

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
251/Mum/2025	2015-16	Annapurna Infratech, Shop No. 6, Ground Floor, Rachana CHS Ltd., Opp. MCF Club, Jogurs Park, Borivali (West), Mumbai [PAN: AAXFA2823J]	DCIT, Central Circle-1, 6 th Floor, Ashar IT Park, Wagle Estate, Thane (W) Maharashtra
252/Mum/2025	2016-17		

Assessee by : Shri Tarang Mehta
Revenue by : Dr. K.R. Subhash, CIT-DR

Date of Hearing : 25-02-2025
Date of Pronouncement : 01-04-2025

ORDER

PER BENCH :

Both the appeals filed by the assessee are directed against the separate orders, both dated 20-12-2024 passed by the Ld CIT(A), Pune-11 and they relate to the Assessment Years (AYs.) 2015-16 and 2016-17. Since the issue urged in both these appeals is identical in nature, these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. In both the years, the assessee is contesting the addition made by the AO u/s 68 of the Act in respect of alleged accommodation loans taken by the assessee.

3. The facts relating to the case are stated in brief. The assessee herein belongs to 'Span Group' and it is a leading builder and developer. This group is engaged in the business of construction and sale of residential and commercial buildings in Mira and Bhayander areas in the District of Thane. The Revenue carried out the search and seizure action u/s. 132 of the Income Tax Act, 1961 ('the Act') on 12-01-2021 in the business as well as the residential premises of the group including that of the assessee. Consequent thereto, the assessments of both the assessment years under consideration were completed by the AO u/s. 143(3) r.w.s 153A of the Act.

4. The addition made u/s 68 of the Act in respect of peak credit of alleged accommodation loans amounting was Rs.6,32,65,194/- in AY 2015-16 and Rs.1,43,05,438/- in AY 2016-17. It is pertinent to note that both these years fall under the category of 'unabated assessment years'. It is well settled proposition of law that the AO is entitled to make addition in the assessment completed u/s 153A of the Act in the unabated assessment years only on the basis of incriminating material found during the course of search. It is also pertinent to note that the AO has not assessed entire amount of loan taken by the assessee, i.e., he has assessed only the peak credit of loans.

5. The facts relating to the same are discussed in brief. During the course of pre-search investigation carried out by the department, it was noticed that the assessee group has taken accommodation entries by way of loans from various dummy companies. The Revenue came to such a conclusion on the basis of search conducted in the cases of lender

companies. The AO took the view that the accommodation entries by way of loans are usually obtained by paying equal amount of unaccounted cash to the lending companies. It was noticed that the assessee herein has taken an aggregate amount of Rs.7.07 crores and Rs.1.43 crores as loans during the years relevant to AYs. 2015-16 and 2016-17 respectively. Accordingly, he proposed to assess the loans taken by the assessee as its income. In response thereto, the assessee contended that the loans taken by it are genuine loans. In the alternative, the assessee had submitted in the assessment of other groups that, if at all the AO proposes to assess loans as income of the assessee, then telescopic benefit should be given to the amount of loan repaid by it and also to the profit estimated on the on-money receipts. The AO accepted the alternative contentions of the assessee in the hands of the assessee as well in other group cases.

6. It is pertinent to note that, in the case of other group companies, certain incriminating evidences relating to alleged on-money receipts on sale of flats were found and the AO had estimated the profit on such receipts @ 15%. Hence, the AO gave telescoping benefit to the loan amount repaid by the assessee and also income estimated on the on-money receipts. Accordingly, the AO prepared a cash flow statement by treating

- (a) the loan received by the assessee as 'cash outflow'
- (b) loan repaid by the assessee as 'cash inflow'.
- (c) income estimated by the AO on the alleged on-money receipts as 'cash inflow'.

In these two years under consideration, no incriminating material relating to alleged on-money receipts were found from the assessee. Hence, no such addition was made. Accordingly, the AO granted telescoping benefit

in respect of loans repaid only. Accordingly, he determined and assessed the peak credit amounts as Rs.6.32 crores and Rs.1.43 crores in A.Ys. 2015-16 and 2016-17 respectively. The Ld.CIT(A) also confirmed the same.

7. The only question that arises before us is whether the AO was right in law in assessing the peak credit balance of loans in these two years in the absence of any incriminating material, since both these years fall under the category of unabated assessment years.

8. It is the contention of the assessee that the search officials did not unearth any incriminating material in order to show that the loans taken by the assessee are bogus and accommodation entries only. On the contrary, the Ld D.R contended that the assessing officer was in possession of 'incriminating information' that the assessee had availed accommodation entries in the form of bogus loans prior to the commencement of search and hence the AO could very well use it for making addition in the unabated assessment years also.

9. We notice that an identical issue has been examined by the Co-ordinate Bench in another group case of the assessee, viz., Annapurna Buildcon Infra Private Ltd. vs. DCIT (ITA Nos.6827 to 6834/Mum/2024 dated 06-03-2025). It has been held by the co-ordinate bench that the incriminating information, if any, available with the AO cannot be the basis for making the addition. For the sake of convenience, we extract below the observations made by the Co-ordinate Bench and the decision taken by it on this issue:-

"9. We shall now take up the appeal relating to AY 2015-16. The only remaining issue urged in this appeal relates to the addition made

u/s 68 of the Act in respect of alleged accommodation loans amounting to Rs.1,64,20,877/-.

9.1 The facts relating to the same are discussed in brief. During the course of pre-search investigation carried out by the department, it was noticed that the assessee group has taken accommodation entries by way of loans from various dummy companies. The AO took the view that the accommodation entries by way of loans are usually obtained by paying equal amount of unaccounted cash to the lending companies. It was noticed that the assessee herein has taken an aggregate amount of Rs. 5.62 crores as loans during the years relevant to AYs. 2014-15 to 2019-20. Accordingly, he proposed to assess the loans taken by the assessee as its income. In response thereto, the assessee contended that the loans taken by it are genuine loans. In the alternative, the assessee submitted that, if at all the AO proposes to assess loans as income of the assessee, then telescopic benefit should be given to the amount of loan repaid by it and also to the profit estimated on the on-money receipts. The AO accepted the alternative contentions of the assessee and accordingly he prepared a cash flow statement by treating

- (a) the loan received by the assessee as 'cash outflow'*
- (b) loan repaid by the assessee as 'cash inflow'.*
- (c) income estimated by the AO on the alleged on-money receipts as 'cash inflow'.*

The cash flow statement was prepared by the AO, is extracted below:-

Annapurna Buildcon Infra Private Limited							
Entity wise Cash Flow					Minimum Peak Balance	-2,10,95,041	
AY	Nature of Transaction	Transaction Amount	%	Inflow	Outflow	Closing Balance	AY wise peak (differential)
2014-15	On Money	2,02,00,000	15%	30,30,000			
2014-15	Accommodation Loan	75,00,000	100%		77,04,164	-46,74,164	-46,74,164
2015-16	On Money	1,65,00,000	15%	24,75,000		-	
2015-16	Repayment of accommodation loan	75,00,000	100%	75,00,000		-	
2015-16	Accommodation Loan	2,50,00,000	100%		2,63,95,877	-2,10,95,041	-1,64,20,877
2016-17	On Money	1,36,00,000	15%	20,40,000		-	
2016-17	Repayment of accommodation loan	1,50,00,000	100%	1,50,00,000		-	
2016-17	Accommodation Loan	25,00,000	100%		45,92,257	-86,47,298	-
2017-18	On Money	1,21,00,000	15%	18,15,000		-	
2017-18	Repayment of accommodation loan	1,00,00,000	100%	1,00,00,000		-	
2017-18	Accommodation Loan	50,00,000	100%		58,53,770	-26,86,068	-
2018-19	On Money	3,34,00,000	15%	50,10,000		-	
2018-19	Repayment of accommodation loan	47,50,000	100%	47,50,000		-	
2018-19	Accommodation Loan	1,03,00,000	100%		1,15,16,866	-44,42,934	-
2019-20	On Money	2,34,00,000	15%	35,10,000			
2019-20	Repayment of accommodation loan	55,50,000	100%	55,50,000			
2019-20	Accommodation Loan	1,53,122	100%		1,53,122	44,63,944	-
2020-21	On Money	1,05,00,000	15%	15,75,000		60,38,944	-
2021-22	On Money	1,34,00,000	15%	20,10,000		80,48,944	-

9.2 The above said workings made by the AO revealed that there was negative peak balance of Rs.46,74,164/- in the financial year relevant to AY. 2014-15 and Rs.1,64,20,877/- in the year relevant to AY. 2015-16, meaning thereby, there was cash outflow in the above said two years to the extent mentioned above. The AO treated the excess cash outflow as unaccounted income of the assessee and assessed the above said amounts in the respective years. The Ld.CIT(A) also confirmed the same.

9.3 The Ld.AR submitted that the assessment year 2015-16 would fall under the category of "unabated assessment year". Accordingly, the Ld.AR submitted that the AO could not have made addition on peak balance of loan entries, without there being any incriminating material found during the course of search. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P) Ltd.*, [2023] 454 ITR

212 (SC). He submitted that the search officials did not find any incriminating material during the course of search conducted in the hands of the assessee in order to show that the loans taken by the assessee from various companies are in the nature of accommodation entries.

9.4 The Ld D.R, on the contrary, contended that the AO has received 'Incriminating information" regarding accommodation loans taken by the assessee from various paper companies. He also submitted that the enquiries/search conducted in the hands of those paper companies have brought to light that they were providing only accommodation entries to the beneficiaries. He submitted that the revenue has found incriminating materials in respect of on-money receipts for Ay 2015-16 also, which was an unabated assessment year. Hence the AO has validly assumed jurisdiction to assess or reassess the total income. He submitted that the AO was in the possession of incriminating information that the assessee had availed accommodation loans at the time at the time the assessment of AY 2015-16 was completed. Hence the said incriminating information could also be used by the AO in the case of unabated assessment year as held by Hon'ble Supreme Court in the case of *Abhisar Buildwell P Ltd (454 ITR 212)(SC)*. In this regard, the Ld D.R placed his reliance on the following observations made by Hon'ble Apex Court in paragraph 14(iii) of its order:-

"in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume 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"

Accordingly, the Ld D.R contended that incriminating information received in respect of accommodation loans shall constitute 'other

material' which could be used by the AO in the unabated assessment year 2015-16. Accordingly, he contended that the addition made by the AO u/s 68 of the Act was justified.

9.5 On the contrary, the ld A.R submitted that the interpretation given by the Ld D.R is not in accordance with the ratio laid down by Hon'ble Supreme Court in the case of Abhisar Buildwell P Ltd (supra). He submitted that the ratio of the decision rendered by Hon'ble Supreme Court should be understood by reading of entire order. He submitted that a careful reading of entire order passed by the Hon'ble Supreme Court in the above said case would show that the Hon'ble Apex Court has completely agreed with the decisions rendered by Hon'ble Delhi High Court in the case of Kabul Chawla and by Hon'ble Gujarat High Court in the case of Saumya Construction, wherein it has been clearly held that the addition in the case of unabated assessment should be based on incriminating material found during the course of search conducted in the hands of the assessee. Further, the Hon'ble Supreme Court has also held that the foundation for making assessment u/s 153A can be said to be existence of incriminating material showing undisclosed income detected as a result of search. Once an incriminating material relating to an unabated assessment year is found, then the AO assumes jurisdiction to assess or reassess "total income" of that year. The Ld A.R submitted that, under the erstwhile scheme of block assessments made u/s 158BA to 158BD of the Act, the AO was required to assess only the "undisclosed income" found during the course of search. However, under the present scheme of assessment u/s 153A of the Act, the AO is required to assess or reassess the 'total income', which can be arrived at by adding the undisclosed income found during the course of search to the total

income already assessed by the assessing officer. He submitted that the Hon'ble Supreme Court has used the expression, viz., 'other material available with the AO including the income declared in the returns' only to make it clear that the final total income of an unabated assessment year can be arrived by consolidating the undisclosed income and other income already known to the AO. Accordingly, he submitted that the AO could not get power to consider any other addition in the case of an unabated assessment year, which was not supported by the incriminating material found during the course of search conducted in the hands of the assessee. Accordingly, he submitted that the alleged incriminating information about accommodation loans cannot partake the character of 'incriminating material' unearthed during the course of search.

9.6 *We heard rival contentions and perused the record. There is no dispute with regard to the fact that the assessment year 2015-16, in the instant case, would fall under the category of 'unabated assessment year'. The law is now well settled that the AO can make any addition in an unabated assessment year only on the basis of any incriminating material found during the course of search conducted in the hands of the assessee. In this regard, we may take support of the decision rendered by the Hon'ble Supreme Court in the case of *Abhisar Buildwell P Ltd (supra)*.*

9.7 *Under the scheme of assessments to be made u/s 153A of the Act, we noticed that the "total income" has to be assessed or reassessed for each of the assessment years falling in the block. Under the erstwhile scheme covered by the provisions of sec.158BA to 158BD of the Act, only 'undisclosed income' shall be assessed for the block*

period, while the assessment of regular income shall be carried out separately in the normal course. Hence, under the erstwhile scheme, there were two parallel assessments, viz., one regular assessment for assessing regular income of each of the year and second one for assessing the 'undisclosed income' for the block period. This distinction between old scheme and new scheme was elaborately brought out by Hon'ble Supreme Court in the above said case as under:-

“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.”

9.8 The scope of assessments to be framed u/s 153A/153C of the Act has been explained by Hon'ble Delhi High Court in the case of *Kabul Chawla (380 ITR 573)(Delhi)* and by Hon'ble Gujarat High Court in the case of *Saumya Construction (387 ITR 529)(Guj)*. The Hon'ble

Supreme Court has approved the interpretations given by the Hon'ble Delhi and Gujarat High Court in the above said cases. The relevant observations made by Hon'ble Supreme Court are extracted below:-

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 153 A is relatable to abated proceedings (i.e., those pending on the date of

search) and the word 'reassess' to completed assessment proceedings.

vi. 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 153 A 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 there under 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.

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The above said decisions rendered by Hon'ble Delhi High Court and Hon'ble Gujarat High Court bring out the proposition of law that the completed assessments (unabated assessments) can be interfered with 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. The Hon'ble Supreme Court has approved the above said interpretation given by both the High Courts.

9.9 A careful reading of the decision rendered by Hon'ble Gujarat High Court in the case of Saumya Constructions(supra) would show that there are two aspects involved while framing assessment u/s 153A of the Act. One is making addition and another one is computing total income. In case of an unabated assessment year, the Hon'ble Gujarat High Court has made it clear that any addition or disallowance can be made only on the basis of material collected during the search or requisition. It was further held that, in case no incriminating material is found, as held by the Rajasthan High Court

in the case of Jai Steel (India) v. Asst. CIT (36 taxmann.com 523), the earlier assessment would have to be reiterated.

9.10 The Hon'ble Supreme Court has extracted the submissions made by the assessee in a tabular form in paragraph 4.1 of the order. A perusal of the same would show that the assessee has stated that the addition u/s 153A can be made only on the basis of any incriminating material found during the course of search. It is further contended that, if the AO was having any other information available with him or any other information was found from external sources, then the AO can use those information in a separate proceeding initiated u/s 147 of the Act or u/s 263 of the Act.

9.11 The Hon'ble Supreme Court has again explained the scope of provisions of sec.153A of the Act in paragraph 11 and 12 of its order, wherein Hon'ble Apex Court has again reiterated that the AO is required to compute 'total income' u/s 153A of the Act. The relevant observations are extracted below:-

*".....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.”

9.12 *The above said discussions would show that the AO is entitled to make addition in an unabated assessment year only on the basis of incriminating material found during the course of search conducted in the hands of an assessee. Once the undisclosed income is determined on the basis of said incriminating material in the case of*

an unabated assessment year; then the AO should proceed to determine the total income by making addition of undisclosed income to the total income already determined on the basis of return of income and other material.

9.13 *The Ld D.R submitted that the assessing officer was in possession of information that the loans already taken by the assessee was only accommodation entries and the same would constitute ‘incriminating information’. According to Ld D.R, the said incriminating information could be used by the AO while computing total income of unabated assessment year, viz., AY 2015-16, since the revenue has unearthed incriminating material relating to on-money receipts during the course of search conducted in the hands of the assessee. The Ld D.R also furnished a copy of report received from the assessing officer. However, on a perusal of the same, we notice that the AO has furnished following details:-*

- (a) A brief note about M/s Span Group*
- (b) Details of entities under M/s Span Group*
- (c) Details of projects undertaken by M/s Span Group*
- (d) Details of Unsecured loans taken by M/s Span Group and it is titled as “Accommodation entries in the form of Unsecured loans received by M/s Span Group”.*
- (e) Copy of seized materials relating to on-money receipts.*

We notice that the incriminating materials, which were found during the course of search, were related to the on-money receipts only. We notice that the search team did not find any material to support the case of the revenue that the loans taken by the assessee were in the

nature of accommodation entries. We noticed earlier that the AO has observed in the assessment order that the search action u/s 132 of the Act was undertaken in the hands of the group on the basis of pre-search information that the assessee group has availed accommodation entries in the form of loans. However, it is nowhere stated that the revenue could find any incriminating material during the course of search proceedings in order to support the above said view of the revenue/AO. Accordingly, in our view, that the AO has only entertained presumption that the loans taken by the assessee are in the nature of accommodation entries and further, the assessee would have paid equal amount of cash to the lender in order to get the loans through banking channels by way of accommodation entries.

9.14 First of all, the above said suspicion of the revenue cannot be termed as 'incriminating information' as contended by the Ld D.R. Secondly, even if it is accepted as incriminating information, the same was not unearthed during the course of search conducted in the hands of the assessee. Thirdly, the said information would only trigger further investigation and hence it cannot be said to be concrete proof to show that the assessee has availed accommodation entries. Fourthly, as observed by the AO in the assessment order, the search itself was conducted on the basis of above said information, but the search did not bring out any incriminating material to support the view of the revenue that the loans taken by the assessee were in the nature of accommodation entries. Fifthly, it is not the case that the AO had already computed the total income earlier by making addition of loans/peak credit of loans. Accordingly, in our view, the AO could not have made any addition of the peak credit of loans in an unabated assessment year and hence the Ld DR was not correct in law in contending that there was incriminating information with the AO and

the same would constitute 'other material', as mentioned in the order passed by Hon'ble Supreme Court in the case of Abhisar Buildwell P Ltd. (supra).

9.15 In view of the foregoing discussions, we are of the view that the AO was not correct in law in making addition of peak credit of loans in AY 2015-16, being an unabated assessment year, in the absence of any incriminating material found during the course of search conducted in the hands of the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.”

10. The facts prevailing in the instant cases are identical. The search team did not find any material during the course of search that the loans taken by the assessee are bogus in nature; that the assessee had paid equivalent amount of cash for availing cheque from lender companies; that the assessee had received equivalent amount of cash in respect loan repaid to the lender companies. Hence the decision rendered by the co-ordinate bench in the case of above said group company of the assessee shall be applicable. The Ld A.R relied upon the decision rendered by the Tribunal in the case of DCIT vs. Arun Kumar R Mehta (ITA No.2477/Mum/2018 dated 06-09-2019) and in the case of Shri Bishwanath Garodia vs. DCIT (ITA Nos. 853 & 854/Kol/2016 dated 21-09-2016), wherein also identical views have been expressed by the co-ordinate benches. Hence, we hold that the AO was not right in law in assessing the peak credit of loan amounts as undisclosed income of the assessee in these two years.

11. The Ld A.R took an alternative legal contention. He submitted that the AO had, in fact, relied upon the information obtained from the search conducted in the cases of “other persons” for making the impugned

addition of peak credit of loans. In that case, the AO should have assessed the above said income u/s 153C of the Act only and not in the 153A proceedings. In support of this legal contention, the Ld A.R placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr (WP No.3057 of 2019 dated 18-02-2019). Since we have already held that the impugned additions could not have been made by the AO in the absence of any incriminating material, the above said legal issue raised by the Ld A.R shall become academic in nature.

12. In view of the foregoing discussions, we set aside the orders passed by the Ld CIT(A) in both the years on this issue and direct the AO to delete the impugned additions of Rs.6.32 crores and Rs.1.43 crores made in AYs. 2015-16 and 2016-17; respectively.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 01-04-2025

Sd/-
[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 01-04-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai