

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1318/KOL/2025
(Assessment Year:2013-14)**

**Dy. Commissioner of income
Tax, Central Circle 4(3),
110, Shantipally,
Kolkata-700107, West Bengal**

(Appellant)

**Rajesh Auto Merchandise
Private Limited
2nd Floor, B 2/2 Gillander House,
8, N.S. Road, Kolkata-700001,
West Bengal**

Vs.

(Respondent)

PAN No. AACCR9920R

Assessee by : Shri S.Jhajaria, AR
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 08.10.2025
Date of pronouncement: 15.10.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue against the order of the Commissioner of Income-tax (Appeals) Kolkata-27, (hereinafter referred to as the "Ld. CIT(A)") dated 22.02.2025 for the AY 2013-14.

02. At the outset, we observe from the appeal folder that there is a delay of 17 days in filing the appeal by the department and in support of this a condonation petition was filed. It was stated in the condonation petition that the delay has occurred due to obtaining the administrative approvals from the competent authorities and accordingly, the delay may be condoned. The Id. AR, on the other hand, did not oppose the condonation of delay. Considering the

reasons cited before us, we are inclined to condone the delay and admit the appeal for hearing.

03. The Revenue has challenged the order of learned CIT (A) deleting the addition on merit of ₹1,92,00,000/- in respect of foreign exchange fluctuations loss and ₹79,82,162/- on account of unexplained cash credit on the ground that the learned CIT (A) followed the order of the learned PCIT v. Abhisar Buildwell P. Ltd. (2023)454 ITR 212(SC).

04. After hearing the rival contentions and perusing the materials available on record, we find that the learned AO has made two additions namely; (i) in respect of foreign exchange fluctuations loss of ₹1,92, and ₹79,82,162/- as comprising 60 lacs + 19,82,162/- on account of unexplained cash credit. We find that the learned AO while making the addition has relied on the books of accounts to make these additions as all these items of income/ loss were part of the books of accounts maintained by the assessee. We note that the learned AO has not referred to any incriminating material found and seized during the course of search while making these additions.

05. We further note that in the appellate proceedings, the learned CIT (A) in Para no.5.2.1 to 5.2.3, has discussed the issues and recorded a clear-cut finding that the additions made by the learned AO were not linked to any incriminating material found during the course of search and were in fact the part of the books of accounts maintained by the assessee. Therefore, the learned AO has no jurisdiction in terms of Section 153A of the Act to make these additions as the assessment has attained finality on the date of search. Pertinent to note that in this case the search was conducted on the assessee on 25.09.2020 and on the date of search there was

no pending proceedings and the assessment has already attained finality. We also note that the time limit for issuing notice u/s 143(2) of the Act had also expired. Therefore, in terms of provisions of Section 153A of the Act in case of unabated assessment year, the learned AO has a jurisdiction to make the addition only on the basis of seized material, which is incriminating and found during the course of search and that is not in the case of the assessee. The learned CIT (A) has followed the decision of Hon'ble Apex Court in the case of PCIT v. Abhisar Buildwell (supra). Therefore, we do not find any infirmity in the order of the learned CIT (A) and accordingly, uphold the order of learned CIT (A) by dismissing the appeal of the Revenue.

06. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 15.10.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.10.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata