

आयकर अपीलीय अधिकरण  
गुवाहाटी पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.:**  
**110, 111, 112, 113, 114, 115, 116, 117 & 118/GTY/2024**  
**Assessment Years:**  
**2014-15, 2016-17, 2015-16, 2017-18, 2017-18,**  
**2018-19, 2019-20, 2020-21 & 2021-22**

Greenwood Resorts Private Limited <i>(Appellant)</i>	Vs.	ACIT, Central Circle-1, Guwahati <i>(Respondent)</i>
<b>PAN: AACCG9121F</b>		

**Appearances:**

**Assessee represented by** : S. P. Bhati, FCA.

**Department represented by** : Kausik Ray, JCIT

Date of concluding the hearing : 13-March-2025

Date of pronouncing the order : 29-May-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

All these appeals filed by the assessee are against the separate orders of the Ld. Commissioner of Income Tax, Central NER, Guwahati [hereinafter referred to as “the Ld. CIT(A)”] passed u/s 250 of the Income

Tax Act, 1961 (hereinafter referred to as “the Act”) for AYs 2014-15 to AY 2021-22, which have been passed against the assessment orders u/ss 153C/143(3) and 143(3) of the Act.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal in ITA No. 110/GTY/2024:

**i. ITA No. 110/GTY/2024: A.Y. 2014-15:**

*“1. For that assessment order passed u s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I T. Act.*

*2. For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.*

*3. For that the learned A.O. is not justified in making addition of Rs.4,30,00,000/- us 68 of I T. Act.*

*4. For that the learned A.O. is not justified in disallowing interest of Rs.47,10,000/- on unsecured loan.*

*5. The Appellant craves the leave to lake Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”*

**ii. ITA No. 111/GTY/2024: A.Y. 2016-17:**

*“1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.*

*2. For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.*

*3. For that the learned A.O. is not justified in making addition of Rs.30,00,000/- u/s 68 of I.T. Act.*

*4. For that the learned A.O. is not justified in disallowing interest of Rs.44,22,465/ on unsecured 4 loan.*

*5. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”*

**iii. ITA No. 112/GTY/2024: A.Y. 2015-16:**

“1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.

3 For that the learned A.O. is not justified in disallowing interest of Rs. 47,09,992/- on unsecured loan.

4 For that the learned A.O. is not justified in making addition of Rs.2,99,14,790/- on account of suppression of sales.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

**iv. ITA No. 113/GTY/2024: A.Y. 2017-18:**

“1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.

3 For that the learned A.O. is not justified in disallowing interest of Rs.43,45,000/- on unsecured loan.

4 For that the learned A.O. is not justified in making addition of Rs. 1,16,25,711/- on account of suppression of sales.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

**v. ITA No. 114/GTY/2024: A.Y. 2017-18:**

“1 For that the learned A.O. is not justified in making disallowance of Capital Expenditure of Rs. 17,49,055/- and charging the same to taxable income even when no expenditure was claimed.

2 For that the learned A.O. is not justified in disallowing Depreciation of Rs. 1,74,905/- after rejecting the Capital expenditure.

3 For that the learned A.O. is not justified in disallowing revenue expenditure of Rs. 5,55,109/- u/s 40A(3).

4 For that the learned A.O. is not justified in disallowing Sundry subscription Rs. 41,000/- u/s 36.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

**vi. ITA No. 115/GTY/2024: A.Y. 2018-19:**

1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I T Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found

3 For that the learned A.O. is not justified in disallowing interest of Rs.22,95,000/- on unsecured loan.

4 For that the learned A.O. is not justified in making addition of Rs. 1,01,25,690/- on account of suppression of sales.

5 The Appellant craves the leave to take Additional Grounds and or amend the above grounds of appeal at the time of hearing of Appeal.”

**vii. ITA No. 116/GTY/2024: A.Y. 2019-20:**

“1 For that assessment order passed u/s 153C 143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.

3 For that the learned A.O is not justified in disallowing interest of Rs.40.27,500 - on unsecured loan.

4 For that the learned A.O. is not justified in making addition of Rs.3.20.17,555/- on account of suppression of sales.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

**viii. ITA No. 117/GTY/2024: A.Y. 2020-21:**

“1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.



3 For that the learned A.O. is not justified in disallowing interest of Rs.36,17,000 - on unsecured loan.

4 For that the learned A.O. is not justified in making addition of Rs.4,95,17,205/- on account of suppression of sales.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

**ix. ITA No. 118/GTY/2024: A.Y. 2021-22:**

“1 For that assessment order passed u/s 153C/143(3) is bad in law and liable to be quashed as no proper satisfaction has been recorded as required under the provision of I.T. Act.

2 For that additions made by the A.O. and upheld by the CIT (A) are bad in law as no incriminating materials has been found.

3 For that the learned A.O. is not justified in disallowing expenses u/s 40 A(3) of Rs.47,75,062/-and added back to the total income which were not recorded in the books of accounts.

4 For that the learned A.O. is not justified in disallowing expenses u/s 40A(3) of Rs. 1,13,006/-and added back to the total income which were not recorded in the books of accounts.

5 The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

2.1. Since the issues are common and common written submissions have been made; therefore, all these appeals were taken up together, were heard together and are being decided vide this common order for the sake of convenience and brevity. We will take up ITA No. 110/GTY/2024 for AY 2014-15 first as the lead case for adjudication. The grounds of appeal are similar in the other AYs as well except for the fact that in A.Y. 2016-17, the loan of Rs. 30,00,000/- from M/s. Orchid Finnlease Pvt. Ltd. has been added under section 68 of the Act and interests of Rs. 44,22,465/- was disallowed in the order. Similar additions were made in the other assessment orders.



3. Brief facts of the case are that the assessee is stated to be a domestic company, engaged in the business of hotel and hospitality services etc. and had filed the return of income showing total income of Rs. NIL on 30/11/2014. There was a survey operation under section 133A of the Act on 22/12/2020 wherein books of accounts and other documents were impounded. A search and seizure action under section 132(1) of the Act was conducted on 22.12.2020 at the residential and business premises of the assessee belonging to the Contractors' Group/ Bhagya Kalita group. Warrant of authorization u/s 132 of the Act was issued in the name of the assessee and panchnama was drawn in consequence thereof as mentioned in the assessment order but it transpired during the course of the appeal before us that no such warrant was issued in the name of the assessee and only a survey u/s 133A of the Act was carried out. The documents pertaining to the assessee were found and seized during the course of search and seizure action, which had a bearing on the total income of the assessee and accordingly, notice u/s 153C of the Act was issued on 22.03.2022 in response to which the assessee e-filed the return of income on 24.03.2022 showing loss of Rs. 77,13,709/- for AY 2014-15. In the original return of income filed u/s 139 of the Act, loss of Rs. 87,13,709/- was shown. Statutory notices under the Act were issued by the Ld. AO and after considering the reply, a sum of Rs. 4,30,00,000/- was added u/s 68 of the Act being loans from Akruiti Securities Pvt. Ltd. and Arbitrage Securities Pvt. Ltd. The interest incurred on such bogus and unsecured loans was also disallowed and a sum of Rs. 47,10,000/- was also added to the income and the assessment was made accordingly.

3.1. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who considered the submissions of the assessee



and confirmed both the additions of Rs. 4,30,00,000/- u/s 68 of the Act as well as Rs. 47,10,000/- on account of interest payment and dismissed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival contentions were heard and the paper book filed and the submissions made have been examined. During the course of the appeal before the Tribunal, the Ld. AR raised the issue that no incriminating material was found during the course of the search and, therefore, the addition was not liable to be made. Before us the Ld. AR submitted that a search and seizure action had taken place in the case of Shri Bhagya Kalita group on 22.12.2020 and in the case of the appellant a survey was conducted and the Ld. AO assumed jurisdiction u/s 153C of the Act. Our attention was drawn to the satisfaction note as per paper book pages 1 to 5. It was contended that the Assessing Officer of the searched person recorded the finding of the search proceeding in which case he was not authorized and the Assessing Officer of the assessee also recorded the same sales figure and the difference of Rs.15,92,03,491/- was noted as per the reference given and the details are at page 4 para 2.1 of the paper book. In the paper book, pages 1 to 5 contain copy of the satisfaction note. It was submitted that the property was purchased on 17.11.2015 and section 56(2)(x) of the Act was not on the statute as the same was brought on the statute only with effect from 01.04.2017. It was further contended that the dates are mentioned for AY 2016-17 but satisfaction is recorded for 10 years. It was further submitted that no incriminating material for other 10 years was found and the Ld. AO while making the assessment has not made any addition in respect of the difference in the value of the property. Major property was purchased in AY 2013-14 and regular assessment was made, a copy of

which has been enclosed in the paper book. It was stated that no satisfaction was recorded and whatever is the finding of the survey team must be excluded in the order u/s 153C of the Act and the property purchases also have to be excluded in the order u/s 153C of the Act. The Ld. AO has made addition on unsecured loans which the company had taken from three entities amounting to Rs. 4.30 Crore out of which major amount was received in FY 2013-14 for which the assessment was done and the loan was accepted. The order u/s 143(3) of the Act was passed with limited scrutiny and the loan was not verified by the Ld. AO. It was contended that the assessments for AY 2014-15 and AY 2015-16 are bad in law and written submission on pages 126 to 133 of the paper book have been filed and specifically page 130 was referred. The written submission filed by the assessee is as under:

*"1. That Sir, there was Search & Seizure operation on 22/12/2020 in the case of Mr. Bhagya Kalita. Our company is although in the same group but there was only Survey operation u/s 133A on same date. The AO has made our assessment u/s 153C after recording satisfaction as envisaged in said section. So it is beyond reasonable doubt that we are not covered u/s 153A & in this regard we are enclosing herewith copies of Panchanamas prepared at the premises of Mr. Bhagya Kalita in which there is no mention of our name also. We are further enclosing Record of Survey Proceeding at our premises.*

*2. That Sir, the copy of Satisfaction Note u/s 153C is enclosed.*

*3. Our observation & Submission on Satisfaction Note*

*1<sup>st</sup> Part 1<sup>st</sup> Para records the fact of Search & also records that during the course of Survey at our premises one hard disk was impounded. There was difference of total sales as compared to Audited books for the FY 2014-15 to FY 2020-21 amounting in total Rs.15,92,03,491/-*

*1<sup>st</sup> Part 2<sup>nd</sup> Para records names of various entities covered by Search from whose possession loose sheets marked BKS-11 was Seized. The analysis of AO of BKS-11 is further recorded that Mr. Bhagya Kalita had purchased our Company from Ms. Asha Borah at Rs. 1,90,14,300/-however consideration amount of the property is Rs.9,22,50,000/- and thereafter has recorded his satisfaction in following words:-*

*In view of the above, I am satisfied that the said seized material contains information that pertains to the assessee.*

*2<sup>nd</sup> Part 1<sup>st</sup> Para records the facts of Search and also records question & answer of Mr. Bhagya Kalita in respect of impounded Hard disk found during the course of Survey at our premises. Further Break up of year-wise undisclosed sales is also recorded. 2<sup>nd</sup> Part 2<sup>nd</sup> Para records names of various entities of Mr. Bhagya Kalita Group. It is also recorded that Mr. Bhagya Kalita had purchased our Company. Details of Bunch of loose sheets (BKT-11) is also recorded. Further question put to him and his reply is also recorded are as under:-*

*Question:*

*During the course of the search and seizure u/s 132 of the Income Tax Act, 1961 conducted in the office premise of BK Sons Infrastructure Private Limited, B. K Sons Resorts Private Limited, HKS Publications Limited, Himanshu Printers And Publishers Private Limited. HKS Publications Limited, Himatsingka Resorts Private Limited, Bhagya Kalita, Geetika Kalita, Keshab Kalita, Kaushik Kalita, Binanda Kalita at Beekay Towers, Ganeshguri, Guwahati-781005 on 23/12/2020, in the bunch of loose sheets marked as BKS-11, page no as mentioned below, purchase of Greenwood Resorts Pvt. Ltd. From Asha Borah has taken place at Rs. 1,90,14,300/- in total, however the total consideration amount of the property is Rs. 9,22,50,000/- Therefore you are show caused why the difference amount of Rs. 7,32,35,700/- should not be taxed in your hand under section 56(2)(X) of IT Act.*

*Ans:*

*That the property purchased by Greenwood Resorts Pvt Ltd on the value mentioned in sale deeds. The reason for purchase of property at value lesser than stamp value is that the resort was under heavy financial crunch and the properties were attached by NEDFI. Due to loss, the book value of the resorts was estimated at lower than the stamp duty value and as such we have purchased the same at the price lower than stamp value. If tax is applicable of difference amount and required to pay tax thereon under the provision of income Tax Act 1961 we will pay the same.*

*In view of the above, I am satisfied that the seized material and disclosure on the basis of impounded material marked as GWR/HD-01 have bearing on the determination of total income of the assessee. In view of this, notice u/s 153C is issued to the assessee.*

*4. That Sir, there are two parts in satisfaction recorded & provided to us so it can be presumed that 1<sup>st</sup> part is the Note by AO handling the case of Searched person and 2<sup>nd</sup> part is the note prepared by my AO.*

5. That Sir, when admittedly there was no Search at our premises how the AO of Searched person can records facts as regards documents found during the course of Survey in as much as there was no necessity of my AO also for recording the same in satisfaction note because it is required only in the case of Search. So, the recording of undisclosed sales in the satisfaction note has no value in the eyes of law.

6. That Sir, although AO of the Searched person in passing over the information in respect of property is correct but my AO is not correct in treating the same information/ details as incriminating and/ or as having bearing on total income for issue of Notice u/s 153C because

(a) it is an admitted fact that said property is already disclosed by the assessee in his financial statements & assessment has been framed u/s 143(3) for the year in which said property was purchased.

(b) it is apparent from the question put that AO wanted to invoke provisions of Sec.56(2)(X) for assessing the difference of actual consideration and FMV but said section has been incorporated in the Act by F Act 2017 w.e.f. 1/4/2017 but the transactions has took place earlier.

7. That Sir, from the above it is quite clear that one part of satisfaction note is on Survey proceeding and other part is in respect of property already disclosed in as much as relates to year in which there was no Provision in I. T Act applicable for us to tax difference between FMV and actual purchase consideration as specific section as presumed by AO has come into operation from 01-04-2017 whereas transaction relates to earlier year so it does not come within the definition of incriminating material and has no effect on determination of our taxable income.

8. That Sir, it can be looked also from another angle i.e. after initiating the proceeding what has happed in assessment proceeding. The AO has not made any addition in respect of said property so it can be conclusively said that initiation of proceeding itself is bad in law. What actual assessment has been made by AO in different years are as under

a) The AO has made addition of Rs.4,30,00,000/- in the AY 2014-15 and of Rs.30,00,000/- in the AY 2016-17 u/s 68 of I.T. Act.1961.

#### Basis of Addition

Survey at the premises of lender on same day when Survey was carried out at our premises and in which lender could not give satisfactory reply.

b) The AO has disallowed interest on loan as under:

Assessment Year	Interest Exp. Disallowance
2014-15	47,10,000/-

2015-16	47,09,992/-
2016-17	44,22,465/-
2017-18	43,45,000/-
2018-19	22,95,000/-
2019-20	40,27,500/-
2020-21	36,17,000/-

Basis of Addition

Survey at the premises of lender on same day when Survey was carried out at our premises and in which lender could not give satisfactory reply.

c) The AO has made addition in respect of undisclosed sales (impounded papers/documents from our premises during Survey u/s 133A)

Assessment Year	Suppression of Sales (Addition Amount)	Gross Sales Supressed	Income disclosed	Exp. allowed being recorded in impounded papers
2015-16	2,99,14,790/-	3,26,82,790/-	27,68,000/-	
2017-18	1,16,25,711/-	1,29,13,711/-	12,88,000/-	
2018-19	1,01,25,690/-	1,39,61,346/-	11,60,000/-	26,75,650/-
2019-20	3,20,17,555/-	3,98,89,243/-	24,80,000/-	53,91,888/-
2020-21	4,95,17,205/-	5,97,56,401/-	31,84,000/-	70,55,196/-

9. That Sir, in view of 1 Proviso to Sec. 153C the date of Search is to be construed when it is received by AO of such third person. In this case we are the person covered by such law. In our case AO has issued Notice to us u/s 153C on 21/01/2022 so it can be presumed that he has received the details in FY 21-22. Accordingly six preceding years will be from AY 2016-17 to AY 2021-22. In view of this legal provision the assessments framed for the AY 2014-15 and AY 2015-16 are ab-initio void and liable to be annulled. The definition given in Explanation-1 to Sec. 153A of relevant year is not applicable because

a) No such satisfaction has been recorded by either AO of Searched person or by our AO.

b) No Assets being undisclosed asset has been found.

10. That Sir, Apex Court in the case of CIT Vs. Sinhgad Technical Education Society (397 ITR 344) while affirming the decision of ITAT & Hon'ble Bombay High Court has held that AO cannot resort to jurisdiction of Sec. 153C without having Incriminating material for the assessment year in question. Blindly he cannot resort to all the six years.

11. That Sir, in our case two grounds has been reflected in satisfaction Note First in respect of impounded materials during Survey at our premises which by no stretch can be used for Sec. 153C. 2<sup>nd</sup> one are sale deed executed on 17-11-2015. Assuming but not accepting that same can be brought u/s 153C than also only one assessment year is covered i.e. AY 2016-17 and



as such for all other years i.e. A.Y 2014-15, 15-16, 17-18, 18-19, 19-20 & 20-21 the assessment order are bad in law & liable to be annulled.

12. That Sir jurisdictional Gauhati High Court in the case of Principal Commissioner of Income Tax Vs. Shyama Power India Ltd. 294 Taxman 652(Gauhati) has upheld the action of ITAT where it has been held that disallowance u/s 40(a)(ia) of I.T Act cannot be made in case of concluded/unabated assessment in respect of disclosed transaction unless incriminating materials are found during the course of search.

13. In our case property papers has been found which are duly disclosed in the financial statements hence only for the purpose of Sec 50C these cannot be treated as incriminating. Further our assessment has been framed u/s 143(3) for the A.Y 14-15 in which one of the major property has been purchased & AO in the assessment order has recorded finding also. Thereafter for the A.Y 2017-18 also scrutiny assessment has been made.

#### ON MERIT OF THE CASE

14. That Sir as aforesaid, A.O while framing assessment u/s 153C has made addition u/s 68 of I.T Act of Rs.4,30,00,000/- and Rs.30,00,000/- for A.Y 14-15 & A.Y 16-17 respectively on account of loan accepted from M/s Akruti Securities Pvt. Ltd. Rs.2,25,00,000/- (A.Y 14-15) M/s Arbitrage Securities Pvt. Ltd. Rs.2,05,00,000/- (A.Y 14-15) and M/s Orchid Finlease Pvt. Ltd. Rs.30,00,000/- (A.Y 16-17) and has also disallowed interest from A.Y 14-15 to A.Y 2020-21 on the aforesaid loan.

15. That Sir on the date of search at the premises of Bhagya Kalita Group on 22/12/2020. Survey was conducted at our premises as well as at the premises of lender companies from whom we have accepted loan.

16. That Sir nothing incriminating has been found in respect of these loan from the premises of Bhagya Kalita.

17. That Sir at the time of survey in the case of these companies some lapse of companies Act has been found.

18. That Sir in the assessment order A.O has referred the survey proceedings as well as has referred financial statements of these companies & statement recorded while making additional u/s 68 & disallowing interest on borrowings and no reference has been made to any documents unearthed during the course of search at the premises of Bhagya Kalita.

19. That Sir all the loans has been accepted initially in FY 14-15 & FY 15-16 has been repaid in FY 19-20. The interest payment has been paid yearly after deducting TDS. A chart in respect of the same is enclosed.

20. That Sir our case for A.Y 14-15 has been scrutinized i.e. the initial year in which major loan of Rs.4,30,00,000/- has been accepted and in assessment same has been treated as genuine.

21. That Sir our A.Y for the A.Y 2017-18 was also scrutinized in which also no question as regards loan and/or disallowance of interest has been raised.

22. That Sir it is settled law in the case of assessment which are made u/s 153A/ 153C that no addition can be made until & unless some incriminating materials are found during the course of search. In this regards, your appellant relies on the Apex Court Judgement in the case of Pr. CIT Vs. Abhisar Buildwell P. Ltd. 454 ITR 212.

23. That Sir learned A.O has made addition in respect of undisclosed sales on the basis of impounded papers from our premises as detailed in the assessment order gist of which is mentioned in this submission.

24. That Sir as the exercise of jurisdiction u/s 153C itself is under challenge and simply on the basis of survey no assessment could be framed u/s 153C.

25. That Sir following answer was given during the course of enquiry in connection with these papers/ documents:-

*Ans: That Sir, with a view to buy peace with the department and avoid prolonged litigations we offer to disclose the difference of turnover of Rs. 13.60 crores for the period from A.Y 2014-15 to 2020-21. The disclosure is made on account shortcomings, inability to reconcile the documents seized and taking into consideration various disallowances which the assessing officer may take while framing the assessment order u/s 153A/ 153C and other anomalies found in the records seized by you. The difference amount of Rs. 15,92,03,491/-calculated by you might be due to the GST amount included in the total sales."*

26. That Sir thereafter while filing returns u/s 153C we have disclosed income @ 8% of such undisclosed sales as details.

27. That Sir A.O has assessed the gross figures of sales as undisclosed sales.

28. That Sir it is settled principle of Income Tax that only the net profit is liable for taxation & includable in taxable income and as we have instead of going into the litigation have declared net profit @ 8% the action of A.O in including the total sales figures is wrong & liable to be deleted.

29. That Sir if the appeal is not decided on legal point than we may be given some further time to explain elaboratory in respect of this addition."



5. During the course of appeal Ld. DR was required to inform whether any warrant of search was issued in the case of the assessee so as to attract the provision of section 153C or 153A of the Act. Certain other details were also required and the Ld. DR filed the report as under:

136  
INCOME TAX APPELLATE TRIBUNAL  
DATE OF RECEIPT 06/02/25  
Fixed on 12/3/2025

भारत सरकार  
INITIALS OF  
वित्त मंत्रालय :: राजस्व विभाग  
कार्यालय: संयुक्त आयकर आयुक्त,  
वरिष्ठ वि.प्र., आ. अ. न्या. - 1, गुवाहाटी बेंच, गुवाहाटी  
5 बी मंजिल, मैनाक टोअर, जी एस रोड, गुवाहाटी-781005

**Government of India**  
**Ministry of Finance::Department of Revenue**  
**Office of the Joint Commissioner of Income Tax**  
**Sr. DR, ITAT-1, Gauhati Bench, Guwahati**  
**5<sup>th</sup> Floor, Mainaak Tower ,G.S. Road, Guwahati-781005**

F. No. JCIT/Sr. DR/ITAT/Ghy/2024-25/ 319  
Dated 05.02.2025

To  
The Hon'ble Members,  
ITAT, Gauhati Bench, Guwahati

Respected Hon'ble Members,

**Sub : Submission w.r.t. query raised during hearing- Matter regarding -**

Kindly refer to the above.

With reference to above, the undersigned is submitting that on **09.12.2024** following case(s) was/were fixed for hearing and discussed partly -



**I.T.A. Nos.: 110 to 118/GTY/2024  
Assessment Years: 2014-15 to 2021-22  
Greenwood Resorts Private Limited.**

Sl. No.	Appeal Number	A.Y.	Assessee	Remarks
1	ITA 110/GTY/2024	2014-15	Greenwood Resortas Pvt. Ltd.	
2	ITA 111/GTY/2024	2016-17	Do	
3	ITA 112/GTY/2024	2015-16	Do	
4	ITA 113/GTY/2024	2017-18	Do	
5	ITA 114/GTY/2024	2017-18	Do	
6	ITA 115/GTY/2024	2018-19	Do	
7	ITA 116/GTY/2024	2019-20	Do	
8	ITA 117/GTY/2024	2020-21	Do	
9	ITA 118/GTY/2024	2021-22	Do	

During hearing before the Hon'ble Bench, the A/R of the appellant raised the **legal issues** as well as **merit** of the case in respect of the assessments of the A.Y.s as mentioned in the chart above. He also pointed out the PAPER Book filed in this respect.

Further, after discussion, the Ld. Members has asked for further clarification / submission w.r.t. the following issues –

[i] It is not search & seizure case but in consequence a search & seizure action carried out in the case of 'Bhaigya Kalita Group'. **Without proper satisfaction note**, the proceedings was initiated and assessments were made.

[ii] The decision made by the AO which was upheld by the Ld. CIT(A) are bad in law since **no incriminating materials** has been found.

...Contd....

...Page-2....

[iii] The AO is not justified in making addition w.r.t. the alleged unsecured loan(s) as well as disallowing interests on unsecured loan(s). The A/R of the appellant also pointed out that vide orders in ITA No. 122-124/GTY/2024 dated 27.09.2024 in the case of Bhagya Kalita, for the A.Y.s 2017-18 to 2019-20, wherein the Hon'ble ITAT, Guwahati deleted the addition(s) by citing different court's judgments viz. Kabul Chawla and Abhishar Buildwell Pvt. Ltd. etc. and allowed assessee's appeal.

Accordingly, the questions/ points so raised and explanation thereof are being obtained from the JAO. All the questions/ points wise necessary details/ explanations as obtained are hereby forwarding herewith for your kind perusal and necessary consideration.

Considering the facts & circumstances, Your honours, I rely on the order of the AO and kindly requested to consider the above explanation w.r.t. the issue(s) so raised during adjudication and decide the case on merit and oblige.

With regards.

Yours sincerely,

[ कौशिक राय/ Kausik Ray, (भा. र्ज. से./IRS)]  
सं. आ. आ., वरिष्ठ वि. प्र., आ. अ. न्या./JCIT, Sr. DR, ITAT  
गुवाहाटी बेंच, गुवाहाटी/Guwahati Bench, Guwahati

Encl : As above



**Annexure-1**


**Comments/suggestions w.r.t. M/s Greenwood Resorts Pvt.  
Ltd.(PAN:AACCG9121F)**

a) **It is not a search and seizure case but in consequence a search and seizure action carried out in the case of "bhagya kalita" group. Without proper satisfaction note, the proceedings were initiated and assessments were made.**

**Comments:**

The contention made by the assesee is incorrect on the following grounds:

1. The survey was conducted on the assesee on 22/12/2020, the same day on which search and seizure was conducted on others parties of "Bhagya Kalita" group. Extract of the warrant of authorization of Greenwood Resort private limited and Bhagya Kalita is attached below for reference:

  
GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE  
OFFICE OF THE JOINT DIRECTOR OF INCOME TAX, INVESTIGATION, UNIT-1, GUWAHATI  
4<sup>TH</sup> FLOOR, RAJALAKSHMI BHAWAN, U.S. ROAD, GUWAHATI 781 005

---


**Authorization under Section 133A of the Income-tax Act, 1961**


Authorization under Section 133A of the Income tax Act, 1961, is issued to the Officers/Officials of the Income Tax Department, Guwahati mentioned in the ANNEXURE A to enter the Business/Office/Godown premises of Greenwood Resorts Private Limited, Assam on 22/12/2020

- 1) To inspect such Books of Account or other documents as he/they may require and which may be available at such place for Income Tax matter.
- 2) To place mark of identification or make extracts or photocopies from the books of accounts or other accounts documents, inspected or found by them in the premises.
- 3) To make a list of Books of Accounts and/or documents that may be found at such place.
- 4) To impound books of accounts, make inventory of any stock or other valuable articles or things checked by them.
- 5) To record the statement of any person which may be useful for, or relevant to any proceedings under the Act.

Failure on the part of person(s) present at such place as Proprietor/Director/Officer/Partner/Employee of the business/profession or any person that may at the time and place be attending in any manner to or helping in the carrying of such business or profession, to offer necessary facilities, for the purpose of functioning of the official, for one or more or all of the above work, may render the person(s) concerned as mentioned above, liable for prosecution u/s 186 of the Indian Penal Code.

Place: Guwahati,  
Date:- 22/12/2020

  
[Mrinal Kumar Das]  
Addl. Director of Income Tax(Inv.)  
Unit-1, Guwahati





I.T.A. Nos.: 110 to 118/GTY/2024  
Assessment Years: 2014-15 to 2021-22  
Greenwood Resorts Private Limited.

FORM NO.45  
[ See Rule 112 ]

WARRANT OF AUTHORISATION UNDER SECTION 132 OF THE INCOME TAX ACT, 1961 AND RULE 112(1)  
OF THE INCOME TAX RULES, 1962

To  
The Additional Director  
The Deputy Director Jitu Doley, Rajan Agarwal  
The Deputy Commissioner  
The Assistant Director Priyanka Sharma, Jagan Deka  
The Assistant Commissioner  
The Income-tax Officer

WS: Shubham Singh  
22/12/2020 - 9 AM

Whereas information has been laid before me and on the consideration thereof I have reason to believe that -

A summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Income Tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of the Income Tax Act, 1961, was issued by the Deputy Commissioner/the Assistant Commissioner/the Income Tax Officer, \_\_\_\_\_ to \_\_\_\_\_ [ name of the person ] on \_\_\_\_\_ [ date ] to produce or cause to be produced, books of account or other documents specified in the relevant summons or notice and he has omitted or failed to produce or cause to be produced, such books of account or other documents as required by such summons or notice;

WS: Dhruva Jaisankar  
22/12/2020 - 09 AM

a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Income Tax Act, 1961, or a notice under sub-section (4) of the section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of the Income Tax Act, 1961, has been issued by the Deputy Commissioner/the Assistant Commissioner/the Income Tax Officer, \_\_\_\_\_ to \_\_\_\_\_ [ name of the person ] on \_\_\_\_\_ [ date ] to produce, or cause to be produced books of account or other documents specified in the relevant summons or notice;

If a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Income Tax Act, 1961, or a notice under sub-section (4) of the section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of the Income Tax Act, 1961, is issued to Sresta Properties Private Limited, Bhagya Kalita, Geetika Kalita, Kaushik Kalita, Himanshu Kalita, House number 76, Piyali Phukan Road, Rabarari, Guwahati, 781008.

[name of the person] to produce, or cause to be produced, books of account or other documents which will be useful for, or relevant to proceedings under the Indian Income Tax Act, 1922, or under the Income Tax Act, 1961, he would not produce, or cause to be produced, such books of account or other documents required by such summons or notice;

22/12/20 9 AM

**The A/R of the appellant also pointed out that vide orders in ITA No. 122-124/GTY/2024 dated 27.09.2024 in the case of Bhagya Kalita, for the A.Y.s 201-18 to 2019-20, wherein the Hon'ble ITAT, Guwahati deleted the addition(s) by citing different court's judgments viz. Kabul Chawla and Abhisar Buildwell Pvt. Ltd. etc. and allowed assessee's appeal.**

**Comment:**

Hon'ble ITAT, Guwahati vide orders in ITA No. 122-124/GTY/2024 dated 27.09.2024 2024 in the case of Bhagya Kalita, for the A.Y.s 2017-18 to 2019-20, had deleted the addition(s) by citing different court's judgments viz. Kabul Chawla and Abhisar Buildwell Pvt. Ltd. etc. and allowed assessee's appeal. However in the same order the Hon'ble ITAT, Guwahati, has stated the following:

4. Before parting with this issue and once again considering the specific language used in the case of *Abhisar Buildwell (P.) Ltd. (supra)* it is clear that even though the Income Tax Department was barred from any action u/s 153A of the Act for framing assessments on the impugned amounts for all the five years, but there was a legal mandate available under the provisions of Sections 147/148 of the Act. It is a trite position of law that a document, as also a judgment, has to be read as a whole. Accordingly, if we consider the case of *Abhisar Buildwell (P.) Ltd. (supra)* in its entirety then the Lordships of the Hon'ble Supreme Court have provided a window of opportunity to the Income Tax Department for bringing to tax any income which could be based on material made available otherwise through any action u/s 132 or even 132A of the Act. The relevant portion in this regard from the case of *Abhisar Buildwell (P.) Ltd. (supra)* deserves to be extracted as under:

*"(i) in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A;*

*(ii) all pending assessments/reassessments shall stand abated;*



**I.T.A. Nos.: 110 to 118/GTY/2024  
Assessment Years: 2014-15 to 2021-22  
Greenwood Resorts Private Limited.**

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer 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 Assessing Officer including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the Assessing Officer 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 Assessing Officer in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A. However, the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 and those powers are saved."

4.1. Respectfully following the directions in the extracted portion of the above judgment [para 14 (*supra*)], it deserves to be recorded in this order that the Id. AO needs to consider appropriate action u/s 147/148 of the Act keeping in view the express provisions contained in Section 150 of the Act. For the sake of reference, the said section deserves to be reproduced as under:

*"(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.*

*(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."*

4.2. At this juncture, it deserves to be mentioned that Section 150 of the Act intends to lift the embargo of period of limitation u/s 149 of the Act to enable the Income Tax Authorities to re-open assessments not only on the basis of orders passed in proceedings under the Act but also on orders of appellate

Page 6 of 8

**I.T.A. Nos.: 120 to 124/GTY/2024  
AYs: 2015-16 to 2019-20  
Bhagya Kalita**

authorities. In considering the action u/s 147/148 of the Act the Id. AO would be advised to refer to Instruction No. 1/2003 dated 23.08.2023, which was issued by CBDT to give effect to the case of *Abhisar Buildwell (P.) Ltd. (supra)*. Needless to say, directions u/s 150(1) of the Act would need to be followed strictly and will need to be read in conjunction with the appropriate provisions contained u/s 147/148/149 of the Act.



I.T.A. Nos.: 110 to 118/GTY/2024  
Assessment Years: 2014-15 to 2021-22  
Greenwood Resorts Private Limited.

Mr./Mrs./Shri/Smt. Sweta Properties Private Limited,

Bhagya Kalita, Geetha Kalita, Kavshik Kalita,

Manashu Kalita.

are/it is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents wither wholly or partly income or property which has not been, or would not be, disclosed for the purpose of the Indian Income Tax Act, 1922 or the Income Tax Act, 1961;

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found in House Number 76,  
Pizali Phukan Road, Rehbari, Guwahati - 781008

[specify particulars of the building/place/vessel/vehicle/aircraft]; this is to authorize and require you

As mentioned Overleaf

\_\_\_\_\_ [name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner or the Income Tax Officer]

- (a) to enter and search the said building/place/vessel/vehicle/aircraft;
- (b) to search any person who has got out of, or is about to get into, or is in the building/place/vessel/vehicle/aircraft if you have reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (c) to place identification marks on such books of account and documents as may be found in the course of search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- (d) to examine such books of accounts and documents and make, or cause to be made, copies or extracts from such books of account and documents;
- (e) to seize and such books of account, documents, money, bullion, jewellery, or other valuable article or thing found as a result of such search and take possession thereof;
- (f) to make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing;
- (g) to convey such books of account, documents, money, bullion, jewellery or other valuable article or thing to the office of the Deputy Commissioner of Income Tax or any other authority not below the rank of the Income Tax Officer employed in the execution of the Income Tax Act, 1961; and
- (h) to exercise all other powers and perform all other functions under section 132 of the Income Tax Act, 1961, and the rules relating thereto.

You may requisition the services of any Police Officer or any officer of the Central Government, or of both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income Tax Act, 1961.

SEAL

SEEN 9 AM  
22/12/22  
02m 21/12/22

मुद्रांक के लिये: **Director General or Pr. Director of Income Tax**  
 और, **Chief Commissioner or Pr. Commissioner of Income Tax**  
 Addl. Director of Income Tax (Inv.) or  
 Addl. Director or Joint Director of Income Tax  
 225 the Pr. DIT (Inv.), NEIS, Guwahati



2. Further as per the records of Greenwood Resort Private limited, it is noted that Mr. Bhagya Kalita who is the key person of "Bhagya Kalita" group, has himself brought of Greenwood Resort Private limited on 17/11/2015 from Ash Borah.

So the contention that it's a case in consequence to the search and seizure on "bhagya kalita" group is factually wrong, as a separate warrant of authorization for Greenwood Resort private limited was drawn on 22/12/2020 for the survey u/s133A along with the warrant of authorization of other parties of "Bhagya Kalita" group. Further, since the ownership of Greenwood Resort Private limited now lies with Mr. Bhagya Kalita, hence Greenwood Resort Private limited, is any way a key part of the Bhagya Kalita Group. Hence based upon the above discussion, the contention of the assessee is not acceptable.

**b) The decision made by the AO which was upheld by the Ld. CIT(A) are bad in law since no incriminating materials has been found.**

**Comment:**

The addition made by the AO was, based upon the following impounded documents:

**GWR-01 to GWR-14**, Tally Backup **GWR/HD/01**- contained registers maintained in the office premises. Upon verification it was noted that the above impounded registers are parallel books of account and sales registers which were maintained by the assessee for recording the true sales receipts, both in bank account and in cash.

Further, the addition on account of bogus interest expense on unsecured loan was based upon the survey u/s 133A of the income tax act on Akruti Securities Pvt Ltd, Arbitrage Securities Pvt Ltd and Orchid Finlease Pvt Ltd, and statement of the directors Amit Jain for Akruti Securities Pvt Ltd and Manish Jain for Arbitrage Securities Pvt Ltd, Orchid Finlease Pvt Ltd, recorded under section 131 of the income tax act, during the survey and post survey proceedings.

The above shows that, the additions were made on account of incriminating evidences found during the course of survey proceedings. Hence based upon the above discussion, the contention of the assessee is not acceptable.

**c) The AO is not justified in making addition w.r.t. the alleged unsecured loan(s) as well as disallowing interests on unsecured loan(s).**

However, since the addition was based upon incriminating evidences found from impounded documents during the survey, hence the contention of the assessee that the judgment of Hon'ble Supreme court in the case of **Abhisar Buildwell Pvt. Ltd.**, is applicable on its case is factually incorrect.

The above comments are submitted for your kind reference and necessary action.

(Manoranjan Behera)

Deputy Commissioner of Income Tax,  
Central Circle – 1, Guwahati.



6. We have considered the submission made. It is an undisputed fact as evident from the report of the Ld. Sr. DR that no warrant of authorization for carrying out search u/s 132(1) of the Act was issued in the case of the assessee but a survey was carried out in the case of Bhagya Kalita Group. The authorization u/s 133A of the Act is not equivalent to warrant of authorization u/s 132 of the Act read with Rule 112(1) of the Income tax Rules, 1962 and Form No. 45 thereof as warrant of authorization for search and seizure is a statutory form while the authorization for survey u/s 133A of the Act is a non-statutory form and further, a search can be carried out at the business premises and residential premises both while a survey can be carried out at the business premises only and the finding of the survey can be utilized in an assessment to be made u/s 143(3)/144/147 of the Act while the finding of the search alone can be utilized in the consequential assessment to be framed u/s 153A/153C of the Act. We have further noted that in view of the fact that no incriminating material was found in the course of the search carried out in the case of Bhagya Kalita and Group, in the case of Bhagya Kalita the additions made in the assessment orders u/s 153A/143(3) of the Act have been deleted vide order in ITA No. 120 to 124/GTY/2024 for AYs 2016-17 to 2019-20 order dated 27.09.2024 by the Hon'ble Tribunal. It is noted that the document relied upon being GWR/HD-01 was impounded during the course of survey carried out u/s 133A in the case of Bhagya Kalita Group on 22.12.2020 and was not found in the course of a search. Page 2 of the satisfaction note for the reasons recorded for the proceeding u/s 153C by the ACIT, Circle-1, Guwahati as conveyed to the assessee vide letter dated 21.07.2022 mentions so. The difference in sales was also noted on account of the register found during the course of survey

conducted in Greenwood Resorts Pvt. Ltd. and the Tally backup taken marked as GWR/HD-01 and it was not recovered during the course of the search proceedings. Another document BKS-11 relates to purchase of Greenwood Resorts Pvt. Ltd. by Shri Bhagya Kalita from Asha Borah was found during the course of the search in which the total consideration of the property was mentioned as Rs. 9,22,50,000/- while the same was shown to have been purchased at Rs. 1,90,14,300/-. However, the assessee's Ld. AR conveyed that no addition on account of the difference in the purchase price was made in any of the assessment years and the property was purchased in 2013 as per paper book pages 87 to 125 in which the transactions are dated 01.11.2013. It was also contended by the Ld. AR that the date in the satisfaction note is wrongly mentioned and the property was accounted for in AY 2014-15 for which scrutiny assessment u/s 143(3) of the Act was done. The assessee relied upon the decision of **CIT vs. Sinhgad Technical Education Society 397 ITR 344 (SC)** in support of the claim that as no incriminating material was found in the course of the search, no order u/s 153C of the Act could have been made. It was also stated that the explanation to section 153A of the Act is also not applicable as no satisfaction was recorded nor any asset being undisclosed asset was found in the course of the search. The Ld. DR as per the departmental paper book dated 05.02.2025 mentions that an authorization u/s 133A of the Act was issued in the case of the assessee and warrant of authorization was issued in the case of Bhagya Kalita. It was stated that the case of search and seizure and the case of survey are equivalent as Shri Bhagya Kalita became the owner of Greenwood Resorts Pvt. Ltd. The Ld. AR also drew our attention to the fact that no addition was made on the basis of the satisfaction recorded. The Ld. DR submitted that the survey was carried

out on the same date as the date of search and seizure and the warrant of authorization was duly signed by the DGIT (Inv.) in respect of Bhagya Kalita and Others and the survey was authorized by the DIT (Inv.) and the assessee became part of Bhagya Kalita Group from 2015 onwards. The Ld. AR stated that as evident from pages 87 to 125 of the paper book the property was purchased in 2013 and the major properties were purchased during this period and the date in the satisfaction note is incorrectly noted.

7. We have considered the submission made. Apparently, no incriminating material was found during the course of search. The Hon'ble Supreme Court in the case of **Principal Commissioner of Income-tax, Central-3 vs. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC)[24-04-2023]** held as under:

“■ *The question which is posed for consideration in the instant set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of Assessing Officer to make assessment is confined to incriminating material found during the course of search under section 132 or requisition under section 132A or not, i.e., whether any addition can be made by the Assessing Officer in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A or not. [Para 5]*

■ *At the outset, it is required to be noted that as such various High Courts have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. [Para 7]*

■ *No addition can be made in respect of completed assessment in absence of any incriminating material. [Para 8]*

■ *While considering the issue involved, one has to consider the object and purpose of insertion of section 153A and when there shall be a block assessment under section 153A. [Para 9]*

■ *That prior to insertion of section 153A in the statute, the relevant provision for block assessment was under section 158BA. 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 per cent 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. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of section 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 section 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search. [Para 9.1]

■ On a plain reading of section 153A, it is evident that once search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153 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. [Para 10]

■ As per the provisions of section 153A, in case of a search under section 132 or requisition under section 132A, the Assessing Officer 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 reassessment, 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 Assessing Officer 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 reopen 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, 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 Assessing Officer 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 section 147/48, subject to fulfilment of the conditions mentioned in section 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 section 147/148 has to be saved, otherwise the revenue would be left without remedy. [Para 11]

■ 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 Assessing Officer 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 is linked with the search and requisition under sections 132 and 132A. 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 Assessing Officer 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 Assessing Officer 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. [Para 12]*

■ *For the reasons stated hereinabove, no addition can be made in respect of the completed assessments in absence of any incriminating material. [Para 13]*

■ *In view of the above and for the reasons stated above, it is concluded as under:*

*(i) in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A;*

*(ii) all pending assessments/reassessments shall stand abated;*

*(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer 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 Assessing Officer including the income declared in the returns; and*

*(iv) in case no incriminating material is unearthed during the search, the Assessing Officer 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 Assessing Officer in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A. However, the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 and those powers are saved.*

*The question involved in the instant set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the revenue are hereby dismissed. [Para 14]*

8. Similar issue arose in the case of Bhagya Kalita (supra) and the Tribunal deleted the additions made for AYs 2015-16 to 2019-20 on account of loans and interest expenses incurred against loans vide para

3.1 of its order after relying upon the case of **Abhisar Buildwell (P.) Ltd.** (supra) and by citing the decisions of **Commissioner of Income-tax (Central)-III vs. Kabul Chawla [2016] 380 ITR 573 (Delhi) [28-08-2015]** and allowed the appeal since no incriminating material was found during the course of search in the case of the assessee and any evidence found during the course of the survey could not have been utilized in the course of proceeding u/s 153A of the Act. Hence, on facts of the case and in view of the decision of the Hon'ble Supreme Court in the case of **Abhisar Buildwell (P.) Ltd.** (supra) and other judicial pronouncements relied upon in the course of the appeal before us, the finding of the survey could not have been used in the order u/s 153C of the Act made and the additions made are hereby deleted for AY 2014-15 and the appeal of the assessee is allowed. Further, as regards the difference in sales noted in various other years, as the documents were found in the course of the survey, the same could not have been utilized in the assessment u/s 153C of the Act and the additions made on account of difference in sales, unexplained cash credits and the interest on such bogus loans are deleted as the additions, if any, could have been made only in the assessment u/s 143(3)/144/147 of the Act.

9. A prayer was made by the Ld. DR to issue directions for taking action u/s 147/148 of the Act by relying on paras 4, 4.1 and 4.2 of the order in the case of Bhagya Kalita mentioned in the report of the Ld. Sr. DR by relying upon the findings of the Hon'ble Supreme Court in the case of **Abhisar Buildwell (P.) Ltd.** (supra). As regards the issue in relation to section 150 of the Act for taking action u/s 148 of the Act for the relevant assessment years, the Ld. AR objected to the same raising the contention that u/s 150 of the Act only an authority can issue direction and the Hon'ble Tribunal is not an authority u/s 116 of the

Act. A query was raised to the Ld. AR as to what is the status of the Tribunal if it is neither an authority nor a Court to which no satisfactory response was given by the Ld. AR. It is a matter of fact that the Tribunal is a quasi-judicial authority and only the authorities under the CBDT are mentioned in section 116 of the Act and the Tribunal is a statutory quasi-judicial authority. Hence, in view of the finding in the case of Shri Bhagya Kalita for AY 2017-18 to AY 2019-20 where the Hon'ble ITAT, Guwahati Bench deleted the addition, however, respectfully following the finding of the Coordinate Bench in the case of **Bhagya Kalita wherein reliance has been placed on the judgment of the Hon'ble Supreme Court that the Revenue is not precluded from taking action u/s 148, if otherwise permissible as per law**, the Ld. AO is directed to refer to the instruction no. 1/2023 dated 23.08.2023 issued by the CBDT and the case of **Abhisar Buildwell (P.) Ltd.** (supra) and take necessary action u/s 148 of the Act keeping in view the express provisions in section 150 of the Act and the findings of the Hon'ble Supreme Court in this regard.

10. As regards AY 2017-18 in ITA No. 114/GTY/2024, it was submitted that it was the case of complete scrutiny and the expenses which were not claimed have been disallowed which is not justified. An amount was paid to GMC and though it was a penalty but it was incurred for the purpose of bringing into asset. That being so, the same should have been added to the actual cost. The Ld. DR submitted that the Ld. CIT(A) also considered the facts and issued direction to be followed by the Ld. AO. The finding of the Ld. AO is as under:

*"3.1 The assessee is Domestic Private Company engaged in the business of "Hotels & Hospitality Services" business. On verification of Audited accounts of the financial year 2016-17 it is seen that that during the financial year 2016-17 the assessee company has incurred the expenses of Rs.*

17,42,086/- as GMC TAX which is not reflected either in direct expenses or indirect expenses in the audited accounts of the relevant financial year and accordingly and the assessee has been asked to furnish copy of municipality tax paid challan along with explanation. In response to the above the assessee furnished submission as reproduced under:

*Quote: GMC Tax of Rs. 17,49,055/- was paid on account construction of new building and same was added to the building under fixed assets since it is capital expenditure, same was not claimed as direct/ indirect expenses in the profit and loss account*

*Unquote:*

*Submission of the assessee carefully verified. On verification of receipt issued by the Guwahati Municipal Corporation dated 10/06/2016, it appears that Rs.17,42,086/-received by Guwahati Municipal Corporation on 10/06/2016 from M/s. Greenwood Resort Pvt. Ltd., "as penalty for RCC Building". Scan copy of GMC Receipt is attached herewith as proof.*

*Penalty paid for RCC Building is neither directly relatable to newly constructed RCC Building neither regularization fees paid by the assessee towards violation of certain regulation in construction of building and accordingly did not form part of the actual cost of the building. Therefore, claim of the assessee for capitalization of GMC tax under the fixed assets could not fulfil the conditions of includible of actual cost.*

*Further, explanation to section 37(1) of the Income tax Act, 1961 described as "... any expenditure incurred by an assessee which is an offence or which is prohibited by any law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure*

*Therefore, on the basis of above facts, claim of the assessee for capitalization of GMC tax paid Rs. 17,49,055/- is disallowed within the ambit of explanation to section 37(1) of the Income tax Act, 1961 and added back to the total income of the assessee. Further, Rs.1,74,905/- claimed as depreciation @ 10% on Rs.17,49,055 is disallowed. Penalty proceedings u/s 270A of the Income tax Act, 1961 for under reporting income/ misreporting income is being initiated separately.*

*[(i) Depreciation disallowed Rs.1,74,905/- & (ii) Addition Rs.17,49,055/-]*

*3.2 On verification of audited Audit accounts, it is seen that the assessee debited Rs.41,000/- as sundry subscription. In response to notice assessee furnished ledger of "Sundry Subscription which is examined and found that all payments under the head "Sundry subscription" are made to Student Union, APDCL/Kahanapara for Viswakarma puja, etc. not wholly and*

exclusively for the purpose of the business. Hence, it is held that Rs.41,000/- is disallowed and added back to total income.

(Addition Rs.41,000/-)

3.3 On verification of audit report it appears that the assessee received Rs.3,02,334/- from his employees as provident fund & ESI but the said sum could not be credited by the assessee to the employees account in the relevant funds on or before due date. Hence, the assessee could not fulfil the condition as laid down in section 36(1)(va) of the Income-tax Act, 1961 and accordingly Rs.3,02,334/- is treated as income under section 2(24)(x) of the Income-tax Act, 1961 added to total income.

(Addition Rs.3,02,334/-)

3.4 Further, on verification of "Repairs and Maintenance ledger, it is seen that following payment were made in contravention of section 40A(3) of the Income-tax Act, 1961 which are debited in the Profit & loss account Details are as under:-

Sl. No	Date of payment made	Particulars	Amount (Rs.)
1.	18/11/2016	As per details cash payment	86,450/-
2.	19/11/2016	As per details cash payment	91,600/-
3.	20/11/2016	As per details cash payment	26,750/-
4.	20/11/2016	As per details cash payment	1,05,000/-
5.	20/11/2016	As per details cash payment	23,400/-
6.	29/11/2016	As per details cash payment	22,000/-
7.	01/02/2017	As per details cash payment	69,300/-
8.	28/02/2017	As per details cash payment	1,08,100/-
9.	20/03/2017	As per details cash payment	22,500/-
		Total cash payment	5,55,109/-

The assessee could not furnish any satisfactory reply for payment in cash above Rs.20,000/- or more. Hence, Total payment of Rs.5,85,109/- under the head "Repairs & Maintenance is disallowed and added back to total income of the assessee.

(Addition Rs.5,55,109/-)"

11. The additions were confirmed by the Ld. CIT(A) vide para 6.2, 6.3 and 6.4 which are extracted as under:

“6.2. Decision on Ground(s) of Appeal No(s). 1 & 2:

The Appellant contended that AO was not justified in treating GMC tax paid as revenue expenditure instead of capital expenditure. However, it is observed that the said amount was paid as penalty for violation of GMC regulations in the construction of the building. Such penal amounts cannot be allowed as per the provisions of Section 37(1) of the IT Act. Hence, it is

*concluded that the AO was right in disallowing the impugned amount and disallowing depreciation on the same. Thus, additions in respect of the GMC payment of Rs. 17,49,055/- and the depreciation claimed of Rs. 1,74,905/- are hereby confirmed. Ground No. 1 & 2 are dismissed accordingly.*

*6.3. Decision on Ground(s) of Appeal No(s). 3:*

*The Appellant contended that the subscription paid to various parties for smooth running of business amounting to Rs. 41,000/- needs to be allowed. There is merit in the appellant's argument. The payments were made to several organisations for festive occasions, which are needed for publicity & expanding the business activities in the hospitality sector. It is deemed that the expenditure has been incurred for business purpose. Hence, the addition of Rs. 41,000/- made by the AO for Sundry subscription is hereby deleted. Ground No. 3 is allowed accordingly.*

*6.4. Decision on Ground(s) of Appeal No(s). 4 :*

*The Appellant contended that the AO was not justified in disallowing cash payments to labourers. It is observed from the record that the cash payments above Rs. 20,000/- were made under the head 'Repairs & maintenance' in contravention of Section 40A(3) of the IT Act. The said disallowance is a statutory disallowance and the AO has no discretion in this regard. The Appellant also did not elaborate whether the payments fall under any exceptions. Hence, it can be concluded that the AO has rightfully disallowed the payments. Thus, the disallowance u/s 40A(3) of the IT Act amounting to Rs. 5,55,109/- is hereby confirmed. Ground No. 4 is dismissed accordingly."*

12. It was also submitted that the additions made u/s 40A(3) of the Act ought to be deleted and the submission in this regard were made in the paper book II page 28 to 31 as payment were made for labour charges and repair and maintenance and no the disallowance was called for. It was submitted that the same could be verified by the Ld. Assessing Officer, if so required.

13. We have considered the submissions made. The assessee claims that the expenditure of Rs. 17,49,059/- was not claimed as a revenue expenditure. A query was made as to why the same should not be added to the actual cost of the asset as even though it was a penalty but it was incurred for the purpose of bringing an asset, to which the Ld. AR

submitted that the Ld. AO disallowed the depreciation of Rs. 1,74,905/- after rejecting the capital expenditure. Since, the matter requires verification, hence, for the issues raised in ground nos. 1 and 2, the order of the Ld. CIT(A) is hereby set aside and both the issues are remanded to the Ld. AO who shall verify whether any claim for the expenditure was made so as to call for any disallowance and if the penalty was not paid for any infraction of law, the same should be added to the cost of the asset and depreciation as per law should be allowed and both these grounds are allowed for statistical purposes.

14. As regards ground no. 3, since the required documents were not filed before the Ld. AO the order of the Ld. CIT(A) in this regard is also hereby set aside and the matter is remanded to the Ld. AO. The assessee shall produce the required evidence/bills and vouchers in support of the claim that the disallowance u/s 40A(3) of the Act was not warranted.

15. Ground no. 4 related to disallowance of sundry subscription was not pressed as the same was allowed by the Ld. CIT(A) hence, ground no. 4 is dismissed as not pressed.

16. Ground No. 5 is general in nature and does not require any separate adjudication.

17. In the result, ITA No. 114/GTY/2024 for AY 2017-18 is partly allowed for statistical purposes.

18. As the issues in ITA Nos. 111 to 113/GTY/2024 and 115 to 118/GTY/2024 are similar to the issues in ITA No. 110/GT/2024, our findings in paras 8 and 9 will mutatis mutandis also appeal for appeal for these years and the additions made in the order u/s 153C of the Act which have been confirmed by the Ld. CIT(A) are hereby deleted as the



same do not relate to any incriminating material found during the course of the search.

19. In the result, ITA Nos. 110 to 113/GTY/2024 and 115 to 118/GTY/2024 are allowed subject to the directions as above in para 9 and ITA No. 114/GTY/2024 is partly allowed for statistical purposes.

**Order pronounced on 29<sup>th</sup> May, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.**

Sd/-

**[Manomohan Das]**

Judicial Member

Sd/-

**[Rakesh Mishra]**

Accountant Member

Dated: 29.05.2025

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Greenwood Resorts Private Limited, 1, G.S. Road, Madhab Nagar, Khanapara, Guwahati, Guwahati, Assam, 781022.**
- 2. ACIT, Central Circle-1, Guwahati.**
- CIT(A)-Central NER, Guwahati.
- CIT-
- CIT(DR), Guwahati Benches, Guwahati.
- Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata