

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.23/Nag./2016**  
(Assessment Year : 2008-09)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

M/s. Shree Agarwal Coal India Pvt. Ltd.  
216, DevKripa Society, Wardhaman Nagar ..... Respondent  
Nagpur 440 008PAN – AAFCS6709L

**ITA no.18/Nag./2016**  
(Assessment Year : 2009-10)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

M/s. Shree Agarwal Coal India Pvt. Ltd.  
216, DevKripa Society, Wardhaman Nagar ..... Respondent  
Nagpur 440 008PAN – AAFCS6709L

**ITA no.171/Nag./2016**  
(Assessment Year : 2006-07)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

M/s. Shree Agarwal Finance India Pvt. Ltd.  
216, DevKripa Society, Wardhaman Nagar ..... Respondent  
Nagpur 440 008PAN – AABCA4981E

**ITA no.172/Nag./2016**  
(Assessment Year : 2007-08)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

M/s. Shree Agarwal Finance India Pvt. Ltd.  
216, DevKripa Society  
Wardhaman Nagar, Nagpur 440 008 ..... Respondent  
PAN – AABCA4981E

**ITA no.292/Nag./2016**  
(Assessment Year : 2007-08)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

ShriDharampal R. Agarwal  
290, Satnami Lay Out, Wardhman Nagar ..... Respondent  
Nagpur 440 008 PAN – ABHPA2471M**ITA no.293/Nag./2016**  
(Assessment Year : 2008-09)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

ShriDharampal R. Agarwal  
290, Satnami Lay Out, Wardhman Nagar ..... Respondent  
Nagpur 440 008 PAN – ABHPA2471M**ITA no.182/Nag./2017**  
(Assessment Year : 2006-07)

DCIT, Central Circle-2(2), Nagpur ..... Appellant

v/s

Thanjavur Commerce Pvt. Ltd.  
216, DevKripa Society, Wardhman Nagar ..... Respondent  
Nagpur 440 008 PAN – AABCT8675JAssessee by : Shri Sachin V. Luthra  
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

**ORDER****PER K.M. ROY, A.M.**

The instant appeals by the Revenue are emanating from the separate impugned orders passed by the first appellate authority, the details of which are tabulated below:-

Sr. no.	Appeal Number, Assessment Year and Assessee's Name	Date of order passed by the first appellate authority	Section under which first appellate authority has passed the Order	First Appellate Authority
1.	ITAno.23/Nag./2016 A.Y. 2008-09 – By Revenue M/s. Shree Agarwal Coal India Pvt. Ltd.	22/12/2015	143(3) r/w 153A	CIT(A)-3, Nagpur
2.	ITAno.18/Nag./2016 A.Y. 2009-10 – By Revenue M/s. Shree Agarwal Coal India Pvt. Ltd.	18/12/2015	143(3) r/w 153A	CIT(A)-3, Nagpur
3.	ITAno.171/Nag./2016 A.Y. 2006-07 by Revenue Shree Agarwal Finance India Pvt. Ltd.	21/01/2016	143(3) r/w 153A	CIT(A)-3, Nagpur
4.	ITAno.172/Nag./2016 A.Y. 2007-08- By Revenue Shree Agarwal Finance India Pvt. Ltd.	20/01/2016	143(3) r/w 153A	CIT(A)-3, Nagpur
5.	IT no.292/Nag./2016 A.Y. 2007-08 – By Revenue ShriDharampal R. Agarwal	26/02/2016	143(3) r/w 153A	CIT(A)-3, Nagpur
6.	ITAno.293/Nag./2016 A.Y. 2008-09 – By Revenue ShriDharampal R. Agarwal	29/02/2016	143(3) r/w 153A	CIT(A)-3, Nagpur
7.	ITAno.182/Nag./2017 A.Y. 2006-07 – By Revenue Thanjavur Commerce Pvt. Ltd.	30/03/2017	143(3) r/w 153A	CIT(A)-3, Nagpur

2. Since all the aforesaid appeals filed by the Revenue pertain to different assesseees involving multiple common issues under similar set of facts and circumstances, therefore, as a matter of convenience, these Revenue's appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly

narrating the facts, as they appear in the appeal in ITA no.23/Nag./2016, for assessment year 2008–09, the decision of which shall mutatis mutandis apply to other appeals as well.

**ITA no.23/Nag./2016**  
**Revenue's Appeal – A.Y. 2008–09**  
**M/s. Shree Agarwal Coal India Pvt. Ltd.**

3. In this appeal, following grounds have been raised by the Revenue:–

*"1. On the facts and circumstances of the case, the learned CIT(A) erred in holding that the notice and action u/s 153A of the I.T. Act was bad in law, even though the Assessing Officer had recorded his satisfaction that the documents seized from various premises, belonged to the assessee, which is the only pre-condition for issue of notice under Section 153A of the Income-tax Act, 1961?*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of an agriculture income, amounting Rs. 1,61,800/-.*

*3. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the disallowance made u/s 40(A)(2)(b) of Rs. 37,05,109/- .*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made u/s 43B of Rs. 1,27,653/-.*

*5. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of deemed dividend u/s 2(22)(e) of Rs. 4,77,67,712/-.*

*6. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of deemed dividend u/s 2(22)(e) of Rs. 8,75,36,654/-.*

*7. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of disallowance of depreciation of Rs. 47,53,025/-.*

*8. On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of unsecured loans being unexplained credits Rs. 6,45,38,278/-.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of unsecured loans being unexplained credits Rs. 14,69,12,389/-.*

10. *On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of disallowances of expenses amounting of Rs. 41,29,550/-.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred in deleting the addition made on account of disallowance of bad debts and EMD lapsed amounting to Rs. 3,27,930/-.*

12. *Any other ground that may be urged at the time of hearing."*

4. Facts in Brief:- During the year, the assessee herein was engaged in the business of trading and liasoning of coal and wind power. On 16/03/2011, a search and seizure action was conducted in assessee's group cases namely M/s. Shree Agarwal Coal India Pvt. Ltd. The above mentioned assessee is one of the members of this group. The assessee, for the year under consideration, filed its return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*") on 01/10/2008, disclosing total income of ₹nil. As on the date of search, there were no pending assessment proceedings, because the time limit for issuing of notice under section 143(2) of the Income Tax Act, 1961 ("*the Act*") had long expired and no such notice was issued at any point of time. There were no proceedings under section 148 of the Act, which were also pending as on the date of search since no notices were issued. In other words, the assessments have become unabated as these were already completed and had attained finality as on the date of the search. In all these cases, the addition made by the Assessing Officer was not based on any incriminating documents. The assessee's contention is that even if some documents have been seized in some cases, these documents were already

reflected in the regular books of accounts and hence cannot be roped under the genre of incriminating documents since no element of undisclosed income can be inferred therefrom.

5. The learned Departmental Representative, Shri Sandip kumar Salunke, on behalf of the Revenue strongly vehemently assailing the impugned order passed by the first appellate authority submitted that when the assessments were carried out under section 153A of the Act, addition can be made to compute the correct taxable income even in the absence of incriminating documents.

6. On the other hand, the learned Authorized Representative appearing for the assessee relied on the impugned order passed by learned CIT(A) and prayed that the same should not be disturbed. He vehemently submitted that additions were perpetrated de hors any incriminating evidences in any of the above cases.

7. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. Insofar as the issue of abatement of pending assessment/re-assessment is concerned, as per second proviso to section 153A(1) of the Act, any pending assessment or re-assessment in relation to any of the six assessment years shall abate on the date of initiation of the search under section 132 or requisition under section 132A of the Act. However, provisions of section 153(2) of the Act states that if any proceeding initiated or any order of assessment or re-assessment made under sub-section (1) of the Act has been annulled in appeal or other legal proceeding, then the assessment or re-

assessment relating to any assessment year which has been abated under the second proviso to sub-section (1) shall stand revived with effect from the date of receipt of the order and such annulment by the Commissioner. Such revival shall cease to have effect if such order of annulment is set aside. Whereas, in cases where the assessment/re-assessment proceedings have already been completed and assessment orders have been passed determining the total income and such orders are subsisting at the time when the search or requisition is made, there is no question of any abatement since no proceeding are pending. Similarly, the appellate proceedings before learned CIT(A)), Income Tax Appellate Tribunal, Hon'ble High Court and Hon'ble Supreme Court against such orders also not abate. Here, we wish to place reliance on the judgment of the Hon'ble Delhi High Court in CIT v/s Anil Kumar Bhatia, [2013] 352 ITR 493 (Del.), wherein the Hon'ble High Court, in Para-22, held as under:-

*"22. In the light of our discussion, we find it difficult to uphold the view of the Tribunal expressed in Para 9.6 of its order that since the returns of income filed by the assessee for all the six years under consideration before the search took place were processed under Section 143(1)(a) of the Act, the provisions of Section 153A cannot be invoked. The Assessing Officer has the power under Section 153A to make assessment for all the six years and compute the total income of the assessee, including the undisclosed income, notwithstanding that the assessee filed returns before the date of search which stood processed under Section 143(1)(a). The other reason given by the Tribunal in the same paragraph of its order that no material was found during the search is factually unsustainable since the entire case and arguments before the departmental authorities as well as the Tribunal had proceeded on the basis that the document embodying the transaction with Mohini Sharma was recovered from the assessee. While summarizing the contentions of the assessee in Paragraph 5 of its order, the Tribunal itself has referred to the contention that no document much less incriminating material was found during the search of the assessee's premises, except one unsigned undertaking for loan. Again in Paragraph 10 of its order, while dealing with the assessee's contention against the addition of Rs.1,50,000/- being unexplained loan given to Mohini Sharma, the Tribunal has stated that it has analyzed "the subject document carefully, recovered from search" suggesting that the document was recovered during the search from the assessee.*

*The Tribunal has even proceeded to delete the addition of Rs. 1,50,000/- as well as the notional interest on merits, holding that the document was unsigned, that Mohini Sharma was not examined by the income tax authorities and there was no corroboration of the unsigned document. If it is not in dispute that the document was found in the course of the search of the assessee, then Section 153A is triggered. Once the Section is triggered, it appears mandatory for the Assessing Officer to issue notices under Section 153A calling upon the assessee to file returns for the six assessment years prior to the year in which the search took place. There are contradictions in the order of the Tribunal. We are unable to appreciate how the Tribunal can say in Para 9.6 that no material was found during the search and at the same time in Paragraph 10 deal with the merits of the additions based on the document recovered during the search which allegedly contain the loan transaction with Mohini Sharma. Therefore, both the reasons given by the Tribunal for holding that the assessments made under Section 153A were bad in law do not commend themselves to us. The result is that the first substantial question of law is answered in the negative, in favour of the Revenue and against the assessee."*

8. Further, we find that the Hon'ble Rajasthan High Court in *Jai Steel (India) v/s ACIT*, [2013] 259 CTR 281 (Raj.) has opined on the same issue and the relevant observations of the Hon'ble High Court of Rajasthan are reproduced below for better appreciation of facts.

*"22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:*

*(a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;*

*(b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and*

*(c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."*

9. More so, we further find that the Hon'ble Delhi High Court in *CIT v/s Kabul Chawla*, [2016] 380 ITR 573 (Del.) has also laid down a legal proposition in Para-37, which reads as under:-

"37. 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 153 A (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 153A 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."

10. Thus, on a plain reading of the propositions laid down by the Hon'ble High Courts cited supra, one can analyse that the Hon'ble Rajasthan High Court concurs with the view of Hon'ble Delhi High Court that the assessment/re-assessment which stand abated in terms of second proviso to

section 153A of the Act, the Assessing Officer acts in his original jurisdiction for which the assessment has to be made. The jurisdiction of the Assessing Officer under section 153A of the Act in respect of the assessments which were pending as on the date of search would be his original jurisdiction for framing the regular assessment and not as a re-assessment. The only consequence of the search and seizure action under section 132 of the Act in respect of assessment pending on the date of search is that the pending assessment shall stand abated and there cannot be two assessment orders.

11. We further find that the Hon'ble Supreme Court in PCIT v/s Abhisar Buildwell (P) Ltd., [2023] 149 taxmann.com 399 (SC) has completely laid to rest the controversy on the matter. The Hon'ble Supreme Court has approved the decision of Hon'ble Delhi High Court rendered in Kabul Chawla (supra) and held that in respect of completed assessments/unabated assessments, no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A of the Act. The summary of legal position, as held by Hon'ble Supreme Court is culled out below:-

*"11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the total income in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the*

legislation seems to be that in case of search only the pending assessment reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

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

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

*i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A:*

*ii) all pending assessment / reassessments shall stand abated.*

*iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns, and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved."*

12. No incriminating documents were unearthed in the present case, which is an established fact. In the light of the above judicial precedents which are binding upon us, we have no hesitation to hold that the additions carried out by the Assessing Officer are not sustainable in accordance with law and the impugned order of the learned CIT(A) needs no interference at our end. Hence, all the grounds raised by the Revenue are dismissed.

13. In the result, Revenue's appeal being ITA no.23/Nag./2016, for A.Y. 2008-09 stands dismissed.

**ITA no.18/Nag./2016**  
**Revenue's Appeal – A.Y. 2009-10**  
**Shree Agarwal Coal India Pvt. Ltd.**

**ITA no.171/Nag./2016**  
**Revenue's Appeal – A.Y. 2006-07**  
**Shree Agarwal Finance India Pvt. Ltd.**

**ITA no.172/Nag./2016**  
**Revenue's Appeal – A.Y. 2007-08**  
**Shree Agarwal Finance India Pvt. Ltd.**

**ITA no.292/Nag./2016**  
**Revenue's Appeal – A.Y. 2007-08**  
**ShriDharampal R. Agarwal**

**ITA no.293/Nag./2016**  
**Revenue's Appeal – A.Y. 2008-09**  
**ShriDharampal R. Agarwal**

**ITA no.182/Nag./2017**  
**Revenue's Appeal – A.Y. 2006-07**  
**M/s. Thanjavur Commerce Pvt. Ltd.**

14. Grounds raised by the Revenue in its appeal being ITA no.18/Nag./2016, for the assessment year 2009-10, read as follows:-

*"i) On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in directing the Assessing Officer to delete the addition of Rs.11.24,304/- made on account of unexplained cash credits.*

*ii) On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the disallowances of Rs. 8,69,520/- on account of expenses claimed.*

*iii) On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the disallowance made out of expenditure claimed of Rs. 73,11,786/- on account of bad debts & EMD lapsed.*

*iv) On the facts and circumstances of the case, the Id. CIT(A) erred in restricting to 10% the addition of Rs.88,30,079/- made by the AO on account of unaccounted purchases.*

*v) The appellant craves to add, amend or delete any of the above grounds."*

15. Grounds raised by the Revenue in its appeal being ITA No. 171/Nag./2016 for the assessment year 2006-07) are as follows:-

*"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the notice and action u/s 153A of the I.T.Act was bad in law, even though the Assessing Officer had recorded his satisfaction that the documents seized from various premises, belonged to the assessee, which is the only pre-condition for issue of notice under Section 153A of the Income-tax Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the additional ground and cancelling the assessment whereas the Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia reported in 352 ITR 493 and the Karnataka High Court in the case of Canara Housing Development Co. Vs. DCIT, have affirmed the scope of the*

Assessing Officer to assess the total income in the proceedings u/s.153A of the Income Tax Act. Also, the Pune ITAT has held in the case of Kranti Realtors Pvt Ltd. (ITA No. 2021 to 2023/Pn/2013 dated 10.11.2015), that the Bombay High Court decision of CIT Vs. Continental Warehousing Corporation is on 'completed basis' and where no assessment has been completed u/s.143(3), the AO is competent to invoke the jurisdiction u/s. 153A/153C of the Act and complete the assessment following the procedure laid down u/s. 143(3) of the Act, even in the absence of incriminating documents found.

3. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in allowing additional evidence under rule 46A whereas the assessee's case is not covered by the exceptions provided under rule 46A of the I.T. Rules

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of treating the income from house property of Rs.75,408/- as business income.

5. On the facts and circumstances of the case, the learned CIT(A) erred in deleting the disallowance made by the Assessing Officer of Rs.40,192/- and treating the same as business income, which was claimed as deduction u/s.24 by the assessee.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer on account of disallowance of capital gain of Rs.17.33.880/- on sale of shares claimed exempt u/s.10(38).

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer on account of disallowance of legal and professional charges of Rs. 2,25,310/-.

8. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer on account of unexplained investment being advance for land purchase.

9. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in deleting the addition of Rs.6,836/-made on account of unexplained expenditure being jewellery purchase.

10. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.98,72,000/-made on account of unexplained cash deposits.

11. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.6,00,000/- made by the Assessing Officer on account of receipt of subscription and premium on issue of shares though the assessee does not satisfactorily prove the source of the credits.

12. Any other ground that may be urged at the time of hearing."

16. Grounds raised in ITA no.172/Nag./2016, for the assessment year 2007-08 are as under:-

"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the notice and action u/s 153A of the I.T. Act was bad in law, even though the Assessing Officer had recorded his satisfaction that the documents seized from various premises, belonged to the assessee, which is the only pre-condition for issue of notice under Section 153A of the Income-tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the additional ground and cancelling the assessment whereas the Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia reported in 352 ITR 493 and the Karnataka High Court in the case of Canara Housing Development Co. v/s DCIT. have affirmed the scope of the Assessing Officer to assess the total income in the proceedings u/s. 153A of the Income Tax Act. Also, the Pune ITAT has held in the case of Kranti Realtors Pvt Lad. (ITA No. 2021 to 2023/Pn/2013 dated 10.11.2015), that the Bombay High Court decision of CIT Vs. Continental Warehousing Corporation is on 'completed basis' and where no assessment has been completed w/s. 143(3), the AO is competent to invoke the jurisdiction u/s. 153A/153C of the Act and complete the assessment following the procedure laid down u/s 143(3) of the Act, even in the absence of incriminating documents found.

3. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing additional evidence under rule 46.4 whereas the assessee's case is not covered by the exceptions provided under rule 46.4 of the I.T. Rules.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of treating the income from house property of Rs.1,05,000/- as business income

5. On the facts and circumstances of the case, the learned CIT(A) erred in deleting the disallowance made by the Assessing Officer of Rs.37,012/- and treating the same as business income, which was claimed as deduction u/s.24 by the assessee

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs. 5,52,424/- made on account of Capital gain on sale of shares.

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of deemed dividend of Rs.4,03,68,424/- (after rectification Rs.81,93,107/-)

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.3,87,27,243/- made on account of unexplained cash credits.

9. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.16,90,072/- made on account of disallowance of expenses on ad-

10. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs. 56,12,108/- made on account of disallowance of interest paid.*

11. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.31,20,000/- made on account of investment in land treated as unexplained.*

12. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.23,40,000/- made on account of investment in land treated as unexplained.*

13. *Any other ground that may be urged at the time of hearing."*

17. Grounds raised by the Revenue in its appeal being ITA no.292/Nag./2016, for the assessment year 2007-08 are as follows:-

"1. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the notice and action w/s 153A of the I.T. Act was bad in law, even though the Assessing Officer had recorded his satisfaction that the documents seized from various premises, belonged to the assessee, which is the only pre-condition for issue of notice under Section 153A of the Income-tax Act, 1961.*

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the additional ground whereas the Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia reported in 352 ITR 493 and the Karnataka High Court in the case of Canara Housing Development Co. Vs. DCIT, have affirmed the scope of the Assessing Officer to assess the total income in the proceedings u/s. 153A of the Income Tax Act.*

3. *On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the Assessing Officer is required to assess or re-assess the total income of 6 assessment years as per provisions of section 153A(1)(b) of the I.T. Act.*

4. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in treating mere processing of return u/s. 143(1) of the I.T. Act, 1961 before search action as 'completed assessment by ignoring the decision of the Supreme Court in the case of DCIT Vs. Zuari Estate Development & Investment Co.Ltd. (CA 6758 of 2004) and CIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 (2007).*

5. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing additional evidence under rule 464 whereas the assessee's case is not covered by the exceptions provided under rule 46A of the I.T. Rules.*

6. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.59,35,446/- on account of capital gain on shares held as taxable, without discussing anything on merit..*

7. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.58,53,382/- on account of credits in capital account, without discussing anything on merit.*

8. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in restricting the addition made by the Assessing Officer of Rs.91,65,797/- on account of unexplained investment in immovable property, to Rs.9,61,000/- by admitting additional evidence under rule 46A of the I.T. Rules.*

9. *Any other ground that may be urged at the time of hearing."*

18. Grounds raised in ITA no.293/Nag./2016, for the assessment year 2008-09 are as under:-

"1. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the notice and action u/s 1534 of the I.T. Act was bad in law, even though the Assessing Officer had recorded his satisfaction that the documents seized from various premises, belonged to the assessee, which is the only pre-condition for issue of notice under Section 1534 of the Income-tax Act, 1961.*

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the additional ground whereas the Delhi High Court in the case of CIT Vs. Anil Kumar Bhatia reported in 352 ITR 493 and the Karnataka High Court in the case of Canara Housing Development Co. Vs DCIT, have affirmed the scope of the Assessing Officer to assess the total income in the proceedings u/s. 153A of the Income Tax Act.*

3 *On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the Assessing Officer is required to assess or re-assess the total income of 6 assessment years as per provisions of section 1534(1)(b) of the I.T. Act.*

*On the facts and circumstances of the case and in law, the learned CIT(A) erred in treating mere processing of return u/s. 143(1) of the I.T. Act, 1961 before search action as 'completed assessment' by ignoring the decision of the Supreme Court in the case of DCIT Vs. Zuari Estate Development & Investment Co.Ltd. (CA 6758 of 2004) and CIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 (2007).*

5. *On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing additional evidence under rule 464 whereas the*

*assessee's case is not covered by the exceptions provided under rule 46 of the I.T. Rules.*

*6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account treatment of agricultural income of Rs.1,53,209/- as business income, without discussing anything on merit.*

*7. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unsecured loans for Rs.1,09,00,952/-, without discussing anything on merit.*

*8. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of loss in drilling (hole) business for Rs.4,67,518/-, without discussing anything on merit.*

*9. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of interest debited to P & L A/c for Rs. 2,42,986/-, without discussing anything on merit.*

*10. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance on account of provision for gratuity of Rs. 2.83.270/-, without discussing anything on merit.*

*11. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of commission paid for Rs. 70,000/-, without discussing anything on merit.*

*12. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of rebate and remissions of Rs. 6,75,513/-, without discussing anything on merit.*

*13. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 1,32,56,590/- on account of unexplained investment in various properties, by admitting additional evidence under rule 46A of the I.T. Rules.*

*14. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 1,50,000 on account of disallowance of interest expenses by admitting additional evidence under rule 46A of the I.T. Rules.*

*15. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 22,39,003/- on account of unexplained investment in lands, by admitting additional evidence under rule 46A of the I.T. Rules.*

*16. Any other ground that may be urged at the time of hearing."*

19. Grounds raised by the Revenue in its appeal being ITA no.182/Nag./2017, for the assessment year 2006-07 are as under:-

*"1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that it was not open for the AO to make additions in the assessment u/s 153A r.w.s. 143(3) without the existence of any incriminating documents found or seized during the search action w/s 132 of the IT. Act in the case of completed assessments without appreciating the fact that the decision of the Bombay High Court in the case of All Cargo Global Logistics Ltd has not been accepted by the department and SLP bearing no. 5254 to 5265 of 2016 has been filed and the same is pending*

*2. On the facts and circumstances of the case and in law, the learned CIT (A) failed to appreciate that the Assessing Officer is required to assess or re-assess the total income of 6 assessment years as per provisions of section 153A(1)(b) of the I.T. Act.*

*3. On the facts and circumstances of the case and in law, the learned CIT (A), by relying on the decision of the Hon'ble ITAT. Nagpur, in the case of Late Shri Shaktikumar Sancheti in ITA No.203/Nag/2014 dated 5.2.2016, has failed to appreciate that the Hon'ble ITAT, Pune bench, has held in the case of Kranti Realtors Pvt Ltd. (ITA No. 2021 to 2023/Pn/2013 dated 10.11.2015), when return was processed u/s. 143(1) and no assessment was made, additions may or may not be based on incriminating material found during search*

*4. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the additions on account of unexplained share application money and share premium of Rs.4,68,00,000/- without appreciating the fact that the assessee had not discharged its onus of proving the identity, creditworthiness of the subscriber companies and the genuineness of transaction and as such did not take into consideration the decision of the Supreme Court in the case of Navodaya Castle P. Ltd (230 Taxman 268).*

*5. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in deleting the addition made by the Assessing Officer of Rs. 4,70,00,000/- on account of unexplained investment, without going into the merits of the case.*

*6. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the additions on account of unexplained credit of Rs.50,00,000/-without appreciating the fact that the assessee has not been able to prove the genuineness of the transaction with the alleged creditor Tasmseem Commercial P. Ltd.*

*7. Any other ground that may be urged at the time of hearing."*

20. During the course of hearing, both the learned Counsel appearing for the parties agreed before us that the issues raised by the Revenue in these

appeals, the related facts and circumstances of the issues raised by either party are mutatis mutandis and materially identical to the issue decided by us vide effective grounds no.1 to 11, raised by the Revenue in its appeal being ITA no.23/Nag./2016, for the assessment year 2008-09, vide Para-7 to 13 of this order, wherein we have affirmed the impugned order passed by the learned CIT(A) by dismissing the grounds raised by the Revenue for the reasons stated therein. Consequent upon the decision taken by us on these issues as aforesaid, while maintaining the consistency with the view taken therein, we do not find any infirmity with the impugned orders passed by the learned CIT(A) in the matter of M/s. Shree Agarwal Coal India Pvt., for the assessment year 2008-09 and 2009-10, M/s. Shree Agarwal Finance India Pvt. Ltd., for the assessment year 2006-07 and 2007-08, Shri Dharampal R. Agarwal, for the assessment year 2007-08 & 2008-09 and M/s. Thanjavur there Commerce Pvt. Ltd. for the assessment year 2006-07. Thus, all the grounds raised by the Revenue in all the six (6) appeals for the years under consideration are liable to be dismissed.

21. In the result, Revenue's appeal being ITA no.18/Nag./2016, ITA no.171/Nag./2016, ITA no.172/Nag./2016, ITA no.292/Nag./2016, ITA no. 293/Nag./2016 and ITA no.182/Nag./2017 stand dismissed.

22. To sum up, all the seven (7) appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 15/05/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 15/05/2025**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur