

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA Nos.1290, 1307 & 1308/Kol/2025
Assessment Years: 2010-11, 2011-12 & 2012-13**

DCIT, CC-2(1), Kolkata.....Appellant

vs.

**Frankdeal Tradcom Pvt. Ltd.....Respondent
6D, Shyamkunj, 12C Lord Sinha Road,
Kol- 7.
[PAN: AABCF1099A]**

**ITA Nos.1309, 1310 & 1311/Kol/2025
Assessment Years: 2010-11, 2011-12 & 2012-13**

DCIT, CC-2(1), Kolkata.....Appellant

vs.

**Amanat Trade Comm Pvt. Ltd.....Respondent
6D, Shyamkunj, 12C Lord Sinha Road,
Kol- 7.
[PAN: AAGCA3278H]**

Appearances by:

Shri Raja Sengupta, CIT-DR, appeared on behalf of the appellant.
Shri Miraj D Shah, AR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 14, 2025

Date of pronouncing the order : October 27, 2025

ORDER

Per Pradip Kumar Choubey, Judicial Member:

All the captioned appeals have been preferred by the assessee for the assessment years 2010-11, 2011-12 & 2012-13 against separate orders of the Commissioner of Income Tax (Appeals)-26, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') respectively. Since, the issues involved in all the appeals are common and relate to the same search operation, therefore, these appeals have been heard together and are

being disposed of by this consolidated order. ITA No.1290/Kol/2025 is taken as lead case for narration of facts.

2. ITA No.1290/Kol/2025 - Brief facts of the case are that the assessee filed its Return of Income u/s 139(1) for the A.Y. 2010-11 disclosing total income of Rs.2,167/- on 17.09.2010. The return was processed u/s 143(1) of the Act. A search and seizure operation was conducted at the office premises of the assessee at 12C, Lord Sinha Road, Shyamkunj, Flat No 6D, Ps Shakespeare Sarani, Kolkata, WB 700071 on 04.02.2020 and subsequent dates and also at 2, Iswar Chatterjee Road, Sodepur. Kolkata -700110 WB on 04.02.2020. Again, a survey operation was conducted at the premise of the assessee at 8/C, Maharshi Debendra Road 6th floor Kolkata-700007 on 04.02.2020. Consequently, notice u/s 153A was issued on 11.02.2021 and assessment was completed u/s 153A r.w.s. 143(3) of the Act on 27.09.2021 on a total income of Rs.5,37,56,220/- after making following additions: 1. Addition u/s 68 of the Act Rs. 5,36,20,000/- 2. Addition u/s 69C of the Act Rs. 1,34,050/-

3. Aggrieved by the said order, the assessee preferred appeal before the Id. CIT(A) wherein the appeal of the assessee has been allowed by following the judgment of Hon'ble Supreme Court passed in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. reported in (2023) 459 ITR 212 dated 24.04.2023 as there was no incriminating material unearthed during the search.

5. Aggrieved and dissatisfied, the revenue filed the present appeal before us by taking following grounds of appeal:

Grounds of Appeal

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 5,36,20,000/- made by the Assessing Officer as unexplained cash credit under section 68 of the Income-tax Act, 1961, in respect of alleged sale of shares held as stock-in-trade to various shell entities, despite clear findings that the transactions lacked genuineness and involved non-existent or untraceable parties?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,34,050/- as unexplained expenditure u/s 69C of the Act on account of expenditure incurred by the assessee towards payments made to entry erators for facilitating predetermined and sham transactions involving the alleged sale of shares held as stock-in-trade to various shell entities under their control?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ignoring that the addition in the present case was made on the basis of document marked as BGHO/9 seized during the course of search and statement of the accommodation entry operator recorded u/s 132(4) of the IT Act, 1961 during the Search operation who admitted to have provided accommodation entries to the assessee company, which makes entries recorded in the books of accounts in this regard, which were seized during the course of Search and Seizure, as incriminating and hence, the Assessing officer rightly assumed jurisdiction u/s 153A of the IT Act, 1961 ?
4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made under Section 153A of the Income-tax Act, 1961, despite the fact that the seized documents, when read in conjunction with post-search enquiries and departmental records, clearly revealed that the investee entities were shell companies with no genuine business activity and the material found during the search established a systematic arrangement of accommodation entries and concealment of income, thereby fulfilling the condition of "incriminating material" as interpreted by the Hon'ble Supreme Court in Principal CIT v. Abhisar Buildwell Pvt. Ltd. [2023] 149 taxmann.com 399 (SC)?
5. That the revenue reserves its rights to substantiate, modify, delete supplement and/or alter any or all grounds of appeal at any the time of appeal proceedings.

5.1 The ld. DR in the course of argument has only submitted that the ld. CIT(A) erred in ignoring the addition on the basis of document marked as BGHO/9 seized during the course of search and statement of the accommodation entry operator during the search operation and mainly relied on the other documents in the course of search.

6. Contrary to that, the ld. AR supports the impugned order thereby submitting that such documents which have been referred by the revenue are nothing but it is a tally of accounting mentioned in the record. The ld. counsel placed before us the document seized being Bundle no.BGHO/9 and submits that it is part of tally accounts record maintained by the assessee in the regular books of account and that cannot be treated as an incriminating material. The ld. AR further submits that there is no denying of this fact that the assessment u/s 153A of the Act falls in an unabated assessment year and there is no incriminating document was found and seized during the search proceedings. The ld. counsel submits that the order passed by the ld. CIT(A) is not required any interference keeping in view the judgment passed by the passed in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra).

7. Upon hearing the submissions of the respective parties and on perusal of the impugned order we find that the assessee being a company, filed its return of income on 17.09.2010 and last date of issuing of notice u/s 143(2) of the Act was 30.09.2011, the date of search conducted u/s 132 of the Act was on 04.02.2020 and notice u/s 153A was issued on 11.02.2021 and assessment passed u/s 153A of the Act on 27.09.2021. On examination of the above facts, it is clear that on the date of search, no assessment or reassessment relating to this assessment year was pending on the date of search. In the assessment year passed u/s 153A, additions were made for alleged transaction of the accommodation entry via sale of shares, payment of commission for the same. Going over the Assessing Officer, we find that the Assessing Officer did not refer any material which is incriminating in nature in respect of these additions. On the other hand, we find that the alleged transactions on sale of shares/receipt of the sale proceeds of

Rs.5,36,20,000/- was reflected in the regular books. It is settled law that regular books of account cannot be considered as incriminating material. It is pertinent to mention here that the additions were made for sale proceeds from shares sold by the assessee which were carried out in the ordinary course of business which were again reflected in the audited books of account. The ld. AR submits that the document seized bearing no.BGHO/9 during the search operation and the relevant parties which are concerned to this assessee are mentioned in pages 51 to 58. Seeing the above documents seized, we find that this is a part of tally accounts and records were mentioned in the regular books of account of the assessee. The Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. stated supra has clearly been laid down that in the case of unabated assessment, the scope of addition in an assessment proceedings u/s 153A of the Act is available only if there is incriminating material found in the course of search and in the absence of any incriminating material, the Assessing Officer has no jurisdiction to make such addition. During the assessment proceedings, the assessee has filed details in respect of the said amount of Rs.5,36,20,000/- received from various private companies. It is further pertinent to mention here that the statement of one Shri N. K. Jain was recorded and no opportunity has been given to the assessee to cross-examine the same qua the statement of third party. We have gone through the impugned order of the ld. CIT(A) and find that the ld. CIT(A) in his order has clearly been held that on perusal of the Panchanama(s) as well as assessment order, the document as inventorised as BGHO/1 to 15, BGHO/HD/1 to 5 and BGHO/PO/01 were seized but in the order of the assessment, there is no mention of this documents that how these are incriminating in nature. The ld. CIT(A) has held in his order that no incriminating documents have been found during search against the assessee relevant to this particular assessment year. In the current case, additions have

been made on the basis of post search enquiry, assessment proceedings and statement of Shri N. K. Jain. Hence, respectfully following the judgment of the Hon'ble Supreme Court in Abhisar Buildwell Pvt. Ltd. (supra), that the disallowances/additions made are not sustainable. We do not find any infirmity in the impugned order. Accordingly, ITA No.1290/Kol/2025 filed by the revenue is dismissed.

8. ITA Nos.1307 to 1311/Kol/2025 - Since the facts and issues involved in all the appeals are identical and arise from the same search action, and no incriminating materials have been found as discussed above, therefore, our findings/directions given above in ITA No.1290/Kol/2025 will mutatis mutandis apply to ITA Nos.1307 to 1311/Kol/2025 also. Hence, ITA Nos.1307 to 1311/Kol/2025 are dismissed.

11. In the result, all the captioned appeals of the revenue are dismissed.

Kolkata, the 27th October , 2025.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 27.10.2025.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches