

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No:- 320/Del/2019
(Assessment Year- 2015-16)**

Kuber Khadyann Pvt. Ltd., 1/8, West Patel Nagar, Delhi-110008.	Vs.	ACIT, Central Circle-30, New Delhi-110055.
PAN No: AABCK0600L		
APPELLANT		RESPONDENT

Assessee by : Shri Rajiv Khandelwal, CA &
Shri Gagan Khandelwal, Adv. &
Shri Jaind Kumar, Adv.

Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing :06.03.2025

**ITA No:- 1407 /Del/2022
(Assessment Year- 2015-16)**

Kuber Grains & Spices Pvt. Ltd., Khasra No. 1281-1282. Delhi-110037.	Vs.	ACIT, Central Circle-30, New Delhi.
PAN No: AABCK0599G		
APPELLANT		RESPONDENT

ITA No:- 2711 /Del/2022
(Assessment Year- 2015-16)

Kuber Grains & Spices Pvt. Ltd., Khasra No. 1281-1282. Delhi-110037.	Vs.	CIT(A)-30 New Delhi.
PAN No: AABCK0599G		
APPELLANT		RESPONDENT

ITA No:- 1412 /Del/2021
(Assessment Year- 2012-13)

Dy. Commissioner of Income Tax, Central Circle-8, New Delhi.	Vs.	M/s Kuber Securities Pvt. Ltd. 12, Pusa Road, New Delhi-05.
PAN No: AAFFK6731R		
APPELLANT		RESPONDENT

ITA No:- 4213 /Del/2018
(Assessment Year- 2013-14)

ACIT, Central Circle-30, New Delhi.	Vs.	M/s Kuber Securities Pvt. Ltd. 12, Pusa Road, New Delhi-05.
PAN No: AAFFK6731R		
APPELLANT		RESPONDENT

Assessee by : Shri Rajiv Khandelwal, CA &
Shri Gagan Khandelwal, Adv. &
Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing

:03.03.2025

**ITA No:- 1406 /Del/2022
(Assessment Year- 2015-16)**

Sh. Vikas Malu, Plot No.-79, Property No. Villa 43 Hills View, Dubai Hills, UAE.	Vs.	ACIT, Central Circle-30, New Delhi.
PAN No: ACZPM0292M		
APPELLANT		RESPONDENT

Assessee by : Shri Rajiv Khandelwal, CA &
Shri Gagan Khandelwal, Adv. &
Shri Jaind Kumar, Adv.

Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing

:03.03.2025

**ITA No:- 885/Del/2019
(Assessment Year- 2014-15)**

Kuber Khaini Pvt. Ltd., Khasra No. 32, Godown No.6, Siraspur, GT Karnal Road, New Delhi-110042.	Vs.	ACIT, Central Circle-30, New Delhi-110055.
PAN No: AABCK0469M		
APPELLANT		RESPONDENT

Assessee by : Shri Rajiv Khandelwal, CA &
Shri Gagan Khandelwal, Adv. &
Shri Jaind Kumar, Adv.

Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing

:06.03.2025

**ITA No:- 1408/Del/2022
(Assessment Year- 2011-12)**

Kuber Metpack Private Ltd., (formerly known as Kevin Metpack (P) Ltd., 1/8 West Patel Nagar, Delhi-110008.	Vs.	ACIT, CC-30, New Delhi.
PAN No: AADCK2465P		
APPELLANT		RESPONDENT

**ITA No:- 1409/Del/2022
(Assessment Year- 2015-16)**

Kuber Metpack Private Ltd., (formerly known as Kevin Metpack (P) Ltd., 1/8 West Patel Nagar, Delhi-110008.	Vs.	ACIT, CC-30, New Delhi.
PAN No: AADCK2465P		
APPELLANT		RESPONDENT

**ITA No:- 1924/Del/2023
(Assessment Year- 2011-12)**

Kuber Metpack Private Ltd., (formerly known as Kevin Metpack (P) Ltd., 1/8 West Patel Nagar, Delhi-110008.	Vs.	ACIT, CC-30, New Delhi.
PAN No: AADCK2465P		
APPELLANT		RESPONDENT

Assessee by : Shri Rajiv Khandelwal, CA &

Shri Gagan Khandelwal, Adv. &
Shri Jaind Kumar, Adv.

Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing :06.03.2025

Date of Pronouncement : 21.03.2025

ORDER

PER BENCH:

These bunch of 10 appeals filed by Assessee and Revenue are in respect of group companies and associated persons and hence as the issues are identical in all these appeals, so for the purpose of convenience these appeals were heard together and have been adjudicated by this common order. Brief factual metrics common to all the above appeals is that assessee group has been engaged in the business of manufacturing of trading of tobacco&food products and allied activities . A search and seizure section u/s 132 was conducted upon the assessee. Consequent to the search proceedings incriminating documents were found and seized. One Shri Moolchand Malu, main person of the group gave statement making disclosure of unaccounted of about Rs. 150 crores. The disclosure, inter-alia, included unaccounted investments in

properties, share application, investments, unexplained transactions found in incriminating documents etc.

ITA No.- 1406/Del/ 2023 -Vikas Malu

2. The first issue arising in the present appeal is the action of AO in making an addition of Rs. 9,47,50,000/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken unsecured loans of Rs. 9,47,50,000/- from two parties, namely, Hallow Securities Pvt. Ltd. and XO Infratech Pvt. Ltd. The Ld. Counsel for the assessee submitted that order 143(3) of the Act, was passed on 29/12/2016. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata including statement of Kolkata based accommodation entry providers. The Ld. AO noted that the impugned parties did not had sufficient creditworthiness qua the impugned unsecured loans. He also held the view that the said company was a non-existent entity.

3. The Ld. Counsel for the assessee submitted that the impugned addition by the Ld. AO and its affirmation is based upon inappropriate understanding of the facts of the case. It has been

argued that the disclosure statements of shri Mulchand Malu, does not mention any unsecured loans. This was submitted without prejudice that the statement per se could not hold any water in the absence of corresponding credible evidences. The Ld. Counsel argued that the Ld. AO was having addresses of the said parties yet it did not deem it appropriate to conduct any independent inquiry, but merely relied upon inquiries of the investigation directorate. The Ld. Counsel also submitted that, assuming without conceding, the statement of shri Mulchand Malu is to be relied even then, no case of addition is made out since the impugned loans from hallow securities pvt. Ltd., and XO Infratech Pvt. Ltd. were taken on 23 & 24.03.2015, and 17 & 22.10.2015, respectively, that is much after the statement of Shri Malu was recorded. Thus, it was argued that the statement of Shri Mulchand Malu has no bearing on the case and the Ld. AO has failed to conduct any independent inquiries. The Ld. DR vehemently argued in favour of order of lower authorities.

4. We have heard rival submission, in the light of the material available on record. It is a fact borne from records that the Ld. AO

while making the impugned additions has relied upon the inquiries conducted by investigation wing of Kolkata, and did not conduct any independent inquiries of his own. A statement of Shri Mulchand Malu is difficult to be accepted and considering the decision of this Tribunal in the decisions in case of Kuber Khadyan Pvt. Ltd. ITA No. 4223/Del/2018 and Kuber KhanpaanUdhyog Pvt. Ltd, ITA No. 580/Del/2019. Accordingly, we are of the considered view, that no case of any addition is made out in the case on account of unsecured loans u/s 68. **Consequently, the order of lower authorities is set aside and the addition of Rs. 9,47,50,000/- made by the Ld. AO is deleted. Accordingly, all the grounds of appeal raised by the assessee on this issue, are allowed.**

5. The next issue raised by the assessee is regarding the amount of Rs 18,94,000/- added to the income of the assessee by the Ld. CIT(A) invoking his powers of enhancement. Ld. Counsel submitted that the impugned enhancement is based upon twin presumption of assessee undertaking accommodation entries and such entry providers charging commission @ 1-4 %. Thus, on an estimate basis

assuming commission @2%, he made an enhancement of Rs 18,94,000/-.

6. We have heard rival submissions in the light of material available on records. The Ld. counsel for appellant has argued that they have not undertaken any entry from any dubious entry provider and that all its loans are genuine. Consequently, there cannot arise any case paying any commission to any entry provider. The Ld. DR relied upon order of Ld. CIT(A). We have considered the impugned loans in proceeding paras and concluded that they do not suffer from any lack of genuineness. Accordingly, there cannot be any case charging of any commission by such entry providers from the assessee. Further, we have also noted that Ld. CIT(A) has merely done a guess work to make his enhancements without placing any credible evidence on records. We are therefore not inclined to subscribe to his view point on the issue. **The order of Ld. CIT(A) is therefore set aside and the enhancement made by him is deleted. The ground of appeal raised by the assessee on the subject is therefore allowed.**

7. The assessee has through grounds of appeal number 10 has raised the issue of legal challenge to the order challenging legality of proceedings u/s 153D. As we have decided the appeal on its merits, the impugned legal ground is left open.

ITA No.- 1408/Del/2022 Kuber MetpackPvt.Ltd.

8. The first issue arising in the present appeal is the action of AO in making an addition of Rs. 5,90,00,000/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken share application money of Rs. 5,90,00,000/- from one M/s Powmex Sales Pvt. Ltd., a Calcutta based company. The Ld. Counsel for the assessee submitted that order U/s 147 of the Act, r.w.s. 143(3) was passed on 26.04.2017. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata. The Ld. AO had concluded that the said M/s Powmex Sales Pvt. Ltd. did not have sufficient creditworthiness qua the impugned share application money. He also held the view that the said company was a non-existent entity.

9. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein including the remand report submitted by the Ld. Assessing Officer. The Ld. Counsel submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel submitted that its case is fully covered by the decision of this Tribunal, in the case of M/s Kuber Khanpaan Udyog for A.Y. 2012-13 and A.Y. 2013-14 passed by ITA No.- 581 and 582/Del/2019. It was submitted that in the said case this Tribunal had concluded that M/s Powmex India was a genuine entity. As per the facts of impugned case M/s Powmex India had given share application money of Rs. 45,55,000/- to M/s Kuber Khanpaan Udyog. The Ld. DR would like to place reliance upon the decision of lower authorities.

10. We have heard rival submissions in the light of the material available on record. We have noted that in the case of M/s Kuber Khanpaan Udyog at para 9 and 10 of its order on pages 10 to 12, the Hon'ble Co-ordinate Bench has observed as under:

“9. We observe that the Hon’ble Coordinate Bench of the Tribunal in the case of Vijayshree Food Products P. LtdVs.ACIT, {ITA No. 587/Del/2019 decided on 06.12.2021} while relying upon the aforesaid judgment passed by the co-ordinate Bench in the case of Kuber Khanpan Pvt. Ltd (supra) , deleted the similar addition by observing as under:- 23.We find, identical issue had come up before the Tribunal in the case of sister concerns of the assessee, namely, Kuber Khanpan Udyog Pvt. Ltd. And Kuber Food Products India Pvt. Ltd. in ITA No.580/Del/2019 and ITANo.322/Del/2019, respectively, order dated 22 nd October, 2019 for AY 2011-12.We find, the Tribunal, in the case of Kuber Khanpan Udyog Pvt. Ltd., whiledeciding the issue had noted the following facts at para 4 of the order:-

“4. Brief facts of the case is that Kuber Khanpan Udyog Pvt. Ltd filed itsreturn of income on 29.09.2011 for Rs. 320270/-. The assessment of thecompany was reopened u/s 148 of the Act on 31.03.2017. The Assessee filed return in response to that notice on 13.04.2017 declaring the sameincome. The assessment u/s 143(3) read with section 147 of the Act waspassed on 12.05.2017 at Rs. 14795510/-. The addition of Rs. 1.35 crores was made in the hands of the Assessee u/s 68 of the Act. During the searchand seizure u/s 132 of the Act on 09.10.2014 on Kuber Group of Cases details relating to companies with respect to share capital and unsecuredloan came to the light. The statement recorded on oath on 15.12.2014 ShriMulchandMallu declared undisclosed income of Rs. 100 crores of theKuber Group of Companies and its directors out of total undisclosed income of Rs. 150 crores. During the course of assessment proceedingsstatement of Mr. Malu was also recorded u/s 131 of the Act. The AO notedthat the Assessee issued share capital of Rs. 1.35 crores from M/s. Pawmex Sales Pvt. Ltd and same was added u/s 68 of the Act. Against the order oftheld Assessing Officer Assessee preferred appeal before the IdCIT(A),who dismissed the appeal of the Assessee.” 23.1 We find, the Tribunal, after considering the a23.1 We find, the Tribunal, after considering the arguments advanced by boththe sides, deleted the addition by observing as under:- “11. Now we come to the other issues of the reopening of the assessment challenged by the assessee.

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.....Therefore we direct the learned AO to delete theaddition of INR 13,500,000 in ITA number 580/del/2019 and INR21,500,000 in ITA number 322/del/2019. 12. In the result, both these appeals are partly allowed.” 24. Since the assessee in the instant case also belongs to the Kuber Group of companies and the facts are identical,

therefore, respectfully following the decision of the Tribunal in the case of Kuber Khanpan Udyog (P) Ltd. (supra), we hold that the addition made by the AO and sustained by the CIT(A) cannot be upheld. We, therefore, set aside the order of the ld. CIT(A) and direct the AO to delete the addition. The grounds raised by the assessee are partly allowed.”¹⁰. There is no denial qua factual position by the revenue department. Hence, considering the peculiar facts and circumstances as the facts of the instant case are exactly similar as dealt by the Hon’ble Tribunal in the case of Kuber Khanpan Udyog Pvt Ltd (supra) and Vijayshree Food Products P. Ltd Vs. ACIT, hence, respectfully following the decision of the Hon’ble Tribunal, we are inclined to delete the addition made by the AO affirmed by the ld. Commissioner. Consequently, the addition stands deleted.”

11. A perusal of the above, shows that the tribunal has taken the decision that share capital from M/s Powmex Pvt Ltd share is not a part of any chequered/ suspicious entry. We have noted that the thrust of additions made by the Ld assessing officer is resting upon the statement of Sh Mul Chand Malu made during the search making disclosure of additional income. The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata, inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon’ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon’ble Apex Court in the case of Abhisar Buildwell has also been found to applicable

in the case .The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi judicial authority must make his own independent enquiries before making any addition of income. Third party enquiries and/or statements can be a starting point but not the sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of his own.

There is no denial qua factual position by the Ld. Sr. DR.

Accordingly, in respectful compliance to the decision of this Tribunal in the case of M/s Kuber Khanpaan Udyog (supra), the order of Ld. CIT(A) is set aside and the Ld. AO is directed to delete the impugned addition of Rs. 5. 90 crores.

12. The next issue raised by the assessee is regarding the amount of Rs 11.80 lacs added to the income of the assessee by the Ld. CIT(A) invoking his powers of enhancement. Ld. Counsel submitted that the impugned enhancement is based upon twin presumption of assessee undertaking accommodation entries and such entry providers charging commission @ 1-4 %. Thus, on amount of Rs

5.90 crLd CIT(A) applied commission of 2% so as to make enhancement of Rs 11.90 lacs.

12.1 We have heard rival submissions on the matter in the light of material available on records. Apropos to discussion in proceedingparas we have concluded that the transaction of receipt of share applicationmoney by the assessee from M/s Powmexpvt Ltd is not a suspicious transaction and directed to delete the addition. Accordingly, there cannot be any case for any accommodation entry being taken from any entry provider. We have also noted that the conclusion drawn by Ld CIT(A) are purely based upon his conjectures and premises and are not supported by any credible evidence on record. We are therefore not inclined to subscribe to reasoning adopted by the Ld first appellate authority.

Accordingly, we set aside the order of Ld CIT(A) and order deletion of impugned addition, by way of enhancement of Rs 11.90/-lacs. The ground of appeal raised by the assesee are therefore allowed.

13. The assesee has through grounds of appeal number 1 has raised the issue of legal challenge to the order challenging legality of

proceedings u/s 148. As we have decided the appeal on its merits, the impugned legal ground is left open.

14. In the result appeal of assessee vide ITA number 1408/del/2022 is allowed.

ITA No.- 1409/Del/2022- Kuber Metpack Pvt. Ltd.

15. The first issue arising in the present appeal is the action of AO in making an addition of Rs. 18,13,00,000/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken unsecured loans of Rs. 18,13,00,000/- from few parties. The Ld. Counsel for the assessee submitted that order 143(3) of the Act, was passed on 31.03.2017. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata including statement of one Sh. Devesh Upadhaya. The Ld. AO had concluded that the said parties were actually Kolkata based accommodation entry providers who did not had sufficient creditworthiness qua the impugned unsecured loans. He also held the view that the said company was a non-existent entity.

16. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein. The Ld. Counsel, submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel through documents filed in its paper book, submitted that the stand taken by the Ld. AO is contradictory in as much as whereas the AO has added the principal component of the unsecured loan it has failed to add back the interest component thereof which was part of the same loan transaction. The Ld. counsel argued that genuineness of either both principle and loan would be doubtful or both would be genuine. It cannot be case that revenue treats principal loan as ingenuine but allows corresponding claim of interest on it as genuine. The Ld counsel drew our attention to the decision of Mumbai Tribunal, in the case of M/s NH securities Ltd passed vide ITA number 1079/mum/2018 dated 24/3/2021 where it was held that once interest is accepted as genuine qua a loan there cannot be case of treating principle as in genuine. The Ld DR argued that the said case is distinguished on facts.

17. We have heard rival submissions in the light of the material available on record. We have noted that in the case of M/s NH securities Ltd passed vide ITA number 1079/mum/2018 dated 24/3/2021 at para 3.3 of its order on pages 3-4, the Hon'ble Co-ordinate Bench has observed as under:

“ 3.3. We find that the ledger extracts given by the assessee before the ld CITA itself contains the counter signature of the creditors duly confirming all the transactions together with their PAN. From the perusal of the ledger extracts, we find that there is a running account maintained by the assessee with these creditors and all the transactions are routed through regular banking channels in account payee cheques. One more excruciating fact to be noted here is that the assessee had paid interest on these loans after subjecting the same to due deduction of tax at source. We find that the lower authorities had duly granted deduction for the interest expenditure claimed on these loans by the assessee. Once the interest is accepted to be genuine , then how the principal component thereon could be disbelieved by the lower authorities. We are unable to comprehend and unable to persuade ourselves to accept to this act of the lower authorities.”

18. We have considered the above decision of Hon'ble Co-ordinate Bench of Mumbai, and we concur with the findings that “*Once the interest is accepted to be genuine , then how the principal component thereon could be disbelieved by the lower authorities. We are unable to comprehend and unable to persuade ourselves to*

*accept to this act of the lower authorities...".*We have also noted that the thrust of additions made by the Ld assessing officer is resting upon the statement of Sh Mul Chand Malu made during the search making disclosure of additional income. The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata, inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon'ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case .edtha The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi judicial authority must make his own independent enquiries before making any addition of income. Third party enquiries and/or statements can be a starting point but not the sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of

his own. Accordingly, in respectful submissions of the decision in the case of NH Securities (supra), we are of the view that the principal amount of loan do not attract any disallowance u/s 68 in cases where corresponding component of interest has not been disallowed. **The order of lower authorities is therefore, set aside and the Ld. AO is directed to delete the impugned addition of Rs. 18,13,00,000/-.**The Ground of appeal raised by the assessee are therefore, allowed.

19. The next issue raised by the assessee is regarding the amount of Rs 11.80 lacs added to the income of the assessee by the Ld. CIT(A) invoking his powers of enhancement. Ld. Counsel submitted that the impugned enhancement is based upon twin presumption of assessee undertaking accommodation entries and such entry providers charging commission @ 1-4 %. Thus, on an estimate basis assuming commission @2%, he made an enhancement of Rs 11,80,000/-.

20. We have heard rival submissions in the light of material available on records. The Ld. counsel for appellant has argued that they have not undertaken any entry from any dubious entry

provider and that all its loans are genuine. Consequently, there cannot arise any case paying any commission to any entry provider. The Ld. DR relied upon order of Ld. CIT(A). We have considered the impugned loans in proceeding paras and concluded that they do not suffer from any lack of genuineness. Accordingly, there cannot be any case charging of any commission by such entry providers from the assessee. Further, we have also noted that Ld. CIT(A) has merely done a guess work to make his enhancements without placing any credible evidence on records. We are therefore not inclined to subscribe to his view point on the issue. **The order of Ld. CIT(A) is therefore set aside and the enhancement made by him is deleted. The ground of appeal raised by the assessee on the subject is therefore allowed.**

ITA- 1924/Del/2023- Kuber Metpack Pvt. Ltd.

21. The first issue arising in the present appeal is the action of AO in making an addition of Rs. 2 crores under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken unsecured loans of Rs. 2 crores from Campbell Advertising

Pvt. Ltd. The Ld. Counsel for the assessee submitted that order 143(3) of the Act, was passed on 24.12.2018. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata including statement of Shri Ashish Begwani and Shri Vikas Kumar Aggarwal. The Ld. AO had concluded that the said company did not had sufficient creditworthiness qua the impugned unsecured loans. He also held adverse view qua genuineness of the impugned loan transaction.

22. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein. The Ld. Counsel, submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel through documents filed in its paper book, submitted that the stand taken by the Ld AO is contradictory in as much as the impugned loan was returned by the assessee during the previous year on 17.09.2010 and hence, as the same was not appearing in its books on 31.03.2011, there cannot be any addition in respect of

the same. In support of his contentions, the Ld. AR has filed requisite documents showing repayment of the loan. The Ld. DR argued in favour of the order of lower authorities.

23. We have heard rival submissions in the light of the material available on record. We have noted that the appellant has produced credible evidences indicating return of the impugned loan during the financial year under consideration. Since, the said loan was not existing as a liability as on 31.03.2011, there cannot be any case of invoking of provision of section 68 of the Act. We have also noted that the thrust of additions made by the Ld assessing officer is resting upon the statement of Sh Mul Chand Malu made during the search making disclosure of additional income . The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata , inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon'ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble

Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case . The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi judicial authority must make his own independent enquiries before making any addition of income . Third party enquiries and/or statements can be a starting point but not the sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of his own.

Accordingly, the order of lower authorities is set aside and the Ld. AO is directed to delete the impugned addition of Rs. 2 crores. The grounds of appeal raised by the assessee are therefore, allowed.

24. The assessee has through grounds of appeal number 1 has raised the issue of legal challenge to the order challenging legality of proceedings u/s 148. As we have decided the appeal on its merits, the impugned legal ground is left open.

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

ITA no.- 320/Del/2019- Kuber Khadyan Pvt. Ltd.

26. The only issue arising in the present appeal is the action of AO in making an addition of Rs. 1,21,38,863/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken unsecured loans of Rs. 1,21,38,863/- from M/s Powmex Sales Pvt. Ltd. of Calcutta. The Ld. Counsel for the assessee submitted that order 143(3) of the Act, was passed on 28.12.2016. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata. The Ld. AO had concluded that the said company did not have sufficient creditworthiness qua the impugned unsecured loans. He also held adverse view qua genuineness of the impugned loan transaction.

27. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein. The Ld. Counsel, submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel through documents filed in its paper book, submitted that the

stand taken by the Ld. AO qua the impugned loan is contradictory. In support of his contentions, the Ld. AR has filed requisite documents showing repayment of the loan. It is the case of the assessee that the Ld. AO has accepted the opening balance of Rs. 3.63 crores appearing in the confirmation of M/s Powmex Sales Pvt. Ltd. It has also been argued that the AO has also been selectively discriminating in his approach in as much as whereas he has accepted loan entry of Rs. 40 lakhs received on 17.07.2014, he has added all other entries aggregating to Rs. 1,21,38,863/-. The Ld. DR argued in favour of the order of lower authorities.

28. We have heard rival submissions in the light of the material available on record. We have noted that the appellant has produced credible evidences comprising a confirmation filed by M/s Powmex Sales Pvt. Ltd. Indicating loans given by them. We have noted that the AO has selectively added loan entries other than the loan of Rs. 40 lakhs received on 17.07.2014. There is nothing in the order towards justification of this selective approach adopted by the Ld. AO. The Ld. AO cannot take contradictory position. Unsecured loan from a party received in a year can either be held to be fully

genuine or ingenuine. In case, there are specific entries deemed as ingenuine and or genuine, a clear and cogent justification is sine qua non of any speaking judicious order. We have noted that the thrust of additions made by the Ld assessing officer is resting upon the statement of Sh Mul Chand Malu made during the search making disclosure of additional income. The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata, inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon'ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case . The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi judicial authority must make his own independent enquiries before making any addition of income. Third party enquiries and/or statements can be a starting point but not the

sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of his own. Accordingly, we are unable to subscribe to the view point of Revenue of treating the impugned unsecured loan of Rs. 1,21,38,863/- as ingenuine loan hit by provisions of Section 68 of the Act. **The order of lower authorities is therefore, set aside and the Ld. AO is directed to delete the impugned unsecured loan of Rs. 1,21,38,863/-. All the grounds of appeal raised by the assessee is therefore, allowed.**

29. Grounds of appeal no. 1 to 4 and 10 have been found to be general in nature and hence, bereft of any meritorious adjudication. The same are therefore, dismissed.

30. In the result, appeal of the assessee is partly allowed.

ITA- 885/Del/2019- Kuber Khaini Pvt. Ltd.

31. The only issue arising in the present appeal is the action of AO in making an addition of Rs. 2,45,00,000/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). As per para 5.2 of the AO's order, the assessee had reportedly taken share application money of Rs. 2,45,00,000/- from three companies namely, M/s

Kanasbati Trade Com Pvt. Ltd., M/s Binapani Merchandise Pvt. Ltd.
And M/s Innova Comtrade Pvt. Ltd. of Rs. 50,00,000/-,
1,15,00,000/- and 80,00,000/- respectively.

32. The Ld. Counsel for the assessee submitted that order U/s 147 of the Act, r.w.s. 143(3) was passed on 27.12.2016. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata inter alia including statement of one Vikas Aggarwal an alleged entry provider. The Ld. AO had concluded that the said entities did not had sufficient creditworthiness qua the impugned share application money. He also held the view that the said company were a non-existent entity. Reliance was placed upon statement of one shri Vikas Aggarwal, and Divesh Upadhyay a Calcutta based entry provider.

33. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein. The Ld. Counsel submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel

submitted that the conclusions drawn by the Ld. AO purely upon inquiries of Investigation Wing of Kolkata, was not correct. It is submitted that in order to verify, identity of the impugned companies, the Ld. AO ought to have made inquiries qua the MCA data. It was said that the conclusions drawn by the Ld. AO were based upon third party inquiry and therefore, addition is erroneous. The Ld. DR argued that onus was upon the assessee to have provided the requisite details, and hence, the AO cannot be blamed for making any additions.

34. We have heard rival submissions in the light of the material available on record. We have noted that in para 5.7 of his order, the Ld. AO has recorded that assessee had furnished share applications form, confirmations, bank statements, income tax returns, financial statements and MCA data of impugned companies. We have also noted that, the Ld. AO has held that the assessee failed to produce the promoters or the persons managing affairs of investor companies and hence, he held the share application money is ingenuine. We have noted that the thrust of additions made by the Ld assessing officer is resting upon the

statement of Sh Mul Chand Malu made during the search making disclosure of additional income. The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata, inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon'ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case . The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi-judicial authority must make his own independent enquiries before making any addition of income. Third party enquiries and/or statements can be a starting point but not the sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of his own. We have also noted that the Ld. AO has failed to discharge his primary responsibility of conducting his inquiries once details

are provided by assessee qua provisions of section 68 of the Act. To this extent, the order of Ld. AO and its affirmation by Ld. CIT(A) is found to be erroneous. **Accordingly, we set aside the order of lower authorities and direct the Ld. AO to delete the impugned addition of Rs. 2, 25,00,000/-.**

35. Ground of appeal no. 1 has been found to be general in nature and hence, bereft of any meritorious adjudication. The same is therefore, dismissed.

36. In the result, appeal of the assessee is partly allowed.

ITA- 1407/Del/2022 Kuber Grains and Spices Pvt. Ltd.

37. The first issue arising in the present appeal is the action of AO in making an addition of Rs. 13,23,00,000/- under Section 68 of the Act, and its affirmation by the Ld. CIT(A). The assessee had reportedly taken unsecured loans of Rs. 13,23,00,000/- from few parties. The Ld. Counsel for the assessee submitted that order 143(3) of the Act, was passed on 29/12/2016. The Ld. AO while making the addition relied upon the statement of Shri Mulchand Malu, the head of the Group and inquiry conducted by Investigation Wing of Kolkata including statement of one Sh. Devesh Upadhaya.

The Ld. AO had concluded that the said parties were actually Kolkata based accommodation entry providers who did not had sufficient creditworthiness qua the impugned unsecured loans. He also held the view that the said company was a non-existent entity.

38. The Ld. Counsel for the assessee submitted that the Ld. First Appellate Authority has affirmed the order of the Ld. AO by relying upon averments made therein. The Ld. Counsel, submitted that the addition made by the Ld. AO is not based upon correct appreciation and understanding of the facts governing the case. The Ld. Counsel through documents filed in its paper book, submitted that the stand taken by the Ld. AO is contradictory in as much as whereas the AO has added the principal component of the unsecured loan it has failed to add back the interest component thereof which was part of the same loan transaction. The Ld. counsel argued that genuineness of either both principle and loan would be doubtful or both would be genuine. It cannot be case that revenue treats principal loan as ingenuine but allows corresponding claim of interest on it as genuine. The Ld. counsel drew our attention to the decision of Mumbai Tribunal, in the case of M/s NH securities Ltd

passed vide ITA number 1079/mum/2018 dated 24/3/2021 where it was held that once interest is accepted as genuine qua a loan there cannot be case of treating principle as in genuine. The Ld. DR argued that the said case is distinguished on facts.

39. We have heard rival submissions in the light of the material available on record. We have noted that in the case of M/s NH securities Ltd passed vide ITA number 1079/mum/2018 dated 24/3/2021 at para 3.3 of its order on pages 3-4, the Hon'ble Co-ordinate Bench has observed as under:

“ 3.3. We find that the ledger extracts given by the assessee before the ld CITA itself contains the counter signature of the creditors duly confirming all the transactions together with their PAN. From the perusal of the ledger extracts, we find that there is a running account maintained by the assessee with these creditors and all the transactions are routed through regular banking channels in account payee cheques. One more excruciating fact to be noted here is that the assessee had paid interest on these loans after subjecting the same to due deduction of tax at source. We find that the lower authorities had duly granted deduction for the interest expenditure claimed on these loans by the assessee. Once the interest is accepted to be genuine , then how the principal component thereon could be disbelieved by the lower authorities. We are unable to comprehend and unable to persuade ourselves to accept to this act of the lower authorities.”

40. We have considered the above decision of Hon'ble Co-ordinate Bench of Mumbai, and we concur with the findings that “ ...*Once the interest is accepted to be genuine , then how the principal component thereon could be disbelieved by the lower authorities. We are unable to comprehend and unable to persuade ourselves to accept to this act of the lower authorities...*”.We have noted that the thrust of additions made by the Ld assessing officer is resting upon the statement of Sh Mul Chand Malu made during the search making disclosure of additional income. The assessing authority has also placed sufficient reliance upon enquiries conducted by the investigation wing of Kolkata, inter alia, including statement of third parties stated to be accommodation entry providers. In the case of Harjeev Agarwal, Hon'ble Delhi High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case .The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. Further it is trite law that the assessing officer as a quasi-

judicial authority must make his own independent enquiries before making any addition of income. Third party enquiries and/or statements can be a starting point but not the sole basis for drawing any conclusions. The assessment order suffers from deficiency of AO making any independent enquiries of his own.

Accordingly, in respectful submissions of the decision in the case of NH Securities (supra), we are of the view that the principal amount of loan do not attract any disallowance u/s 68 in cases where corresponding component of interest has not been disallowed. **The order of lower authorities is therefore, set aside and the Ld. AO is directed to delete the impugned addition of Rs. 13,23,00,000/-.** **The Ground of appeal raised by the assessee are therefore, allowed.**

41. The next issue raised by the assessee is regarding the amount of Rs 26,46,000/- added to the income of the assessee by the Ld. CIT(A) invoking his powers of enhancement. Ld. Counsel submitted that the impugned enhancement is based upon twin presumption of assessee undertaking accommodation entries and such entry providers charging commission @ 1-4 %. Thus, on an estimate basis

assuming commission @2%, he made an enhancement of Rs 26,46,000/-.

42. We have heard rival submissions in the light of material available on records. The Ld. counsel for appellant has argued that they have not undertaken any entry from any dubious entry provider and that all its loans are genuine. Consequently, there cannot arise any case paying any commission to any entry provider. The Ld. DR relied upon order of Ld. CIT(A). We have considered the impugned loans in proceeding paras and concluded that they do not suffer from any lack of genuineness. Accordingly, there cannot be any case charging of any commission by such entry providers from the assessee. Further, we have also noted that Ld. CIT(A) has merely done a guess work to make his enhancements without placing any credible evidence on records. We are therefore not inclined to subscribe to his view point on the issue. **The order of Ld. CIT(A) is therefore set aside and the enhancement made by him is deleted. The ground of appeal raised by the assessee on the subject is therefore allowed.**

43. The assessee has through grounds of appeal number 10 has raised the issue of legal challenge to the order challenging legality of proceedings u/s 153D. As we have decided the appeal on its merits, the impugned legal ground is left open.

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

ITA- 2711/Del/2022- Kuber Grains and Spices Pvt. Ltd.

45. ITA No. 2711/Del/2022 is regarding penalty U/s 271(1)(c) quantum addition challenged in ITA No. 1407(supra). We have already decided that there is no case for making any addition on account of unsecured loans u/s 68 or enhancement of income for alleged commission payment to entry providers. It is trite law that when the foundation goes, the super structure naturally collapses. In the present case, when the quantum addition stands deleted, there cannot be any case for survival of corresponding concealment penalty under Section 271(1)(c). **Accordingly, we set aside the order of lower authority and delete the penalty for concealment under Section 271(1)(c) imposed by the Ld. AO. All the grounds of appeal raised by the assessee are therefore, allowed.**

ITA- 1412/Del/2021 and 4213/Del/2018- Kuber Securities Pvt.

Ltd.

46. The two appeals of Revenue, for A.Y. 2012-13 and 2013-14 are revolving around identical facts and hence for the purposes of convenience adjudicated together. The decision taken in ITA- **1412/Del/2021** for A.Y. 2012-13, shall apply mutatis mutandis in ITA No. **4213/Del/2018 for** 2013-14.

47. The Ld. Counsel for the assessee informed that the Ld. AO had made an addition of Rs. 2,78,00,000/- U/s 68 of the Act, on account of unsecured loans. The Ld. AO while making the impugned addition relied upon the statement of Shri Mulchand Malu, the Head of the Group and inquiry conducted by Investigation Wing of Kolkata. Before the Ld. First Appellate Authority, the assessee had contended that the addition of Rs. 2.78 crores did not have any nexus with any incriminating document found during the course of search, the statement of Sh. Mulchand Mallu, head of Family cannot be relied upon as he was neither an employee nor a Director in any company. It was argued that, there was no reference to the impugned loan in the satisfaction note.

Before the Ld. First Appellate Authority, the assessee relied upon decision of Hon'ble Delhi High Court in the case of Kabul Chawla 380 ITR 573, Meeta Gutgutiya 395 ITR 526. Harjeev Agarwal 241taxman 199 and Best Infrastructure Pvt. Ltd. 397 ITR 182, in support of its claim that no addition was permissible in assessee's case on the existing facts and circumstances of the case. Reliance was also placed upon the decision and the case of Abhisar Buildwell. The Ld. DR placed reliance upon the order of the Ld. AO and submitted that statement of Sh Malu constitutes incriminating evidence.

48. We have heard rival submissions in the light of the material available on record. We have noted that the Ld. CIT(A), has comprehensively analysed the facts and circumstances of the case in the light of available judicial decisions of Hon'ble Delhi High Court. Through the decisions in case of Kabul Chawla 380 ITR 573, Meeta Gutgutiya 395 ITR 526, and Best Infrastructure Pvt. Ltd. 397 ITR 182 (supra), it is settled position that addition in search cases can only be made with reference to any incriminating seized documents. The addition therefore, cannot be made u/s 153

unless an incriminating document, in support thereof is on record. Further, in the case of Harjeev Agarwal, Hon'ble High Court has held that undisclosed income cannot be computed merely on the basis of statements of an accused unless, the same is supported by credible evidence on record. The ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell has also been found to applicable in the case . The statement of Shri Mulchand Malu, who was neither a Director nor an employee becomes questionable, for resting any addition. We are of the view that as the Ld. CIT(A) has extensively covered all the facets of the case before arriving at his decision, there is no case for any interference at this stage. **Accordingly, we confirmed the order of Ld. CIT(A), and dismissed all the grounds of appeal raised by the Revenue.**

49. As facts of the case in ITA No. 4213/Del/2018, for A.Y. 2013-14, are identical the decision in ITA No. 1412/Del/2021 herein above, shall apply mutatis mutandis. **Accordingly, the appeal of the Revenue in ITA No. 4213/Del/2018, for A.Y. 2013-14, also stands dismissed.**

50. In the result appeal of assessee vide ITR Nos.320/del/2019, 885/del/2019, 1406/del/2022, 1407/del/2022, 2711/del/2022, 1408/del/2022, 1409/del/2022 & 1924/del/2023 are allowed and of Revenue vide ITR no 4213/del/2018 and 1412/del/2021 is dismissed .

Order pronounced in the open court on 21.03.2025.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Pooja /Neha, Sr. PS

Dated: /03/2025.

Copy forwarded to:

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

Sd/-

(AMITABH SHUKLA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI