

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &  
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 179 & 178/JP/2024  
निर्धारण वर्ष/Assessment Year : 2018-19 & 2012-13.

Babu Lal Sharma, 305, Kanak Vihar, Dhavas Walon Ki Dhani, Amba Bari, Jaipur.	बनाम Vs.	Dy. Commissioner of Income-tax, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADVPL 0253E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &  
Shri R.K. Bhatra, CA

राजस्व की ओर से / Revenue by : Shri Ajey Malik, CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 30/09/2024

आदेश / ORDER

PER BENCH.

These two appeals by the assessee are directed against two separate orders dated 20.12.2023 of Id. CIT (Appeals)-4, Jaipur passed under section 250 of the Income Tax Act, 1961 for the assessment years 2018-19 and 2012-13. The grounds raised in the respective appeals are as under :-

**ITA No. 179/JP/2024 Assessment Year : 2018-19:**

1. That on the facts and in the circumstances of the case the Id. LD. CIT (A) is wrong, unjust and has erred in law in confirming addition to the extent of Rs. 18,40,000/- made by Id. AO to the income of the appellant on account of alleged unexplained cash credit u/s 68 of the I.T. Act, 1961 and in further upholding application of provision of sec. 115BBE of the IT Act, 1961 to the addition confirmed by him.
2. The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

**ITA No. 178/JP/2024 Assessment Year : 2012-13 :**

1. That on the facts and in circumstances of the case, the Id. AO is wrong, unjust and has erred in law in confirming addition of Rs. 25,00,000/- made by the Id. AO to the income of the appellant on account of alleged unexplained cash credit u/s 68 of the IT Act, 1961.
2. The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

The assessee has also raised an additional ground as under :

3. That on the facts and circumstances of the case the Id. LD. CIT (A) is wrong and bad in law in confirming the action of Id.AO in initiating the proceedings u/s 153C of the IT Act, 1961 in case of the appellant in as much as no incriminating documents pertaining to the appellants was found and / or seized during the course of search of Sh. Raju Sharma. The consequent assessment made by the Id. AO is, therefore, wrong and bad in law.

We first take up the appeal in **ITA No. 179/JP/2024** for the Assessment Year 2018-19 as under :-

2. The Brief facts of the case are that the appellant is an Individual and engaged in milk supply distribution activities at a very small scale. The activity of the assessee is that he collects milk from various villages and supply the same in Jaipur City. Besides the said

activity, he is carrying on agricultural activity on his agricultural land measuring about 9 bighas. The income of the assessee from the said activities is below taxable limits and accordingly no return of income was filed by the assessee for the year under consideration. A search and seizure action under section 132(1) of the IT Act, 1961 was carried out on 02.08.2017 at the various premises of Shri Raju Sharma Group, Jaipur and residential premises of the appellant was also covered therein. Satisfaction note was recorded on 19.09.2019. Notice under section 142(1) of the IT Act was issued to the appellant on 20.09.2019 which was duly served. The appellant was required to furnish return of income. However, the appellant had not furnished any return of income for the year under consideration. Further, show cause notices under section 144 of the IT Act were issued to the appellant on 11.10.2019 and 25.11.2019. The appellant again failed to furnish return of income for the year under consideration. Finally, the AO completed the assessment vide order dated 20.12.2019 at a total income of Rs. 27,00,000/- by making additions to Rs. 27,00,000/- on account of unexplained cash credit under section 68 of the Act. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. IT (A). The Id. CIT (A) after considering the written submissions of the assessee, allowed part relief of Rs. 8,60,000/- and confirmed the addition of Rs. 18,40,000/- made by the AO. The present appeal filed by the assessee before us is against this order of the Id. CIT (A).

3. Before us, the Id. A/R of the assessee has submitted his written submissions as under :-

"**Ground No. 1** of the appeal is challenging the addition of Rs. 18,40,000/- confirmed under section 68 of the IT Act, 1961 on account of alleged cash deposit in Current Account No. 11212032146 of the assessee on the following dates:-

Dates	Amount
19.03.2018	350000
19.03.2018	250000
19.03.2018	860000
19.03.2018	140000
21.03.2018	600000
31.03.2018	500000
Total	2700000

In this connection it is submitted that the finding and observations of the Id. AO is grossly wrong and far from the correct facts of the case. No alleged cash was deposited by the assessee in the above said bank account. All the above said transactions in the bank account were made through account payee cheques. The said amounts are borrowings of the assessee made from the following persons for the purpose of release of title deeds of his properties from the Income Tax Department:-

1. Shri Bheru Ram
2. Shri Khema Ram Choudhary
3. Shri Ram Prakash Sharma
4. M/s. Harshita Construction
5. Shri Lal Chand Sharma

A copy of his current bank account along with confirmation letters/affidavits of the above said persons who are agriculturists and the amount was received by them from the Government of India as a Kishan Credit Card Credit Facility Scheme. Copy of documentary evidences for verification of the above said facts are enclosed herewith. In this regard the assessee further

submits that the Id. AO made the addition treating the said amount as cash deposits whereas as evident and verifiable from the copy of bank statement and affidavits of the various persons; who advanced the loan to appellant that the said amount was not cash deposits but the deposits are by account payee cheques. Thus the basic foundation of addition made by the AO proves to be wrong and incorrect. In view of the above facts, the impugned addition made by the Id. AO to the income of the appellant on account of alleged cash deposits made in his bank account is apparently wrong and made only the basis of presumption and accordingly bad in law. The appellant during the course of appeal proceedings filed the confirmation letter(s), bank account statement and affidavit of lenders. In this regard, the appellant also submitted that if so required, the appellant is ready to produce all the loan creditors before the department for verification of the correct facts. A brief of the factual matrix on the issue is as follows:-

S. No	Name	Extract from affidavit	Remarks on affidavit	Comments of AO in Remand Report	CIT(A) Findings in order	Submission of appellant
1.	Lal Chand Sharma	<p>Affidavit 1</p> <p>2. यह है कि मैंने दिनांक 17.03.2018 को रूपये 3,50,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे रिश्तेदार को उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे बैंक खाते से किया गया है।</p> <p>Affidavit 2</p> <p>2. यह हैं कि मैंने दिनांक 17.03.2018 को रूपये 2,50,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे रिश्तेदार को</p>	The bank account copy in support of affidavit as submitted by the appellant is not legible.	On perusal of documents furnished in respect to Shri Lal Chand Sharma, it has been noticed that copy of bank account is not legible; further, supporting evidences regarding creditworthi	<p>The appellant has not given specific rebuttal of the remand report and has made common submissions w.r.t. all lenders in the rejoinder.</p> <p>There is no ID proof, address proof of the lender on record. The bank account from which it is claimed that the payment has been made to the</p>	<p>It is alleged in the order that no legible copy of bank statement of loan debtor filed. In this connection it is submitted that in the although image is little bit dull but in Bank statement both cheque no. as well as amount are legible. During the course of appellate proceedings, the appellant submitted</p>

		उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे बैंक खाते से किया गया है।		ness and identity have also not been furnished. Therefore, the transaction in the absence of these is not verifiable.	appellant is not legible. In rejoinder comments also no fresh copy was provided. Lender has stated in affidavit that his source of income is business however PAN, ITR, etc. have also not been submitted. No documents regarding creditworthiness have been submitted.	confirmation letter(s), PAN No., Bank account statement and affidavit(s) of the persons from he borrowed the said amounts by account payee cheques/ inter banking transfer. The said documents explained the source of deposits made by the said persons. Thus, the appellant has proved identity, genuineness and creditworthiness of the loan creditors and accordingly he completely discharges the onus cast by the IT Act,1961 to prove deposits in his Bank account.
2.	Khema Ram Choudhary	2. यह है कि मैंने दिनांक 19.03.2018 को रूपये 8,60,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे मित्र को उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे बैंक खाते में किसान क्रेडिट कार्ड खाते से आये थे।	As per copy of bank statement submitted by the appellant, Rs. 8,60,000/- credited on 19.03.2018	On perusal of documents furnished in respect to Shri Khema Ram, supporting evidences regarding	The appellant has not given specific rebuttal of the remand report and has made common submissions w.r.t. all lenders in the rejoinder.	The Ld. AO accepted and submission and documentary evidences filed and deleted the addition.

			<p>in his bank account with remarks as Cr. KHEMA RAM CHOUDHARY .</p>	<p>creditworthiness and identity have also not been furnished. Therefore, the transaction in the absence of these not verifiable. The said person also not having PAN.</p> <p>Further on 19.03.2018 a credit entry amounting to Rs. 8,60,000/- is appearing in his bank account and the same amount was transferred on very same day i.e. on 19.03.2018, thus the same appears to be a non-genuine transaction.</p>	<p>The credit received in the bank account is not cash deposit and is received from another account of Sh. Khema Ram Choudhry. The lender has given affidavit that the same was from his Kisan Credit Card account. The Ld. AO has failed to rebut this statement which is prima-facie correct from the perusal of bank statement. Ld. AO has not brought on record any counter evidence.</p> <p>In the affidavit it is stated that the source of income is agriculture and land documents are attached however there is no attachment. However once it is found that the source of payment received by the appellant is bank / kisan credit card the income earning source documents are</p>
--	--	--	--	---	---

					immaterial in the factual background of the case when there is no other adverse evidence on record.	
3.	Ram Prakash Sharma	2. यह है कि मैंने दिनांक 19.03.2018 को रूपये 1,40,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे रिश्तेदार को उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे बैंक खाते में किसान क्रेडिट कार्ड खाते से आये थे।	As per copy of bank statement submitted by the appellant, Rs. 1,40,000/- credited on 19.03.2018 in his bank account with remarks as CASH RECEIPT.	On perusal of documents furnished in respect to Shri Ram Prakash Sharma, supporting evidences regarding creditworthiness and identity have also not been furnished. Therefore, the transaction in the absence of these not verifiable. The said person also not having PAN. Further 19.03.2018 cash amounting to Rs. 1,40,000/- was	The appellant has not given specific rebuttal of the remand report and has made common submissions w.r.t. all lenders in the rejoinder.  On 19.03.2018 cash amounting to Rs. 1,40,000/- was deposited in his bank account and the same amount was transferred on very same day i.e. on 19.03.2018.  On 19.03.2018 cash amounting to Rs. 1,40,000/- was deposited in his bank account. Later on another amount of Rs. 3,24,000/- is received on 19.03.2018 which (Rs. 3,30,000) is withdrawn on same date for self. Identity of the real source lender /	During the course of appellate proceedings, the appellant submitted confirmation letter(s), PAN No., Bank account statement and affidavit(s) of the persons from he borrowed the said amounts by account payee cheques/ inter banking transfer. The said documents explained the source of deposits made by the said persons. Thus, the appellant has proved identity, genuineness and creditworthiness of the loan creditors and accordingly he completely discharges the onus cast by the IT Act,1961 to prove deposits

				deposited in this bank account and the same amount was transferred on very same day i.e. on 19.03.2018, thus the same appears to be a non-genuine transaction.	cash source is not disclosed as apparently the account of Sh. Bhairu Ram is used as conduit.  The bank statement email is on the email id of one Kamlesh Sharma.  Evidences regarding creditworthiness and identity have also not been furnished.	in his Bank account.
4	Bhairu Ram	2. यह है कि मैंने दिनांक 21.03.2018 को रूपये 6,00,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे मित्र को उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे केसीसी खाते से दिया गया है।	As per copy of bank statement submitted by the appellant, Rs. 9,90,000/- credited on 19.03.2018 in his bank account with remarks as CASH RECEIPT	On perusal of documents furnished in respect to Shri Bheru Ram, supporting evidences regarding creditworthiness and identity have also not been furnished. Therefore, the transaction in the absence of these not verifiable.	The appellant has not given specific rebuttal of the remand report in his rejoinder comments and has made common submissions w.r.t. all lenders.  The bank statement email is on the email id of one Kamlesh Sharma.  Evidences regarding creditworthiness and identity have also not been furnished.	During the course of appellate proceedings, the appellant submitted confirmation letter(s), PAN No., Bank account statement and affidavit(s) of the persons from he borrowed the said amounts by account payee cheques/ inter banking transfer. The said documents explained the source of deposits made by the said persons.

				<p>The said person also not having PAN. Further on 19.03.2018 cash amounting to Rs. 6,00,000/- was deposited in his bank account and the same amount was transferred on 21.03.2018, thus the same appears to be a non-genuine transaction.</p>	<p>On 19.03.2018 cash amounting to Rs. 6,00,000/- was deposited in his bank account and the same amount was transferred on 21.03.2018 to the appellant. Identity of the real source lender is not disclosed as apparently the account of Sh. Bhairu Ram is used as conduit.</p>	<p>Thus, the appellant has proved identity, genuineness and creditworthiness of the loan creditors and accordingly he completely discharges the onus cast by the IT Act,1961 to prove deposits in his Bank account.</p>
5.	Harshita Construction	<p>2. यह है कि मैंने दिनांक 31.03.2018 को रूपये 5,00,000/- श्रीमान बाबुलाल शर्मा जो कि मेरे मित्र को उनके मांगने पर उधार दिये थे। उपयुक्त रूपया मेरे बैंक खाते से किया गया है।</p>	<p>As per copy of bank statement submitted by the appellant, Rs. 5,00,029.50/- debit on 31.03.2018 from its bank account with remarks as CHQ/948341 TRANSFER – BABU LAL SHARMA</p>	<p>On perusal of documents furnished in respect to M/s Harshita Construction, supporting evidences regarding creditworthiness and identity have also not been</p>	<p>The appellant has not given specific rebuttal of the remand report and has made common submissions w.r.t. all lenders.</p> <p>There is no ID proof, address proof of the lender on record. The affidavit is signed by one Rakesh Meena however his</p>	<p>During the course of appellate proceedings, the appellant submitted confirmation letter(s), PAN No., Bank account statement and affidavit(s) of the persons from he borrowed the said amounts by account payee cheques/ inter banking transfer. The said</p>

				<p>furnished. Therefore, the transaction in the absence of these not verifiable</p>	<p>designation / connection with lender is not specified. Lender has stated in affidavit that his source of income is building construction activity however PAN, ITR, etc. have not been submitted. No documents regarding creditworthiness have been submitted.</p>	<p>documents explained the source of deposits made by the said persons. Thus, the appellant has proved identity, genuineness and creditworthiness of the loan creditors and accordingly he completely discharges the onus cast by the Act,1961 to prove deposits in his Bank account.</p>
--	--	--	--	---	---	---

The Id. AO made the addition treating the said amount as cash deposits whereas amount was not cash deposits but the deposits are by account payee cheques. Thus the basic foundation of addition made by the AO proves to be wrong and incorrect. In view of the above facts, the impugned addition made by the Id. AO to the income of the appellant on account of alleged cash deposits made in his bank account is apparently wrong and made only the basis of presumption and accordingly bad in law. Further the Id. AO has not mentioned any section of the Income Tax Act under which she made the addition on account of deposits in bank account. In view of the above facts and circumstances it is requested that the impugned addition made by Ld. AO and confirmed Ld. CIT(A) to the extent of Rs.18,40,000/- may kindly be deleted.”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.
5. We have heard the contentions of both the parties and carefully perused the relevant material on record. The AO has made the addition observing that the source of cash deposited in the bank account by the assessee could not be verified in absence

of return of income and treated the same as unexplained cash credit under section 68 read with section 115BBE of the IT Act, 1961. At the appellate proceedings, the Id. CIT (A) called for remand report from the AO, the extract of which are as under :-

*" Please refer to the above aforementioned subject. Aforesaid appeal is pending in this office for the Assessment Year 2018-19. The LD.AR of the appellant Sh. R.K. Bhatra has furnished detailed written submissions alongwith paper book (page 1 to 45) vide letter dt. 11.07.2023.*

*2. During the course of appellate proceedings, the Authorized Representative of the appellant has furnished an application for additional evidences under Rule 46A, detailed written submissions (copies enclosed). You are requested to examine the following :-*

- (i) Whether the additional evidences are admissible in terms of Rule 46A or not and*
- (ii) Without prejudice to your comments for Sr. No. (a) above, you are also directed to examine the additional evidences on merits."*

The AO furnished his remand report dated 14.11.2023. The Id. CIT (A) after considering the facts of the case, written submissions of the appellant and the remand report and the rejoinder submitted by the appellant, the LD. CIT (A) allowed part relief of Rs. 8,60,000/- by sustaining the addition of Rs. 18.40 lacs.

5.1 On perusal of the material available on record and the documentary evidences, we find that as regards addition of Rs. 27,00,000/-, the AO has not controverted /denied the facts and submissions made by the appellant that there was no alleged cash deposit of Rs. 27.00 lacs in his bank account, on which basis the impugned addition of Rs. 27.00 was made by the AO. The facts of the case are that a sum of Rs.

27.00 lacs were borrowed by the appellant by account payee cheques or inter banking transfer and the said cheque amounts were deposited in his bank account. Further, the said amount was arranged to deposit the amount in PD A/c of the Income Tax Department to release the assessee's residential house No. 239 registered documents seized by the Income Tax Department during the course of search on Shri Raju Sharma. During the course of appellant proceedings, the appellant submitted confirmation letters and affidavits of the persons from whom the assessee borrowed the said amounts by account payee cheques/inter banking transfer. The said documents explained the sources of deposits made by the said persons, PAN numbers of the persons who were filing income tax returns, copies of bank accounts have also been submitted. All the loan creditors have confirmed that they have given the loans to the appellant by submitting affidavits duly notarized and bank accounts. In the affidavits, all the loan creditors have stated that in case the Income-Tax Department wants to record their statement in person in respect of the loan amount, they are ready to cooperate with the Income Tax Department. On the contrary, the AO has not made any enquiry to prove that the transactions of the loan creditors are not genuine. Once the assessee has produced the letters and affidavits, then the primary onus on the assessee has been discharged. The Id. CIT (A) while confirming the addition has placed reliance on the various decisions. However, we find that all those decisions are not applicable in the facts of the present case of the appellant. The AO has only expressed his doubt about the genuineness but this is only a suspicion without any basis. When the assessee has produced all the relevant documents which includes PAN, bank accounts,

notarized affidavits of the loan creditors etc. offering to give statements before the Income Tax authorities, then in the absence of any contrary material to controvert or disprove the documentary evidence produced by the assessee, the addition made by the AO under section 68 is not justified. Thus, the appellant has proved identity, genuineness and creditworthiness of the loan creditors and accordingly discharged the onus cast by the IT Act, 1961 to prove the deposits in the bank account of the appellant. Accordingly, in view of above discussions and also relying on the judgement of the Hon'ble Supreme Court in the case of Mehta Parikh & Co. vs. LD. CIT, 30ITR 181 (SC) and LD. CIT vs. Smt. P.K. Noorjehan, 103 Taxman 382 (SC), we find that the primary onus on the assessee to prove the identity and creditworthiness of the creditors as well as the genuineness of the transactions stood proved and neither the Id. AO nor LD. CIT (A) have controverted and or gave negative finding regarding the averment made in the affidavits filed before the AO. It is also verifiable from the Affidavits that the deponents have stated that they are ready to appear to the I.T. Authorities, if so called. As per record, it is evident that the AO has not called the loan creditors nor further enquiry was made in this regard. Thus the legal inference is that the AO has accepted the statements made by the deponents by filing the affidavits. Accordingly, the addition of Rs. 18.40 lacs sustained by the LD. CIT (A) is deleted.

6. Since we have deleted the addition on account of alleged unexplained cash credit under section 68 of the IT Act, 1961, the application of provisions of section 115BBE has become infructuous.

7. In the result, appeal of the assessee is allowed.

**ITA No. 178/JP/2024 Assessment Year 2012-13.**

For the sake of convenience, we first adjudicate the **additional ground** as under :

8. The brief facts of the case are that the appellant is an Individual and engaged in milk supply distribution activities at a very small scale. The activity of the assessee is that he collects milk from various villages and supply the same in Jaipur City. Besides the said activity, he is carrying on agricultural activity on his agricultural land measuring about 9 bighas. The income of the assessee from the said activities is below taxable limits and accordingly no return of income was filed by the assessee for the year under consideration. A search and seizure action under section 132(1) of the IT Act, 1961 was carried out on 02.08.2017 at the various premises of Shri Raju Sharma Group, Jaipur and residential premises of the appellant was also covered therein. A Notice u/ s 153C of the Act was issued to the appellant on 20.09.2019. The appellant was required to furnish return of income within 10 days of service of this notice. However, the appellant had not furnished any return of income for the year under consideration on due date. Further, a show cause notice u/ s 144 of the Act was issued to the appellant on 12.11.2019. However, no response or written submission was furnished by the appellant. As submitted above that he is a very petty means person and neither having any computer and/or other device on which mail can be delivered. Thus no notice under section 153C as alleged by the Department was ever served on the assessee. No

further notice as mentioned by the Id. AO in her assessment order was served on the assessee. In view of the above facts, the assessee was not able to comply with the terms of the said statutory notices issued to him although not legally valid. Finally, the AO completed the assessment vide order dated 20.12.2019 at a total income of Rs. 25,00,000/- by making additions of Rs. 10,00,000/- on account of unexplained cash deposited in bank account and Rs. 15,00,000/- on account of unexplained credit entry in bank account. Aggrieved by the aforesaid assessment, the appellant has filed the appeal before Ld. CIT(A). The LD. CIT (A) vide his order dated 20.12.2023 after considering the written submissions of the assessee confirmed the addition made by the AO.

Now the assessee is in appeal before us.

9. Before us, the Id. A/R of the assessee has submitted his written submissions as under :-

“ That on the facts and circumstances of case the Ld. CIT(A) is wrong and bad in law in confirming the action of Ld. AO in initiating the proceedings u/s 153C of the IT Act, 1961 in case of the appellant in as much as no incriminating documents pertaining to the appellants was found and / or seized during the course of search of Sh. Raju Sharma. The consequent assessment made by the Ld. AO is therefore wrong and bad in law.

The said ground of appeal is challenging the action of the Id. AO in initiating the proceedings under section 153C of the IT Act, 1961 against the assessee. For ready reference and for the sake of convenience, the provisions of section 153C are reproduced hereunder below:-

“**153C.** 72[(1)] [Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, 74 belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [and that Assessing Officer shall proceed against each such other person and issue notice and assessor reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A] :]

**[Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :]

**[Provided further** that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [and for the relevant assessment year or years as referred to in sub-section (1) of section 153A] except in cases where any assessment or reassessment has abated.]

[(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]

[(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.]”

As per above provisions of law, it is mandatory to issue the notice under section 153C that a person other than the person referred to in section 153A, then the books of account or documents or assets, seized shall be handed over to the Id. AO having jurisdiction over such other person and the Id. AO shall proceed against such other person and issue notice and assess or reassess the income of other person in accordance with the provisions of section 153A. Thus, as per requirement of section 153C, there must be some books of account and/or other valuable articles or things or documents found during the course of proceedings under section 132 of the IT Act, 1961 with some other person and the said books of account, articles or things should pertain to other person. Further satisfaction notes are also required for issuing the notice to the other person by the Id. AO of the person referred to in section 153A as well as by the Id. AO of some other person. It is submitted that as evident and verifiable from the assessment order itself that no incriminating document, valuable articles or things pertaining to the appellant for the year under assessment were found with the person referred to in provisions of section 153A and accordingly time limit for issue of a notice under section 142(1) /143(2) stood expired on 30.09.2013, as such no assessment was pending for the above said assessment year when the search was conducted on the person referred to section 153A of the Act. Thus the assessment year under appeal is unabated as per provisions of section 153A and the additions, if any, to be made would be restricted to incriminating document found during the course of search. In other

words, no routine additions are permitted. As in the case of the assessee, the search action under section 132 was carried out against the person referred in section 153A of the IT Act, 1961 on 02.08.2017 and accordingly no notice under section 142(1) and/or 143(2) can be issued upto 30.09.2013 and latest by 31<sup>st</sup> March, 2015. In the light of above facts it is evident that on the date of search i.e. 02.08.2017, the assessment year 2012-13 was unabated and accordingly no addition except supported by any incriminating document is permissible as per law.

**1(i)** This position has been settled by a number of judicial pronouncements, few of which are reproduced herewith:

(i) **All Cargo Global Logistic Ltd. Vs. DCIT 137 ITD 287 (Mum)(SB) – Upheld by Bombay High Court.**

**Relevant** extracts:

**Para 58 of SB** decisions: Thus, question No. 1 before us is answered as under:

- (a) In assessments that are abated, the A.O. retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately :
- (b) **In other cases**, in addition to the income that has already been assessed, the assessment u/s 153A will be made **on the basis of incriminating material**, which in the context of relevant provisions means – (i) books of account , other documents, found in the course of search but not produced in the course of original assessment, and (ii) Undisclosed income or property discovered in the course of search.

**CIT vs Kabul Chawla Delhi High reported in (2016) 380 ITR 5733 (Delhi)** vide ITA Nos. 707/2014 and others, dated 28.8.2015, (SLP dismissed by Hon'ble Supreme Court on 7-12-2015) wherein the Hon'ble Delhi High Court has reiterated the above settled legal proposition that **since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed .....**

Rajasthan High **Court** in the case of **Jai Steel (India) vs ACIT** reported in **259 CTR (Raj.) 281** “..... The **requirement** of assessment or reassessment under the said section has to be read in the context of sections 132 or 132A, in as much as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is

only in the context of the abated assessment under second proviso which is required to be assessed.

.....

.....

**Para 26 of the Judgement:** The plea raised on behalf of the assessee that as the first proviso provides for assessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. **The words ‘assess’ or ‘reassess’ have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word ‘assess’ has been used in the context of an abated proceedings and word “reasons” has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.**

There are various recent decisions on the issue that there can be no addition in respect to completed assessment if no incriminating material found during the course of search namely :-

*Jai Lokenath Oil Extraction P. Ltd. Vs. DCIT (2017) 166 ITD 161 (Kol – ITAT).*

*CIT Vs. Deepak Kumar Agarwal (2017) 251 Taxman 22 (Bombay H.C.).*

*Ratan Kumar Sharma Vs. DCIT (ITAT – JPR ITA No. 797/JP/2014 order dated 25-7-1).*

Similar view point was expressed by the Hon’ble Delhi High Court in the case of **Kabul Chawla vs. ACIT 380 ITR 573 (Del HC) (order upheld by Hon’ble Supreme Court)**. The **relevant observation of Hon’ble court** could be seen in para 37 & 38 of order.

*Summary of the legal position*

37. *On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law exploited 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 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. *Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

- iii. The AO will exercise *normal* assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment file 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. In so far 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 on/y on the basis of some incriminating material unearthed during the course of

**1(ii)** The above said legal position is finally upheld by the Hon'ble Supreme Court of India, in case of PCIT vs. Abhisar Buildwell P. Ltd. in Appeal No. 6580 of 2021 vide Order dated 24.04.2023. In the said judgment the Hon'ble Supreme Court has relied upon the various judgments of the Hon'ble High Courts including Delhi High Court judgment in case of Kabul Chawla. The para 13 of the said judgment is reproduced herein below:-

***"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."***

In view of the above facts, the impugned proceedings initiated under section 153C and consequently the assessment order passed is grossly wrong and bad in law. It is requested that the impugned order passed on the basis of said illegal notice may kindly be quashed.”

10. On the other hand, the Id. D/R supported the orders of the Revenue Authorities.

11. We have heard the rival contentions and perused the material available on record. It would be pertinent to understand the scheme of assessment u/s 153C of the Act. Relevant provisions of the Act read as under:

“Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that

(a) any money, bullion jewellery or other valuable article or thing, seized or requisitioned, belongs to or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person 3 and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 6 sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which 10 search is conducted or requisition is made<sup>4</sup> and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of

such other person of such assessment year in the manner provided in section 153A.

11.1. As per above provisions of law, it is mandatory to issue the notice under section 153C that a person other than the person referred to in section 153A, then the books of account or documents or assets, seized shall be handed over to the AO having jurisdiction over such other person and the AO shall proceed against such other person and issue notice and assess or reassess the income of other person in accordance with the provisions of section 153A. Thus, as per requirement of section 153C, there must be some books of account and/or other valuable articles or things or documents found during the course of proceedings under section 132 of the IT Act, 1961 with some other person and the said books of account, articles or things should pertain to other person. Further satisfaction notes are also required for issuing the notice to the other person by the Id. AO of the person referred to in section 153A as well as by the Id. AO of some other person. It is evident and verifiable from the assessment order itself that no incriminating document, valuable articles or things pertaining to the appellant for the year under assessment were found with the person referred to in provisions of section 153A and accordingly time limit for issue of a notice under section 142(1) /143(2) stood expired on 30.09.2013, as such no assessment was pending for the above said assessment year when the search was conducted on the person referred to section 153A of the Act. Thus the assessment year under appeal is unabated as per provisions of section 153A and the additions, if any, to be made would be restricted to

incriminating document found during the course of search. In other words, no routine additions are permitted. As in the case of the assessee, the search action under section 132 was carried out against the person referred in section 153A of the IT Act, 1961 on 02.08.2017 and accordingly no notice under section 142(1) and/or 143(2) can be issued upto 30.09.2013 and latest by 31<sup>st</sup> March, 2015. In the light of above facts, it is evident that on the date of search i.e. 02.08.2017, the assessment year 2012-13 was unabated and accordingly no addition except supported by any incriminating document is permissible as per law.

11.2. In light of the above, we are of the considered opinion that, as per provisions of law, the Assessing Officer can proceed only on the basis of incriminating material which has a bearing on determination of the total income of such other person. Nowhere in the assessment order it has been mentioned that any incriminating material has been seized related to the alleged business of the assessee. The Id. A/R placed reliance on the decision of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. in Appeal No. 6580 of 2021 vide order dated 24.04.2023. We find that the Hon'ble Supreme Court placing reliance on various judgments of Hon'ble High Courts including Delhi High Court judgment in the case of Kabul Chawla, observed in para 13 of its order as under :

***"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."***

12. Considering the facts in totality, additions/disallowances made by the Assessing Officer are devoid of any incriminating material. Therefore, such assessment orders cannot be sustained and deserve to be quashed. The additional ground is allowed.

13. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30/09/2024.

Sd/-

( राठौड़ कमलेश जयंतभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/09/2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Babu Lal Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 179 & 178/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar