

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकर अपील सं/ ITA No.1227/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
2. आयकर अपील सं/ ITA No.1228/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
3. आयकर अपील सं/ ITA No.1229/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
4. आयकर अपील सं/ ITA No.1230/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)

M/s SG Wind Farm Private Limited 21, Pollachi Road, Palladam, Tirupur-641 664.	बनाम/ Vs.	DCIT Central Circle-3 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AARCS-5303-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/Date of Hearing	:	25-10-2024
घोषणा की तारीख /Date of Pronouncement	:	19-11-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2014-15 to 2017-18 arises out of separate orders of learned first appellate

authority. However, the facts as well as issues are stated to be substantially the same. First, we take up appeal for AY 2014-15 which arises out of the order of Ld. Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] dated 22-03-2024 in the matter of an assessment framed by Ld. AO u/s.143(3) r.w.s 153A of the Act on 18-06-2021. The grounds taken by the assessee read as under: -

1. The order of the CIT(Appeals) - 20, Chennai dated 29.02.2024 vide DIN & Order No. ITBA/APL/S/250/2023-24/1061736911(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.
2. The CIT(Appeals) - 20, Chennai erred in confirming the search assessment in terms of section 153A of the Act in contra distinction to a search assessment as per section 153C of the Act without assigning proper reasons and justification and ought to have appreciated that the order of search assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
3. The CIT(Appeals) - 20, Chennai erred in confirming the validity of framing of the assessment under Section 153A of the Act in the absence of seized material during the course of the search made in hands of the appellant and further erred in confirming the addition made in the search assessment order passed in terms of Section 153A of the Act without assigning proper reasons and justification.
- 4, The CIT(Appeals) - 20, Chennai failed to appreciate that having assessed the appellant in terms of Section 153A of the Act based on the incriminating materials seized during the search in the premises of Mr. O. Arumugasamy and others in contra distinction to the search in the premises of the appellant herein, wherein no incriminating materials were seized for the purpose of making the disputed addition(s) in the search assessment order(s), the consequential search assessment order passed should be reckoned as bad in law.
5. The CIT (Appeals) - 20, Chennai failed to appreciate that having used the disputed search materials seized in the premises at Mr. O. Arumugasamy and others for making the disputed addition and further having not seized any incriminating material in support of the disputed addition in the hands of the searched person, the assessment completed by making additions not arising from the search conducted in the hands of the appellant should be reckoned as nullity in law.
6. The CIT(Appeals) - 20, Chennai failed to appreciate the law declared by the Supreme Court in the- case reported in 454 ITR 212 on the scope of jurisdiction on the scope of jurisdiction under Section 153A of the Act in proper perceptive and as a consequence ought to have appreciated that the search assessment order under consideration was invalid, passed without jurisdiction and not sustainable both on facts and in law.
7. The CIT(Appeals) - 20, Chennai failed to appreciate that the finding rendered with respect to framing of assessment under Section 153A of the Act in the absence of incriminating material in contrary to judicial precedents, thereby vitiating the passing of the appellate order.

8. The CIT(Appeals) - 20, Chennai failed to appreciate that the findings rendered in this regard in the impugned order was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

9. The CIT(Appeals) - 20, Chennai erred in sustaining the addition of Rs.58,80,000/- being the sum alleged to have been earned as unaccounted interest income for the loan given to Mr. O. Arumugasamy and others as income of the appellant in terms of Section 56 of the Act in the computation of taxable total income without assigning proper reasons and justification.

10. The CIT(Appeals) - 20, Chennai failed to appreciate that the additions made merely based on the 'dairy statement' seized during search in the premises of Mr. O. Arumugasamy and others was wholly unjustified and ought to have appreciated that the subsequent affidavit was rejected on superfluous reasons, thereby vitiating the action of the First Appellate Authority in confirming the addition made.

11. The CIT(Appeals) - 20, Chennai failed to appreciate that the rejection of the affidavits and the explanation provided by the appellant on the ground that other parties had not appeared before the Assessing Officer in response to the summon issued by them was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The CIT(Appeals) - 20, Chennai failed to appreciate that appellant had discharged the onus cast upon in explaining the transaction under consideration by way of affidavits from the person whose statements were relied on and ought to have further appreciated that the action of the First Appellate Authority in not conducting any further enquiry while passing the order impugned is unsustainable in law.

13. The CIT(Appeals) - 20, Chennai failed to appreciate that reasons provided in the affidavit for explaining the transactions under consideration was not understood in proper perceptive while rejecting the same on mere suspicion and surmises.

14. The CIT(Appeals) - 20, Chennai failed to appreciate that misreading of the sworn statements would vitiate the addition made and further ought to have appreciated that having not rejected the affidavits filed from the sellers, the presumption of extra consideration paid would fall to the ground in the light of the law consistently declared by the Supreme Court.

15. The CIT(Appeals) - 20, Chennai failed to appreciate that the findings recorded in this regard in of the impugned order were wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

16. The CIT(Appeals) - 20, Chennai failed to appreciate that having not examined the nature of transactions reflected in the invalid loose sheets, the addition made should be reckoned as bad in law in view of the wrong presumption of extra consideration received.

17. The CIT (Appeals) - 20, Chennai erred in sustaining the denial of the claim for deduction under Section 80-IA of the Act to the tune of **Rs. 8,70,87,757** /- in the computation sheet annexed to the search assessment order despite accepting the return of income filed by the Appellant without assigning proper reasons and justification.

18. The CIT(Appeals) - 20, Chennai failed to appreciate that the Appellant had filed its original return of income within the time stipulated under Section 139(1) of the Act and the provisions of Section 80AC has been fully complied with thereby vitiating the addition made in the computation sheet annexed to the search assessment order.

19. The CIT(Appeals) - 20, Chennai failed to appreciate that in any event, there was no time limit prescribed statutory for filing of the return in consequence to issuance of notice under Section 153A of the Act and ought to have appreciated that the time granted for filing the return of income to the said notice was only for procedural and compliance purposes, while further ought to have appreciated that the return of income filed later in the said

proceedings was correctly accepted by issuance of notice under Section 143(2) of the Act, thereby vitiating the presumption of applicability of the provisions in Section 80AC of the Act in the context of the claim made right from the beginning in terms of Section 80IA of the Act for which reasons, even though not captured in the computation sheet / search assessment order and communicated only in the rejection order passed under Section 154 of the Act

20. The CIT(Appeals) - 20, Chennai failed to appreciate that the difficulties faced on account of COVID 19 Pandemic and restrictions imposed in relation thereto were completely overlooked and brushed aside inasmuch as the judicial trend in this regard would vitiate the computation adopted in the computation sheet annexed to the search assessment order.

21. The CIT(Appeals) - 20, Chennai failed to appreciate that the provisions of Section 80AC of the Act would apply only to the return of income filed within the time limits stipulated in Section 139(1) of the Act thereby vitiating the determination of taxable total income forming part of the computation sheet annexed to the search assessment order.

22. The CIT(Appeals) - 20, Chennai failed to appreciate that the entire recomputation of taxable total income including the quantification of interest charged under various sections and non-granting of deductions under Chapter VI-A of the Act was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

23. The CIT(Appeals) - 20, Chennai failed to appreciate that the Appellant having complied with the conditions prescribed in relation to claim of deduction under Section 80-1A of the Act scrupulously, the denial of such claim in the computation sheet annexed to the search assessment order is wholly unjustified and not sustainable in law.

24. The CIT(Appeals) - 20, Chennai failed to appreciate that the assessment order under consideration was passed out of time, Invalid, passed without jurisdiction and not sustainable both on facts and in law.

As is evident, the sole subject matter of appeal is additions made by lower authorities consequent to search proceedings in the case of the assessee. The assessee has challenged the assumption of jurisdiction on legal grounds and also assailed the quantum additions on merits.

2. The Ld. AR, drawing attention to the documents as placed on record, assailed the assessment proceedings on the legal ground and submitted that that in the absence of any incriminating material found during the course of search, no addition could be made in the hands of the assessee as per the ratio of decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment in the absence of any incriminating material found during the course of

search. The Ld. CIT-DR advanced arguments and supported the findings of lower authorities. The case was put for clarification which was responded to by both the sides. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in the business of wind energy production and sales. The assessee filed return of income on 29-09-2014 offering income of Rs.25.63 Lacs, The same was duly processed u/s 143(1) and no assessment proceedings were pending for this year on the date of search (06-03-2019) on the assessee. In other words, this was unabated assessment year.

3.2 However, the impugned assessment proceedings stem from search carried out by the department u/s 132 in the case of the assessee group on 06-03-2019. Consequently, notice u/s 153A was issued on 06-02-2020 and in response, the assessee filed return of income of income u/s 153A on 18-08-2020 declaring income of Rs.25.63 Lacs which was the same as income offered in regular return of income filed u/s 139(1).

3.3 In the assessment order, Ld. AO referred to search conducted by the department on 09-11-2017 in the case of another group viz. Shri O. Arumugasamy and M/s Senthil group of companies wherein certain incriminating material was found from the premises of Smt. R. Santhamani (cashier of M/s Senthil Group of companies) as well as from the office premises of M/s Senthil Group of Companies. The same inter-alia, includes details of loan taken in cash as well as through cheques from various creditors, payment of interest in cash to them and repayment of loans by the said group.

3.4 It was noted by Ld. AO that certain loans were received in cash as well as through bank from Shri PK Ganeswar (Prop. of Shri Ganesha Textile) as well as from the assessee and interest was paid in cash to them. The details thereof along with scanned images of incriminating material as well as statements recorded during the course of search proceedings on that other group has already been extracted extensively in the assessment order.

3.5 During search on assessee group, details of loans advanced to debtors were found from the office premises of Shri Ganesha Textile (proprietorship of Shri PK Ganeshwar). The details of the same were also available in Tally Data. On verification of the same, it was found by Ld. AO that the assessee company and Shri PK Ganeshwar had advanced loans to Shri O. Arumugasamy, Shri A. Senthil Kumar (son of Shri O. Arumugasamy), and Shri M. Palanisamy (business associate of Shri O. Arumugasamy). The details of the same along with ledger extracts have been extracted on Page No.30 onwards in the assessment order. The material as seized from other group indicated that there was a loan received entry of Rs.20 Crores from PK Ganeshwar Tirupur Tip Top and interest payment at the rate of 3% per month for the same loan.

3.6 In assessee's premises, there was a sale agreement between Shri R. Eswaran (shareholder of Tirupur Tip Top Chit funds) and Sh. Senthil Kumar (son of Shri O. Arumugasamy) and director of M/s Kasthuri Mills Pvt. Ltd.

3.7 Considering all the above facts, Ld. AO concluded that there exists a nexus between Shri O. Arumugasamy, Shri PK Ganeshwar, assessee and R. Eswaran of Tirupur Tip Top Chit funds. Hence, in the seized material of Shri O. Arumugasamy, notings were mentioned as Tirupur

Tip Top C/o PK Ganeshwar, Further, cash loan of Rs.20 Crores entered in the seized material of Shri O. Arumugasamy as 'PK Ganeshwar C/o TPR Tip Top' was also repaid by Shri O. Arumugasamy during demonetization as part of Rs.36 Crores that was totally repaid to Shri PK Ganeshwar. As per document seized during search on that group, outstanding quantum of loan lent by Shri PK Ganeshwar and the assessee was Rs.71.88 Crores. Out of the same, the undisclosed portion was Rs.42.34 Crores whereas the balance was Rs.29.54 Crores which was the disclosed portion as per the books of Shri PK Ganeshwar still outstanding from Shri O. Arumugasamy and his related concerns.

3.8 In relation to undisclosed portion, Rs.36 Crores was received by Shri PK Ganeshwar in cash from Shri O. Arumugasamy on two occasions i.e., Rs.16 Crores on 03-12-2016 and Rs.20 Crores on 27-11-2016 as per material seized from search of Shri O. Arumugasamy group and confirmed in sworn statement recorded therein.

3.9 The details of return of income as filed by the assessee u/s 139(1) as well as filed u/s 153A was tabulated by Ld. AO as under: -

A.Y	Date of notice issued u/s.153A	Original return of income as per 139(1)	Original return of income date filed	Return of income as per 153A	Date of return of income filed u/s.153A	Agri income	Addl. income disclosed
2013-14	06.02.2020	84252178	28.09.2013	54252178	18.08.2020	0	Nil
2014-15	06.02.2020	2563760	29.09.2014	2563760	18.08.2020	0	Nil
2015-16	06.02.2020	116920040	28.09.2015	116920040	18.08.2020	0	Nil
2016-17	06.02.2020	88261600	09.10.2016	88261600	18.08.2020	0	Nil
2017-18	06.02.2020	104677310	26.10.2017	104577310	18.08.2020	0	Nil
2018-19	06.02.2020	3714604	27.09.2018	3714604	18.08.2020	0	Nil
2019-20	143(2)	0	12.05.2020	NA	NA	NA	NA

3.10 During the course of assessment proceedings, the assessee furnished various replies and filed financial statements etc. in support of its return of income. Upon perusal, it was noted by Ld. AO that no

interest income was admitted by the assessee as received from Shri O. Arumugasamy group whereas material found during the search on that group indicated that the assessee had advanced loan of Rs.8 Crores during December, 2013 which was also available in the books of the assessee. Though the transactions were undertaken by the assessee, the assessee failed to disclose the interest income against the same. Such interest allegedly received by the assessee group was quantified at Rs.108.70 Lacs as under: -

Amount in Rs.	Interest rate	Period	Duration	Interest paid on 06.03.2014	Interest received by SG wind Farm
10,00,00,000/-Rs. 5 crores given by M/s.Shri Ganesha Textiles and Rs.5 crores by M/s.SG Windfarms P.Ltd.	3%	16.12.2014 to 06.03.2014	2 months 18 days	78,00,000	39,00,000
3,00,00,000/- given by M/s. SG Windfarms P.Ltd.	3%	30.12.2014 to 06.03.2014	2 months 16 days	19,80,000	19,80,000
2,00,00,000/- Undisclosed cash loan given by Shri P.K.Ganeshwar	3%	21.01.2014 to 06.03.2014	1 month & 13 days	8,60,000	In the hands of PK Ganeshwar
1,00,00,000/- Undisclosed cash loan given by Shri P.K.Ganeshwar	3%	12.02.2014 to 06.03.2014	23 days	2,30,000	In the hands of PK Ganeshwar
	Total			1,08,70,000	58,80,000

Accordingly, Ld. AO proceeded to add the proportionate interest of Rs.58.80 Lacs in the hands of the assessee.

3.11 The assessee opposed the same on the ground that all these loans were advanced through banking channels and repayment also happened through banking channels only. All the transactions were duly disclosed in the books of accounts. The assessee also filed loan confirmation from each of the entities for respective years. The assessee denied having entered into any other transactions with Shri O. Arumugasamy and others. The assessee also submitted that the group was unable to repay the outstanding loans and interest due to heavy losses incurred by that

group in their business. The assessee refuted the allegation of Ld. AO on the ground that loose sheets recovered during search on third-party could not be considered as conclusive evidence in the absence of corroboration thereof. No addition could be made on the basis of presumption and surmises.

3.12 However, going by the material found during the search in the case of Shri O. Arumugasamy group as well as statements made therein, Ld. AO rejected the submissions of the assessee and added interest income of Rs.58.80 Lacs in the hands of the assessee as 'income from other sources' u/s 56. Finally, the assessment was framed on 18-06-2021 and the income was assessed at Rs.84.43 Lacs as under: -

<i>Returned income in response to notice u/s.153A</i>	<i>Rs.25,63,760</i>
<i>Addition: Undisclosed interest u/s.56</i>	<i>Rs.58,80,000</i>
<i>Assessed income</i>	<i>Rs.84,43,760</i>

3.13 Consequently, computation sheet was issued by Ld. AO on same date wherein the income has been determined at Rs.955.31 Lacs raising demand of Rs.264.12 Lacs against the assessee. The anomaly in determination of total income arises from the fact that the deduction as originally claimed by the assessee u/s 80-IA was denied in this computation sheet even though the same was not the subject matter of impugned assessment proceedings. The assessee preferred rectification application u/s 154 which was also rejected.

3.14 In Assessment Year 2015-16, Ld. AO made similar addition of interest income for Rs.211.21 Lacs. In the computation sheet, the assessee was denied deduction as claimed u/s 80-IA in the original return of income.

3.15 In Assessment Year 2016-17, Ld. AO made similar addition of interest income for Rs.507.15 Lacs. The MAT credit of Rs.161.58 Lacs as claimed by the assessee was restricted to Rs.114.73 Lacs.

3.16 In Assessment Year 2017-18, Ld. AO made similar addition of interest income for Rs.572.01 Lacs.

3.17 Aggrieved as aforesaid, the assessee assailed all the assessments before Ld. CIT(A) by way of elaborate written submissions and opposed the impugned additions / adjustments.

Appellate Proceedings

4.1 The Ld. CIT(A), in impugned order for AY 2014-15, noted that during the course of search on the assessee, details of loans advanced to debtors maintained in Tally data were seized vide ANN/VP/ED/S dated 09-03-2019. On verification of the seized Tally data and loose sheets, it was found that the assessee company and Shri PK Ganeshwar had advanced loans to Shri O Arumugasamy, Shri A. Senthil Kumar and Shri M. Palanisamy through banking channels, but failed to offer interest on the same. During search in the case of Shri O. Arumugasamy group, interest on such loan was found recorded in the seized material.

4.2 The assessee reiterated that in the absence of any incriminating material found from the premises of the assessee leading to impugned addition, no such addition could have been made for this year. The only addition made was based on the material seized and statement recorded during an earlier independent / separate search conducted on 09-11-2017 in the case of Shri O. Arumugasamy group. Therefore, notice issued u/s 153A was not legally sustainable and consequential assessment was to be reckoned as nullity in law. On the given facts, Ld. AO ought to have issued notice u/s 153C by reckoning the assessee as

“other person” by following separate procedure as laid down in the statute including the recording of satisfaction by both the AO of the searched person (Shri O Arumugasamy) and the AO of the assessee. The failure to do so would be fatal to assessment. Reference was made to the decision of this Tribunal in the case of **GR Thangamaligai & Sons (ITA Nos. 53/CHNY/2019 & ors. dated 28-06-2019)** as well as various other decisions in support of the same. The assessee also drew attention to the law laid down by Hon’ble Apex Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment in the absence of any incriminating material found during the course of search. Since, admittedly in the present case, there was no seized material found during the search conducted at the premises of the assessee with respect to the impugned addition, notice issued u/s 153A was to be quashed.

4.3 The assessee also assailed impugned addition on merits, inter-alia, on the ground that the details in loose sheets were rough details having no evidentiary value and without any corroborative evidences. It was also submitted that the assessee had advanced loan to that group through banking channels only which was duly recorded in the books of accounts well before the date of search. During search proceedings, the assessee furnished copy of the affidavit of Shri O. Arumugasamy confirming that no cash transaction was entered into by the assessee. The said person duly confirmed the contents of the affidavit through an email as well as letter sent through registered post. Further, Ld. AO had not brought on record any document / corroborative evidence establishing the movement of cash / alleged advancement of cash loan

by the assessee during relevant assessment years. Since there was no cash loan transactions, addition of consequential interest was to be deleted.

4.4 The Ld. CIT(A) rejected the legal ground by observing that the provisions of Sec.153A clearly state that notice u/s 153A would be issued for six assessment years immediately preceding the assessment year relevant to previous year in which the search was conducted and the assessment / reassessment shall be made in case of persons covered u/s 132. There was no discretion given to AO not to issue notice u/s 153A once the provisions of Sec.153A were attracted.

4.5 On the argument of invocation of Sec. 153C, the Ld. CIT(A) held that the impugned additions were based on incriminating material found during search in other case. There was no explicit limitation provided u/s 153A that additions are to be made based only on incriminating material found during the course of search in the case of assessee only. Once the case was to be assessed u/s 153A by virtue of search, the same assessee could not be assessed simultaneously u/s 153C also because it would lead to two parallel assessments proceedings in the case of same assessee. The Ld. CIT(A) also held that Sec. 153C would apply only to a person other than the searched person. Essentially, both categories of persons are the same in as much as their books or documents are seized from different locations. Moreover, seizure or the requisition must be of such a character so as to persuade AO to reopen closed assessments. In this sense, there was no hostile discrimination between two categories of persons. This is also based on principle that there can only be one assessment for the respective assessment year and therefore there can't be an assessment u/s 153A as well as u/s

153C. The case laws as cited by the assessee were held to be distinguishable on facts. In the case of **Abhisar Buildwell (supra)**, it was held by Hon'ble Apex Court that in case of completed assessments, no addition could be made based on information contained in return of income in the absence of incriminating material. It was held that if incriminating material was found in case of completed / unabated assessment then total income could be computed on the basis of incriminating material as well as other material available with Ld. AO. Accordingly, the grounds as raised by the assessee were rejected.

4.6 On merits, Ld. CIT(A) observed that certain material was seized during search in the case of Shri O. Arumugasamy group. The same would show that the loans were advanced by the assessee group from AYs 2014-15 to 2017-18 both in cash and through banking channels. Interest paid on such cash loans was found recorded in the said material. It was found that the assessee had duly recorded loans advanced through banking channels over the years in its books of accounts. However, the assessee did not offer any interest income.

4.7 Proceeding further, Ld. CIT(A) noted that during the course of search in case of Shri O. Arumugasamy Group, in seized books, it was mentioned that during demonetization period, an amount of Rs.36 Crores was paid on 27-11-2016 and 03-12-2016. This fact was admitted by Shri M. Palanisamy in his sworn statement. Shri PK Ganeshwar also admitted that they received amount through banking channels for Rs.21.54 Crores. The reasonable interpretation would be that the excess amount was towards interest only. In the statement, Shri PK Ganeshwar clearly stated that since he and his group had advanced loan of Rs.28.34 Crores by Cheques, he wanted refund of amount along with interest by

cheque or bank transfer. However, the assessee did not offer any interest income. Shri PK Ganeshwar vaguely stated that no interest was paid to them since the group had become sick. Therefore, these arguments were also rejected.

4.8 On the argument of evidentiary value of loose sheets, Ld. CIT(A) held that seized material in the form of daily statements could not be treated as loose sheets with rough notings since the same contain details of cash loans which were unaccounted and also loans received through banking channels. The entries in daily sheets were not randomly made but confirmed in sworn statements. The entries of cash loans and loans received through bank were recorded not only in daily sheets but also in registers maintained therein. These documents were not vague but recorded systematically. The loans advanced through banking channels by the assessee were found duly recorded in the books of the assessee. Therefore, the seized material could not be termed as rough sheets. Reliance by Ld. AO on the decision of Delhi Tribunal in the case of **Mahavir Woollen Mills Vs CIT (2000) 245 ITR 297(Del.)** was correct. The Tribunal held that the assessee could not accept part of the entries and deny the rest of the entries just because they were not entered in the books of accounts.

4.9 The assessee filed affidavits of Shri O. Arumugasamy, Shri M. Palanisamy, Shri A. Senthil Kumar & Smt. R. Santhamani wherein they had stated the quantum of loan received through banking channel and mentioned that amount along with interest is what is due to assessee from them without specifying interest component. However, in the affidavits, they have not offered any reason for recording cash loans in the name of assessee. They have also not pointed out the names of

persons from whom such loans were actually received. Further, mere production of the affidavits would not suffice. Such retractions by them came after a long gap without any reasons or evidences. Therefore, no credence could be given to the affidavits.

4.10 Another argument was that addition based on entries found in third-party accounts could not be made without corroborative evidence. In the present case, facts stated in sworn statements of Shri O. Arumugasamy, Shri M. Palanisamy and Smt. R. Santhamani were found consistent with each other though recorded on different dates and different places. There is no contradiction found in the facts stated by them. Finally, considering all these facts, the impugned addition of alleged undisclosed interest income was confirmed.

4.11 The assessee also challenged the denial of deduction u/s 80-IA for Rs.870.87 Lacs in the computation sheet as attached with assessment order. It was noted that Ld. AO arrived at assessed income of Rs.84.73 Lacs whereas in the computation sheet, the income was computed as Rs.955.31 Lacs since deduction u/s 80-IA was denied to the assessee. The Ld. CIT(A) noted that in this case, notice u/s 153A was issued to the assessee on 06-02-2020 giving seven days time to file the return of income. However, the assessee filed return of income belatedly on 18-08-2020. As per the statutory provisions, return filed u/s 153A is to be treated as return filed u/s 139 (1) and all the provisions of Act will apply to the return filed u/s 153A. A return filed u/s 153A takes the place of original return u/s 139 for the purposes of all other provisions of the Act. Once the AO accepts the revised return filed u/s 153A, the original return u/s 139 abates and becomes non-est. Once return is filed u/s 153A, all provisions of the act would apply. As per the provisions of Sec. 80AC, no

deduction u/s 80-IA could be allowed unless return is filed within due date as prescribed u/s 139(1). With respect to returns filed u/s 153A, due date would be the time period as mentioned in the notices by which the return of income was to be filed. The assessee filed return of income with a delay of 187 days. Therefore, deduction u/s 80-IA could not be allowed as per the provisions of Sec. 80AC. Finally, the corresponding grounds were dismissed.

4.12 Similar adjudication was done for all the other years also. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. Upon perusal of factual matrix as enumerated in preceding paragraphs, the undisputed position that emerges is that the impugned addition of undisclosed interest income is based on incriminating material found during an earlier separate / independent search conducted by the department on Shri O. Arumugasamy group on 09-11-2017. No incriminating material, in this regard, has been found during the search conducted on assessee group on 06-03-2019. From tabulation in para 3.9, it could be seen that the assessee had filed return of income for this year on 29-09-2014 which stood attained finality since the date of issuance of notice u/s 143(2) had already expired on 30-09-2015. In other words, the regular assessment proceedings had attained finality and this year was a case of unabated assessment year. In response to notice u/s 153A, the assessee offered same income. Quite clearly, the impugned addition of undisclosed interest income is not based on any incriminating material found during search on the assessee group but the same are based on incriminating material found in another search which

has already happened much earlier before the date of search on the assessee.

6. On given set of facts, the ratio of recent decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)**, considering all the earlier decisions holding the field, would squarely apply to the facts of the case settling the impugned issue in favor of the assessee. The adjudication of Hon'ble Court was as under: -

5. We have heard learned counsel for the respective parties at length. The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, i.e., whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under section 132 or requisition under section 132A, the assessment has to be done under section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

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

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

Summary of the legal position

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

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

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

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.

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

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

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

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

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six

assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

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

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

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

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961. The erstwhile scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income'

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

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

"153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132-A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132-A, as the case may be, shall abate.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, section 153-B and section 153-C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

11. As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income

is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

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

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

- (i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- (ii) all pending assessments/reassessments shall stand abated;
- (iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs. Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021

15. Insofar as the aforesaid Civil Appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 6-9-2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, TANVI 16/2015, 268/2014 and 17/2015, as also, against the order dated 21-9-2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under section 143(1)(a) or 143(3) of the Act, 1961 and to reassess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court

taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

Approving the decision of Hon'ble Delhi High Court in the case of **Kabul Chawal (380 ITR 573)** as well as the decision of Hon'ble Gujarat High Court in **Saumya Construction (P.) Ltd. (387 ITR 529)**, it was held that in respect of completed assessments / unabated assessments, no addition could be made by Assessing Officer in the absence of any incriminating material found during course of search under section 132 or requisition made under section 132A.

7. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT vs. Continental Warehousing Corporation [2015; 374 ITR 645]** which has been followed in subsequent decision in **CIT V/s Gurinder Singh Bawa (79 taxmann.com 398 05/10/2015)** which deals with a situation wherein the original return of income was processed u/s 143(1). The present case before us is on similar fact. It was held by Hon'ble Court that in respect of non-abated assessment, the additions are to be strictly based on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search and undisclosed income or undisclosed property discovered during search.

8. We find that similar is the view of Hon'ble Delhi High Court in **Pr. CIT V/s Meeta Gutgutia (82 Taxmann.com 287)** which has primarily followed the decision of **Kabul Chawla (supra)**. We also find that Special Leave Petition (SLP) filed by the revenue against this decision

has already been dismissed by Hon'ble Supreme Court on 02.07.2018 which is reported at 96 Taxmann.com 468. The decision of Hon'ble Court was as under: -

1. Delay condoned.
2. We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.
3. Pending application stands disposed of.

9. Similar is the decision of this Tribunal in the case of **M/s Pearl Printers & Publishers Pvt. Ltd. (ITA Nos.1042/Chny/2023 dated 03-06-2024)**. The bench, under similar circumstances, held that the ratio of decision of Hon'ble Apex Court in **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)** would squarely apply wherein it was held by Hon'ble Court that concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search.

10. The facts of the present case would establish that impugned addition of interest income has been made on the basis of incriminating material found during the course of search on a third-party as well as statement recorded therein. In such a case, the proceedings have to be initiated u/s 153C and not u/s 153A which has not been done by Ld. AO. To initiate proceedings u/s 153C, it is mandatory requirement of law that satisfaction should have been recorded by Ld. AO of the searched person as well as the AO of the other person before proceedings u/s 153C. The recording of satisfaction is sine qua non to assume jurisdiction u/s 153C. Without recording of this satisfaction, no addition could have been made in the hands of the assessee. In the present case, no such satisfaction has been shown to us and in fact, the

assessment has been framed u/s 153A which could not be sustained in law considering the mandatory provisions of Sec.153C.

11. Our aforesaid view is duly supported by the decision of Hon'ble Delhi High Court in the case of **PCIT vs. Anand Kumar Jain HUF (ITA Nos.23/2021 & ors. dated 12.02.2021)**. The Hon'ble Court held that additions on the basis of statement recorded in a separate search action in the case of a third-person are not permissible in Section 153A proceedings. The Hon'ble High Court observed that the statement of third person cannot be construed as an incriminating material belonging to or pertaining to the person other than the person searched. Similar is the view of Bangalore Tribunal in **ACIT Vs. P. Shyamaraju & Co. India Pvt. Ltd (ITA Nos.978 to 984/Bang/2014 dated 25-04-2022)** as well the decision of Kolkata Tribunal in the case of **Krishan Kumar Singhania vs. DCIT (88 Taxmann.com 259)**.

12. Therefore, considering the aforesaid settled position of law, we would hold that the assessment, for all the years, would be bad-in-law and therefore, the impugned addition could not be sustained on this score only. We order so. In other words, the impugned addition of alleged undisclosed interest income stands deleted. The return of income as filed by the assessee stand restored.

13. We further find that the issue of deduction u/s 80-IA was not even the subject matter of present assessment proceedings. The assessee had filed original return of income on 29-09-2014 claiming impugned deduction u/s 80-IA. The assessee filed all the requisite forms, Auditor's report and necessary computations in the original return of income itself to lay claim on this deduction therein. Considering the same, the claim was duly accepted by CPC while processing the return of income u/s

143(1). Accordingly, this issue had already attained finality and it was not even the subject matter of present assessment proceedings. Pursuant to notice, u/s 153A, the assessee filed same return of income on 18-08-2020 which was the same as return of income filed u/s 139(1). The assessee claimed deduction u/s 80-IA and again filed all the requisite documents / information as required therein. This was not a new claim but already an existing claim which attained finality in assessee's favor u/s 143(1). The Ld. CIT(A), in para 7.4.2, erred in noting that the assessee made a new claim in the return of income filed u/s 153A. The impugned order proceeds on erroneous assumption that this claim was being made for the first time in return of income filed u/s 153A. The same is not the case here. It is an existing claim which attained finality in assessee's favor and therefore, the same could not be disturbed in the proceedings u/s 153A. Therefore, the denial of deduction could not have been confirmed by Ld. CIT(A) from any angle. Accordingly, Ld. AO is directed to allow this deduction and accept the returned income of the assessee. The corresponding grounds raised by the assessee stand allowed.

14. Since the appeal has been allowed on legal grounds itself, delving into the merits or other grounds of appeal has been rendered merely academic in nature.

15. Facts as well as issues are quite identical in all the other years. The addition of undisclosed interest income stand deleted for AYs 2015-16 to 2017-18 also. The deduction claimed by the assessee u/s 80-IA for AY 2015-16 stand restored. The Ld. AO is directed to grant the same. For AY 2016-17, MAT credit would be allowable to the assessee in

accordance with law. The Ld. AO is directed to verify the same and grant MAT credit as available to the assessee.

16. All the appeals stand allowed in terms of our above order.

Order pronounced on 19th November, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
---	---

चेन्नई Chennai; दिनांक Dated : 19-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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