

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**

[Before Shri Rajesh Kumar, AM & Shri Pradip Kumar Choubey, JM]

**I.T.A. Nos. 2180 to 2182/Kol/2024**  
Assessment Years: 2011-12 to 2013-14

ITO, Ward-3(1), Kolkata	Vs.	Uniglobal Papers Pvt. Ltd. 2A, Ganesh Chandra Avenue, West Bengal-700013. (PAN: AAECA7423N)
Appellant		Respondent

**&**

**C.O. Nos. 55 to 57/Kol/2024**  
**In I.T.A. Nos. 2180 to 2182/Kol/2024**  
Assessment Years: 2011-12 to 2013-14

Uniglobal Papers Pvt. Ltd. 2A, Ganesh Chandra Avenue, West Bengal-700013.	Vs.	ITO, Ward-3(1), Kolkata
Cross Objector		Respondent

Date of conclusion of Hearing	01.01.2025
Date of Pronouncement	06.01.2025
For the Assessee	Shri S. Jhajharia, FCA
For the Revenue	Shri Sanjay Mukherjee, CIT, DR

**ORDER**

**Per Shri Rajesh Kumar, AM**

All these appeals filed by the revenue and the Cross Objections filed by the assessee are against the separate orders of Ld. CIT(A), Kolkata-21 dated 06.06.2024 for AYs 2011-12 and 2013-14 and dated 05.06.2024 for AY 2012-13 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset, we note that there is a delay in filing the appeals by the revenue of 85 days in respect of AY 2011-12 and 86 days in respect of AY 2012-13. We have perused the condonation petitions filed by the revenue seeking the condoning the delay. After hearing both the sides and after considering the condonation petitions, we are inclined to condone

the delay on the ground of reasons for delay have been explained and appear to be genuine and bonafide. Accordingly, the delay is condoned and the appeals are admitted for adjudication.

**ITA No.2180/Kol/2024 A.Y.2011-12.**

3. The revenue has filed appeal before us challenging the deletion of addition to the tune of Rs.2,71,00,000/- by Ld. CIT(A) as made by the AO u/s. 68 of the Act in respect of bogus unsecured loans.

4. The facts in brief are that the assessee filed the return of income u/s. 139(1) of the Act on 24.09.2011 declaring total loss of Rs. 3,15,69,270/-. A search action u/s. 132 of the Act was conducted on 09.09.2015 and subsequent dates on UNIGLOBAL GROUP of which the assessee is a related entity. Accordingly notice u/s. 153A of the Act was issued which was duly served. The assessee complied with the said notice by filing a return of income declaring loss of Rs. 1,60,48,955/- on 18.08.2017. Thereafter, statutory notices were issued along with questionnaires which were duly complied and replied by the assessee. Pertinent to state that the impugned assessment is an unabated assessment on the date of search as there were no pending proceeding on the date of search and also the time period prescribed under the Act for issuing notice u/s. 143(2) had also expired. The AO after taking into account the contentions and submissions of the assessee made addition to the income in respect of share capital application money.

5. The Ld. CIT(A) in the appellate proceeding allowed the appeal of the assessee on legal issue as well as on merit. So far as the legal issue is concerned, Ld. CIT(A) directed the AO to delete the addition in respect of share application money on the ground that the addition was not linked to any incriminating materials found and seized during the course of search but are based on post search enquiries and statements recorded during that enquiry. On merits Ld. CIT(A) deleted the additions on the ground that the assessee has proved the necessary ingredients as envisaged u/s 68 of the Act and AO has not brought any substantive materials/evidences on records to the contrary.

6. After hearing the rival contentions and perusing the material available on record, we find that the return of income was filed u/s 139(1) of the Act on 24.09.2011. A search action u/s 132(1) was conducted on the assessee on 09.09.2015. So on the date of search there were no pending proceedings before the AO qua this assessment year and also that the time limit for issuing notice u/s 143(2) had already expired. Therefore the impugned assessment was unabated on the date of search or had attained finality in terms provisions of section 153A of the Act. Now the issue before us for adjudication is whether the AO has jurisdiction to make additions without there being any incriminating materials seized during the search. In our opinion the addition in case of unabated assessment can only be made with reference to incriminating materials seized during search and not otherwise. We note that in the appellate order, Ld. CIT(A) has clearly recorded a finding of fact that AO has not referred to any incriminating materials found during the course of search qua the share application . Accordingly, we are in agreement with the Ld. CIT(A) that addition in case of unabated assessment year can only be made on the basis of search material found and seized during search. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of "*Pr. CIT Vs. Abhisar Buildwell (P) Ltd.*" [2023] 149 taxmann.com 399 (SC), wherein the Hon'ble Supreme Court has held that in the case of non-abated/completed assessments, no addition can be made by the Assessing Officer in an assessment carried out u/s.153A of the Act in the absence of any incriminating material found during the search action which has been respectfully followed by the ld. CIT(A) while deleting the additions. The order passed by the ld. CIT(A) appears to be correct and therefore the appeal of the revenue is dismissed by upholding the order of ld. CIT(A).

7. The issues raised in all other appeals in ITA No.2181,2182/Kol/2024 for A.Y. 2012-13 and 2013-14 are substantially similar as decided by us in ITA No. 2180/Kol/2024 A.Y. 2011-12, therefore our decision in ITA No. 2180/Kol/2024 would apply, mutatis mutandis, to other appeals as well. Accordingly, all the appeals of the revenue are dismissed.

8. The Cross Objections Nos. 55, 56 & 57/KOL/2024 AY 11-12 to 13-14 are filed by the assessee in support of the orders of the ld. CIT(A). Since, we have dismissed the appeals of

the Revenue by upholding the orders of the CIT (A) in all these assessment years, therefore, these cross objections become infructuous and dismissed.

8. In the result, appeals of the Revenue and cross objection of the assessee are dismissed.

Order is pronounced in the open court on 06.01.2025

Sd/-

Sd/-

(Pradip Kumar Choubey)  
Judicial Member

(Rajesh Kumar)  
Accountant Member

Dated: 06.01.2025

*JD, Sr. PS*

Copy of the order forwarded to:

1. Appellant–ITO, Ward-3(1), Kolkata
2. Respondent – Uniglobal Papers Pvt. Ltd.,
3. CIT(A), Kolkata-21
4. Pr. CIT
5. DR, ITAT, Kolkata,  
True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Bench, Kolkata