the order impugned in this appeal was based on or made with reference to any incriminating document found in the course of search which would justify the addition made u/s 68 of the Act.

36. On perusal of the assessment order impugned before us, it is noted that the document marked as ANN/MS/JMG/LS/S-1 was the regular books of accounts of the lender, M/s KSJ Infrastructure Pvt Ltd. This fact has also been acknowledged by the AO in his assessment order. As noted earlier, these documents are noted to contain day book/ ledger forming part of the regular books of accounts of M/s KSJ Infrastructure Pvt Ltd and does not contain anything incriminating *qua* the assessee. The entries found noted in these seized documents relates to the entries passed in

the regular books of account of M/s KSJ Infrastructure Pvt Ltd, which does not have any bearing on the case of the assessee. Having examined these documents, we find that not only were these documents print-outs of the day-books from the regular books maintained by the lender, M/s KSJ Infrastructure Pvt Ltd but more importantly it did not contain any information pertaining or relating to the assessee which would incriminate it of any wrong-doing in any manner. When confronted with the same, even the Ld. CIT, DR was unable to co-relate or link as to how the contents of these documents led to unearthing of unexplained income of the assessee, that too represented by an '*asset*' by the AO in the AY 2013-14. Having regard to the foregoing facts, we thus find that, the information contained in the referred seized document i.e. ANN/MS/JMG/LS/S-1 did not contain anything pertaining or relating to the assessee in as much as it also did not contain anything which would be said to constitute '*incriminating*' material *qua* the assessee. Accordingly, the addition made u/s 68 of the Act in this unabated AY 2013-14 is held to be unjustified.

37. Before us, the Ld. CIT, DR also laid emphasis on the statement of Mr. Kamlesh Jain, which was extensively relied upon by the Ld. CIT(A) to justify the impugned addition. At the onset, it is noted that this statement was recorded on 28-09-2020 subsequent to the date of search (25-02-2020). Accordingly, this statement cannot under any circumstances be

construed as an incriminating material unearthed in the course of search, so as to justify the impugned addition in the unabated AY 2013-14. Moreover, we have also perused the contents of the statement of Mr. Jain and it is nobody's case that, he had admitted to any wrong doing or had averred that, the loan received by the assessee from M/s KSJ Infrastructure Pvt Ltd represented their unaccounted monies. Reading of the statement shows that, he had only sought time to verify from his records and submit the details regarding the same. This, according to us, cannot be treated as incriminating statement to draw adverse inference in an unabated assessment. Having regard to the foregoing and more so when the impugned statement itself did not contain any admission or surrender to any wrong doing, we do not countenance this plea of the Revenue that, the said statement constituted incriminating material unearthed in the course of search.

38. For the reasons set out in the preceding paragraphs, we are therefore of the considered view that there was no incriminating material found in the course of search on the basis of which addition u/s 68 of the Act could have been legally made in the unabated AY 2013-14. We accordingly direct the AO to delete the impugned addition made u/s 68 of the Act in the unabated AY 2013-14.

39. As we have already held the usurpation of jurisdiction u/s 153C of the Act to be invalid and also deleted the addition made u/s 68 of the Act for want of incriminating material found & seized in the course of search, the other grounds raised by the assessee on merits of the impugned addition has now become academic in nature and is therefore not being separately adjudicated upon.

40. Overall, therefore, the appeal of the assessee in ITA No.799/Chny/2024 for AY 2013-14 stands allowed.

41. We now take up the assessee's appeal in ITA No.800/Chny/2024 for AY 2014-15. Ground Nos. 1 & 2 of this appeal relates to the disallowance of loss of Rs.11,55,400/- incurred in futures & derivatives and addition of Rs.53,836/- by way of purported unexplained commission u/s 69C of the Act paid in relation thereto. Briefly stated, the AO, in the course of assessment, had requisitioned the details of trades in futures & options on the Stock Exchange. In response, the assessee furnished the details of transactions undertaken through registered broker, M/s Network Stock Brokers Ltd. Upon analysis of these trades, the AO held that the loss of Rs.11,55,400/- incurred therein was fictitious and disallowed the same. The AO also made an addition on account of unexplained commission expenditure u/s 69C of the Act being 2% of the value of trades, which according to the AO, the assessee would have incurred to accommodate

the fictitious loss. Being aggrieved by this action of the AO, the assessee preferred appeal before the Ld. CIT(A) who confirmed the same. Now the assessee is in appeal before us.

42. Assailing the action of the lower authorities, the Ld. AR of the assessee contended that the relevant AY 2014-15 was an unabated assessment year and therefore the impugned disallowance was unsustainable since it was not based on any incriminating material seized during the course of search. For this, the Ld. AR reiterated his reliance on the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (supra) and DCIT vs U.K. Paints (Overseas) Limited (supra). According to Ld. AR, even if this legal plea is not upheld, the impugned disallowance was not also permissible on merits, as according to him, the transactions in derivatives were supported by contemporaneous evidences and that the addition had been made by the AO only on suspicion. Per contra, the Ld. CIT, DR supported the order of the lower authorities.

43. After hearing the rival contentions and perusing the material on record, we find that admittedly AY 2014-15 was an unabated assessment year and during the course of search, no incriminating material was found with respect to the loss incurred on derivatives. As noted by us above, following the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (supra), in case of unabated assessments, the AO can

re-assess the income only to the extent and with reference to any incriminating material which the Revenue has unearthed in the course of search qua the assess qua the AY. On the given facts before us, we find that the AO has made disallowance of loss incurred in derivatives and addition by way of unexplained commission expense on the basis of his own analysis of the documents/details requisitioned in the course of assessment, without any reference to any seized material impounded in the course of search. Following the decision of Hon'ble Supreme Court (supra), we are in agreement with the Ld. AR that, the impugned addition/s could not have been made in the unabated AY 2014-15, in absence of there being any incriminating material found in the course of search relating to this impugned issue. Accordingly, this legal plea of the assessee stands allowed and hence both the additions by way of loss on derivatives of Rs.11,55,400/- and unexplained commission of Rs.53,836/- is hereby directed to be deleted.

44. We now take up Ground No. 3 of AY 2014-15 which is against the addition made on account of cash interest income of Rs.1,40,000/-. It is further noted that, the facts and issue involved in this ground of AY 2014-15 is identical to the sole Ground No.1 involved in the respective appeals for AY 2016-17 to 2020-21 in ITA Nos. 801 to 805 /Chny/2024. It is noted that the reasoning given by the AO for making the above addition/disallowance were verbatim same across all these AYs. Hence,

for the sake of convenience, and to avoid repetition of facts; we deem it fit to adjudicate *this particular common issue* across all AYs before us together.

45. The above grounds are noted to be against the Ld. CIT(A)'s action confirming the addition/s made by the AO on account of noting of interest income in cash, found in the excel sheets, which was extracted from server seized during the course of search on Shri Kamlesh Jain, whose path was E:/Extract-4HDD/D_Server_Cloud/G_drive-live-data/ AmithParik f server-data/Amithparik/PCNAMU. The details of the cash-interest income, as tabulated by the AO, is as follows:-

F.Y	AMOUNT
2012-13	70,000
2013-14	1,40,000
2015-16	2,00,000
2016-17	3,64,29,253
2017-18	4,36,95,943
2018-19	6,50,93,385
2019-20	56,30,000
Total	15,12,58,581

46. At the outset, the Ld. AR pointed out to us that, the above electronic data was seized from the office premises of Shri Kamlesh Jain, who was one of the person searched u/s 132 of the Act. He showed us that, the searched person i.e. Shri Kamlesh Jain had already owned up the cash interest notings found in this electronic data as his own undisclosed income and had already paid the taxes along with interest thereon. The Ld. AR, in this regard, invited our attention to the copy of

the Settlement Application filed by Shri Kamlesh Jain before the Income-tax Settlement Commission ('ITSC') on 12-03-2021, copy of which is found placed at 40 to 81 of the paper book, and more particularly to Page 53 of the application, to show us that, the interest computation excel sheets in question, which contained aggregate cash interest notings of Rs.15,12,58,581/- had been offered to tax by Shri Kamlesh Jain and his own undisclosed income and that he had also paid taxes thereon. The Ld. AR also pointed out that, although the Interim Board of ITSC had initially refused to admit the Settlement Application vide their order dated 30.07.2023 [Pages 90 to 96 of paper book], but the Hon'ble Madras High Court vide their order dated 17.11.2023 had reversed the order of the ITSC and treated the Settlement Application as deemed pending application before the ITSC for adjudication. The Ld. AR had placed the copy of the said High Court order at Pages 97 to 134 of the paper book. It was also brought to our notice that, the SLP preferred by the Revenue against the order of Hon'ble High Court has since been dismissed by the Hon'ble Apex Court vide order dated 09.07.2024 and therefore the matter of admissibility of Settlement Application had attained finality, copy of which was placed at Pages 135 to 137 of Paper Book. The Ld. AR thus urged that, the impugned addition was unsustainable for the reason that, the impugned seized material and the contents therein, basis of which the impugned addition was made, had already been owned up by the

searched person as belonging/ pertaining/relating to him and he had also paid the taxes on the incriminating notings mentioned therein and thus it could not now be inferred in the hands of the assessee. It was also urged that the impugned addition/s would otherwise also amount to double addition of the same sum and hence ought to be deleted. Per contra, the Ld. CIT, DR supported the order of lower authorities.

47. Heard both the parties. It is noted that, in the course of search conducted upon Mr. Kamlesh Jain, certain excel sheets were retrieved from the server which *inter alia* contained interest computation workings pertaining to the advances given by the assessee firm, in which Shri Kamlesh Jain was a partner. The workings are noted to contain various columns, like, cheque, TDS, cash, DD, Cu, Copper, etc. When confronted with this excel-sheet, it is noted that Mr. Kamlesh Jain in his sworn statement had stated that, the words 'DD', 'Cu' and 'Copper' represented cash interest received from parties. It is noted that, Mr. Kamlesh Jain, however is noted to have nowhere stated that, the assessee-firm was the recipient of the cash component of the interest income. Hence, ordinarily the presumption would therefore be against the person searched i.e. Mr. Kamlesh Jain unless he had stated otherwise. The Ld. AR also explained that, although the advances were given by the assessee-firm but only the cheque component of the interest income was received/accrued in the books of assessee-firm and that the cash component of the interest

income was being received/collected by the partner, Shri Kamlesh Jain in his own proprietary capacity. We find this to be corroborated by the fact that, Shri Kamlesh Jain in his Settlement Application filed before the ITSC on 12.03.2021 had admitted that these cash interest receipts by way of his own undisclosed income. It is noted that, the additional income offered to tax by Mr. Kamlesh Jain across AYs 2013-14 to 2020-21 *inter-alia* included the aggregate interest of Rs.15,12,58,581/- found mentioned in the aforesaid excel-sheets retrieved from the server. It is also noted that Shri Kamlesh Jain had *inter alia* discharged the tax liability on the aforesaid admitted additional income and the copies of the relevant tax challans were also enclosed along with the Settlement Application. We also note that, pursuant to the order of the Hon'ble Madras High Court dated 17.11.2023, which has since attained finality, the Settlement Application of Shri Kamlesh Jain stands admitted before the ITSC. Having regard to these contemporaneous facts, we thus find merit in the assessee's plea that since the cash notings found on the excel sheets of interest computation workings, had already been admitted and owned up by the searched person, i.e. Shri Kamlesh Jain, as his own undisclosed income, that too prior to the reopening of assessment of the assessee u/s 153C of the Act, the AO's inference that these cash interest notings related to the assessee was unjustified in as much as the impugned addition/s made on account of cash interest income by the AO

of the assessee amounted to double addition of the same sum, which we find to be unsustainable on facts. Accordingly, for the reasons set out in the foregoing, and particularly having regard to the fact that, the impugned cash interest income in question has already been admitted and offered to tax by Shri Kamlesh Jain, partner of the assessee firm as his own undisclosed income, these additions impugned before us are held to be unjustified and is accordingly directed to be deleted. Hence, Ground No.3 of AY 2014-15 and Ground No. 1 of AYs 2016-17 to 2020-21 stands allowed.

48. In the result, all the appeals in ITA Nos.799 to 805/Chny/2024 filed by the assessee stands allowed.

Order pronounced on the 30th day of September, 2024, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 30th September, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF