

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3177/Mum/2025 to 3183/Mum/2025  
(Assessment Year :2012-13 to 2018-19)**

**&**

**ITA No. 3184/Mum/2025  
(Assessment Year: 2020-21)**

Leshark Global LLP 307, Premosns Industrial Estate Tahira Compound Caves Road, Jogeshwari East Mumbai - 400 060	Vs.	DCIT CC 4(1), Mumbai
<b>PAN/GIR No.AADFL8780F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vinod Kumar Bindal (Virtually appeared) & Shri Satish Kumar
Revenue by	Shri Rajesh Kumar Yadav, CIR DR
<b>Date of Hearing</b>	<b>25/06/2025</b>
<b>Date of Pronouncement</b>	<b>31 /07/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeals have been filed by the assessee against order of Id. CIT(A)-52, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 153A for the A.Y.2012-13 to 2018-19.

2. Since all the appeals involve common issue and are based on identical facts therefore, same were heard together and have been disposed of by way of this consolidated order.

3. Both the parties agreed that if the appeal for the A.Y.2012-13 is decided, the same finding will apply *mutatis mutandis* in other years also. Accordingly, the appeal for A.Y.2012-13 in ITA No. No.3177/Mum/2025 is taken as a lead case, wherein the assessee has raised following grounds:-

*“1. The CIT(A) erred in law and on facts in upholding the action of the AO making the addition of Rs 2,20,00,000/- in the completed assessment, on account of the alleged cash loan advanced by the appellant to Mr. Nilesh Bharani / Evergreen Enterprises as an unexplained investment u/s 69 of the Act where admittedly during the search on the assessee no incriminating material /evidence showing the alleged undisclosed income was found and following the judgment dated 24/04/2023 of the Hon’ble Apex Court in PCIT v Abhisar Buildwell Pvt Ltd (2023) 149 taxmann.com 399 (SC), the addition must be deleted.*

*2. The CIT (A) erred in law and on facts in confirming the estimated addition of Rs 16,35,558/- made u/s 56 of the Act in the completed assessment presuming interest earned on the alleged cash loans given by assessee and assesseed as unexplained investments though no incriminating material at all was found during the search in the premises of the assessee. Thus, following the judgment dated 24/04/2023 of the Hon’ble Apex Court in PCIT v Abhisar Buildwell Pvt Ltd (2023) 149 taxmann.com 399 (SC), the addition must be deleted.*

*3. The CIT (A) erred in law and on facts and circumstances of the case, by not admitting the additional ground raised in appellate proceedings that Focus Product Scheme (FPS) incentive Rs 82,98,227/- received under Foreign Trade Policy has been wrongly offered for tax in the return of income though not taxable under the provisions of the Act being capital*

receipt by considering the purpose test and judicial pronouncements, hence over-assessed to that extent and entail correct assessment of income. As such the legitimate exclusion for which the assessee is entitled should be allowed while determining the taxable income.

4. That assessment order passed by AO u/s 153A dated 29.12.2019 and impugned appellate order confirming the addition made by the AO are bad in law in as much as while passing the impugned orders the material relied upon/taken from (considered incriminating material as per para 26 page 58 of impugned appellate order) were found from the premises of Mr. Nilesh Bharani/ Evergreen Enterprises during search and which could only be assessed by taking recourse to the section 153C of the Act. Thus, the impugned assessment order must be declared as void ab initio by following the judgment of the Hon'ble Apex Court in Vikram Sujitkumar Bhatia (2023) 149 taxmann.com 123 (SC) dated 06/04/2023 and Nilesh Bharani in ITA 612/Mum/2020 dated 28/03/2023 r/w S S Con Build Pvt Ltd 2023-TIOL-65-SC -IT dated 04/05.2023 r/w Kanwar Singh Saini vs Delhi High Court 2012 4 SCC 307.

5. The CIT (A) erred in confirming the additions made by AO ignoring the fact that the assessment framed u/s 153A/143(3) of the Act is required to be treated as 'invalid and shall be deemed to have never been issued' in absence of any Document Identification Number (DIN) or for lack of computer-generated Document Identification Number (DIN) thereon which was required to be generated and duly quoted in the body of such communication as has been ordered by the CBDT vide Circular No. 19 /2019 dated 14/08/2019 and reiterated vide the circular number 27/2019 dated 26/09/2019.

6. That in view of the facts and circumstances of the case and in law, the approval granted u/s 153D of the Act by the addl. CIT CC-4, Mumbai is mechanical, without any application of mind and is not a valid approval. Thus, the impugned assessment is illegal, bad in law and liable to be quashed.

7. That assessment order passed by the AO u/s 153A dated 29.12.2019 and the impugned appellate order are bad in law as the additions have been framed /confirmed by applying the provisions of the section 69 and 56 of the Act without

*appreciating the facts and exclusively relying upon the statement of Mr. Nilesh Bharani and other persons and personal ledgers (unsubstantiated & uncorroborated) which suffered from following infirmities:*

- a) that during the cross examination of Mr Nilesh Bharani (Creator of alleged incriminating material seized and exclusive base of addition) by other person searched (since cross-examination to assessee could not materialize) categorically denied to have taken any cash loan from so called alleged lenders and also denied to have paid any interest to them;*
- b) Mr. Nilesh Bharani & other persons had also retracted the statements given by them during the search / investigation proceedings;*
- c) Mr. Nilesh Bharani had filed an affidavit to the extent before the assessing officer denying all the allegations of the revenue and owned up all these transactions in personal capacity, recording all ingenuine compiled contacts and maintained ledgers written by pencil.*
- d) By not granting an inspection of the alleged original material seized from the premises of Evergreen Enterprises / Mr Nilesh Bharani though specifically demanded to ascertain veracity of photocopy of ledger sheet extracts. Thus, violating all the principles of the law and justice, particularly when the appellant specifically denied his liability to income-tax on the amounts added as his undisclosed income for the relevant assessment year.*
- e) Moreover, statement or any material seized during the course of search u/s 132(4) of the Act can only be used against the searched person and not against the assessee without any corroboration.*

*Therefore, the all additions premised on conjectures and presumptions should be deleted.*

4. The brief facts of the case as culled out from the records are that a search and seizure operation was carried out u/s.132(1) in the case of assessee on 17.11.2017. During the course of search, a statement of Mr. Anil Shah, The Chief Executive Officer and the partner of the assessee LLP was

recorded u/s 132(4) of the Act. It has been stated that it is a matter of fact that no incriminating material or document pertaining to the additions made in all the assessment orders under appeal were found during the course of search. Otherwise also from the bare perusal of the assessment order, it is seen that Id. AO has not referred to any material discovered during the course of search conducted in the premises of the assessee. The entire additions made in the assessment orders pertaining to alleged cash loans advanced and estimated interest earned thereon, were based on documents seized from one Mr Nilesh Bharani on an independent income-tax search conducted on 06.10.2017. This material was procured from the third party and did not emanate from the assessee's premises and pertain to separate, independent Income Tax authorities. It is also an undisputed fact that assessee's name does not appear in the search warrants or panchnamas of those searches. Accordingly, it has been vehemently argued before us that any reference to those documents cannot be construed as incriminating material found in the course of search in the case of assessee u/s.132 of the Act. The Id. AO in the assessment order for the impugned assessment years has made following additions:-

<b>Assessment Year (Unabated Assessments)</b>	<b>Addition u/s 69 for alleged cash loan advanced in Rs</b>	<b>Addition u/s 56 for notional interest earned on cash loan advanced in Rs</b>
2012-13	2,20,00,000	16,35,558
2013-14	3,01,75,000	43,29,867

2014-15	3,78,00,000	82,84,097
2015-16	1,97,00,000	1,24,23,417
2016-17	-	1,23,63,666
<b>(Abated Assessments)</b>		
2017-18	1,50,000	94,04,826
2018-19	46,70,000	99,59,373

5. First of all it is seen that Id. AO has incorporated the statement recorded u/s.132(4) of Mr. Anil Shah, relevant extract of which are reproduced hereunder:-

Statement of Mr Anil Shah the CEO and a partner of the assessee:

Q.22 *Have you ever entered into any transactions with Mr Nilesh Bharani?*

Ans: *No sir, I have not entered into any transactions with Mr Nilesh Bharani.*

Q.23 *What are the relations you have with Mr Nilesh Bharani?*

Ans: *I have no relation with Mr Nilesh Bharani.*

Q. 24 *Mr Nilesh Bharani in his statement dated 11.10.2017 attached as Annexure -2 has stated in reply to Question No 21 that he is engaged in cash lending and borrowing. Kindly confirm the same?*

Ans: *Yes sir, I can confirm the same.*

Q. 25 *Mr Nilesh Sharani in his statement dated 11.10.2017 attached as Annexure -2 has stated in reply to Question No 30 that the amounts mentioned in the ledger are in '000 of Rs', for eg. an entry 2500 represents an actual transaction of Rs 25,00,000/-. Kindly confirm the same?*

Ans: *Yes sir, I have been asked to read Question No 30 and the reply to it in Annexure -2 and explain what it conveys. By reading the same, I conclude it is trying to convey that*

amounts mentioned is in '000, i.e. 1000 is equal to Rs 10,00,000/-.

Q 26 I am showing you 3 pages as Annexure-3 which was part of the details taken along with the statement recorded by ADIT(Inv)-1(3), Mumbai of Mr Nilesh Bharani dated 11.10.2017 Annexure -2 to this statement. Kindly confirm the same?

Ans: Yes sir, I confirm that the Annexure-3 has been shown to me.

Q.27 In the Annexure- 3, the name on top of the page-1 is written as (Anil Bhai) Le Shark). Kindly confirm the same?

Ans: Yes sir, I confirm the names (Anil Bhal) (Le Shark) on top of page 1 of Annexure -3. It also has an entry L105 A.

Q.28 In the Annexure-3, the name on top of the page-2 is written as (76520). Kindly confirm the same?

Ans: Yes sir, I confirm the same.

Q.29 Do you have anything to say about the details on Annexure 3?

Ans: I do not know what the statement is nor do I understand the various names and figures mentioned in it. I fail to understand why I have been asked to read it.

Q.30 I am showing you 2 pages as Annexure-4 to the statement which was part of the details taken along with the statement recorded by ADIT(Inv)-1(3), Mumbai of Mr Nilesh Bharani dated 11.10.2017 which is Annexure-2 to this statement. Kindly confirm the same?

Ans: Yes sir, I confirm that the Annexure-3 has been shown to me.

Q.31 In the page 1 of Annexure -4 shown to you, kindly state the details mentioned against No. 13?

Ans: Against No 13, the SL No is 454, the code is mentioned as 1/05/A, the name mentioned is Le Shark, the outstanding amount in ('000) is mentioned as 76520, the contact person is shown as Anil Shah, the Contact number is given as 9894722000, the address is given as Tirupur and there are no remarks against It.

*Q.32 Does the telephone number as mentioned in reply to Question No 31 belong to you?*

*Ans: Yes, the telephone number as mentioned in reply to Question No 31 belongs to me.*

*Q.33 Do you have anything to say about the details on Annexure 4?*

*Ans: I do not know what the statement is nor do I understand the various names and figures mentioned in it. I fail to understand why I have been asked to read it.*

*Q.34 Please confirm that the entry against Name on No 13 in Pg 1 of Annexure 4 matches with the entry on top of page 1 of Annexure 3 to this statement?*

*Ans: I do not know what these documents are. I fail to understand why this question has been asked to me. All I can say is the name mentioned against Name on No 13 in Pg 1 of Annexure 4 is Le Shark. On Pg 1 of Annexure-3 the inscription on top is 291 L105 A (Anil Bhal) (LeShark).*

*Q.35 Please confirm that the entry against Outstanding amount (in '000) on No 13 in Pg 1 of Annexure 4 matches with the entry on top of page 2 of Annexure 3 to this statement?*

*Ans: I do not know what these documents are. I fail to understand why this question has been asked to me. As I can read it, in the column Outstanding amount (in '000) mentions 76520 and the On Pg 2 of Annexure-3 the number mentioned in "(76520)".*

*Q.36 Is it logical to understand that the amount outstanding in No 13 on Pg 1 of Annexure-4 amounts to Rs 7,65,20,000/-?*

*Ans: I do not know what these documents are. I fail to understand why this question has been asked to me. It is not logical to understand anything without reasoning and documentary evidence.*

*Q.37 In view of the statement of Mr Nilesh Bharani as given as Annexure-2 to this statement and the documents produced to you as Annexure 3 and 4 to this statement, it can be seen that there is a cash loan given by you to*

*Nilesh Bharani amounting to Rs 7,65,20,000/- Can you confirm the same?*

*Ans: Sir, it has already been clarified that no cash loan has been given to anyone by me and that includes Mr Nilesh Bharani.*

*Q. 38 Have you given any cash loan to Mr Nilesh Bharani?*

*Ans: Sir, it has already been clarified by me that I have not given cash loan to anyone. This includes Mr Nilesh Bharani.*

*Q.39 Have you given a cash loan of Rs 7,65,20,000/- to Mr Nilesh Bharani?*

*Ans: Sir, it has already been clarified by me that I have not given cash loan to anyone. This Includes Mr Nilesh Bharani.*

*Q.40 I am reminding you once again that you are under oath. Have you given a cash loan to Mr Nilesh Bharani?*

*Ans: Sir, it has already been clarified that no cash loan has been given to anyone by me and that includes Mr Nilesh Bharani.*

6. Before us ld. Counsel for the assessee Mr. Vinod Kumar Bindal submitted that from the bare perusal of the aforesaid statement, it clearly established that no incriminating material was found during the search in the assessee's premises. The attempt to rely on statements or documents found elsewhere by the ld. AO, cannot justify additions within the scope of assessment u/s.153A specially in the case of unabated assessment in absence of any material found during the course of the search of the assessee. In support, he strongly relied upon the judgment of the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell (P) Ltd [2023] 149 taxmann.com 399 (SC)** wherein it was held that no addition could be made in assessment order framed

u/s.153A unless incriminating material is found during the course of search in the case of the assessee. In rebuttal, ld. CIT DR submitted that assessee was confronted with the material u/s.132(4) and therefore, the information becomes part of the incriminating evidence. On a specific question raised at the time of hearing to the ld. CIT DR, whether any kind of corroborative evidence or material was found from the search of the assessee's premises, he submitted that the main material which was found in the case of Nilesh Bharani and Sons and since assessee was questioned, the Act of confrontation alone suffices to trigger the addition u/s.153A.

7. In rejoinder Mr. Vinod Kumar Bindal submitted that there are consistent judicial pronouncement that mandate the foundational requirement of incriminating material being found in the course of search conducted in the premises of assessee not elsewhere. If any such material has been found in search of other person, then there is a proper procedure laid down under the Act i.e. u/s.153C. He once again relied upon the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (supra)* had referred to the following passage:-

*"14(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."*

8. He further placed reliance on the Co-ordinate Bench decision in the case of **Nilesh Bharani vs. DCIT in ITA No. No.612/Mum/2020 dated 28/02/2023** wherein it was held as under:-

91. *We have already observed in our earlier paragraphs that the entire procedure to make an assessment or reassessment of income of the alleged escaped income either u/s 148 or section 153C of the Act practically is the same except the jurisdiction and root cause which are different. The legislature has specifically carved out scope of assessment / reassessment of income of a person not searched of such alleged escaped income based on some incriminating information found during a search on some other person searched by taking recourse to the section 153C of the Act. The AO has not been empowered to extend the scope of an assessment/ reassessment u/s 153A read with the section 153C of the Act beyond the alleged incriminating material found during the course of search in the case of some other person, because assessment / reassessment in such case is specifically restricted to the income based on the said incriminating information only. Whereas, in the proceedings initiated u/s 148 of the Act, the AO may extend the scope of the assessment / reassessment on other amounts also if any information about those is on his record over and above the alleged escaped income as per the reasons recorded. The purpose of restriction of assessment for amount of income by taking recourse to the provisions u/s 153C of the Act to alleged incriminating material and not on suspicion has been upheld by the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society (supra)*.*

92. *Accordingly, we hold that any incriminating information of any undisclosed income of the person not searched which was found during the course of a search having taken place up to 31/03/2021 on some other assessee, can only be taken into consideration for an assessment / reassessment in the hands of the said person not searched through the domain of the section 153C of the Act. Thus, any assessment / reassessment*

proceedings-initiated u/s 148 of the Act in respect of the said incriminating information found during the course of a search up to 31/03/2021 on some other assessee is illegal and is ab initio as the same can be considered only by taking recourse to the provisions of the section 153C r.w.s. 153A of the Act. Thus, the assessment of the said amount of LTCG, which was claimed to be exempt u/s 10(38) of the Act by the assessee, made u/s 147 of the Act is beyond the scope of section 147, albeit it can be roped in only u/s 153C.

93. If on overall appreciation of the scheme of assessment / reassessment of income after the income-tax searches on the assessee searched and also for the persons not searched based on detection of some incriminating information during the said searches conducted upto 31/03/2021, the following legal course of action is open for the AOs, which can be summed up, in the following manner:

- (i) It is mandatory for the AO of the person searched to make an assessment / reassessment of income of the said assessee u/s 153A of the Act for the 6 assessment years prior to the date of search and also for the extended 4 relevant assessment years, subject to fulfillment of the prescribed conditions for the same, on the basis of an income-tax search conducted on him.
- (ii) However, in the assessment / reassessment orders passed within the scope of section 153A of the Act, the AO cannot consider any undisclosed income detected by way of an incriminating information pertaining / relating to the said assessee, during an income-tax search conducted in the premises of some other assessee(s), even conducted at the same time or in some connected matter. In such a case where AO gets any information or material about any assessee from the search of some other person, he can, make assessment of the undisclosed income/ amount emanating from such information or material for the assessment / re assessment vide separate assessment / reassessment orders to be passed u/s 153A by taking recourse to the provisions of the section 153C of the Act. Because the cause of action for the said incriminating information for different amounts had originated in different search(es) in the different premises

*of other assesseees and for the same, the mandatory route legislated u/s 153C of the Act must be followed.*

- (iii) *Further, an assessee can also be assessed multiple times u/s 153C r.w.s 153A of the Act, despite having already been assessed u/s 153A of Act on the basis of an income-tax search in his premises, where the incriminating information has been received u/s 153C of the Act by the AOs of the searched person as well as of the person not searched, which information originates in different searches at different times on different persons as well.*

9. Besides this, he relied upon various other decisions which was exactly on the same issue based on the search conducted in the case of Nilesh Bharani. Finally, he pointed out that this Tribunal in the case of Ms. Rupal Kashyap Mehta vs. DCIT in ITA No. 6191 to 6196/2024 dated 27.02.2025 on same set of facts where similar additions were made by the ld.AO by working on the unexplained cash loan given by the assessee, Mr. Nilesh Bharani by relying on the same information found in different searches in the premises of Mr. Nilesh Bharani while name of the assessee was not there in any panchanama. The entire premise of the ld. AO in all these cases was based on the fact that Mr. Nilesh Bharani had admitted in his statement recorded u/s.132(4), the receipt of such loan from the assessee is from undisclosed sources. In that case, this fact was not admitted by the assessee and also Mr. Nilesh Bharani has retracted his statement before the Investigation Wing on 14.10.2017. The relevant observations and the finding of the Tribunal is as under:-

5.31. In the light of the above discussion, the cash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to Rs. 56,00,000/- for AY 2014-15 to 2018-19, u/s 69 of the IT Act as detailed below.

<i>Assessment Year (Unabated Assessments)</i>	<i>Addition u/s 69 for alleged cash loan advanced in Rs</i>	<i>Addition u/s 56 for notional interest earned on cash loan advanced in Rs</i>
2014-15	42,00,000	2,34,167
2015-16	14,00,000	7,98,583
2016-17	0	7,35,416
<i>(Abated Assessments)</i>		
2017-18	0	3,80,208
2018-19	0	3,80,208

16. Thus, the additions were made by the AO in the above five AYs and also estimated the interest income having been earned thereon in cash outside the declared sources of income in its return of income by the assessee on the said amounts allegedly lent by the assessee to Mr Nilesh Bharani, though there was no such evidence in the alleged material relied upon as per the above chart.

17. For such additions in respect of the cash loans lent, the learned counsel of the assessee also placed reliance on the decision dated 31/01/2025 of the coordinate bench of the ITAT Mumbai in the case of Rajesh Kumar Rameshchandra Shah in appeal nos. ITA 5568 to 5573/Mum/2024 where the facts were identical based on an income-tax search on Mr Nilesh Bharani as in this case, except to the extent that there the assessee denied any knowledge of any such transactions rather knowledge of Evergreen Enterprises but here the assessee on confrontation admitted to have undertaken some transactions in cash with Nilesh Bharani / Evergreen Enterprises but also in the same breath categorically stated that he is not aware of the quantum and would respond in 3 days thereafter, after looking into his records.

18. In respect of these additions, the learned counsel of the assessee submitted that the search in the premises of the assessee continued for 6 days from 06/10/2017 till 11/10/2017, including the residential and

*business premises of the assessee as well as other associates when no such records or books of account were found and no material in any manner was also found from the assessee having been made any investment or having earned any interest income. He also said that these questions were raised on the husband of the assessee on the 5th day of the search, i.e., on 10/10/2017 when the alleged material / information had already been found in an independent income-tax search conducted in the premises of Mr Nilesh Bharani in the afternoon of 06/10/2017. The ld. counsel also said that no other material has been referred to in the assessment orders which could suggest any such undisclosed income. He also stated that physical presence of many Revenue Officers as per the Panchnamas for the 6 days (from 06/10/2017 to 11/10/2017) in the premises of the assessee without having found any material needing examination and confrontation with the assessee itself during the said search, demonstrate the clear mental pressure and harassment exerted to the husband of the assessee to pressurise him to sign on the dotted lines as recorded by the Revenue Officers on the 5th day of the search in their residence. Admittedly, the statement was also retracted by the assessee at the earliest thereafter on 23/10/2017 proves that the said statement was not at all voluntary and where words were allegedly put in the mouth of the husband of the assessee.*

*19. The ld. Counsel also stated that no question at all, which must have been asked, as a corollary to the answer given by the husband of the assessee, as to where those records which were not available with him at that time, were kept to surface the truth. He stated that the Revenue Officers were duty bound to take consequent action u/s 132 r.w.s. 133A to find the said record and if the assessee was not forthcoming with such information, he could have been confronted about it then and there only and not later. However, the same was also not done later including on 03/11/2017 when another panchnama was drawn to vacate the prohibited order in continuation to the search proceedings undertaken on 06/10/2017 in the premises of the assessee had already retracted his earlier statement dated 10/10/2017 vide letter dated 23/10/2017, a fact not denied by the Revenue. The learned counsel of the assessee also drew the attention of the bench to the said statement of the husband of the assessee, which interestingly was not signed at all on any page by the Authorised Officer Mr Ashwini Prasad, the then DDIT, Unit 5(4), Mumbai, as is placed on PB page no. 19-33 with annexures thereto from PB page no. 34-57 dated 20/01/2025. He also drew the attention of the bench to the copy of the statement of the husband of the assessee to Q. No. 31 on Page no.10 and 32 of the PB showing that the said statement was resumed on 07/10/2017 at 12:00 pm with Q. No. 21 and closed on 07/10/2017 at 10:00 pm at Q. No. 33 as per Page 18 of the PB,*

being another statement recorded by Mr Raghav Gupta, DDIT Investigation. Thereafter, another statement dated 10/10/2017 allegedly recorded by Mr Ashwani Prasad u/s 132(4), though not signed by him nor his any stamp is there, commenced with Q. No. 1. and which does not mention time of its commencement on 10/10/2017 nor mentions time of closure on 10/10/2017.

20. The ld. Counsel also demonstrated that Q. Nos. 30 and 31 were practically the last questions in the entire said proceedings wherein the statement had total 36 questions and Q. No. 32 to Q. No. 36 were just confirmatory questions about the seizure and return devices and cash etc. The entire statement has been typed in a chronological manner of different issues and not in a manner the information found or is found and confronted. Such types of statements are typed after assimilating the alleged information in one serial form and then typed. This in entirety shows that the statement of the assessee relied by the Revenue is not a legal statement u/s 132(4) of the Act as was not tendered under the normal circumstances, was also not authenticated by the authorised officer before whom it was allegedly recorded so the Revenue is completely barred to take cognizance of the same against anybody including the deponent Kashyap K Mehta nor the assessee.

21. The contention of assessee also finds support from the legal pronouncements in CIT vs Lavanya Land (P) Ltd [2017] 83 taxmann.com 161 (Bombay), Aurum Platz (P) Ltd vs DCIT [2023] 152 taxmann.com 85 (Mumbai), CIT vs. Harjeev Aggarwal (2016) 70 taxmann.com 95 (Delhi) and PCIT vs Agson Global (P) Ltd [2022] 134 taxmann.com 256 (Delhi) holding that a statement recorded u/s 132(4) of the Act per se not at all evidence, unless it is supported with any material gathered during the course of said search.

22. After considering the rival submissions and on perusal of the facts on record and the decisions of the coordinate bench as mentioned above, we agree with the contention of the Ld. Counsel that the additions made on an uncorroborated statement of the husband of the assessee cannot be sustained at least within the scope of assessment under section 153A as the statement is not corroborated with any other material found from the search and statement per se cannot be reckoned as incriminating material.

23. It is a well settled proposition by various High Courts that addition cannot be made only on the basis of admission made by the assessee in the absence of any incriminating material. The Hon'ble Delhi High Court in the case of PCIT vs. Pavitra Realcon Pvt. Ltd. and others in ITA

No.579/2018, 587/2018 and 590/2018 vide judgment dated 29/05/2024 had referred to various decisions which are as under:-

*“20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.*

*21. In the case of Kailashben Manharlal Chokshi v. CIT', the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -*

*26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority, We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission, We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.*

*[Emphasis supplied]*

*22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of CIT v. Harjeev Aggarwal, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the*

same. The relevant paragraph of the said decision is extracted herein below:

*"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation,*

*23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.*

*24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of CIT v. Sinhgad Technical Education Society and held as follows: -*

*"18. Further, while writing the order it has come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the 19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra*

*Realcon Pvt. Ltd. And Mis Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned."*

25. Also, the Supreme Court in the case of *CIT v. Abhisar Buildwell (P) Ltd.*, has clarified that in case no incriminating material is found during the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -

*"36.4. 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 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."*

24. Similarly, the Hon'ble Delhi High Court in the case of *PCIT vs. Anand Kumar Jain (HUF)* in ITA No.23/2021 and other appeals vide judgment and order dated 12/02/2021 had held that statement u/s.132(4) does not construe incriminating material for carrying out the assessment u/s.153A of the Act and statement cannot justify the additions made by the ld. AO. Similarly other judgments which have been referred and relied upon by the ld. Counsel which are not repeated but underlying principle is that for making the addition within the scope and ambit of Section 153A for unabated assessment years, statement alone cannot be treated as incriminating material and here in this case this statement is not of the assessee but of her husband and here it is not a case of assessment u/s.153C that any material or document found from search of other person has been made the basis for addition. Albeit in case of assessment u/s.153A (searched person) wherein the addition for unabated assessment has to be confined on the basis of incriminating material found during the course of search.

25. It is undisputed fact that no material much less incriminating material was found during the course of search from the premises of the assessee in support of the additions, made for the quantum amounts of the

*alleged cash loans given and the estimated interest thereon in all the AYs as per chart herein above is deleted. We direct accordingly to delete the additions as above.*

*26. Since, all the above appeals have been decided on the above grounds by deleting the additions, other grounds taken by the assessee have become academic and not adjudicated for any of the above assessment years.*

*27. In the result, all the appeals filed by the assessee are allowed.*

10. Upon a careful consideration of the facts of the case, the rival submissions, and the material available on record, we find that the core issue arising in the present appeals pertains to the additions made under Section 69 of the Act towards alleged cash loans purportedly advanced by the assessee to one Mr. Nilesh Bharani and his associates, as well as the notional interest computed thereon under Section 56. It is undisputed that these additions are founded solely upon certain loose sheets, coded ledger extracts, and statements recovered and recorded during the course of search proceedings conducted not on the assessee but in the case of a third party, namely, Mr. Nilesh Bharani and entities associated with him.

11. As rightly contended by the learned counsel for the assessee, Shri Vinod Kumar Bindal, this precise issue, both in law and in fact has been deliberated upon by the Coordinate Benches of the Tribunal in several matters involving identical allegations and evidentiary foundations. He specifically drew our attention to the decisions of the Tribunal in the cases of:

- Ms. Rupal Kashyap Mehta vs. DCIT in ITA Nos. 6191 to 6196/Mum/2024 (order dated 27.02.2025),
- Rajesh Kumar Rameshchandra Shah vs. DCIT in ITA Nos. 5568 to 5573/Mum/2024 (order dated 31.01.2025),  
and
- Nilesh Bharani vs. DCIT in ITA No. 612/Mum/2020 (order dated 28.02.2023).

In each of these matters, the additions made under Sections 69 and 56 were based exclusively on the so-called “incriminating” material seized from the premises of Mr. Nilesh Bharani, which included handwritten ledgers, coded entries, and statements recorded during investigation. The Co-ordinate Benches, after a meticulous examination of the evidentiary trail and the legal framework governing search assessments, unequivocally held that such third-party material howsoever incriminating it may appear cannot be used to make additions in the hands of another assessee under Section 153A, unless the procedural mandate of Section 153C is duly followed.

12. This Tribunal in Nilesh Bharani (supra), while elaborating the statutory architecture, observed that the jurisdiction under Section 153A is strictly confined to the material unearthed during the course of search conducted on the assessee himself. Where the Revenue seeks to act on the basis of documents found during the search of another person, the only lawful recourse is via Section 153C requiring satisfaction to be recorded that the material belongs to or pertains to the assessee and in the absence of such

compliance, the jurisdiction exercised under Section 153A would be rendered invalid and the consequential assessment orders, non-est in law.

13. The same reasoning was echoed in Rupal Kashyap Mehta (supra), where this Tribunal found that the alleged transactions were neither corroborated by any material found during the search on the assessee nor independently supported by any verifiable documentation, and that even the statement relied upon by the Revenue had been retracted, unauthenticated, or was otherwise uncorroborated. On those grounds alone, the additions were deleted.

14. In light of the binding ratio laid down by the Hon'ble Supreme Court in **PCIT vs. Abhisar Buildwell Pvt. Ltd. [(2023) 149 taxmann.com 399 (SC)]**, which held that no addition can be made under Section 153A in respect of unabated assessments in the absence of incriminating material found during the search on the assessee, and following the aforementioned consistent judicial pronouncements of the Co-ordinate Benches, we hold that the additions made in the present case resting entirely on documents recovered from the search conducted in the case of Mr. Nilesh Bharani are legally untenable. The Revenue has neither invoked nor complied with the provisions of Section 153C, and hence, the assumption of jurisdiction under Section 153A in respect of these additions stands vitiated. Consequently, the additions made under Section 69 of the Act across all the assessment years under appeal are hereby directed to be deleted.

15. Consequentially, the additions made under Section 56 of the Act towards notional interest income on the said alleged cash loans quantified and tabulated by the Assessing Officer in paragraphs 5.29 and 5.30 of the assessment order for A.Y. 2012-13 are devoid of any independent legal or factual basis. These additions are purely derivative in nature, arising only from the presumption of unexplained investments having been made, and hence, cannot stand once the substantive additions under Section 69 have been found to be unsustainable. There is neither any primary transaction nor any independently discovered evidence which could justify the estimation of such income. In the absence of any corroborative or incriminating material found during the search, such additions are wholly speculative and deserve to be deleted. Accordingly, all the grounds of appeal pertaining to the additions made under Sections 69 and 56 across the assessment years in question are allowed, and the impugned additions are directed to be deleted in full.

16. Another substantive issue arising for adjudication pertains to the assessee's fresh claim made for the first time before the learned CIT(A) during appellate proceedings for A.Ys. 2012-13 to 2018-19. The assessee contended that certain export incentives received under schemes of the Central Government, though erroneously offered to tax in the original returns filed under section 139(1), were, in law, capital receipts not liable to tax. These claims had earlier been agitated in respect of A.Y. 2020-21 and were now sought to be extended to the earlier years under appeal.

17. The claim relates to incentives received under two specific schemes, namely, the Focus Product Scheme (FPS) for A.Ys. 2012–13 to 2016–17 (assessed u/s. 153A), and the Merchandise Exports from India Scheme (MEIS) for A.Ys. 2017–18 to 2018–19 (assessed under section 153A/143(3)). It is not in dispute that the assessee had initially offered these receipts as taxable income in its regular and search-based returns, filed both under section 139(1) and in response to section 153A. However, the assessee subsequently contended that such receipts were capital in nature and not liable to tax, and accordingly raised a fresh ground before the appellate authorities.

18. The assessee, a Limited Liability Partnership engaged in the manufacture and export of knitted hosiery garments, contended that the erroneous inclusion of these receipts as revenue income was based on mistaken professional advice. It was submitted that the incentives under FPS and MEIS were in fact capital receipts, intended to promote exports and market diversification, and thus did not bear the character of income under the Act. A claim to this effect was raised before the learned CIT(A) by way of additional grounds during appellate proceedings for the block assessments completed u/s. 153A.

19. The CIT(A), upon calling for a remand report dated 18.01.2023, declined to admit the claim, holding it to be inadmissible in view of the Hon'ble Supreme Court's ruling in Goetze (India) Ltd. [284 ITR 323 (SC)], on the ground that the claim had not been made in the original or revised returns.

The assessee, however, relied upon the well-settled principle that the restriction laid down in Goetze (India) applies only to the Assessing Officer and not to the appellate authorities, who are vested with wide plenary powers to consider fresh legal claims based on facts already on record.

20. The question that arises is whether such a fresh claim can be entertained in proceedings initiated under section 153A, particularly where the relevant assessment years were unabated as on the date of search. In this regard, reference was made to the Special Bench decision in SEW Infrastructure Ltd. [(2024) TIOL-1211-ITAT-HYD], wherein it was held that in the case of unabated assessments under section 153A, the assessee cannot make fresh claims in response to notice u/s. 153A. However, in the case of abated assessments, the Assessing Officer is empowered to conduct a fresh assessment de novo and consider all claims; whether made earlier or not including those under Chapter VI-A and section 80-IA(4), as if it were a first assessment.

21. On merits, the assessee placed reliance on the Delhi Bench decision in Jindal Photo Ltd. [ITA No. 5251/Del/2015], wherein sales tax subsidies were held to be capital in nature. However, we find that case involved the Maharashtra 1993 Scheme, which had different objectives. In the present case, the assessee's claim was grounded on export incentives granted under the Foreign Trade Policy (FTP) framed by the Ministry of Commerce, Government of India, specifically the FPS (2009–14) and MEIS (2015–2020) schemes.

22. First we need to understand the scheme. The Focus Product Scheme, as notified under the Foreign Trade Policy for 2009–14 (effective from 23.08.2010), was formulated under Chapter 1B-Special Focus Initiatives. As per Para 3.15.3 of the FTP, the scheme provided for incentives at 2% of the FOB value of eligible exports made in freely convertible foreign exchange to designated “linked markets”. The stated objective was “to continuously increase our percentage share of global trade.” The policy expressly recognised that products with high export intensity and employment potential, particularly from sectors such as agriculture, handlooms, handicrafts, electronics, sports goods, and units in the North-East, required targeted fiscal support. These incentives were thus policy instruments designed not to compensate exporters for revenue loss but to promote long-term capital investment and global market expansion. The Ministry of Commerce, through FTP circulars and notifications such as No. 1 (RE-2012)/2009–14 dated 05.06.2012, clearly set out that the object of these schemes was to support exporters in entering new markets, improving competitiveness, and fostering employment. The Status Holder Incentive Scheme (SHIS), under which additional benefits were extended to high-performing exporters, had similar objectives of promoting capital investment and technology upgradation. These objectives, as recorded in the AO’s remand report dated 11.04.2019, and it has been contended before us that the incentives were capital in nature and not designed to subsidise routine business operations.

23. Before us, it has been argued that the character of these receipts has been judicially tested in multiple forums. **The Rajasthan High Court in PCIT v. Nitin Spinners Ltd. [2020] 116 taxmann.com 26** held that subsidies granted under MLFPS (a variant of FPS) were capital receipts. This decision was affirmed by the Hon'ble Supreme Court with dismissal of Revenue's SLP [2021] 283 Taxman 2 (SC), thus settling the law in favour of the assessee. The Punjab and Haryana High Court in Shyam Lal Bansal and the Calcutta High Court in Gloster Jute Mills Ltd. have also echoed the same view if the objective of the scheme is to encourage industrial development, market access, or employment generation, the resulting receipt must be treated as capital.

24. The relevant observation of the Hon'ble High Court in the case of Pr.CIT vs. Nitin Spinners Ltd., [2020] 116 taxmann.com 26(Rajasthan) reads as under:-

*"5. In its order, the ITAT took note of several previous Bench ruling as well as judgment of the Punjab and Haryana High Court in CIT v. Sham Lal Bansal [2011] 11 taxmann.com 396/200 Taxman 14 (Mag.) (Punj & Har.). In Shyam Lal Bansal (supra) the Punjab and Haryana High Court observed as follows:*

*"6. The purpose of scheme under which the subsidy is given, has been discussed by the Tribunal. To sustain and prove the competitiveness and overall, long- term viability of the textile industry, the concerned Ministry of Textile adopted the TUFPS scheme, envisaging technology upgradation of the industry. Under the scheme, there were two options, either to reimburse the interest charged on the lending agency on purchase of technology upgradation or to give capital subsidy on the investment in compatible machinery. In the present case, the assessee has taken term loans for technology upgradation and subsidy was released under agreement dated 12-7-2005 with Small*

*Industry Development Bank of India. The relevant clause of the agreement under which the subsidy was given is as under:-*

*"Para 8. to prevent mis-utilization of capital subsidy and to provide an incentive for repayment, the capital subsidy will be treated as a noninterest-bearing term loan by the Bank/Fis. The repayment schedule of the term loan however will be worked out excluding the subsidy amount and subsidy will be adjusted against the term loan account of the beneficiary after a lock in period of three years on a pro-rate basis in terms of release of capital subsidy. There is no apparent or real financial loss to a borrower since the countervailing concession is extended to the loan amount."*

*7. In view of the above, the view taken in Sahney Steel & Press Works Ltd., could not be applied in the present case, as in said case the subsidy was given for running the business. For determining whether subsidy payment was 'revenue receipt' or 'capital receipt', character of receipt in the hands of the assessee had to be determined with respect to the purpose for which subsidy is given by applying the purpose test, as held in Sahney Steel & Press Works Ltd. itself and reiterated in later judgment in CIT v. Ponni Sugars & Chemicals Ltd. & Ors. (2008) 306 ITR 392, referred to in the impugned order of the Tribunal."*

*6. This Court notices that the Punjab and Haryana High Court took into account the previous binding ruling of the Supreme Court in CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 and Sahney Steel & Press Works Ltd. v. CIT [1997] 94 Taxman 368/228 ITR 253. In these circumstances, the Court is of the opinion that the amount was received as capital stream and therefore, not taxable.*

*7. A similar view was taken by the Calcutta High Court in CIT v. Gloster Jute Mills Ltd [2018] 96 taxmann.com 303/257 Taxman 512/ [2019] 416 ITR 458.*

*As far as the question with regard to Focus Marketing Scheme was concerned, apparently the Central Government gave the subsidy to enhance Indian export potential in the international market. It was not granted to meet the cost of expenditure to meet the competition of the Indian textile market. The ITAT took note of judgment in Ponni Sugars & Chemicals Ltd. (supra) and held that the amount was not an export incentive, but rather*

*capital receipt and therefore, not taxable. This Court is of the opinion that there is no infirmity with the reason.”*

25. Further, the Coordinate Bench of ITAT Mumbai in **DCIT v. Patanjali Foods Ltd. [2024] 161 taxmann.com 815** dealt squarely with the same issue. It held that incentives received under FPS, FMS, and SHIS were capital receipts and not taxable. The Bench relied on policy objectives, purpose test, and the AO's own remand report which affirmed that the incentives were granted to increase global trade share and competitiveness, not to supplement business income. It further held that the assessee's fresh claim before CIT(A) was maintainable and could not be rejected merely on technical grounds, especially when it pertained to a non-taxable capital receipt. The Tribunal observed and held as under:-

*“8.4 It is also noted that the SLP preferred by the Revenue against the above judgment of the Hon'ble High Court has since been dismissed by the Hon'ble Supreme Court, which is reported in Pr. CIT v. Nitin Spinners Ltd. [2021] 130 taxmann.com 402. We also note that identical issue has also been consider by this Tribunal in the case of Aarti Drugs Ltd. (supra) wherein also the incentives received under the FPS/FMS/SHIS Schemes notified under the Foreign Trade Policy was held to be capital in nature and thus not liable to tax. The relevant findings of this Tribunal, as noted by us, are as under:*

*"43. We have considered the rival submissions and perused the material available on record. The assessee is a manufacturer of bulk drugs and also exports some of the products to various countries for which the government is providing certain subsidies under the Foreign Trade Policy. As noted above, the assessee initially, in its return of income, treated the subsidies received as Revenue receipts and offered the same to tax. However, before the learned CIT(A), the assessee filed additional grounds claiming that the subsidy received under*

*the FPS, FMS, SHIS schemes are capital in nature and therefore cannot be included in the total income of the assessee. As noted elsewhere, the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of a revised return of income. Thus, we find no infirmity in the impugned order admitting the additional ground filed by the assessee.*

*44. Further, we find that the learned CIT(A) analyzed the objectives of subsidies received under the aforesaid schemes in para 14.10 of its order, as under:*

*"14.10 The Government of India notified the Foreign Trade Policy, 2009-14 under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 vide notification No 1 (RE-2012)/2009-14 dated 05.06.2012. The Policy contains a Chapter on Special Focus Initiatives, wherein the objective of special focus incentives given for various sectors (FMS and FPS) is specified as under:*

*"(a) with a view to continuously increasing our percentage share of global trade and expanding employment opportunities, certain special focus initiatives have been identified/continued for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware manufacturing Industries, Green products, Exports of products from North- East, Sports Goods and Toys sectors Government of India shall make concerted efforts to promote exports in these sectors by specific sectoral strategies that shall be notified from time to time"*

*Further, the objective of subsidy under Status Holder Incentive Scrip (SHIS) is laid down in the policy as under:*

*"With an objective to promote investment in upgradation of technology of some specified sectors as listed in Para 3.16.4 below, Status Holders shall be entitled to incentive scrip @ 1% the FOB Value of exports made during 2009-10 and during 2010-11 of these specified sectors in the form of duty credit. This shall be over and above the duty credit scrip claimed/availed under this chapter. "*

*45. In this regard, it is also relevant to note that the AO in its remand report dated 11/04/2019, forming part of the paper book from pages No. 117-120 after examining the submissions of the assessee and schemes and various facts placed on record noted that the salient objectives of the FPS/FMS/SHIS subsidy received under the Foreign Trade Policy is to increase*

percentage share of global trade by increasing the competitiveness in selected markets, technological upgradation and expanding employment opportunity. In para 7.2 of its remand report, the AO further stated that the purpose of introduction of the schemes was to encourage industries, which require industrial growth, technological upgradation, and development.

46. Accordingly, the learned CIT(A) came to the conclusion that the subsidy is a capital receipt in the hands of the assessee and therefore not includable in the total income. The relevant findings of the learned CIT(A) in this regard are as under:

"14.11 Thus, on a plain reading of the relevant policy document of the Government of India, it is clear that the objective of the subsidy granted under FPS, FMS and SHIS is to increase the global market share, technology up gradation and employment generation in certain sectors. The object of the subsidy under these schemes was not to enable the assessee to run the business more profitably. The object was primarily to provide encouragement and support, which would create benefits of enduring nature, for the industry as a whole in certain sectors of economy. It is pertinent to recall here that in the remand report, after examining the facts brought on record by the appellant, AO has also concluded that the salient objective of the FPS, FMS and SHIS subsidy under the Foreign Trade Policy is to increase percentage share of global trade by increasing competitiveness in select markets, technological upgradation and expanding employment opportunity. In that view, I am of the considered opinion that, having regard to the 'purpose test' laid down by the Supreme Court in the aforementioned cases, the amounts received by the appellant during the year, under those Schemes as subsidy should be treated as capital receipt in its hands, not includible in the total income."

47. We find that the subsidy granted under the FMS scheme came up for consideration before the Hon'ble Rajasthan High Court in *PCIT v. Nitin Spinners Ltd.* [2020] 116 taxmann.com 26 (Rajasthan), wherein the Hon'ble High Court observed as under:

. . . . . 48. We further find that the Hon'ble Supreme Court dismissed the Revenue's Special Leave Petition in *PCIT v. Nitin Spinners Ltd.*, [2021] 283 Taxman 2(SC), against the aforesaid decision of the Hon'ble Rajasthan High Court. Thus, when the objective of the aforesaid subsidies has been admitted to be to encourage industries by providing industrial growth,

*technological upgradation, and development, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue in treating the amount received by the assessee under the aforesaid schemes as capital receipt. As a result, grounds no. 9-13 raised in Revenue's appeal are dismissed."*

*8.5 Following the ratio laid down in the above decisions, we, in principle, find merit in the claim of the Ld. AR that the subsidies received by the assessee under the Foreign Trade Policy was in the nature of capital receipt not liable to tax".*

26. The learned counsel also placed reliance on a series of Tribunal decisions including:

- Eastman Exports Global Clothing Pvt. Ltd. (ITA No. 47/Mds/2016),
- Dy. CIT v. Aarti Drugs Ltd.,
- Bharat Rasayan Ltd. (ITA No. 1231/Del/2019),
- Jindal Saw Ltd. v. DCIT (ITA Nos. 826/Del/2016 and 4693/Del/2019),
- Geena Garments v. ACIT (Chennai Bench),
- ACIT v. Gravita Metal Inc. (Amritsar Bench), and
- Gates Wears v. ACIT (Chennai Bench).

27. All these decisions have consistently upheld the view that export-related subsidies aimed at capital development are not chargeable to tax.

28. The assessee's contention, therefore, stands on a different footing altogether. This is not a case of seeking additional relief or deductions under Chapter VI-A or section 10; rather, it is a case where a fundamentally non-taxable capital receipt was inadvertently offered to tax, and the assessee now seeks to correct that error. It has been consistently held that only income legally chargeable to tax can be brought to tax, and equity and justice demand that such capital receipts not be taxed merely due to procedural lapses. Appellate authorities

are well within their jurisdiction to consider such claims when all relevant facts are on record.

29. Thereafter, ld. Counsel has quoted series of decisions of the Tribunal with the relevant paragraphs in support of this claim that it is capital receipt however, the same are not reiterated. A list of such decisions are as under:-

- Eastman Exports Global Clothing Pvt. Ltd. in ITA No. 47/MDS/2016(AYs 2011-12&2012-13) Dated 17.05.2016
- Dy. CIT v. Aarti Drugs Ltd. [IT Appeal No. 2503 (Mum.) of 2021, dated 20-1-2023
- Bharat Rasayan Ltd ITA No. 1231/Del/2019 AY 2014-15 Dated 02.02.2021
- Jindal Saw Ltd vs DCIT in ITA no. 826/DEL/2016 dated 04/06/2025
- Jindal Saw Ltd. vs DCIT in ITA No.4693/Del/2019
- Geena Garments, Tiruppur vs ACIT in I.T.A. No.1823/Chny/2024 Dated 16/10/2024
- ACIT v. Gravita Metal Inc in ITA No. 594/Asr/2019 for AY 2016-17 dated 15.06.2023
- Gates Wears in I.T.A. Nos.3326/Chny/2019 & 326/Chny/2024 Dated 20/09/2024

30. Strongly relying upon these judgments, ld. Counsel for the assessee submitted that on the basis of facts and legal decisions even in the aforesaid decisions, here it is not a case where assessee has claimed same additional relief / exempt u/s.10 or under Chapter VIA or additional claim of expenses. But here is a case, due to an inadvertent error on the part of the assessee, non-taxable income at its root got taxed and the issue here is that same is altogether on a different footage.

31. Ld. Counsel has confronted during the course of hearing as to whether such a claim though capital in nature can still be entertained at this belated stage especially when the

assessments have been framed u/s.153A, ld. Counsel submitted that such a claim should be viewed through lens of equity, justice and constitutional principles, particularly Article 265 which mandates that no tax shall be calculated except by authority of law. He strongly relied upon the judgment of Constitutional Bench of nine Benches of the **Hon'ble Supreme Court Mafatlal Industries versus UOI (1997) 5 SCC 536 (2002-TIOL-54-SC-CX)** interpreted the Article 265 of the Constitution and laid down the legal principles to be followed thenceforth and which is still binding in the Country on all Courts including the Apex Court as has not been overruled.

*"The Hon'ble Supreme Court has held therein that Article 265 mandates that no tax can be levied or collected except by authority of law, which means that tax collected contrary to law has to be refunded; but the question is -- when a tax is considered to have been levied and collected without authority of law.*

32. The Supreme Court visualized several hypothetical situations and answered questions and categorically held as:

*"22. There is as yet a third and an equally important category. It is this: a manufacturer (let us call him "X") pays duty either without protest or after registering his protest. It may also be a case where he disputes the levy and fights it out up to first Appellate or second Appellate/Revisional level and gives up the fight, being unsuccessful therein. It may also be a case where he approaches the High Court too, remains unsuccessful and gives up the fight. He pays the duty demanded or it is recovered from him, as the case may be. In other words, so far as 'X' is concerned, the levy of duty becomes final and his claim that the duty is not leviable is finally rejected. But it so happens that sometime later - may be one year, five years, ten years, twenty years or even fifty years - the Supreme Courts in the case of some other manufacturer that the levy of that kind*

*is not exigible in law. (We must reiterate - we are not speaking of a case where a provision of the Act whereunder the duty is struck down as unconstitutional. We are speaking of a case involving interpretation of the provisions of the Act, Rules and Notification.) The question is whether 'X' can claim refund of the duty paid by him on the ground that he has discovered the mistake of law when the Supreme Court has declared the law in the case of another manufacturer and whether he can say that he will be entitled to file a suit or a writ petition for refund of the duty paid by him within three years of such discovery of mistake? Instances of this nature can be multiplied. It may not be a decision of the Supreme Court that lead 'X' to discover his mistake; it may be a decision of the High Court. It may also be a case where 'X' fights up to first appellate or second appellate stage, gives up the fight, pays the tax and then pleads that he has discovered the mistake of law when the High Court has declared the law. The fact is that such claims have been entertained both in writ petitions and suits until now, purporting to follow the law declared in Kanhaiyalal, and are being allowed and decreed, sometimes even with interest....*

.....  
149. For the sake of convenience, I shall summarise my conclusions as hereunder: (in case of doubt, the body of the judgment should be looked into)..... (E) It is not possible to conclude that any and every claim for refund of illegal/unauthorised levy of tax, can be made only in accordance with the provisions of the Act (Rule 11, Section 11B etc., as the case may be), and an action by way of suit or writ petition under Article 226 will not be maintainable under any circumstances. An action by way of suit or a petition under Article 226 of the Constitution is maintainable to assail the levy or order which is illegal, void or unauthorised or without jurisdiction and/or claim refund, in cases covered by proposition Nos. (1), (3), (4) and (5) in Dulabhai's case, as one passed outside the Act, and ultra vires. Such action will be governed by the general law and the procedure and period of limitation provided by the specific statute will have no application.”

33. Mr. Bindal further submitted that it is a well accepted principle of law that the Courts and the Tribunal have inherent powers to further the cause of substantive justice

and something which is not taxable under the Act, same cannot be taxed. He further referred and relied upon the judgment of the Hon'ble Supreme Court in Supreme Court in **Shipping Corporation Of India Ltd vs Machado Brothers & Ors on 25 March, 2004 in CASE NO.: Appeal (Civil) 1855-1856 of 2004** held:

*"This Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders (1975 1 SCC 770 at para 4) has held thus: "We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad....We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."*

*In the very same case, this Court quoted with approval a judgment of the Supreme Court of United States in Patterson vs. State of Alabama, (294 US 600) wherein it was laid down thus: "We have frequently held that in the exercise of our*

*appellate jurisdiction we have power not only to correct error in the judgment under review but to make such deposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.”*

34. Likewise he has noted several other judgments of the Hon'ble Supreme Court laying down and reiterating same principle. It has been further relied upon the decision of Anant Raj Ltd.[2020] 116 taxmann.com 741 (Delhi - Trib.)where the coordinate Bench of the ITAT examined the entire gamut of law on just approach, avoiding hyper-technical approach, charging only due tax and after referring to the decisions. After referring to series of decisions it was observed and held as under:-

*“The principle enunciated by the Hon'ble Supreme Court clearly clinches the issue that, if the assessee in the earlier years has offered the income or loss under the different head of income either under an erroneous presumption of law or by mistake, then it does not act as an estoppel or bar the assessee to point out that same was assessable under the different head if it is found that income was actually assessable under the different head as claimed by the assessee. Acquiescence by the assessee cannot determine the head in which the income is to be assessed. The income is to be assessed under the correct provisions of the law and it has been held so by various judgments as referred and relied upon by the ld. counsel as incorporated above...One very important fact which weighs here in this case is that, assessee has incurred genuine loss of Rs. 77.98 Crores as discussed herein above and has paid taxes in the earlier years, albeit shown in different head. One fundamental principle while deciding such kind of matters is that, tax due should be collected as enshrined in the taxing statute and which is also the mandate of the Constitution of India. Here assessee is fastened with tax liability on a hypothetical income which did not materialize /received and in*

*this situation a justice- oriented approach is warranted when assessee has, on one hand incurred huge loss and on other, tax on Rs. 77.98 Crores is charged merely on technicality that, since assessee had offered the tax under one particular head which it is claiming in this year to be set-off in the other head, is precluded from doing so. When assessee itself has pointed out its bonafide and legal claim before the Assessing Officer that correct head in which it is assessable is 'business income', then acquiescence by the assessee in earlier year cannot be the ground to tax the same or deny any legal claim. Hon'ble Supreme Court in a recent judgment, in the case of Dalmia Power Ltd. v. Asstt. CIT [2019] 112 taxmann.com 252/[2020] 420 ITR 339, reiterated this principle by holding that "Rules of procedure have been construed to be handmaiden of Justice. Kailash v. Nanhku [2005] 4SCC 480; State of Punjab v. Shamlal Murari [1976] 1 SCC 719. The purpose of assessment proceedings is to assess the tax liability correctly in accordance with law. National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC)" This justice-oriented approach has earlier been ordained in CIT v. Shelly Products [2003] 29 Taxman 271/261 ITR 367 (SC) also. The aforesaid principle can also be applied here". Similar view has been taken by the jurisdictional Bombay High Court in CIT vs Lok Housing & Constructions Ltd. (2015) 58 taxmann.com 179 (Bom) SLP dismissed in (2025) 175 taxmann.com 848 (SC).*

35. Now coming to the issue whether such a claim can be entertained in the assessment proceedings u/s.153A, Mr. Bindal strongly relied upon the judgment of the Hon'ble Bombay High Court in the case of **PCIT vs. JSW Steel Limited (2020) 115 taxmann.com 165(Bom)** wherein, the Hon'ble High Court had observed and held as under:-

*"In other words, section 153-A(1) provides that where a person is subjected to a search under section 132 or his books of accounts, etc. are requisitioned under section 132-A after 31-5-2003, the assessing officer is mandated to issue notice to such person to furnish 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 search is conducted or requisition is made. Such returns of income shall be treated to be returns of income furnished under section 139. Once returns are furnished, income is to be assessed or re-assessed for the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, once section 153-A (1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or re-assessment.....That brings us to the crucial expression, which is 'abate'. The ordinary dictionary meaning of the word 'abate', as per Concise Oxford English Dictionary, Indian Edition, is to reduce or remove (a nuisance). Derivative of abate is abatement. In Black's Law Dictionary, Eighth Edition, 'abatement' has been defined to mean an act of eliminating or nullifying; the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. In Supreme Court on Words and Phrases (1950-2008), "abating" has been defined to mean "an extinguishment of the very right of action itself"; to "abate", as applied to an action, is to cease, terminate, or come to an end prematurely....15. In view of the above, we are in agreement with the findings given by the Tribunal in respect of allowing of the assessee's appeal in paragraph -14 of the order under challenge dated 28-9-2016, which reads thus:*

*"14. From the above discussion and precedence, the scheme of assessment u/s. 153A of the Act in case of search, the AO shall issue notice to searched person requiring him to furnish within such period as maybe specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A and clause (b) postulates assessment or reassessment of the total income of six years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso mandates that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso postulates that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in sub-section (1) is pending on the date of initiation of the search u/s. 132 of the Act shall abate. In the present case before us,*

however, though the second proviso to sub-section (1) of section 153A would not apply in the first three years of this case, yet, as far as the second three- year period is concerned (which are pending before us), the assessments were pending the proceedings in relation thereto abate. Now the entire assessment in relation to the second phase of three years can be made. The pending assessment in that case may be undertaken u/s. 153A of the Act. The abatement of pending assessment is for the purpose of avoiding two assessments for the same year i.e. one being regular assessment and the other being search assessment u/s. 153A of the Act. In other words, these two assessments merge into one assessment. It means that completed assessments stand on different footing from the pending assessments. Hence, in so far, as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s.153A of the Act merge into one and in that case only one assessment for the remaining set of years, where assessment is pending, is to be made separately on the basis of search materials and the regular material existing or brought on record before the AO/Revenue. It means that the assessee can make any new claim in the return of income filed u/s. 153A of the Act or even during the course of assessment proceedings undertaken u/s. 153A of the Act. In our view, and in view of the second proviso to section 153A (1) of the Act, once assessment get abated it is opened both way i.e. for the Revenue to make any additions apart from seized material even regular items declared in the return can be subject matter If there is doubt about the genuineness of those items and similarly the assessee also can lodge new claim, deduction or exemption or relief which remained to be claimed in regular return of income, because assessment was never made in the case of the assessee in such situation. Hence, we allow this issue of assessee's appeal."

16. From the above we conclude that in view of the second proviso to section 153A (1) of the said Act, once assessment gets abated, it is open for the assessee to lodge a new claim in a proceeding under section 153A (1) which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation.

36. The Id. Counsel also stated that similarly in **CIT Vs B. G. Shirke Construction Technology (P.) Ltd [2017] 79 taxmann.com 306 (Bombay)** has held as under:-

*“For the purpose of the present appeal, the issue whether or not the claim of quantification made by the respondent before the Assessing Officer for the subject assessment years would be a fresh claim or not is academic. This in view of the fact that the impugned order has held that even if one accepts that the quantification of the amount of deduction made during the course of assessment proceedings is a fresh claim it is a settled position so far as this Court is concerned that it can be made before and could be considered by the Appellate Authorities. The right of an assessee to raise a fresh claim before the Appellate Authorities is no longer res-integra in view of the decision of this Court in CIT v. Pruthvi Brokers & Shareholders [2012] 349ITR 336/208 Taxman 498/23 taxmann.com 23 (Bom.) wherein the reference has also been made amongst other decisions, to the decision of the Delhi High Court in Jai Parabolic Springs Ltd. (Supra) wherein it has been held that there is no prohibition in the Tribunal to entertaining additional ground/claims which was not placed before the lower Authorities. In view of the above, we are not called upon to decide the applicability of the decision of Goetze (India) Ltd. (Supra) in the present facts viz. whether or not claim for quantification was a fresh claim which is not made in the return of income or in the revised return of income. 10. The reliance on the decision of the Apex Court in Sun Engineering Works (P.) Ltd.(supra) by the Revenue is misplaced. The above case dealt with re-opening of an assessment under Section 147 of the Act. It was in that context that the Apex Court observed that the Order passed under Section 147/148 and the Assessing Officer is primarily restricted to such income which has escaped assessment and does not permit reconsideration of issue which are concluded in the earlier assessment years in favour of the Revenue.*

11. In the present facts for the subject assessment years, it is an undisputed position that the pending assessment before the Assessing Officer consequent to return filed under Section 139(1) of the Act for the subject Assessment years had abated. This was on account of the search and as provided in second

*proviso to Section 153A (1) of the Act. The consequence of notice under Section 153A (1) of the Act is that assessee to furnish fresh return of income for each of the six assessment years in regard to which a notice has been issued. It is this return which is filed consequent to the notice which would be subject of assessment by the Revenue for the first time in the case of abated assessment proceedings. Consequent to notice under Section 153A of the Act the earlier return filed for the purpose of assessment which is pending, would be treated as non-est in law. Further, Section 153A(1) of the Act itself provides on filing of the return consequent to notice, the provision of the Act will apply to the return of income so filed. Consequently, the return filed under Section 153A (1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore, the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply.*

*12. This Court in Pruthvi Brokers & Shareholders (supra) while dealing with a return of income filed under Section 139(1) of the Act has held that an assessee is entitled to raise a fresh claim before the Appellate Authorities, even if the same was not raised before the Assessing Officer at the time of filing return of income or by filing a revised return of income. This Court also placed reliance upon decision of the Apex Court in National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 wherein while dealing with the powers of the Assessing Officer, it had held that a claim not made in the return of income, the Court may lead to nonentertainment of claim by the Assessing Officer. However, this restriction in the power of the Assessing Officer will not affect the power of the appellate Tribunal to entertain a fresh claim.*

*13. In view of the fact that the issue stands concluded by the decision of this Court in Pruthvi Brokers & Shareholders (supra) the question as proposed does not give rise to any substantial question of law.*

37. Thus, Mr. Bindal submitted that in view of the binding judgments of the Jurisdictional High Court (Bom) such a new

claim in respect of abated assessment for the A.Y.2017-18 and also in the subsequent assessment orders passed u/s.143(3) should be accepted. However, with respect to unabated assessment for the A.Yrs. 2012-13 to 2016-17, he submitted that although it is now a trite law well settled by the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.(Supra)*, the ld. AO while passing an independent assessment order u/s.153A, cannot disturb the assessment / re-assessment order which has attained finality, unless materials gathered in the course of proceedings u/s.153A establish that relief granted under the final assessment / re-assessment cannot be disturbed unless there is certain incriminating material unearthed during the course of search and if there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings, the ld. AO while passing the order u/s.153A r.w.s. 143(3) cannot disturb the assessment order. However, he submitted that none of the judgments can be read in saying that assessee is also fettered and cannot raise a new claim. His logic and reasoning on this proposition is stated in the succeeding paragraphs.

38. The ld. Counsel stated that the wordings even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy, has not been given due

attention in interpreting the same. The Hon'ble Supreme Court has accorded alternative only remedy to the revenue u/s 148, and thus, by implication, a remedy must also be accorded to the assessee and the only remedy is a new/ fresh claim. Such an interpretation is fair, equitable and balance both sides.

39. Thus, he submitted that the assessee is entitled to bring in new/ fresh claims not made in original proceedings and on showing that such new claims exceed escaped income, proceedings u/s 148 be dropped. Thus, it can be inferred that neither the Legislature nor the Hon'ble Supreme Court in *Abhisar* has shut the door for an assessee to put up new claim in the assessment proceedings u/s 153A of the Act. In fact, even the appellate proceedings are the extension of the assessment proceedings only in all cases.

40. In so far as the proposition that in cases where reopening are done u/s.147 and in such proceedings, assessee cannot make a new claim, he stated that reliance upon *Sun Engineering*. (supra) is otherwise based upon picking some sentences and without consideration of the factual matrix. The facts therein were that the loss return submitted by the assessee beyond time was held invalid by the AO and the proceedings were filed. On appeal, the AAC held that the ITO was wrong in filing the returns without proper scrutiny and without first computing the loss in accordance with the law. The AAC also opined that it could only be known after proper computation whether the assessment would result in a loss or not. However, the

appellate authority finally held that since the ITO had filed the returns, no relief could be granted to the assessee in the appeals and dismissed the same. No appeal was filed by the assessee against this order. Later on, the assessment was reopened u/s 147 of the Act and a positive income was determined. Now, the case of the assessee was that the ITO should have redetermined the loss so declared in the original return and set it off against the escaped income from other sources and even carried forward the loss, if necessary, to the subsequent assessment years. The Apex Court held that

*“39. As a result of the aforesaid discussion, we find that in proceedings under section 147, the ITO may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under section 148 and where reassessment is made under section 147 in respect of income which has escaped tax, the ITO's jurisdiction is confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The ITO cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject matter of proceedings under section 147. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been assessed originally was at too high a figure except in cases under section 152(2). The words 'such income' in section 147 clearly refer to the income which is chargeable to tax but has 'escaped assessment' and the ITO's jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceeding cannot be permitted to be reagitated on the*

*assessment being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment. A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as 'escaped income'. Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under section 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed."*

41. He also submitted that Sun Engineering (supra) is in essence against the re-agitation of issues concluded in the original assessment. However, in the present case, the assessee is not disputing any item agitated in the original assessment. The claim of assessee is based upon a subsequent development which converted the voluntarily offered taxable income into a non-income by the judicial orders of the higher judiciary. In essence, the case of the assessee is not of re-agitation but claim that even in the reassessment proceedings, income has to be computed as per

the provisions of Act and non-taxable should not be just taxed on technicalities. He submitted that the hyper-technical approach of the revenue ought to be shunned as Sun Engineering was not in this background and a just and fair approach be must be adopted. There is no estoppel against the statutory provisions and there is no vested right in any authority in continuation of error, mistakes, injustice and in ignoring provisions of the statute.

42. However, the ld. Counsel also referred to the decision of the Special Bench, ITAT Hyderabad in M/s SEW INFRASTRUCTURE LTD 2024-TIOL-1211-ITAT-Hyderabad where it has been held that assessee cannot make fresh claim of deduction under Chapter VI-A of Income Tax Act, for first time in its return filed in response to notice issued u/s 153A, pursuant to the search conducted u/s 132 in an unabated assessment as on date of search. He submitted that this SB decision may not apply in Mumbai, as this decision has been rendered on certain legal premises which are contrary to the Decision of Bombay High Court. For example, it has been held in para 31 that 'Therefore, the reliance placed by the revenue on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd (supra) is justified' which is contrary to the judgment in CIT vs B. G. Shirke Construction Technology (P.) Ltd [2017] 79 taxmann.com 306 (Bombay).

43. Now coming to the merits of the claim, ld. Counsel clarified that for the Completed/Unabated being the AYs

2012-13 to 2016-17, the assessee did not make the claim for exclusion of Export Incentive-FPS (Focus Product Scheme) from taxable income, in either original or in revised ROI. The assessee also did not claim Export Incentive-FPS (Focus Product Scheme) as non-taxable in the return filed u/s 153A. However, a claim for exclusion of Export Incentive-FPS (Focus Product Scheme) from taxable income is made by way of Addl. GOA before CIT (A) during the appellate proceedings of assessments completed u/s 153A of the Act following a search conducted on the assessee, a remand report from the AO was called for and a report dated 23/01/2023 was received. The facts of the said completed assessment years are as below.

## Figures in Rs

Particulars	AY2012-13	AY2013-14	AY2014-15	AY2015-16	AY2016-17
Original ROI filed u/s 139	11,55,11,368 30.09.2012	26,44,80,690 29.11.2013	33,08,45,440 30.11.2014	46,71,16,260 30.11.2015	43,74,23,210 17.10.2016
Regular assessment Completed	11,63,43,954 u/s143(3) dt. 13.03.2015	26,50,73,490 u/s143(3) dt. 18.03.2016	33,12,57,830 u/s143(3) dt- 22.12.2016	46,71,16,260 u/s 143(1)	43,74,23,210 u/s143(1)
Search and seizure operation u/s 132 of the Act in case of assessee	18.12.2017				
ROI filed u/s 153A	11,63,43,954	26,50,73,490	33,12,57,830	46,71,16,260	43,74,23,210
Asst. u/s 153A	13,99,79,512	29,95,78,357	37,73,41,927	49,92,39,677	44,97,86,876
Addl. GOA filed before CIT(A)	28.12.2020 modified on 28.04.2023				
AO's Remand Report	23.01.2023				
Amount of FPS (Focus Product Scheme) export incentive hitherto included in taxable income now being claimed as exclusion/deduction	82,98,227	2,05,48,555	2,80,12,373	2,92,65,345	2,92,65,345

44. For the only abated assessment year u/s153A (A.Y.2017-18), the ld. counsel submitted that for the AY 2017-18 also, the assessee did not make the claim for exclusion of Export Incentive-MEIS (Merchandise exports from India Scheme) from its taxable income, in either original or in revised ROI. The assessee also did not claim the Export Incentive -MEIS (Merchandise exports from India Scheme) as non-taxable in the return of income filed u/s 153A. However, a claim for exclusion of Export Incentive- MEIS (Merchandise exports from India Scheme) from taxable income was made by way of an Addl. GOA before the CIT(A) during the appellate proceedings of assessment completed u/s 153A of the Act, following a search conducted on the assessee. A remand report from AO was called for and received.

<b>Particulars</b>	<b>AY 2017-18 Rs</b>
Original ROI filed u/s 139 on 31/10/2017	46,10,64,900/-
Regular assessment Completed	143(1)
Search and seizure operation u/s 132 of the Act in case of assessee	18.12.2017
ROI filed u/s 153A on 04/01/2019	46,10,64,900/-
Asst. u/s 153A	47,06,19,726
Addl. GOA filed before CIT(A)	28.12.2020 modified on 28.04.2023
AO's Remand Report	23.01.2023
Amount of MEIS (Merchandise exports from India Scheme) export incentive hitherto included in taxable income now being claimed as exclusion/deduction	3,67,40,912

45. In respect of the searched AY 2018-19 (date of search 18/12/2017) completed u/s 143(3) of the Act the ld. counsel stated that for the AY 2018-19 being the relevant period to the search, the assessee again did not make the claim for exclusion of the Export Incentive-MEIS (Merchandise exports from India Scheme) from taxable income, in either original or in the revised ROI. However, a claim for exclusion of the Export Incentive- MEIS (Merchandise exports from India Scheme) from its taxable income was made by way of an Additional GOA before the CIT(A) during the appellate proceedings of assessment completed u/s 153A of the Act. A remand report from the AO was called for and received. The facts for the said AY are as below:

<b>Particulars</b>	<b>AY 2018-19 Rs</b>
Original ROI filed u/s 139	46,10,64,900 31.10.2018
Asst. completed u/s 143(3)	47,06,19,726
Addl. GOA filed before CIT(A)	28.12.2020 modified on 28.04.2023
AO's Remand Report	23.01.2023
Amount of MEIS (Merchandise exports from india Scheme) export incentive hitherto included in taxable income now being claimed as exclusion/deduction	<b>3,67,40,912</b>

46. During the first appellate proceedings, the assessee filed an additional GOA and claimed that the FPS and MEIS receipts are exempt from levy of income tax being 'Capital in Nature'. The Ld. CIT(A) called for Remand Report from the AO and eventually dismissed the additional GOA adjudicating

that the claim of the assessee is not admissible, considering the fact that the said claim was not made in the original return of income or the revised return of income, by relying on the Judgment of the Hon'ble Supreme Court in the case of Goetze (India) Ltd.

47. Ergo, the question in this lis is whether the incentives granted in the form of the Scrip (FPS&MEIS) to the assessee as per the FTP Policy of 2010 to 2014 and 2015 to 2020 respectively being an eligible exporter under the FTP Policy is chargeable to the tax or not. The assessee had relied on several judicial precedents when the said issue has been decided by the Co-ordinate Bench of the Tribunal holding that the benefit derived by way of sale of FPS & MEIS scrips in the open market is not an 'income' chargeable to tax being capital in nature within the meaning of provisions under section 2(24)(xviii) of the Act. In respect of the FPS, the Id. Counsel relied on the decision of the ITAT Chennai Bench in the case of Eastman Exports Global Clothing Pvt. Ltd. in ITA No. 47/MDS/2016(AYs 2011-12 and 2012-13) dated 17.05.2016 and the ITAT Delhi in the case of Bharat Rasayan Ltd in ITA No. 1231/Del/2019: AY: 2014-15 Dated 02.02.2021

48. Thus, Mr. Bindal summarized his arguments for the additional claim to consider claim of FPS and MEIS based on judicious appreciation of facts and position of law and contended that the action of the CIT(A) in summarily rejecting the claim of the assessee is not sustainable in law for the following reasons:

(a) On admissibility of claim - Legal claim made before the appellate authority is admissible;

(b) On Merits-Export incentives qualify as capital receipt, not liable to tax.

49. With regard to admissibility of claim, reliance placed by the CIT(A) on judgment of Goetze India Limited vs CIT (2006) 284 ITR 323 (SC) is highly misplaced, since the Hon'ble Supreme Court's judgment was in the context of power of the AO to entertain a fresh claim made otherwise than by a revised return within time but the same in no manner impinged on the power of the CIT(A) / Tribunal u/s 254 of the Act to permit a new claim.

(i) Further, the Id. Counsel also submitted that the Hon'ble Supreme Court also held that the judgment in the case of National Thermal Power Company Ltd. v CIT:229 ITR 383 dealing with the powers of the appellate authority to admit new claims did not relate to the power of the assessing authority to entertain a claim otherwise than by way of revised return. He stated that in fact, the Hon'ble Supreme Court clarified that power of the Tribunal u/s 254 of the Act to permit new claim was not impinged. The Hon'ble Apex Court in NTPC (supra) has held that the purpose of assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. The Hon'ble Court further observed that it did not see any reason to restrict the power of the Tribunal u/s 254 only to decide the ground which arises from the order of Commissioner of Income Tax (Appeals) and held that both the assessee as well as the Department have a right to file an appeal/cross objection before the Tribunal.

(ii) The Id. Counsel advanced his submissions, further, by referring to the Hon'ble Supreme Court in the case of, Wipro Finance Ltd. v. CIT [2022] 137 taxmann.com 230 (SC) dated 12.04.2022 holding that Tribunal's power u/s 254 of the Act remain broad and unrestricted in entertaining fresh claim for the first time, even if, inconsistent with the assessee's original return. It also did not accept the Department's reliance on *Goetze (India) Ltd. (supra)* and clarified that limitation on raising new claims applies only to the AO and not to the Tribunal.

(iii) He emphasized, that apart the above legal position, the purpose of an assessment is to compute the correct taxable income of the assessee as per the provisions of the Act and even if the deduction was not claimed in the return of income by the assessee, which was clearly allowable in law to the

assessee, the assessing officer was duty bound to consider and allow such claim suo-motu, while framing the assessment. For this proposition, he relied on the Circular No. 14 (XL-35) dated 11.04.1955 issued by the Board of Revenue under the Income-tax Act, 1922 besides referring to various legal citations where Courts have held that the AO is duty bound to grant benefits and reliefs during assessment, even if not claimed in the return of income by the assessee.

1. CIT vs. Mahindra Mills: 243 ITR 56 (SC)
2. CIT vs. Jai Parabolic Springs Ltd: 306 ITR 42 (Del)
3. CIT vs. Simon Carves Ltd.: 105 ITR 212 (SC)
4. CIT vs. Mahalaxmi Sugar Mills Co. Lad: 160 ITR 920 (SC)
5. Anchor Pressings (P) Ltd. vs. CIT and Ors 161 ITR 159 (SC)
6. CIT vs. Bharat General Reinsurance: 81 ITR 303 (Del)

(b) It was further submitted by the Id. Counsel that the CIT(A) was bound to consider the claim on merits inter alia, for the following reasons:

i) Firstly, for the assessment years 2012-13 to 2017-18, the original regular assessment had merged with the 153A proceedings and therefore, the scope of 153A assessment included the issues that could have been considered in regular 143(3) proceedings;

ii) Secondly, for assessment year 2018-19, being the search year as searched on 18/12/2017, the proceedings were, in fact, regular assessment proceedings and not assessment as merged with the 153A proceedings and therefore, the CIT(A) ought to have considered the additional claim made;

iii) Thirdly, it was also submitted that the purpose of assessment is to compute the correct taxable income of the assessee as per provisions of the Act and even if the export incentives were wrongly offered for tax in the return of income by the assessee, which was clearly not liable to tax, the assessing officer was duty bound to consider and allow such claim suo motu, while framing the assessment.

iv) In any case, once the claim was made, the AO ought to have considered to determine the correct taxable income, by relying on *Circular No.14 (XL-35) dated 11.04.1955*; *CIT vs. Mahindra Mills 24 ITR 56 (SC)*, *CIT vs. Simon Carves Ltd.: 105 ITR 212 (SC)*; *CIT vs. Mahalaxmi Sugar Mills Co. Ltd.: 160 ITR 920 (SC)*, *Anchor Pressings (P) Ltd. vs. CIT and Ors.: 161 ITR*

159 (SC), *National Thermal Power Limited vs. CIT*: 229 ITR 383(SC), *CIT vs. Bharat General Reinsurance*: 81 ITR 303 (Del) *Chokshi Metal Refinery vs. CIT*: 107 ITR 63 (Guj)];

v) It was also urged by the Id. Counsel that where grant of export incentives is a reward for meeting associated cost of infrastructure inefficiencies; for achieving a national objective/purpose in public interest, the same would be in the nature of capital receipt not liable to tax expounded in the following decisions:

- CIT V. Ponni Sugar and Chemicals Limited: 306 ITR 392
- CIT vs. Chaphalkar Brothers: 351 ITR 309 (Bom HC) affirmed by Hon'ble Supreme Court vide order dated 07.12.2017 in 400 ITR 279 (SC)
- Shree Balaji Alloys vs. CIT: 333 ITR 335 (J&K) - SLP dismissed
- DCIT vs. Reliance Industries Limited: 88 ITD 273 (Mum SB)

vi) It was further stated by the Ld. Counsel that the finding of the AO/CIT(A) are erroneous as nature of the export incentives is determined of application of "purpose test" as has been held in Ponni Sugar (supra).

vii) The NTPC judgement lays down the following conditions for admission of fresh claim by the Tribunal:

- (a) Claim is made for the first time before the Tribunal.
- (b) There must be a bonafide and good reasons as to why the claim could not have been raised earlier by the assessee.
- (c) The claim should purely be a question of law arising from the facts which are already on record in the assessment proceedings.

viii) The CIT(A) was duty bound to admit the additional of appeal instead of summarily rejecting it on the basis of remand report, whereas he was obligated to pass a speaking order on the issue after admitting it by giving reasoning in support of his findings. Thus, his summary action of not admitting the same in para 3.4 of his appellate order dated 26/03/2025 needs to be reversed.

ix) Since, there is no format of an application to be filed u/s 154 of the Act has been prescribed, the application to admit the additional ground to claim export benefits as above capital receipts, filed on 28/12/2020 with the limitation period u/s 154 of the Act should be considered as an application u/s 154 of the Act in view of the obitor dicta of the Hon'ble Apex Court in Mafatlal

Industries (supra). The AO sent the remand report vide letter dated 18/01/2023 in response to the directions of the CIT(A) sought vide letter dated 19/02/2021.

50. The ld. Counsel also stated that the DGFT vide its circular no. 13/2020 – customs dated 19.02.2020 withdrew the MEIS benefit with effect from 07.03.2019 by issuing a public notice no. 58/2015-2020 dated 29.01.2020 on the subject - withdrawal of MEIS for items in the apparel and made-ups sector. And a new scheme titled “RoDTEP (Remission of Duties and Taxes on Exported Products) and RoSCTL (Rebate of State and Central Taxes and Levies)” was introduced which is a revenue income.

51. Thus, as per the ld. Counsel, the Export incentives received as FPS & MEIS is a capital receipt even as per the accepted action of the Government in the new Scheme and accordingly the assessee must have been allowed re-computation of its taxable incomes for the AYs 2012-13 to 2016-17 (FPS) and AYs 2017-18 to 2018-19 (MEIS) respectively and be granted eligible refund with interest.

52. On the other hand, ld. DR submitted that first of all assessee cannot raise any inclusion in the proceedings u/s.153A because the same is based on search proceedings and the scope of Section 153A is confined to assessing / re-assessing the income based on both on incriminating material found in the course of search and also during the course of assessment proceedings. Even if it is accepted that in the abated assessment everything is open however, the scope of unabated assessment, no new claim can be made at all

because the assessment has to be completed based on incriminating material found in the course of search which is agreed by the ld. Counsel is well settled by the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.* (supra).

53. We have heard the rival submissions and carefully perused the material placed on record. The principal issue for adjudication before us is whether the assessee is entitled to raise an additional claim before the appellate authority in the course of proceedings under Section 153A of the Act, specifically in respect of export incentives received under the Focus Product Scheme (FPS) and the Merchandise Exports from India Scheme (MEIS), which were not claimed as exempt income in the original returns, nor in the returns filed in response to notices issued under Section 153A.

54. It is an admitted factual position that the assessments for the Assessment Years 2012–13 to 2016–17 had attained finality prior to the date of search and are thus treated as 'unabated' assessments. The assessee did not make any claim in the original or revised returns for excluding FPS receipts from taxable income. Nor did it claim the same in the returns filed pursuant to the notices issued under Section 153A. The claim was raised for the first time by way of additional grounds of appeal before the learned CIT(A), in response to which a remand report was obtained from the Assessing Officer. The factual matrix, including relevant dates and figures, has already been captured in the tabular presentation above.

55. Similarly, for A.Y. 2017–18, which is an abated assessment, no claim for exclusion of MEIS benefits was made in the original or revised return, or in the return filed under Section 153A. The same applies for A.Y. 2018–19, where the assessment was completed under Section 143(3), but the claim for exclusion of MEIS receipts was made only at the appellate stage. Both the Assessing Officer and the learned CIT(A) declined to entertain these claims, primarily relying on the ratio of the Hon'ble Supreme Court's decision in the case of Goetze (India) Ltd. [(2006) 284 ITR 323 (SC)], wherein it was held that a fresh claim cannot be entertained by the Assessing Officer unless made through a revised return. It is, however, pertinent to note that the remand report submitted by the AO does not state that such a claim is beyond the permissible scope of assessment under Section 153A.

56. On the substantive aspect, the taxability of incentives received under the Foreign Trade Policy namely, FPS and MEIS has been judicially settled in favour of the assessee by various Coordinate Benches of the Tribunal, and more notably by the Hon'ble Rajasthan High Court in the case of PCIT v. Nitin Spinners Ltd. [(2020) 116 taxmann.com 26], wherein it was held that such incentives, when realised by way of sale of scrips in the open market, do not partake the character of income but are capital receipts within the meaning of Section 2(24)(xviii) of the Act. The view of the High Court was affirmed by the Hon'ble Supreme Court by dismissing the Special Leave Petition filed by the Revenue.

Thus, there remains little doubt that, on merits, such receipts are not taxable.

57. As regards the admissibility of a fresh claim in proceedings under Section 153A of the Act, particularly in the context of abated assessments, we find authoritative guidance in the binding pronouncement of the Hon'ble Bombay High Court in the case of *PCIT v. JSW Steel Ltd.* [(2020) 115 taxmann.com 165 (Bom.)]. The Hon'ble High Court, after a comprehensive analysis of the statutory framework, held that upon initiation of search under Section 132, the assessment for the six preceding assessment years becomes open for reassessment under Section 153A. Where the assessment for a particular year was pending on the date of search, it is deemed to abate. In such a case, the jurisdiction of the Assessing Officer is not confined merely to the incriminating material found during the search but extends to conducting a fresh assessment de novo.

58. Most significantly, the Hon'ble Court held that once the assessment abates, it is not only open to the Revenue to make additions on the basis of search material or otherwise, but equally open to the assessee to lodge fresh claims, deductions, exemptions or reliefs which may not have been claimed earlier, including those that were not claimed in the original return filed under Section 139(1). The Court interpreted the legislative scheme of Section 153A(1), including its second proviso, to affirm that an abated assessment merges into the fresh 153A proceedings and that

both the Revenue and the assessee stand on an equal footing in terms of scope and rights.

59. This principle affirms the fundamental objective of tax administration: to assess the correct income in accordance with law, and not to withhold legitimate reliefs on procedural or technical grounds. Applying this ratio to the facts before us, we have no hesitation in holding that in respect of A.Y. 2017-18, which is admittedly an abated assessment, the assessee is fully entitled to raise a new claim in respect of export incentives under MEIS, and the same cannot be rejected solely on the ground that it was not made in the original or revised return.

60. The legal position becomes even more compelling when viewed in conjunction with the principle laid down by the Hon'ble Bombay High Court in the case of **CIT v. B.G. Shirke Construction Technology (P.) Ltd. [(2017) 79 taxmann.com 306 (Bom.)]**. In that case, the Hon'ble High Court authoritatively clarified that the limitation on entertaining fresh claims, as pronounced by the Hon'ble Supreme Court in Goetze (India) Ltd., applies only to the Assessing Officer and does not circumscribe the powers of appellate authorities under the Act. The Court held that even if a fresh legal claim is not made in the return of income or by way of a revised return, it can still be entertained by appellate authorities such as the CIT(A) or the ITAT.

61. It further noted that once a notice under Section 153A is issued and a fresh return is filed, particularly in abated cases, the assessment is conducted afresh, and therefore, all

legitimate claims that could have been made in a regular assessment may be validly entertained. Importantly, the Court reiterated that tax cannot be levied on income which is not chargeable under the Act, merely on account of an omission or error by the assessee in the original return.

62. In the present case, the nature of the receipts viz., export incentives under MEIS has been consistently held to be in the nature of capital receipts, not chargeable to tax, by several judicial fora including the Hon'ble Rajasthan High Court and Coordinate Benches of this Tribunal. Therefore, even if the assessee had not claimed such exclusion in its original return, there is no legal impediment to raising the claim during appellate proceedings. Accordingly, in A.Y. 2018-19, although the assessment was completed under Section 143(3), the claim raised by the assessee before the learned CIT(A) regarding the non-taxability of MEIS receipts deserves to be examined on merits, and cannot be denied on technical grounds. Since the lower authorities have not adjudicated the claim substantively, nor quantified the claim, we restore the matter to the file of the Assessing Officer for de novo adjudication in accordance with law.

63. However, the legal landscape changes materially when it comes to unabated assessments, i.e., those which had attained finality as on the date of search specifically, the assessments for A.Ys. 2012-13 to 2016-17 in the present case. It is now well-settled by the Hon'ble Supreme Court in **PCIT v. Abhisar Buildwell Pvt. Ltd. [(2023) 149 taxmann.com 399 (SC)]** that where the assessment for a

given year has not abated on the date of search, the power of the Assessing Officer under Section 153A is restricted to making additions based on incriminating material found during the course of search. In the absence of such incriminating material, the concluded assessment cannot be disturbed, and any new issue whether in the nature of an addition by the AO or a fresh claim by the assessee would ordinarily fall outside the permissible scope of Section 153A proceedings.

64. That said, a nuanced legal perspective emerges from the very language and construct of Section 153A. The provision mandates that the assessee must file a return of income in response to the notice, and the Assessing Officer is entrusted with the duty to assess or reassess the “total income” for six preceding years. The term “total income”, as defined under Section 2(45), refers to the amount of income computed in accordance with the provisions of the Act. It necessarily follows that the Assessing Officer, while discharging his statutory obligation under Section 153A, must compute the correct total income of the assessee in accordance with law.

65. This brings us to a subtle yet important legal distinction. If a particular receipt such as one under the Focus Product Scheme (FPS) or the Merchandise Exports from India Scheme (MEIS) is in its very nature a capital receipt not chargeable to tax, and thereby falls outside the sweep of “total income” as defined under the Act, the question arises whether the assessee can still point out this legal position in response to a Section 153A notice, even in the absence of any incriminating

material. While Abhisar Buildwell imposes a fetter upon the Revenue to safeguard the sanctity of concluded assessments, it is debatable whether this constraint should extend to prohibit the assessee from asserting a jurisdictional truth namely, that a receipt erroneously offered to tax does not, in law, constitute income at all.

66. Indeed, the mandate to “assess the total income” postulates a correct and lawful determination of taxable income, not a mere reaffirmation of what was returned. If the assessee, upon legal advice or judicial clarification, realises that a previously offered receipt was never taxable *ab initio*, it would be anathema to both equity and the rule of law to prevent the assessee from bringing such a fundamental contention to the notice of the Assessing Officer. The finality attached to concluded assessments is intended to protect against arbitrary additions by the Revenue, not to perpetuate erroneous or excessive taxation merely because the assessee did not previously raise a legal plea.

67. This interpretive tension between the sanctity of finality on one hand and the right to correct a non-taxable error on the other remains a grey area in the jurisprudence under Section 153A. It calls for principled clarification as to whether the bar on reassessment in unabated cases should operate with equal rigidity against a bonafide claim by the assessee that a particular receipt is not income in the first place.

68. Nonetheless, since both the Assessing Officer and the learned CIT(A) in the present case have declined to admit the assessee’s claim solely on procedural grounds, citing Goetze

(India) Ltd., without examining whether the claim could be entertained within the permissible contours of Section 153A, we consider it just and equitable to restore this issue to the file of the Assessing Officer. The AO shall now examine, in law and on facts, whether such a claim for exclusion of export incentives under the FPS scheme can be entertained in respect of the unabated assessment years, and pass a reasoned order after affording an adequate opportunity of hearing to the assessee.

69. Accordingly, in light of the foregoing discussion and judicial pronouncements, we hold that the additional claim made by the assessee in respect of A.Y. 2017-18, being an abated assessment, and A.Y. 2018-19, being a regular assessment under Section 143(3), is legally admissible. In both these years, the claim pertains to the treatment of export incentives under the FPS and MEIS schemes as capital receipts, not exigible to tax under the provisions of the Act.

70. Since the nature and quantum of these receipts have not been examined on merits by the lower authorities and considering that these claims were raised for the first time at the appellate stage, we deem it just and expedient to restore the matter to the file of the Assessing Officer. The Assessing Officer is directed to verify the claim, quantify the amount involved, and adjudicate the same afresh, in accordance with law, after granting due opportunity of hearing to the assessee.

71. As regards the unabated assessment years, namely A.Ys. 2012-13 to 2016-17, where the assessments had attained finality prior to the date of search, the additional claim made

by the assessee for exclusion of FPS incentives requires reconsideration from the standpoint of statutory permissibility under Section 153A. As already observed, the power to make adjustments or admit new claims in such years is contingent upon the existence of incriminating material found during the course of search.

72. Since the Revenue authorities have hitherto declined the claim solely on procedural grounds by placing reliance on the decision in *Goetze (India) Ltd.*, without examining whether such a claim can be entertained in the context of Section 153A for unabated assessments, we consider it appropriate to restore this issue as well to the file of the Assessing Officer. The Assessing Officer shall now examine, in law and on facts, whether the additional claim made by the assessee falls within the permissible ambit of assessment under Section 153A in respect of concluded assessments. The assessee shall be at liberty to raise all relevant contentions in support of its claim, and the Assessing Officer shall pass a reasoned and speaking order in accordance with law.

73. In view of the foregoing discussion and findings, the following directions are issued:

(i). For A.Y. 2017-18 (abated assessment) and A.Y. 2018-19 (regular assessment under Section 143(3)), the additional claims made by the assessee for treating the export incentives under the Focus Product Scheme (FPS) and the Merchandise Exports from India Scheme (MEIS) as capital receipts not chargeable to tax are admitted, and the matter is restored to the file of the Assessing Officer. The Assessing

Officer shall examine the claims on merits, quantify the amounts involved, and decide the issue afresh in accordance with law after granting due opportunity of hearing to the assessee.

(ii). In respect of A.Ys. 2012–13 to 2016–17 (unabated assessment years), the issue relating to admissibility of the assessee's additional claim is also restored to the file of the Assessing Officer. The Assessing Officer shall determine, based on law and facts, whether such a claim can be entertained in the context of Section 153A proceedings in absence of incriminating material. The assessee shall be at liberty to raise all relevant contentions, and the Assessing Officer shall pass a reasoned order in accordance with law.

74. Now, coming to the grounds of appeal for A.Y.2020-21, assessee has raised following grounds of appeal.

1. *The CIT (A) erred in law and on the facts by confirming the addition of Rs. 2,64,64,223/- made by AO treating MEIS license receipts received by the Appellant as income instead of capital receipt, ignoring the purpose test and judicial precedents. Hence the additions must be deleted.*

2. *The CIT(A) erred in law and on facts and circumstances of the case, by upholding the action of AO in not accepting modified computation of total income furnished during the course of assessment proceedings on technical grounds, with regards to inadvertent duplication of income of Rs.2,64,64,223/-, in the form of export incentives, ignoring the fact that it tantamount to taxation of same income twice.*

3. *The CIT (A) erred in confirming the additions made by AO ignoring the fact that the assessment framed u/s 143(3) of the Act is required to be treated as **'invalid and shall be deemed to have never been issued'** in absence of any Document Identification Number (DIN) or for lack of computer-generated Document Identification Number (DIN) thereon which*

*was required to be generated and duly quoted in the body of such communication as has been ordered by the CBDT vide Circular No. 19 /2019 dated 14/08/2019 and reiterated vide the circular number 27/2019 dated 26/09/2019.*

*4. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.*

75. Based on the facts and the material placed on record, as well as the legal position outlined by the assessee, it emerges that the assessee received export incentives during the Assessment Year 2020-21 under the Merchandise Exports from India Scheme (MEIS), a scheme notified by the Government of India for the promotion of exports. The stated objective of the scheme, as discernible from its text and structure, was not to subsidise trading profits but to incentivise and reward exporters for exploring potential foreign markets, particularly those with infrastructural inefficiencies and cost disadvantages. The incentive was granted through tradable duty credit scrips as a percentage of the FOB value of exports and was not linked to cost reimbursements or revenue generation. These characteristics suggest that the MEIS benefits partake the character of a capital receipt aimed at strengthening the economic foundation of the business, rather than constituting an income taxable under the Act.

76. The record reveals that in its original return of income, the assessee had disclosed a taxable income of Rs.38,65,82,200/- after excluding the MEIS receipts of Rs.2,64,64,223/- by treating the same as a capital receipt. Notably, the amount was recorded in the Profit and Loss

Account under “Other Operating Income” but was simultaneously excluded in the computation of taxable income. During the assessment proceedings, the assessee submitted that this sum was inadvertently considered a second time under the head “Indirect Income,” thereby leading to duplication. To rectify the anomaly, the assessee submitted a revised computation of income during the assessment proceedings, reflecting corrected income at Rs.36,53,13,640/-, accompanied by a detailed reconciliation of accounts and a rationale explaining the duplicative accounting error.

77. Before us Id. Counsel had filed a revised computation of income at Rs. 36,53,13,640/- excluding Rs. 5,29,28,446/- (Rs. \*2,64,64,223/- + Rs. \*\*2,64,64,223/-) (MEIS Receipts not chargeable to tax being capital receipt – Schedule 4) because the amount of Rs 2,64,64,223/- was recorded twice in the books of account, once as MEIS and second time in ROSTCL.

In Rs

<b>Particulars</b>	<b>Tiruppur</b>	<b>Mumbai</b>	<b>Total</b>
Other Operating income as per the P&L Account for the year ended 31.03.2020	-	-	21,81,07,710
<b>Includes :</b>			
Accessories sales (page 63)	11,49,645	-	11,49,645
Job work charges received (page 63)	1,14,60,796	-	1,14,60,796
Scraps sales (page 63)	43,250	-	43,250
Difference in exchange (Page 62)	-	3,73,13,496	3,73,13,496

Drawback received (page 64)	-	3,89,97,810	3,89,97,810
**ROSTCL Incentives (page 63) includes Rs. 2,64,64,223	10,26,78,490	-	10,26,78,490
*MEIS – other operating income	2,64,64,223	-	2,64,64,223

78. However, the Assessing Officer rejected the revised computation solely on the technical ground that no revised return had been filed under section 139(5) of the Act. This approach was mechanically affirmed by the learned CIT(A), without evaluating the merits of the claim or the nature of the receipts in question. In our considered view, the rejection of a legitimate claim on purely procedural grounds, especially where no fresh claim is being introduced but only an arithmetical correction is being sought, militates against the settled principles of tax jurisprudence and fails the test of substantive justice.

79. The learned counsel for the assessee submitted that in the following assessment year (AY 2021–22), the assessee, suomoto, reversed the excess provision for export incentives to the extent of Rs.2,15,76,766/- that had inadvertently been offered to tax during AY 2020–21, thereby evidencing the bona fides of the assessee's conduct. The argument was also made that the MEIS scheme was withdrawn for certain sectors with effect from 07.03.2019, as per DGFT Circular No. 13/2020 – Customs dated 19.02.2020 and Public Notice No. 58/2015–2020 dated 29.01.2020, demonstrating the

transitional nature of the scheme and its intended role as a promotional not compensatory instrument of trade policy.

80. A critical plank of the assessee's legal argument rests on the interpretation of section 2(24)(xviii) of the Act, which was introduced with effect from 01.04.2016 and defines certain forms of Government assistance such as subsidies, grants, cash incentives, duty drawbacks, waivers, concessions or reimbursements as income. The MEIS scheme, however, consciously eschews all such expressions and instead introduces the word "Reward" a term hitherto absent in the statute. The learned counsel argued that if the legislature intended to bring MEIS within the fold of section 2(24)(xviii), it would have explicitly included "Reward" in the list of taxable receipts. The deliberate omission of this term from the statutory definition reflects the legislative intent to treat MEIS scrips as distinct from subsidies or grants and, consequently, outside the ambit of taxable income.

81. We have duly considered the elaborate submissions advanced by the learned counsel for the assessee and perused the relevant material placed on record, including the assessment orders, computation statements, financial accounts, the policy framework of the MEIS scheme, and the legislative contours of Section 2(24)(xviii) of the Act. The primary issue that now arises for our consideration is whether the export incentive received under the MEIS scheme, amounting to Rs.2,64,64,223/-, is liable to tax as a revenue receipt, or whether it partakes the character of a

capital receipt outside the purview of the charging provisions of the Act.

82. To answer this question, it is imperative to closely examine the text and structure of Section 2(24)(xviii), which was inserted with effect from 01.04.2016 by the Finance Act, 2015. The said provision expanded the inclusive definition of the term “income” to specifically include:

*“any assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called), by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee.”*

83. This provision was intended to capture various forms of fiscal assistance that, though not strictly “income” in the traditional sense, had the effect of enriching the taxpayer in the course of business. However, notably absent from this list is the term “reward”, which is the very expression used by the Government under the MEIS policy framework to describe the benefit conferred upon exporters.

84. The learned counsel for the assessee, Shri Bindal, submitted that this omission is not incidental but deliberate and significant. He argued that the use of the word “reward” in the MEIS scheme, and its conspicuous absence in the statutory language of Section 2(24)(xviii), must be interpreted as a conscious legislative exclusion. He also contended that while the statute uses expressions such as “subsidy,” “grant,” “incentive,” and “concession,” the scheme departs from these formulations and chooses a distinct nomenclature, thereby distancing itself from the legislative intent underlying Section

2(24)(xviii). It was further submitted that had the legislature intended to bring “rewards” within the tax net, it could have done so explicitly especially since both the MEIS scheme and clause (xviii) were introduced contemporaneously from AY 2016–17. The deliberate exclusion thus affirms the view that MEIS receipts are not taxable.

85. We find considerable force in the above argument. The legislature, in its wisdom, has adopted a wide and inclusive language in Section 2(24)(xviii), covering a range of governmental aids from subsidies to reimbursements. Yet, despite its expansive sweep, the provision does not include “reward.” The use of the phrase “by whatever name called” in clause (xviii) does not automatically encompass every form of State support, especially where the scheme itself is distinct in substance and form. The MEIS scheme was conceptualised not as a profit-linked assistance or cost-reimbursement mechanism, but as a policy instrument to reward exports to incentivised markets, framed under the Foreign Trade Policy. This distinction is not merely semantic but structural. The tradable duty credit scrips awarded under MEIS are not calculated based on cost, loss, or business exigency, but rather as a fixed percentage of FOB value of eligible exports. Such scrips, granted to stimulate economic activity and trade flows, partake the nature of a capital accretion rather than a revenue inflow.

86. In interpreting a charging provision like Section 2(24), it is well-settled that strict construction must apply. One cannot presume a legislative intention to tax a class of receipts

unless such inclusion is unambiguously expressed or implied by necessary and inescapable construction. As the Hon'ble Supreme Court observed in *Ponni Sugars and Chemicals Ltd.* [(2008) 306 ITR 392 (SC)], where a subsidy or grant is linked not to trading operations but to a capital outlay or economic policy, it must be viewed as capital in nature.

87. Further, the contemporaneous introduction of both the MEIS scheme and clause (xviii) of Section 2(24), and the absence of any attempt to align their terminology, reinforces the conclusion that MEIS rewards were not meant to be covered under this clause. A taxing provision cannot be extended by analogy or inference especially where the Legislature has shown itself capable of articulating inclusivity through expansive language. The omission of "reward," despite its repeated and specific usage in the MEIS framework, cannot be treated as accidental.

88. Furthermore, the Government's own notifications and subsequent discontinuance of the scheme reinforce the view that MEIS was neither a recurring nor a revenue-based benefit. In fact, the decision to retrospectively withdraw MEIS benefits for certain sectors affirms that such rewards were viewed as a one-time policy tool rather than an income stream.

89. It is also pertinent to note that the alleged double-counting of Rs.2,64,64,223/- was not a matter of controversy arising from concealment or non-disclosure, but from an inadvertent accounting classification, which was transparently explained and rectified through a revised

computation. The AO's refusal to entertain such correction is unsustainable and contrary to the principles of natural justice and equity. The Tribunal, being the final fact-finding authority, is not precluded by the procedural technicalities of return filing from rendering substantial justice.

90. Thus, after a holistic appraisal of the factual matrix, scheme provisions, statutory context, and judicial precedents, we hold that the MEIS "reward" received by the assessee during A.Y. 2020–21 is a capital receipt, not forming part of taxable income under section 2(24) of the Act. The Assessing Officer is directed to delete the addition made by treating the same as revenue income. Further, the AO shall also rectify the inadvertent duplication of the said amount in the Profit and Loss Account under multiple heads.

91. With respect to Assessment Years 2017–18 and 2018–19, where the assessee had raised similar claims regarding the non-taxability of export incentives under the MEIS, and the AO had proceeded to tax such incentives as revenue receipts, we follow our reasoning hereinabove mutatis mutandis and direct that the said claims be allowed, treating the incentives as capital receipts.

92. Insofar as Assessment Years 2012–13 to 2016–17 are concerned, the issue pertains to the claim raised for the first time before the CIT(A) that MEIS receipts were capital in nature and, therefore, not liable to tax. The CIT(A) declined to entertain the claim on the ground that the assessee had not filed a revised return. In view of the settled position of law as laid down by the Hon'ble Supreme Court in NTPC Ltd.

(supra), and in the absence of any material dispute on facts, we are of the considered view that the claim deserves to be adjudicated on merits. Accordingly, we restore the matter for these years to the file of the AO to examine the claim afresh and to determine, in accordance with law, whether the receipts in question are of a capital nature.

93. Other grounds which have been raised in all the appeals are not adjudicated as same have not been argued before us, the same are dismissed as infructuous. Since on merits the issues have been decided, accordingly other technical grounds are kept open and hence dismissed as infructuous.

**94. In the result, all the appeals for A.Y. 2012-13 to 2018-19 are partly allowed for statistical purposes, and the appeal for 2020-21 is allowed.**

Order pronounced on 31<sup>st</sup> July, 2025.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 31/07/2025  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumba**