

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

**AND**

**SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER,**

**ITA Nos:- 338, 339, 340 & 341/Del/2019**

**(Assessment Years- 2010-11, 2011-12, 2012-13 & 2013-14)**

M/s Aashiyana Infratec Pvt. Ltd., B-20,21-22, Sector-16, Noida, Uttar Pradesh-201301.	Vs.	DY. Commissioner of Income Tax, Central Circle, Noida.
<b>PAN No:AAGCA3210K</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Sandeep Jain, CA  
**Revenue by** : Mr. Javed Akhtar, CIT(DR)

**Date of Hearing** : 11.12.2024  
**Date of Pronouncement** : 18.12.2024

**ORDER**

**PER BENCH:**

These four appeals by the Assessee are arising out of different orders of Commissioner of Income Tax (Appeals)-IV, Kanpur, in appeal numbers CIT(A)-IV/10792/DCIT-CC/Noida/2017-18/612, CIT(A)-IV/10801/DCIT-CC/Noida/2017-18/611, 620 & 610 vide

even date i.e. 19.11.2028. Assessments were framed by Deputy Commissioner of Income Tax, Central Circle-Noida for the Assessment Years (AYs) 2010-11 to 2013-14 under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his different orders of even dated 30.12.2017.

2. At the outset, the Ld. Counsel for the assessee first of all, drew our attention to additional grounds raised by the assessee vide application dated 02.01.2024. The Ld. Counsel for the assessee stated that both grounds raised in all four appeals are identical and pertains to the issue of assumption of jurisdiction by the AO for framing of assessment u/s 153A of the Act in consequent to search conducted u/s 132 of the Act. The Ld. Counsel for the assessee drew our attention to the following additional grounds:

*"1. The learned CIT-A has erred both in law and in facts in confirming addition on account of unsecured loan despite the fact that no incriminating material or no undisclosed income or any evidence has been found during the search at the premises of the Appellant and therefore the addition under Section 153A is not sustainable.*

*2. The learned CIT-A has erred in law and in facts as the approval to be taken under Section 153D is mechanical. The approval for Section 153D of the Income Tax Act, 1961 has to be separate for each assessment year and cannot be a common approval. Further, the approval under Section 153D is mechanical in nature."*

3. The Ld. Counsel stated that identical grounds have been raised in all four appeals of the assessee. He argued that these additional grounds raised by the assessee are purely jurisdictional. The first ground is covered by the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell reported in [2023] 454 ITR 212*, wherein it was held that an assessment U/s 153A of the Act made pursuant to search conducted u/s 132 of the Act, in the case of abated assessment, can be made only on the basis of incriminating material. He stated that there is no incriminating material and without any incriminating material these assessments are framed. The second ground raised by the assessee is as regards to approval taken by the Department from JCIT for framing the assessment U/s 153D of the Act, is in a mechanical manner. Qua these two issues, Ld. Counsel stated that these are jurisdictional issues that goes to root of the matter, and in view of the decision of Hon'ble Supreme Court in the case of *National Thermal Power Company Limited Vs. CIT- 229 ITR 383 (SC)*, these grounds are to be admitted and to be adjudicated upon.

4. When these facts were confronted to Ld. CIT(DR), he contested the admissibility of the additional grounds. He argued that these grounds could have been raised by the assessee at the time of framing the assessment because the assessment orders are dated 30.12.2017, and at that point of time, these issues have already been adjudicated by many High Courts. Hence, he opposed the admissibility of the additional grounds.

5. We have heard rival contentions and gone through facts and circumstances of this case. We noted that the issue of framing the assessment i.e., search assessment U/s 153A of the Act, based on incriminating material or no incriminating material in the case of an unabated assessment, is a purely legal issue, and, hence this ground goes to the root of the matter. Hence, we admit this ground for adjudication. This view is supported by the decision of the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd. (supra)*, wherein it is held as under:

*“4. The Tribunal has framed as many as five questions while making a reference to us. Since the Tribunal has not examined the additional grounds raised by the assessee on the merits, we do not propose to answer the questions relating to the merits of those contentions. We reframe the question which arises for our*

*consideration in order to bring out the point which requires determination more clearly. It is as follows:*

*Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same ?*

5. *Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

6. *In the case of Jute Corporation of India Ltd. v. C.I.T., this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not*

*permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.*

7. *The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*

8. *The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.”*

6. In view of the decision of the Hon'ble Supreme Court and given the facts that this additional ground raised regarding the assessment framed U/s 153A i.e., search assessment based on no incriminating material, even though the original assessment is unabated, we admit this ground and are adjudicating the same.

7. The first additional ground raised by the assessee is that, in the case of an unabated assessment, while framing a search assessment U/s 153A of the Act in consequent to search conducted

u/s 132 of the Act, the primary contention is that incriminating material is necessary for framing such an assessment.

8. The brief facts are that a search and seizure action U/s 132 of the Act was conducted in Air will Group of Cases on 30.09.2015. In view of the search operation, the group cases were centralized to Central Circle, Noida, and accordingly, notices U/s 153A of the Act were issued for the relevant Assessment Years, i.e., 2010-11, 2011-12, 2012-13 and 2013-14 vide dated 19.06.2017. In response to the notices U/s 153A of the Act, the assessee it filed returns of income for all these four assessment years on 13.07.2017. Accordingly, notice U/s 143(2) of the Act was issued on 24.07.2017, along with a questionnaire and notice U/s 142(1) of the Act. In response to these notices, the assessee represented before Assessing Officer and submitted details. The Assessing Officer during the course of assessment proceedings, made additions for unexplained unsecured loans of Rs. 4,20,45,440/- for AY 2010-11, Rs. 2,90,00,000/- for AY 2011-12, Rs. 9,77,95,000/- for AY 2012-13 and Rs. 2,34,85,000/- for AY 2013-14. Similarly, other additions were also made by the Assessing Officer as the particulars were

declared in financials of the relevant assessment years. For AY 2010-11, being unexplained cash credit of Rs. 4 lakhs, for AY 2011-12 being unexplained cash deposits of Rs. 2 lakhs, for AY 2012-13 being disallowance of expenses and cash credits of Rs. 5,00,000/- and 8,00,000/- and for AY 2013-14 being unexplained unsecured loans of Rs. 29 lakhs were added. As the facts and circumstances narrated are exactly identical in all the four assessment years, hence, we take the facts from the Assessment Year 2010-11. The Assessing Officer noted that during the course of the search and post-search enquiry, it was observed that the company of this group is involved in taking bogus unsecured loans, accommodation entries, and some expenditure was incurring which is unexplained. He also noted that the assessee is taking the entries from paper companies, which are providing accommodation entries while actually the unaccounted cash of the group companies is being ploughed back in the books of such companies through these bogus unsecured loans. The Assessing Officer further noted that for the assessment year 2010-11, the details of parties from whom the assessee has obtained unsecured loans were provided and the total details for the assessment year as under:

<b>Name</b>	<b>Amount</b>
<i>Aashiyana Propzone P. Ltd.</i>	<i>4,50,000</i>
<i>Brij Realtech Pvt. Ltd.</i>	<i>90,00,000</i>
<i>Chavi Kashyap</i>	<i>15,00,000</i>
<i>HR Malik</i>	<i>3,00,000</i>
<i>HR Malik (JOint)</i>	<i>7,00,000</i>
<i>Hospitality International</i>	<i>10,00,000</i>
<i>Jaddish Kashyap</i>	<i>20,00,000</i>
<i>Ram Ply Board Industries P.Ltd.</i>	<i>25,00,000</i>
<i>Sourabh Kashyap</i>	<i>15,00,000</i>
<i>Squared up</i>	<i>Amount in Rs.</i>
<i>M/s Indo-gulf Infrastructure and Investment Pvt. Ltd.</i>	<i>1,00,00,000/-</i>
<i>Visgi</i>	<i>5,00,000/-</i>
<b>Total</b>	<b>4,20,45,440/-</b>

The Assessing Officer required the assessee to provide the identity, genuineness and creditworthiness of these creditors or unexplained loans, but the assessee could not explain except for filing the details of the balance sheet which were filed during the course of the original assessment proceedings. The Assessing Officer further noted that the assessee had not established the identity, genuineness and creditworthiness of these unsecured loans or accommodation entries. Therefore, he added the amount of unexplained unsecured loans U/s 68 of the Act at Rs. 4,20,45,440/- and unexplained cash credits U/s 68 of the Act at Rs. 4,00,000/-.

9. Aggrieved, the assessee preferred an appeal before the CIT(A).
10. The CIT(A), after going through the facts of the case, confirmed the action of the Assessing Officer on both the additions by discussing the provisions of Section 68 of the Act, on both the issues i.e., the addition of unexplained unsecured loans as well as unexplained cash credits of Rs. 4,20,45,440/- and Rs. 4,00,000/- , respectively.
11. Aggrieved, the assessee is in appeal before the Tribunal.
12. Before us, the Ld. Counsel of the assessee, first of all, argued this additional ground and stated that no incriminating material or any evidence suggesting such addition was found during the course of the search conducted at the assessee's premises or in its Group Cases i.e., Airwill Group Cases, on 30.09.2015. The Ld. Counsel for the assessee argued that all these loans entries, i.e. unsecured loans and cash credits, were already reflected in the balance sheet, and during the course of the original assessment proceedings, all these details were available before the Assessing Officer. He narrated that the assessee has filed the returns for these four years as under:

<b>AY</b>	<b>Filing Date</b>	<b>ACK No.</b>
2010-11	15/10/2010	172729291151010
2011-12	29/03/2012	371614941290312
2012-13	25/09/2012	494398621250912
2013-14	28/09/2013	796576441280913

13. We noticed that the details regarding the filing of the return of income on due dates, are noted as above, and the same were confronted to the Ld. Sr. DR.

14. When these facts were confronted to the Ld. CIT(DR) and inquired whether any incriminating materials reflecting these unsecured loans or cash credits for these four assessment years were available in the seized material or not, he answered that, actually if incriminating material is interpreted in a particular manner, then what is incriminating material ?, it is not in strict term the incriminating material is not available. However, he submitted that the facts emerging from the findings of the Assessing Officer that he has collected the details of incriminating material found during the search and as well as post-search proceedings. But, he could not point out any incriminating material either from the assessment order or the order of CIT(A), or from the seized materials. When he was confronted with the assessment order, that the additions made by the Assessing Officer emerge from

the balance sheet of the assessee, which was available before the Assessing Officer in the original return of income filed on various dates for these four years as noted above in para 7. He could not answer this query and could not explain that this addition has any relation with incriminating material.

15. We have heard rival contentions and gone through facts and circumstances of these four appeals. We have perused the assessment order and the order of the CIT(A), and noted the argument from both sides. The Admitted facts are that the nature of additions made by the Assessing Officer (i) unsecured loans, unsecured cash credits, expenditure noted in the profit and loss account, and advances from customers, i.e, suspense account, which is part of account of the assessee, are disclosed in the financials of the assessee. It means that the addition is based on the accounts of the assessee filed in the financial statements along with return of income originally. It means that there is no incriminating material or seized material pertaining to these four assessment years, and the addition is based on the financials filed by the assessee along with the original return. In view of the above

facts, we have gone through the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (2022-23) for 54 ITR 212*, as cited by the Ld. Counsel for the assessee, wherein Hon'ble Supreme Court has finally held how to frame search assessment and what are the requisitions. The dictum is as under:-

*“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 fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

16. The above clause (iv) of para 14 clears that in case, no incriminating material is found or seized during the course of search proceedings, the AO cannot assess or reassess taking into consideration other materials in respect of completed assessment or unabated assessment meaning thereby no addition can be made by the AO in absence of any incriminating material found during the course of search u/s.132 of the Act. Further, we notice that the Hon'ble Supreme Court has rejected the Revenue's contention that in case of search even where no incriminating material is found during the course of search, whether the AO can assess or reassess the income taking into consideration the other material, the Hon'ble Supreme Court has explained in great detail the provisions of section 153Ar.w.s. 132 of the Act vide paras 11 & 12 as under:-

*“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 subsection (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 fulfillment 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 subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.”*

16.1 We noted from the above judgment of the Hon’ble Supreme Court and the facts of the present case, that Hon’ble Supreme court

has categorically held that an assessment U/s 153A of the Act is linked with the search and requisition made U/s 132 and 132A of the Act, and the objects 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. Further, the Hon'ble Supreme Court held that only in a case where the undisclosed income was found on the basis of incriminating material, the Assessing Officer would frame the jurisdiction to assess or reassess the total income for the entire six block assessment year period in the case of unabated assessment.

16.2 In view of the above legal position enunciated by Hon'ble Supreme Court and the facts of the case that there is no incriminating materials in these four appeals, we quash the assessment framed U/s 153A of the Act for all these four years and also set aside the orders of CIT(A). Hence, these four appeals of the assessee are allowed for this jurisdictional issue.

17. Since, the assessee has raised one more jurisdictional issue i.e. the approval by the CIT U/s 153D of the Act, and other issue on merits, which we refrain ourselves to adjudicate because we have

already quashed assessment framed U/s 153A of the act on the issue of the absence of incriminating material. Hence, all these grounds are kept open and have become academic and accordingly are dismissed as academic.

18. In the result, all the four appeals are allowed.

Order pronounced on 18.12.2024

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

Dated: 18 /12/2024.  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	11.12.2024
Date on which the typed draft is placed before the dictating Member	11/12/2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	