

**IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.**

**BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &**

**DR. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**I.T.A. No. 848/Jodh/2024**

**Assessment Year: 2018-19**

Tarun Muradia 1, Kesar Kunj, New Bhupalpura Udaipur	Vs.	The DCIT Central Circle-1, Udaipur
PAN No.: ABQPM3342Q		
Appellant		Respondent

<b>Appellant by</b>	Sh. Shrawan Kumar Gupta, Adv.
<b>Respondent by</b>	Sh. Sanjay Dhariwal, CIT-DR

<b>Date of Hearing</b>	07/05/2025
<b>Date of Pronouncement</b>	23/06/2025

**ORDER**

**PER: DR. S. SEETHALAKSHMI, J.M.**

This is an appeal filed by the assessee against the order of ld. CIT (A), Udaipur-2, dated 23.10.2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2018-19. The assessee has raised the following grounds of appeal :-

“1.1 The impugned order u/s 153A rws 143(3) of the I.T. Act. 1961 dated 31.05.2021 as well as the action taken u/s 153A and notices u/s 143(2) or other notices are illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons or bared by limitation and further contrary to the real facts of the case, hence the same may kindly be quashed.

1.2 The search action taken u/s 132 and consequent proceedings are illegal, bad in law and on the facts of the case for want of jurisdiction and various other reasons, against the provisions and procedures as per law and further contrary to the real facts of the case hence all the consequent notices as well as the subsequent proceedings invalid, illegal, and bad in law hence liable to be quashed.

1.3 The Id CIT(A) has also erred in passing the exparty order without Providing the opportunity of being heard in gross breach of law which are illegal, bad in law and on the facts of the case against the provisions and procedures as per law and further contrary to the real facts of the case hence liable to be quashed.

2. Rs.4,53,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining/confirming the addition of Rs.4,53,000/- on account of alleged suppressed rental income ignoring the other material and facts. The addition so made by the Id. AO and confirmed by the Id. CIT(A) is also contrary to the real facts of the case and not according to the provision of law hence the same is illegal, bad in law, against the principle of natural justice. hence the same may kindly be deleted in full.

3. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A. B.C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

4. That the appellatant prays your honour indulgence to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

2. Succinctly, the facts as culled out from the records are that the assessee earned business, rental and interest income during the year. In this case, a search and seizure action u/s 132 took place against the assessee and his group on 03.01.2019. Consequently, the AO issued notice u/s 153A on 17.01.2020. In response thereto, the assessee filed his return of income declaring total income of Rs.3,09,940/- on 29.01.2020 During the course of assessment proceedings, the Id. AO inquired about seized material found in the form of loose papers and other details, to which the assessee submitted written replies and filed relevant documents. The Id. AO made addition of Rs.4,53,000/- on account of alleged

suppressed income of rent and completed the assessment u/s 153A r.w.s.143(3) at Rs.7,62,940/-

3. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the CIT(A) on legal grounds as well as on facts. He challenged the assumption of jurisdiction by the AO and addition made by him. On facts, the assessee pleaded before the CIT (A) that the rental receipts pertained to Harsh Hospitality, to whom the building had been rented out by his son, Chirag Murdia and in respect of which the relevant rent deeds were found & seized during search. He provided the same supporting evidence which was also made available to the AO. However, his appeal did not find favor with the CIT(A) who dismissed the appeal on all the grounds. In respect of grounds on factual aspect, the Ld. CIT(A) held-

*“The claim of the assessee is not found to be acceptable as the assessee is receiving the payment from customers and not Harsh Hospitality. No evidence is furnished by the assessee that the amount was actually received by M/s Harsh Hospitality. The assessee has also not furnished any evidence to prove that the amount collected from these persons were later on handed over to M/s Harsh Hospitality. The AO has rightly rejected the claim of the assessee.*

*The documents are found from the possession of the assessee and the assessee failed to furnish evidence that the documents are not belonging to him.*

*In view of the above discussion, the addition made by the AO is found to be justified. The ground of appeal is treated as dismissed.”*

4. Now the assessee is in appeal before the ITAT. He has made the following submissions-

**“1. No additions can be made without any material found during the course of search or no incriminating documents found during the course of search:** At the very outset we have to submit that no additions were called for in the assessment u/s 153A for the years under consideration, in the present case, considering the fact that there was no material evidence found during the course of search admittedly **except excel sheet showing room booking not related to the assessee, its belonged to Harsh Hospitality (Tenant of Chirag Murdia).** As per settled law and legal position, as there was no incriminating documents/material found during the course of search hence no addition can be made in the assessment u/s 153A. This legal issue has been decided in so many cases and becomes a settled law by now according to which no addition can be made in the assessment u/s 153A in absence of any incriminating documents or material from which it can be inferred or which can suggest that there was income derived by the assessee in the year under consideration which was not disclosed by him prior to the date of search. Even no addition can be made in the assessment u/s 153A on the basis of statement u/s 132(4) in absence of incriminating material found during the course of search. Addition towards undisclosed income without establishing the basis found during the course of search could not be sustained. The assessment u/s 153A should focus on the basis of material and evidences gathered during the course of search. In this respect we like to draw your attention towards the following judgments:

**(i) CIT V/s Deepak Kumar Agrawal and others (2017) 299 CTR(Bom) 62**

Assessment u/s 153A- Scope- No addition could have been made while completing assessment u/s 153A in the case of completed assessment if no undisclosed income was determinable from the material found as a result of search – Once there is no incriminating material in support of the addition and brought on record by the Revenue, then no addition u/s 68 could be made.

**(ii) CIT and Anr V/s Lancy Constructions (2017) 295 CTR (Kar) 454** Assessment u/s 153A computation of undisclosed income - When there were no incriminating documents found during the course of search – If assessment is allowed to be reopened on the basis of search, in which no incriminating material had been found, and merely on the basis of further investigating the books of accounts which had been already submitted by the assessee and accepted by the AO at the time of regular assessment, the same would amount to the Revenue getting a second opportunity to reopen the concluded assessment, which is not permissible under the law.

**(iii) CIT V/S KABUL CHAWALA(2016) 380 ITR 573Held** – Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. Assessment u/s 153A can be carried out only on the basis of

seized material. Where no incriminating material was unearthed during the search, no additions could be made to the income already assessed. The ratio of above judgment is also followed in the case reported at (2017) 295 CTR (DEL) 466.

**(iv) PCIT V/s Saumya Construction P Ltd. (2017) 297 CTR387(Guj)** Assessment u/s 153A-Scope-Sec 153A seek to assess the total income for the assessment year, which is clear from the first proviso thereto – Second proviso further makes the intention of the legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub section (1) pending on the date of initiation of search u/s 132 or requisition u/s 132A, as the case may be, shall abate – From the heading of section 153A, the intention of the legislation is clear viz, to provide for assessment in case of search and requisition – When the very purpose of the provision is to make assessment in the case of search or requisition, the assessment should be connected with something found during the search or requisition, viz. Incriminating material which reveals undisclosed income – In case where pending assessments have abated, the AO can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns. If any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition - Where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search u/s 132 or making of requisition u/s 132A, addition or disallowances can be made only the basis of the incriminating material found during the search or requisition.

If in relation to the assessment year, no increment material is found, no addition and disallowance can be made in relation to that assessment year in exercise of power u/s 153A and the earlier assessment shall have to be reiterated.

***Covered matter:*** Here also the same position because admittedly in the present case there is no incriminating documents have been founds admittedly and the ld. AO has made the addition on the basis of documents i.e statements of affairs filed by the assessee during the course of assessment u/s 153A on the demand. Hence the above matter is directly covered matter by the following judgments.

***The Honble ITAT Jodhpur Bench Jodhpur in the case of Chhoga Lal Jain(Maroo), Leela Devi Jain(Maroo) and Vijay Jain v/s DCIT Central Circle-1 Udaipur in ITA No. 128,129,130,131,132/Jodh//2019 dt. 28.11.2019 the HonbleITAT has held that***

“We have heard the rival contentions of both the parties and perused the material placed on record and the orders passed by the revenue authorities and the judgment cited by the parties. From the facts we noted that the additions have been made by the A.O. and sustained by the ld.CIT(A) U/s 153A of the Act whereas neither any documentary evidence nor any incriminating material has been referred to as according to the assessee, no such documentary evidence or any incriminating material was found

as a result of search. In this respect, the ld AR relied upon the decision of the Hon'ble Jurisdictional High Court in the case of PT.CIT vs. Smt. Daksha Jain W/o Shri Virendra Modi, Adarsh Nagar, Sirohi in DB Income Tax Appeal No.125/2017 dated 04/07/2019 wherein the Hon'ble High Court has held as under:

'1. Various questions of law with respect to disallowance and additions made in the course of re-assessment proceedings are urged by the Revenue in its appeal under Section 260A of the income Tax Act, 1961 (for short, 'the Act').

2. The search under Section 132 of the Act was conducted in the assessee's premises on 10.2.2010. This resulted in notices under Section 153A which culminated in search assessment orders for block period between assessment A.Y. 2004-05 to 2010-11. The additions made were on identical grounds i.e. business loss, claim for disallowance of interest of substantial amount, additions made on account of unexplained cash entries in the bank accounts, etc. the ITAT noticed inter alia that all the additions were not based upon any fresh materials seized during the course of search. That was the first ground for setting aside the order; the ITAT also considered and decided in favour of the assessee on the merits of the additions.

The approach of the ITAT for setting aside the search Assessment on the ground that no fresh material was seized or discerned in the course of search is correct and confirm to the view taken by the Delhi High Court in the case of Commissioner of Tax (Central)-III vs. Kabul Chawla reported in 380 ITR 573. That judgment has been followed by various High Courts including this Court. Consequently, no question of law arises. The present appeal is accordingly dismissed."

After having gone through the facts of the present case and also the decision to be given by the assessee we found that no fresh material was seized or discerned in the course of search, thus, no additions could not have been made by the A.O. in view of the decision of the Hon'ble Delhi High Court in the case of CIT (Central)-III vs. Kabul Chawla 380 ITR 573 and the said decision has also been followed by the **Hon'ble Rajasthan High Court in the case of Pr. CIT Vs Smt. Daksh Jain (supra)**. The ld. CIT-Dr appearing on behalf of the revenue could not point out that the additions were made on the basis of any fresh material seized or discerned in the course of search. Thus, by taking into consideration, facts and circumstances and the legal position as enumerated above, we set aside the additions made by the AO and confirmed by the ld. CIT(A). Thus, we allow this ground of appeal raised by the assessee.

*Copy of order is enclosed.*

In the case of **Rathi Steel Ltd. & ANR. vs. ACIT & ANR. 31st May, 2019 (2019) 56 CCH 0102 Del Trib** it has been held that *Search and seizure—New scheme of assessment in search cases—Assessee filed return of income—AO completed assessment u/s 143(3) making an addition towards fees paid to ROC for increase in authorized share capital—*

*Thereafter, a search and seizure action u/s 132 was conducted in business and residential premises of R group of cases wherein, assessee was also covered—During search operation, various incriminating documents were found and seized—In response to notice u/s 153A, assessee filed its return of income for relevant AY—During assessment proceedings, AO noted from assessee's balance sheet that assessee had raised share capital including share premium from three companies—Further, companies which invested in assessee's shares at such a high rate were hardly having any business activities of their own—AO made inquiries by issuing summons through DIT(Inv.)—AO noted that provisions of s. 68 were amended by Finance Act, 2012 w.e.f. 01.04.2013 whereby onus was on assessee to prove source of source in case of receipt of share subscription to satisfaction of AO—AO held that assessee failed to prove genuineness of transactions as well as credit worthiness of the investing companies as well as investors of investing companies—Accordingly, AO made addition u/s 68—CIT(A), after considering remand report of AO and rejoinder of the assessee to such remand report, upheld AO's action—Held, addition made by AO on account of increase in share capital/share premium was based on balance sheet filed by assessee during course of assessment proceedings and nowhere from assessment order or of order of CIT(A) it came out that said addition was based on incriminating material found during course of search—Even DR also could not point out that addition was based on any incriminating material—Since addition in instant case was not based on any incriminating material found during course of search, but, on basis of balance sheet filed by assessee in return of income, therefore, addition made by AO u/s 68 on account of increase in share capital which was upheld by CIT(A) was not justified*

**2.2 In the case of PCIT v/s Meeta Gutgutia Prop. Ferns Patel & Ors 395 ITR 526(Del) held** Search and Seizure—New scheme of assessment in search cases—Validity of invocation of Section 153A—On basis of documents recovered during search and seizure operation, notice u/s. 153A was issued to Assessee—AO invoking section 153A passed assessment order against assessee—CIT(A) and Tribunal held that assumption of jurisdiction under Section 153A for said AYs was bad in law—Held, if no incriminating material was found during course of search in respect of an issue, then no additions in respect of any issue could be made to assessment under Section 153A and 153C—There was no such statement in present case which could be said to constitute admission by Assessee of failure to record any transaction in accounts of Assessee for AYs in question—Disclosure made in sum was only for year of search and not for earlier years—As already noticed, books of accounts maintained by Assessee in present case was accepted by AO—In case of Commissioner of Income Tax (Central-III) v. Kabul Chawla (2016) 380 ITR 573 (Del) Court held that completed assessments could be interfered with by AO while making assessment under Section 153 A only on basis of some incriminating material unearthed during course of search or requisition of documents or undisclosed income or property discovered in course of search which were not produced or not already disclosed or made known in course of original assessment—Assessment in respect of each of six assessment years was separate and distinct assessment—U/s.153A , assessment had to be made in relation to search or

requisition, namely, in relation to material disclosed during search or requisition—If in relation to any assessment year, no incriminating material was found, no addition or disallowance could be made in relation to that assessment year in exercise of powers under section 153A and earlier assessment should have to be reiterated—There was no such statement in present case which said to constitute an admission by Assessee of failure to record any transaction in accounts of Assessee for AYs in question—Court was of view that ITAT was justified in holding that invocation of Section 153A by Revenue for AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

### **2.3 Further the SLP filed by the revenue has been dismissed by the Honble Supreme Court vide order dated 02.07.2018 257 Taxman 441(SC)**

**2.4** In the case of **Pr. CIT. DharampalPremchand Ltd.(2018) 408 ITR 0170 (Delhi)** Held Search and seizure—Addition—Revenue filed appeal claiming that, tribunal fell into error in holding that additions made in course of proceedings u/s 153A/143(3) were not warranted—Held, tribunal took it upon itself to analyze seized material in great detail—There had to be incriminating material to justify assumption to jurisdiction u/s 153A qua each of AYs for which assessment was sought to be reopened—Tribunal had analyzed material seized and in fact found it to be not incriminating even for FY 2010-11—That being position, further question as to whether such material could constitute incriminating material with respect to other AYs simply did not arise—There was no incriminating material seized qua each of AYs assessments for which were sought to be reopened—Consequently, court perceived no conflict in these decisions that warranted reference of issue to larger Bench—Question framed answered in negative i.e. against Revenue and in favour of Assessee—Revenue’s appeals dismissed.

In case no incriminating material have been found addition cannot be made in an unabated assessment as held by **Hon’ble Apex Court held in the Civil Appeal No. 6580 OF 2021 in the case of Principal Commissioner of Income Tax, Central-3 Versus AbhisarBuildwell P. Ltd as under-**

*“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 assessments/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.

3. The following facts is also supporting the case that no incriminating documents has been found during the course of group search, Hence, we request your good self to please delete the addition in this ground alone.

3.1 As in the assessee's group the search has been carried out on dt.03.01.2019 and the ld. AO has issued the notice u/s 153A on dt.17.01.2020, in response to the same, assessee has filed its ROI u/s 153A on dt.30.01.2020.

3.2 Further on perusal of the assessment order, Panchnama (PB), seized documents it is clear that no incriminating documents have been found except excel sheet showing room booking not related to the assessee, it belonged to Harsh Hospitality (Tenant of Chirag Murdia). As the ld. AO has not referred any seized documents regarding this alleged addition, otherwise he could have mentioned or referred. If still any doubt the report may be called from the ld. AO.

4.1 **Invalid Assessment u/s 153A** - The assessments which are not pending and have attained finality on the date of search cannot be disturbed by the AO u/s 153A unless some incriminating materials in respect of the completed assessment were found during the search. In the present case on the date of search assessee's assessment for the year under consideration was not pending and had attained finality as the time limit to issue the notice u/s 143(2) was already finished, and no addition was made on these accounts. No incriminating material qua the position of alleged additions was found during the search. Therefore the AO has no jurisdiction to assess the alleged unexplained income as income from other sources invoking provision of section 69A in the year under consideration.

4.2 Accordingly the addition made by the Ld. AO in the proceedings u/s 153A is without jurisdiction/scope u/s 153A hence illegal and uncalled for. In this respect, the ratios of above judgments are fully applicable considering the facts and circumstances which are totally similar and identical to above cases. Hence the assessment may kindly be quashed and the addition so made may kindly be deleted in full.

5. In addition to the above, in the present case we have to further submit as under:

5.1 That the Ld. AO has made the addition of Rs.4,53,000/- only on account of alleged suppressed rental income. The Ld. AO has not properly appreciated the explanation furnished by the assessee in this respect vide written submission (PB) which clarifies the correct position on the issue. The Ld. AO erred in not accepting the explanations.

If in relation to the assessment year, no increment material is found, no addition and disallowance can be made in relation to that assessment year in exercise of power u/s 153A and the earlier assessment shall have to be reiterated.

**5.1.2** As the facts of the present case clearly speak about the position that there was no documents/material found during the course of search in relation to which the Ld. AO has made additions and it is also an admitted fact that the additions have been made on the basis of information and evidences produced on demand during the assessment proceedings u/s 153A, so the Ld. AO erred at law in making additions on this account in this case. No addition can be made in the assessment u/s 153A considering the facts of this case. Accordingly the addition made by the Ld. AO in the proceedings u/s 153A is without jurisdiction/scope u/s 153A hence illegal and uncalled for. In this respect, the ratios of above judgments are fully applicable considering the facts and circumstances which are totally similar and identical to above cases. Hence, we request your good self to please quash the order u/s 153A and delete the additions made by the Ld. AO in the declared income in the interest of equity and justice considering the above facts that the Ld. AO has made additions without bringing on records any incriminating material found during the course of search in support of such addition.

**5.1.3** In search assessment addition has to be made only on the basis of any incriminating documents found during the course of search related to that transaction.

Considering the above position of law, facts of the case and the attending circumstances, the assessment u/s 153A by making addition of Rs.4,53,000/- on account of alleged suppressed rental income is not justified and deserves to be deleted. We request your good self to please delete the same in the interest of equity and justice.

**6. No supporting material with AO** - Further the assessee in support had filed detailed written submissions, supporting papers/ documents, confirmation/ certificate from Harsh Hospitality under consideration. Other side the Ld. AO has not filed a single evidence in his support except in his own assumption, presumption, guess work and suspicion and blindly ignored these very vital facts or evidences of the case and proceeded on their own guess work, assumption, presumption and suspicion and it is the settled legal position that no addition can be the basis of suspicion, assumptions' and presumption. An allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principles. Kindly refer **Dhakeshwari Cotton Mills 26 ITR 775 (SC)** also refer **R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag)**, **Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All)**. Also refer **CIT v/s Kulwant Rai 291 ITR 36( Del)**. In **CIT v/s Shalimar Buildwell Pvt. Ltd. 86 CCH 250(All)** it has been held that the AO made the addition merely on **suspicion** which was not desirable in the eye of law.

**Kindly refer our WS dated 17.02.2021 filed before Id. AO which is reproduced for reference as under:**

1. Regarding loose papers of booking of building room, it is further respectfully submits that during the course of search proceedings, some loose papers found in AS-32 relates to rent/ booking of building rooms of Rs.4,53,000/- and representing the booking of guest house by various customers.
2. It is thumb rule of business that all rent/ booking of guest house rooms from any customers during the tenant period belonged to tenant only who has taken the building on rent. M/s Harsh Hospitality has taken the building from Shri Chirag Murdia on rent and every booking of rooms of the building during tenant period was the receipts/income of M/s Harsh Hospitality only. Hence, the rent/ booking of room rent transactions written on the seized material relates to M/s Harsh Hospitality (tenant) only and does not relate to Shri Chirag Murdia and Shri TarunMurdia in any manner. The confirmation/ certificate from Harsh Bhavnani Proprietor M/s Harsh Hospitality regarding the same are enclosed for verification please.
3. It is further submits that on vacating the building by Harsh Hospitality on dated 30.11.2018, he gave all the details of booking of the building to Shri Chirag Murdia. Therefore, these loose papers were found with the Murdia family during the course of search proceedings on dated 03.01.2019.

**7.1** The Id. AO observed that amount received in code was received by the assessee, in cash, correlated with other documents, also there is no evidence that the amount subsequent transferred or handed over to M/s Harsh Hospitality or Chirag Murdia.

**7.2** In this regard it has been submitted that on vacating the building by Harsh Hospitality on dated 30.11.2018, he gave all the details of booking of the building to Shri ChiragMurdia. Therefore, these data were found with the Murdia family during the course of search proceedings on dated 03.01.2019.

**7.3** It is further submitted that both 'Cham Cham Tower' of Chirag Murdia and the residence of the assessee are at the same location/ opposite side in New Bhopalpura area. Therefore, whenever the tenant Harsh Bhavnaniwas not there at the Cham Cham Tower, he informed the assessee to collect the advance/ receipts against booking from customers on his behalf, which were subsequently hand over on arrival to Harsh Bhavnani by the assessee. The certificate of Harsh Bhavnani in this regardhas already been submitted. Hence there is no question of guess work, assumption or presumption of income in the case of assessee.

**7.4** Hence in view of the above facts and circumstances of the case the addition so made may kindly be deleted in full and oblige.”

5. Ld. AR of the assessee in support of the contention so raised in the written submission, placed reliance on the following evidence / records:-

S.No.	Particulars	Page No.
1.	Copy of IT return with Balance sheet & computation	1-7
2.	Copy of notices issued by the AO u/s 142(1)	8-14
3.	Copy of Panchnama of search	15-16
4.	Copy of Statement of assessee recorded u/s 131	17-26
5.	Copy of reply filed to AO dated 17.02.2021	27-28
6.	Copy of confirmation of Harsh Bhavnani	29
7.	Copy of reply filed to AO dated 27.02.2020	30-32

6. The ld. DR is heard who relied on the findings of the lower authorities and more particularly advanced similar contentions as stated in the order of the ld. CIT(A).

7. We have heard the rival contentions and perused the material placed on record vide the paper book, as well as the relevant provisions of law and the case laws cited by the Ld.AR in support of his case.

8. **Ground No. 1 and 2**, the assessee challenged the proceedings on legal grounds. That issue has already been discussed at length by the ld. CIT(A) while dealing with the appeal of the assessee. The assessee has raised an issue connected with these grounds that as no incriminating material has been found during the course of group search, addition cannot be made u/s 153A. Records reveal that during the search at the premises of the assessee, certain documents were found and seized, which were inventorized as Annexure-AS. Exhibit 32 of this annexure which was an Excel file named **Cham Cham Tower**, contained

an Excel sheet showing details of room rents. Exhibit 1 of this Annexure, which was the personal diary of the assessee, contained details of cash receipts/payments. Regarding Exhibit 32, the explanation given by the assessee that the same pertains to Harish Bhawnani appears bonafide, and cannot be considered as incriminating material against the assessee. However, regarding Exhibit 1, which is the personal diary of the assessee, prima facie it appears that the alleged transactions noted in it are of incriminating nature and therefore, the addition so made relates to the material found from the premises of the assessee and that requires an investigation about the nature of the receipts/payments and whether the same the same are accounted for or not. Therefore, in that matter of the facts, initiation of the proceedings is based on the document found and therefore, we do not agree with the contention of the assessee that addition not being based on incriminating material found during search, the assessment order passed u/s 153A requires to be quashed. Therefore, this ground of appeal of the assessee does not succeed and is dismissed.

9. **Ground No.3**, the assessee has challenged the addition of Rs.4,53,000/- sustained by the Ld. CIT(A), ignoring the material found during search and the evidence filed by him. We find that the basis of this addition is Exhibit 32 of Annexure AS. The AO observed that the total of this Excel sheet comes to Rs.4,53,000/- which has been written by suppressing one zero as 45300. This conclusion was drawn by the AO on the basis of Page-6 of Exhibit 1, wherein it

was mentioned - 5,6,7 Vinodji72000 Received. The AO correlated the amount of 7200 shown as due against the name of Vinodji Joshi at S.No.1 of the Excel sheet (Exhibit 32), with the figure of 72,000 mentioned in the diary (Page-6 of Exhibit 1). We find that the Excel sheet (Exhibit 32) contained the details of rooms booked by parties (no. of rooms, date, Amount to be charged, mobile no. of parties and remarks) in the property '**Cham Cham Tower**', which had been given on lease by Chirag Murdia (son of the assessee) to M/s Harsh Hospitality, a partnership concern, for the relevant period, as is evidenced by copy of Rent agreement, found during the course of search. It thus, follows that the rental receipts in the Excel sheet (Exhibit 32) pertained to M/s Harsh Hospitality. The assessee also provided a Confirmation to this effect from Harsh Bhawnani, partner of M/s Harsh Hospitality. Now, there remains only Exhibit 1, which is stated to be the personal diary of the assessee. The AO noted that page-6 of this Exhibit has an entry of 72,000 received from Vinodji. He linked this payment to 7200 mentioned in the Excel sheet (Exhibit 32) at S.No.1 to conclude that the amounts noted in the Excel sheet have been suppressed by one zero. Resultantly, he drew a conclusion, a far fetched one, to tax the rental receipts as per the Excel sheet (Exhibit 32) which worked out to Rs.4,53,000/- in the hands of the assessee. The AO and the CIT(A) erred in making/sustaining the addition by clubbing Exhibit 32 and Exhibit 1. As already held by us, Exhibit 32 is in no way connected to the assessee. As a matter of fact, the assessee is neither the landlord nor the tenant of the impugned property, the rental receipts of which

are recorded in the Excel sheet (Exhibit 32). Exhibit 1 does not support the case of the revenue that the rental receipts of Rs.4,53,000/-are recorded in it. Moreover, when the assessee is not the owner of the impugned property, viz. **Cham Cham Tower**, there arises no question of taxing the unrecorded rental receipts in his hands. The same could have been held only in the hands of Chirag Murdia. Simply on the basis of presumptions, it can not be held that the assessee has received all the rental receipts mentioned in Exhibit 32. The AO ought to have conducted proper inquiries to tax these receipts in the hands of the correct person. In view of these facts, the rental receipts can not be considered as income, in the hands of the assessee, and the addition sustained by the CIT(A) is set aside. The ground of appeal is allowed.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-  
**(Dr. Mitha Lal Meena)**  
**Accountant Member**

Sd/-  
**(DR. S. Seethalakshmi)**  
**Judicial Member**

Dated 23/06/2025  
Santosh- Sr. P.S  
Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT

(4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy  
By order