

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. Nos. 265 & 266, 337 to 340, 382 and 389 & 390/Asr/2024
Assessment Years: 2011-12 to 2019-20

Deputy Commissioner of Income Tax, Jalandhar	Vs.	Ankur Marwaha, 670, Model Town, Jalandhar, Punjab 144001 [PAN: AWCPM 0641B]
(Appellant)		(Respondent)

I.T.A. Nos. 391 & 392, 384 to 388 and 383/Asr/2024
Assessment Years: 2011-12 to 2017-18 and 2018-19

Deputy Commissioner of Income Tax, Jalandhar	Vs.	Ankush Marwaha, 670, Model Town, Jalandhar, Punjab 144001 [PAN: AOFPM 4568L]
(Appellant)		(Respondent)

I.T.A. Nos. 196 and 249 to 251 /Asr/2024
Assessment Years: 2014-15 and 2017-18 to 2019-20

Deputy Commissioner of Income Tax, Jalandhar	Vs.	Rajni Marwaha, 670, Model Town, Jalandhar, Punjab 144001 [PAN: ADWPM 8208P]
(Appellant)		(Respondent)

Appellant by : Sh. K. Mehboob Ali Khan, CIT-DR
Respondent by : Sh. Ashray Sarna, C. A.
Date of Hearing : 05.08.2025
Date of Pronouncement : 30.10.2025

ORDER

Per Udayan Dasgupta, J.M.:

All these *eight* appeals in respect of *Mr. Ankush Marwaha* being Appeal Numbers *391 & 392, and 383 to 388 /Asr/2024*, for the respective assessment years, mentioned above, has been filed by revenue against the orders of the Id. CIT (A) NFAC, Delhi , passed u/s 250 of the Income Tax Act, 1961, dated 25th April, 2024 (*for ITA No. 391 and 392*) and dated 29th April, 2024 (*for ITA Nos. 383 to 388*), all emanating from respective orders of ACIT- Circle – 1, Jalandhar , passed u/s 153A of the Act, 1961, passed on respective dates.

2. Facts of the case and the issues involved being common are taken up together for disposal for the sake of convenience.

3. The grounds taken by the revenue in *ITA No. 391/Asr/2024 for A.Y. 2011-12*, in Form No. 36 are as follows:

"1. Whether on the facts and circumstances of the case and in law, the decision of Id. CIT(A) is perverse as CIT(A) has deleted the addition made in assessment u/s 153A

*by relying on the decision of Hon'ble Supreme Court in the case of **Abhisar Buildwell Pvt Ltd** and holding that in the assessment order the AO has not recognized any incriminating material found during search whereas AO made addition based on the statement recorded during search which constitutes incriminating document?*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) bas erred in deleting the protective addition made in the case of assessee without any basis and by holding that since substantive addition has been deleted in the case of Sh. Chander Sheikhar therefore protective addition in the case of assessee is also deleted?*
3. *Whether the decision of Ld. CIT(A) that addition made on the basis of statement of employees and other persons recoreded during the course of search which are not corroborated with any evidence cannot be said to be based on incriminating material, is in contradiction to the decision of Hon'ble Gujrat High Court in the case of Saumya Construction (P) Ltd. (2017) 81 taxmana.com 292 (Gujarat) where the Hon'ble Coun has defined incriminating material to be material found during search or requisition which reveals undisclosed income?*
4. *Whether the statement of employees and other persons recorded during the course of search constitutes incriminating material as defined by Hon'ble Gujarat High Court on the case of Saumya Construction (P) Ltd (2017) 81 taxmann.com 292 (Gujarat) where the Hon'ble Court has defined incriminating material to be material found during search or requisition which reveals undisclosed income?*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 20,16,56,000/-made on basis of incriminating material on account of production of cigarette in the absence of plausible explanation by the assessee, without going into the merit of the case?*
6. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) was justified in deleting the addition of Rs. 2,03,84,000/- mode on basis of incriminating material on account of production of cigarette filter in the absence of plausible explanation by the assessee, without going into the merit of the case?*

7. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A) was justified in deleting the addition of Rs 10,25,300/- made on account of unaccounted money u/s 69A of the Act in the absence of plausible explanation by the assessee without going into the merit of the case?*
8. *The appellant craves leave to add, amend modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

4. During appeal proceedings the Ld. DR of the revenue has neither filed any paper book nor any written submissions in respect of the above appeals and has only relied upon the assessment order and has submitted that the assessment in the instant cases has been done on *protective basis* and *substantive assessment* has been made in the hands of *Mr. Chandra Sekhar Marwaha* (the father of the assessee) u/s 153A of the Act, which was also subject matter of appeal before the Hon'ble Tribunal.

5. The Ld. DR however, objected to the deletion of the additions by the Ld. first appellate authority, on the grounds contained in the memorandum of appeal in form 36.

6. Per contra the Ld. AR of the assessee, filed a copy of the order of the tribunal in the case of *Mr Chandra Sekhar Marwah in ITA nos. / 110 to 113 and 105 , 108 and 179 o 181 Asr / 2024*, dated 18th October, 2024, covering *Asst years 2011-12 to 2019-20*, and submitted that the assessee relies upon the order of the tribunal for the entire group of cases and has prayed for dismissing the revenue appeal .

7. The Ld. AR further stated that in the instant case , in absence of any incriminating materials found in course of search , the Ld first appellate authority was legally correct in following the law laid down by the Hon'ble Apex court in the case of *Abhisar Buildwell Pvt Ltd reported 150 taxmann.com 257 (SC) [2023]* and deleting all the additions made by the AO on protective basis , and he fully relied on the same.
8. The observation of the Ld. first appellate authority are reproduced as follows:

“Therefore, Hon'ble Apex Court has clearly laid down the scope of assessment u/s. 153A and held the pre-condition of initiation of assessment proceeding u/s 153A for a particular year is the existence of seized material in that year. In case, there is no incriminating material, AO cannot assess or reassess the income.

5.4.2 The basic test of any document being qualified to be incriminating is that it must have some indication of undisclosed transaction/activity, which is not reflected in the books of account or return of income of the person. Therefore, any addition on the basic of these documents, which is not incriminating, cannot be sustained in view of the law laid down by the Hon'ble Supreme Court in the case of PCIT, Central-3 vs. Abhisar Buildwell Pvt. Ltd. reported at 150 Taxmann.com 257 (SC) (2023).

5.4.3 Thus, is observed that the addition has been made on the basis of estimation. The AO has mentioned that no document in support of income declared as business income has been provided by the appellant. Further, no incriminating document has been found during the search to indicate that loan taken from Wakeup Portfolio Management Services Pvt Ltd and in respect of investment in buildings.

5.4.4 In view of the above stated legal position and the facts discussed above, in view of the binding nature of the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt.

Ltd (supra), the additions made by the AO which is not based on incriminating material, is not found sustainable and hence deleted.

5.4.5 This decision of Hon'ble Apex Court In the case of Abhisar Buildwell Pvt Ltd has been followed by the Hon'ble Apex Court in the cases of 'King Buildcon Pvt. Ltd. in Civil Appeal No. 4326/2023 and PCIT Vs. S.S. Con. Build Ltd. reported in 445 ITR 506. Therefore, this issue has now been settled. Also, Hon'ble CBDT has issued Instruction vide Instruction No. 1 dated 23.08.2023 [F No. 279/MISC./M-54/2023-ITJJ in which certain directions have been issued by the Hon'ble CBDT that how the effect to such judgment is to be given. In view of this decision in the Abhisar Buildwell case and in view the Instruction of the Hon'ble CBDT, AO is free to examine the possibility of taking action u/s. 147/148 of the Act subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act.

Accordingly, this ground of appeal is allowed.

5.5 Other Grounds of Appeal Since the addition has been deleted on the issue of no incriminating material was found during the course of search, therefore the addition on this account in various grounds of appeal become infructuous and academic in nature. Hence, require no further adjudication.

6. In the result, the appeal is allowed.”

9. It is seen that all the above cases are directly linked to the search and seizure operation conducted u/s 132 of the Act 61, at the premises of *Mr. Chandra Sekhar Marwah, (the father of the assessee) on 29th October, 2020*, and for proper understanding, the brief facts of the case emerging from the search u/s 132 of the Act 61, is narrated below:

10. The facts of this case in brief are that a search was conducted u/s 132 of the Act 61, at the business and residential premises of the **assessee on 29th October, 2020**

located at Noormahal, Jalandhar, Ludhiana, Phagwara, Mohali, Patiala, Moga, and Ferozpur.

11. The assessee is a business man engaged in the business of real estate, as promoter developer and engaged in other trading activities, and is regularly assessed to tax. Regular return has been filed u/s 139(1) along with copies of audited accounts and assessed accordingly. However, it is pertinent to note that in-spite of a thorough search being conducted at the business and residential premises of the assessee (*Sh. Chander Sheikhar Marwah*), on 29/10/2020, no incriminating documents has been found and there is no SEIZURE of any incriminating materials by the search party.

12. Simultaneously, on the same date, survey u/s 133A of the Act 61, was also carried out at the premises of various business concerns, operating under the trade name of *M/s Inayat Global Private Limited, M/s Karsh Enterprises, M/s IJM International, M/s Nagahia Sons*, all located at Nakodar.

13. The outcome of the survey conducted revealed that all the above business concerns under different trade names, are engaged in ***manufacturing and sale of cigarettes and cigarette filters***, legally owned and operated in the names of different individuals, having different PAN, separate VAT numbers (later on separate GST registration numbers) and different Central excise registration, issued by appropriate authorities.

14. The summary are as follows:

<i>Trade name:</i>	<i>Proprietor / Partner / Director</i>	<i>PAN</i>	<i>Excise / VAT /GST</i>
<i>M/s IJM International</i>	<i>Mr Satish Kumar (prop)</i>	<i>AUNPK5953H</i>	<i>AUNPK5953HEM001</i>
<i>M/s Inayat Global Pvt Ltd</i>	<i>Mr Balram and</i>	<i>AACCI8462M</i>	<i>AACCI8462MEM001</i>
	<i>Mr Vinod Kumar (Directors)</i>		
<i>M/s NAGAHA SONS</i>	<i>Mr Kapil Arora (Proprietor)</i>	<i>AGOPA3579N</i>	<i>AGOPA3579NEM001</i>
<i>M/S Karsh Enterprises</i>	<i>Mr Jaswinder Singh (Prop)</i>	<i>EFZPS6418J</i>	<i>EFZPS6418JEM001</i>

15. The above individuals and the corporate, are all separately assessed to tax and has filed their return of income in normal course and has been assessed accordingly in their respective capacity in due course and the impounded documents if any gathered in course of survey from the respective business premises, has been considered in respective hands.

16. In the instant case , the main contention and ***allegation of the revenue*** is that the various concerns , stated above , engaged in the business of manufacturing and sales of *cigarettes and cigarette filters*, are all controlled , owned and operated by the assessee, himself , running in double shifts manufacturing process, and as a result there has been huge suppression of production and sales of cigarettes and its filters,

throughout the entire block period , year to year , and as such the entire income arising out of the four different manufacturing units, factually, belongs to the assessee and should be brought to tax in the hands of the assessee alone on substantive basis.

17. It is seen that the premises on which the **four** cigarette manufacturing units , were installed , are legally owned by the assessee, but the said premises were already let out / leased out to the above four concerns , vide rental agreements , since their inception of business, and the assessee derived rental income from such concerns, and the said rental income has been duly disclosed by the assessee , in his regular returns , year to year , under the head “ income from house property ”, which proves the fact that ,the said premises are let out/leased out , on rent to the above tenants/ lessees , are already in the knowledge of the department , since inception, and the rental income disclosed in regular returns are duly accepted by the department in normal course.

18. It is also seen that all the above four concerns , are legally owned by the respective persons , under respective PAN , and cigarette manufacturing being under the control of *Central excise authorities* , all the above persons are separately registered before the said authorities and also under the *VAT* , and later under *GST authorities*, as per applicable provisions of respective Acts , and all provisions regarding submissions of returns and statements in usual course of business has also been complied with.

19. All the above persons have been regularly filing their respective returns along with financial statements and has been regularly assessed to tax in normal course, since inception of business.

20. During the course of search at the premises of the assessee and survey at the premises of the cigarette manufacturing concerns, statements of various individuals were recorded, the summary of which are as under:

<i>Names of Persons deposed who deposed before Search team : (page 18 of Remand)</i>	<i>Locus satndi of the persons in relation to search :</i>	<i>Main contents of their depositions:</i>
<i>Vinod Kumar</i>	<i>Director Inayat Global Pvt Ltd</i>	<i>The Assessee Mr Chander Sheikhar Marwaha has been controlling the whole business of all cigarette manufacturing units existing in Nakodar for many years.</i>
<i>Sh Balram</i>	<i>Director Inayat Global Pvt Ltd</i>	
<i>Baldish Singh</i>	<i>Director IJM Enterprises Private Ltd Authorised Signatory M/s Karsh Enterprise</i>	<i>Unaccounted manufacturing and production of cigarette takes place in the units and production is carried out at night shifts, with generators.</i>
<i>Sukhpal singh</i>	<i>Employee</i>	<i>All salaries and wages are</i>

		<i>disbursed in cash and there are approximately 22 employees</i>
<i>Kapil Arora</i>	<i>Director Inderjeet Sons Enterprise Pvt Ltd and Proprietor of Nagahia Sons</i>	<i>per shift.</i> <i>No record of raw material purchase and dispatch of</i>
<i>Deepak Kumar</i>	<i>Supervisor Iniyat Global</i>	<i>finished goods are preserved</i> <i>Different brands of cigarette are manufactured and all the above persons has admitted themselves as Employees of the Assessee.</i>

21. It is also recorded in the remand report that certain documents has been impounded from the premises of M/s IJM International (proprietor Mr. Satish Kumar), marked Annexure A - 8, a register for the period 23/02/2014 to 25/03/2017 , duly authenticated by Central excise Officers and some tax invoices and Annexure - A - 15 , impounded from Mr. Satish Kumar , relating to electric bills , relating to electric meter connection in the names of the assessee Chander Sheikhar and another in the name of his son Mr. Ankush Marwaha.

22. Depositions were recorded from one Mr. Baldish Singh, accountant and an employee of the assessee, and one Mr. Kapil Arora, (proprietor of Nagahia Sons) regarding the modus operandi of manufacturing of cigarettes , which are processed in

two shifts, (working eight hours per shift) and which according to the deponents has remained un - recorded in regular books of accounts, and it has been further alleged that the said goods are transported out of the premises , and sold , without compliance with central excise guidelines and GST compliance.

23. In the back drop of such facts, proceedings were initiated against the assessee u/s 153A of the Act 61, on 22nd November, 2021, in response to which return of income was filed on 12th December, 2021, declaring total income of Rs.21,55,210/-.

24. During course of assessment proceedings, in response to notice u/s 142(1) of the Act 61, full compliance has been made by the assessee, and all documents and explanations, as called for has been filed before the AO, without giving any cognizance to such explanations and submissions, proceeded to determine the total income, in his own way.

25. In course of assessment proceedings the AO, made his own workings and computations as contained in the body of the assessment order , on the basis of statements and depositions of the employees and the other persons , recorded ,during search u/s 132 and survey u/s 133A of the Act 61 , referred to in above paragraphs , and estimated the unaccounted sales of *cigarettes and cigarette filter* and went on to make an addition of Rs.20,16,56,000/- on account of alleged “*unaccounted production and sales of cigarette*” plus an amount of Rs. 2,03,84,000/- on account of *profits from*

cigarette filters, alleged to have been produced and sold by the assessee , in the four cigarette manufacturing , units, namely **M/s Inayat Global Private Limited, M/s Karsh Enterprises, M/s IJM International , M/s Nagahia Sons**, thereby determining the total income at Rs. 22,41,95,210/-, against a returned income of Rs. 21,55,210/-.

26. The matter was carried in appeal and the first appellate authority , being the Ld CIT (A) - 5 , Ludhiana , passed a detailed order considering all aspects of the matter, and has observed that in absence of any SEIZED material , or documents , unearthed during the search , and in the absence of any incriminating materials , the provisions and scope of search cases are governed by the decision of the Hon'ble Supreme Court, in the case of PCIT vs Abhisar Buildwell Pvt Ltd in civil appeal No 6580 of 2021 dated 24/04/2023 (150 taxmann.com 257 (SC) (2023) . In the instant cases , since the assessments are all completed / unabated , on date of search , and no incriminating materials found , no additions can be made by the AO , because the pre - condition of initiation of proceedings u/s 153A for the year does not exist.

27. It is also to be noted that the decision of the Hon'ble Apex court in *Abhisar Buildwell Pvt Ltd.*, is followed by the Hon'ble Supreme Court in the case of "*King Buildcon Pvt Ltd in civil appeal No 4326/2023* and also in the decision of the Apex court in *PCIT vs S S Con Build Ltd (445 ITR 506)* .

28. Respectfully, following the decision of the Hon'ble Supreme Court, the Ld. first appellate authority, deleted the additions and allowed the appeal.

29. The matter travelled to the Tribunal where the revenue filed the appeal and the assessee filed cross objections:

30. The gist of the revenue arguments before the tribunal were as follows:

"The Ld DR , in course of appeal , relied on the assessment order and the contents of the remand report submitted by the AO in appellate proceedings , and argued that the AO has made additions based on the statements of various employees and proprietors / directors of M/s Inayat Global Private Limited, M/s Karsh Enterprises, M/s IJM International , M/s Nagahia Sons, recorded, in course of survey u/s 133A at the premises of the aforesaid concerns and also on the basis of statements of employees of the assessee recorded at the premises of the assessee, u/s 132(4) of the Act 61.

The Ld DR further relied upon the statement of oath given by the employee of the assessee Mr Baldish Singh , alleged to be accountant ,of the assessee , with reference to the impounded registers and documents , A-15 (electricity bills in name of assessee and son) , A-2 (relating to tax invoice of cut tobaccos) , A-8 (evidence of double shift production) , A-13 (documents bearing signatures and stamp of Excise officials) , to support the calculation and computation made by the AO on the basis of such deposition and statements , to arrive at the undisclosed quantity of production and subsequent sales of such goods and for determination of suppressed income on such undisclosed sales , which is the subject matter of addition in the assessment order.

In other words the crux of his argument is that , even though no incriminating materials has been found in this search at the premises of the assessee, the deposition and the statements, as recorded by the search and survey team at the premises of the assessee and other four parties , given by the employees and other person , present at the search and survey premises, can be considered as incriminating material , for the purpose of initiating proceedings u/s

153A of the Act 61 , and the Ld CIT(A) was not legally justified in deleting the addition of Rs. 22.41 crores, relying on the judgment of the Hon'ble Supreme court in the case of “ Abhisar Buildwell Pvt Ltd ” , and in support of his contention the Ld DR relied upon the judgment of the Honb'le Gujrat High court in the case of PCIT vs Saumya Constructions (P) Ltd. 387 ITR 529 (Gujrat) dated 14th march, 2016, (which incidently is much earlier to the Hon'ble Apex court judgment in Abhisar Buildwell Pvt Ltd passed on 24th April, 2023).

As such Ld. DR prayed for restoration of the assessment order.”

31. The arguments of the Ld. AR before the tribunal was as follows (relevant portion reproduced):

“On the other hand the Ld AR of the assessee , at the onset referred to the fourth proviso of section 153A of the Act 61 , to submit that in the instant case , that the AO does not have any material whatsoever in his possession , on the basis of which he could issue a notice u/s 153A of the Act 61 .

The relevant portion reads as under:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless— (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years; (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Thereafter, he further submits that whatever documents that has been impounded and referred to in the assessment order and the remand report , has been impounded from the premises of the four parties who are engaged in the manufacturing activity and was under survey u/s 133A of the Act 61, and all such entries has been duly recorded in their respective books (

including central excise returns and GST returns) and books of accounts and regular returns filed in normal course and duly considered in respective hands in assessment proceedings, to which the assessee is not involved , because all the other four parties , are separate and distinct from each other and in the instant case nothing has been SEIZED from the premises of the assessee .”

“Assessee arguments on merits of the case before the Tribunal:

Sir, it is submitted that addition has been made in the hands of assessee for the reason that as per Ld. AO assessee carried unaccounted production of cigarettes/filter during the year under consideration but there is reference in the assessment order to substantiate the fact that there was any unaccounted production for the year under consideration. There was no material found during the search which could prove/show that assessee carried unaccounted production.

Sir, during the course of assessment proceedings notices were issued to the assessee to which assessee stated as under:

“Neither I nor my family have any business interest in the companies/firm dealing in manufacturing of cigarettes. In this connection it is submitted as follows:

- It is fact that my family own business premises of the factory where the business of manufacturing of cigarette has been conducted.*
- The person to whom we have rented out the property is running the business.*
- The Excise license /GST number/VAT number is in the name of the person who is running the business*
- The rent deed of the premises is already available with your goodself in the seized record and there is also an affidavit confirming the fact that the same person is running business in his own name and we do not have any business connection with him.”*

Sir, it is submitted that addition has been made in the hands of assessee for the reason that as per Ld. AO assessee carried unaccounted production of cigarettes/filter during the year under consideration, whereas it relevant to consider the following points:

- 1. That no unaccounted sale/receipt was found during the search.*
- 2. That no unaccounted purchase was found during the search.*
- 3. That no unaccounted/unexplained diary was found during the search.*
- 4. That no unaccounted/excess/short stock was found during the search.*
- 5. That no unaccounted production was found during the search.*
- 6. That no unaccounted machinery was found during search.*
- 7. That no unaccounted labour was found during the search.*
- 8. That no unauthorized movement of stock was found during the search.*
- 9. That no unaccounted debtor/creditor/expense was found during the search.*
- 10. That no proof of under billing / over billing was found during the search.*
- 11. That no mismatch have been found with VAT/GST Authorities during the search.*
- 12. That RG-1 registers, books, documents of the respective concerns were found and seized which duly reconciled with returns and books/balance sheets filed to the departments.*

Sir, relevant facts of the case of assessee are submitted as follows:

- All the time, when manufacturing process were undertaken from 2012 to 2017, it was mandatory as per para 10 of instructions dated 24.12.2008 issued vide F. No. 224/37/2005 by CBEC that round the clock presence of central excise office in the factory is required to control and supervise the operation of cigarettes. Copy of said circular is enclosed herewith.*
- The central excise official marked with seal the production machinery when they leave the factory premises and deseal the same only on our request for production. This fact can be verified from the RG 1 register of the respective firms/companies which was filed before the assessment and appellate proceedings.*

- *Ld. AO during assessment proceedings made enquiry from Central Excise department wherein the sale/ production had been confirmed.*
- *That Ld. AO during post search enquiry issued hundreds of letter to different persons to enquire about the purchase and sales made out of books of accounts but failed to establish that any transaction of sales or purchases made outside the books of accounts.*
- *That assessee and related respective concerns are regularly filing income tax return and assessee has disclosed and filed true facts to all the authorities.*
- *That your attention is drawn to the fact that M/s IJM International, M/s Inayat Global Pvt. Ltd, M/s Karsh Enterprises, M/s Nagahia Sons were in cigarette manufacturing and since beginning of this there was round the clock presence of Central Excise Officer, so that there is no unauthorized removal of goods and there is proper supervision and control over operations of the these concerns. Thus unaccounted sales/production is not possible as the premises were thoroughly checked by the Excise department and was totally under the control of Excise department. The circular dated 01.05.2017 no.1055/04/2017-CX is enclosed herewith which justifies the claim of assessee. Thus there is no possibility of unauthorized/unaccounted production.*
- *The copy of RG-1 which reflects daily production and bears the signature of excise authority/officer who is supervising the production of the respective concerns along with other relevant details with respect to machinery etc which was filed before the assessment and appellate proceedings. These registers are part of seized material also and this fact can be verified from the Ld. AO also.*
- *That the premises were totally under the control of excise department. The goods were removed with the authorization of the Superintendent only. When the productions stops the machines were sealed with proper stamping on it and later next day when production starts the seal was removed by the superintendent only and there was no interference by the assessee.*
- *The addition made in the hands of assessee raises the question on the excise authorities because the production in the respective concerns was always under their supervision and monitored by them, more so when office has already obtained information from the Central Excise Department in this respect.*

- *That these facts were stated to the ld. AO also during the assessment proceedings also but he has not rebutted the same in the entire body of assessment order and merely relied on statement recorded.*
- *Sir, if the entire working is viewed by the Central Excise officer round the clock there is no chance of unaccounted production or under reported manufacturing .*

Sir, no attention was given to the above stated points nor to our submissions and the AO never rebutted our facts and mentioned only the statement of the employees recorded during search. Whereas , no attention was given to the facts that the employees whose statement has been considered were contradicting and changing there own statements and they were recorded under pressure and they threatened time to time during the course of recording of statements.”

32. Moreover, in the order it is stated that total production of Cigarette packets in four units is 7,28,00,000 packets or more as per the relevant year which is totally baseless and without considering the fact that neither assessee nor his family members have interest in these firms. They have only given factory premises on rent which has been evident from the rent deeds seized during the course of search. Further the facts contradictory to the allegations made against assessee is given as follows:

- *All the four unit where the business of cigarette is being run were monitored by Central Excise department till June, 2017.*
- *Time to time inspection was made by the superintendent level officer of these units and during search your goodself seized record of the same wherein no officer from 2012 to 2017 ever made any comment about the ownership of these business at the time of inspection or audit.*

- *All the time, when manufacturing process were undertaken from 2012 to 2017, it was mandatory as per para 10 of instructions dated 24.12.2008 issued vide F. No. 224/37/2005 by CBEC that round the clock presence of central excise office in the factory is required to control and supervise the operation of cigarettes. Copy of said circular is enclosed herewith.*
- *Had assessee or family were having any interest in the said business then the officer sitting all the time there and the officer monitoring production from time to time must have pointed out that the real owner are not the same who are running the business.*

33. Thus, considering the fact that no unaccounted production was undertaken by assessee and other facts stated above and following case laws cited above, it is requested that no adverse inference may kindly be drawn against the assessee and addition made in the hands of assessee may kindly be deleted.

34. *The assessee arguments on legal grounds that no incriminating materials were found:*

1) SUBMISSIONS ON LEGAL GROUND THAT NO INCRIMINATING MATERIAL WAS FOUND DURING SEARCH:

During the year assessee was engaged in the Trading and real estate business and has filed his original returns for all the years and declared his income which is assessed and processed u/s 143(1) of the Act by the department before the date of search.

A search /seizure operation was conducted on business as well as at the residential premises of IJM Group wherein the contention was raised against the assessee that he is engaged in the alleged business of manufacturing cigarettes / filters during the year and the same has been unaccounted by the assessee in his returned income.

Sir it is submitted that no incriminating material was found during the course of search. The addition is made on the basis of estimation and assumption and on the basis of alleged statement of employees of the assessee recorded at the time of search during the FY. 2020-21 whereas no documents pertaining the years under consideration were found during the search and seizure operation.

Sir, the entire addition was made on account of alleged unaccounted production of cigarettes/filter that too on the basis of the statement of the various persons recorded at the time of survey /search operation conducted on 29.10.2020, wherein no documents or evidence were found in respect to any products / manufacturing for sale for cigarettes / filter. Moreover statements of the employees were taken under pressure as they were continuously provoked and threatened by the sections of income tax Act that would be imposed to them and also those statements were contradicting.

Therefore, present case is a case where no proceedings for AY 2011-12 to AY 2019-20 were pending on the date of search and hence the said assessment did not abate. Therefore, in such a situation when the assessment has attained finality and has not abated and no incriminating material qua impugned addition was found as a result of search, which is evident from a plain reading of the assessment order, which also mentions that addition has been made only on the basis of statement recorded during search.

Sir, this issue is also settled by The Hon'ble Supreme Court of India in the case of PCIT-3 vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 vide order dated 24.04.2023 in which it is made clear that no addition can be made in case no incriminating material was found during search u/s 132 of the Income Tax Act. This fact is also accepted by the Hon'ble CIT(A)-5 in his order and considering this he passed order in the favour of assessee.

In support of this reliance is being placed upon the following decisions:

PRINCIPAL COMMISSIONER OF INCOME TAX & ORS. vs. MEETA GUTGUTIA PROP. FERNS 'N' PATELS & ORS. (2017) 152 DTR 153(Del.)

Search and Seizure—New scheme of assessment in search cases—Validity of invocation of Section 153A—On basis of documents recovered during search and seizure operation, notice

u/S. 153A was issued to Assessee—AO invoking section 153A passed assessment order against assessee—CIT(A) and Tribunal held that assumption of jurisdiction under Section 153A for said AYs was bad in law—Held, if no incriminating material was found during course of search in respect of an issue, then no additions in respect of any issue could be made to assessment under Section 153A and 153C—There was no such statement in present case which could be said to constitute admission by Assessee of failure to record any transaction in accounts of Assessee for AYs in question—Disclosure made in sum was only for year of search and not for earlier years—As already noticed, books of accounts maintained by Assessee in present case was accepted by AO—In case of Commissioner of Income Tax (Central-III) v. Kabul Chawla (2016) 380 ITR 573 (Del) Court held that completed assessments could be interfered with by AO while making assessment under Section 153 A only on basis of some incriminating material unearthed during course of search or requisition of documents or undisclosed income or property discovered in course of search which were not produced or not already disclosed or made known in course of original assessment—Assessment in respect of each of six assessment years was separate and distinct assessment—U/s.153A, assessment had to be made in relation to search or requisition, namely, in relation to material disclosed during search or requisition—If in relation to any assessment year, no incriminating material was found, no addition or disallowance could be made in relation to that assessment year in exercise of powers under section 153A and earlier assessment should have to be reiterated—There was no such statement in present case which said to constitute an admission by Assessee of failure to record any transaction in accounts of Assessee for AYs in question—Court was of view that ITAT was justified in holding that invocation of Section 153A by Revenue for AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

CIT-II, Thane vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 58 taxmann.com 78 (Bom HC)

IT: No addition can be made in respect of assessments which have become final if no incriminating material is found during search.

It is submitted, at the cost of repetition, that there was no incriminating material found during Search qua. It is an admitted fact that original return was filed and later it was processed and search in the present case was carried upon on 2020 that is much after the date of completion of

processing. Therefore, in view of above submissions and judgments, jurisdiction assumed by Ld. AO u/s 153A/143(3) is bad in law and impugned assessment order may please be quashed.

2) SUBMISSIONS ON THE LEGAL GROUND THAT ADDITION IS BASED ON STATEMENT OF EMPLOYEES ONLY, WHICH WAS RECORDED DURING THE SEARCH.

It is submitted that in the present case addition is made on the basis of statement of employees recorded during the search which is not supported by any credible evidence. Sir, in this case addition is made on the basis of statements of employees only and not the basis of statement of assessee himself or his family. Moreover statements of the employees were taken under pressure as they were continuously provoked and threatened by the sections of income tax Act that would be imposed to them and also those statements were contradicting. These statements recorded and utilized as the sole basis for making addition in the hands of assessee group is not at all supported/corroborated/substantiated by any credible material/document/loose sheet etc. In the entire body of assessment order Ld. AO is merely relying and reproducing the statement of employees only and these are not supported/corroborated/substantiated by any evidence or document.

Sir, your attention is drawn to of the Assessment order where in the addition is made only on the basis of statement of employees recorded during the search and no incriminating material was found during search which could support the statements made against the assessee group.

Sir, moreover proceedings are not justifiable wholly on the basis of sworn statement recorded in the course of search/survey in the absence of any other tangible evidence available with the Assessing Officer as the material collected and the statement obtained u/s 131 would not automatically bind upon the assessee. This issue had been considered in the case of CIT, Salem v. M/s.S.Khader Khan Son (2012) 254 CTR (SC) 228 : (2013) 352 ITR 480 (SC) : (2012) 210 TAXMAN 248 (SC) wherein the Bench stated that the word "may" used in Section 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, made it clear that the materials collected and the statement recorded during the survey under Section 133A were not conclusive piece of evidence by itself. Following the circular F.No.286/2/2003 of the Central Board of Direct Taxes dated 10.3.2003, it was

concluded that the materials collected and the statement obtained under Section 133A would not automatically bind the assessee.

35. In the instant case there was not a shred of material apart from the statement recorded during search.

Observation of the Hon'ble Tribunal in ITA / 110/ASR/2024

36. We have heard the rival submissions at length on all the issues and considered all the materials on record and the written arguments and submissions filed by the assessee, which is taken on record.

37. We are of the opinion that, in the instant case no incriminating materials has been found from the premises of the assessee in course of search and seizure carried out u/s 132 of the Act 61 , in fact no materials has been found and the entire assessment has been based on estimation of alleged suppression of production of cigarette and filters, worked out on the sole basis of statements of employees and other persons recorded in course of survey u/s 133A carried out in adjoining premises of the four manufacturing units , which admittedly belongs to other parties , who are all legally distinct and separate entities , with separate PAN, Central Excise registration, GST registration, income tax returns and separate assessments . Any document impounded in form of registers and annexures as stated in the remand report, has been collected from the four separate units, and the impounded documents has already been

considered while framing assessments of such manufacturing units, if the same is found unrecorded in regular books of accounts, to which the assessee cannot be under any concern. Moreover, it is already explained and put on record, that whatever documents has been found and impounded in survey proceedings related to the aforesaid four concerns, are duly accounted for in regular books of accounts and relevant registers and are already before the AO and no adverse inference has been drawn.

38. Moreover, we are also in agreement with the submission and explanations of the assessee , as recorded in the above paragraphs , regarding control and supervision of the entire quantity manufactured and sales thereof , being done under Central Excise authorities , and duly recorded in appropriate register , stamped and authenticated by Central Government officers, and as such the suppression of production and sales in this cases are ruled out, without any documentary evidences , being brought to the contrary.

39. However, we are also in agreement with the decision of the Ld CIT (A) , that in absence of any incriminating materials found and SEIZED in course of search , from the premises of assessee, we are bound by the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt Ltd (supra)* , and initiation of proceedings by issue of notice u/s 153A , cannot be undertaken simply on the basis of recorded

statement and depositions of employees of the assessee, in absence of any incriminating materials brought on record and statements of employees, cannot be considered as incriminating materials, unless supported by corroborative evidences.

40. Moreover, in the instant case the assessment proceedings for the Asst year was already completed / unabated proceedings, and in absence of any incriminating materials found in course of search, relating to the year, the same cannot be disturbed.

41. Before we conclude, we note that both the judgements referred to by the revenue in the grounds of appeal, namely *Saumya Construction (P) Ltd, (Gujrat HC) 2017 / 81 taxmann.com 292* and the judgment in the case of *M/s Kesarwani Zarda Bhandar Sahson, Allahabad*, has already been considered by the Hon'ble Apex Court, in this order, and the law has been laid down by the Hon'ble court.

42. Relevant portion of the observation of the Hon;ble Apex court is reproduced for ready reference:

“13. For the reasons stated here in above, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

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

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. 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."

43. As such the appeal of the revenue is dismissed being devoid of merits.

44. The relevant portions of the appeal case in the matter of Mr. Chandra Sekhar Marwaha (*the father of the assessee*) (*ITA No 110/ASR / 2024 dated 18/10/2024*), has been referred to above laying down the entire facts of the matter.

45. It is the same addition amounting to *Rs. 20.16 crores* on account of cigarette production and an addition of *Rs.2.03 crores* on account of production of cigarette filters, has been made in this case on "*protective basis*".

46. The Tribunal in the above appeal matter, has already arrived at the conclusion that in absence of any incriminating materials being found in course of search , we are

legally bound by the law laid down by the Hon'ble Apex court in case of *Abhisar Buildwell Private Limited (supra)* and the law is well settled that completed assessment cannot be disturbed in absence of any incriminating materials being found in course of search.

47. As such in the instant case also we hold that the AO does not have any material whatsoever in his possession, on the basis of which he could issue a notice u/s 153A of the Act 61, and as such we uphold the order of the Ld. CIT (A) on all the grounds contained therein, and consequently, the revenue appeal on all the grounds stands dismissed.

DCIT v. Ankush Marwaha in ITA Nos. 392, 384 to 388 and 383/Asr/2024 for Asstt. Years: 2012-13 to 2017-18 and 2018-19:

48. Facts of all these cases are identical and our observations and findings in ITA No. 391/ASR /2024, will apply *mutatis mutandis* to the aforesaid appeals and as such we uphold the order of the Ld. CIT(A) on all the grounds contained therein, and consequently, the revenue appeal on all the grounds stands dismissed.

DCIT v. Ankur Marwaha in ITA Nos. 265 & 266, 337 to 340, 382 and 389 & 390 /Asr/2024 for Asst Years: 2011-12 to 2019-20.

49. Grounds of appeal taken by the revenue in ITA No. 265/Asr/2024 for A.Y.2011-12 in Form No. 36 are as follows:

- “1. Whether on the facts and circumstances of the case and in law, the decision of Id. CIT(A) is perverse as CIT(A) has deleted the addition made in assessment u/s 153A by relying on the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd* and holding that in the assessment order the AO has not recognized any incriminating material found during search whereas AO made addition based on the statement of employees recorded during search which constitutes incriminating document?
2. Whether the decision of Id. CIT(A) that addition made on the basis of statement of employees and other persons recorded during the course of search which are not corroborated with any evidence cannot be said to be based on incriminating material, is in contradiction to the decision of Hon'ble Gujrat High Court in the case of *Saumya Construction (p) Ltd.* [2017] 81 taxmann.com 292 (Gujarat) where the Hon'ble Court has defined incriminating material to be material found during search or requisition which reveals undisclosed income?
3. Whether the statement of employees and other persons recorded during the course of search constitutes incriminating material as defined by Hon'ble Gujarat High Court in the case of *Saumya Construction (p) Ltd.* [2017] 81 taxmann.com 292 (Gujarat) where the Hon'ble Court has defined incriminating material to be material found during search or requisition which reveals undisclosed income?
4. Whether on facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition made by AO u/s 153A of the Act for the A.Y.2016-17 where the addition has been made on the basis of incriminating material in the A. Y. 2021-22 and ignoring the decision of Hon'ble Supreme Court in the case of *M/s Kesarwani Zarda Bhandar Sahson, Allahabad* in Civil Appeal Nos. 7738 7739/2021, 7736 7737 /2021.7732-7735/2021 and 7710 7743/2021 wherein the Hon'ble Supreme Court has

upheld the order of Allahabad High Court and held that once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments?

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the unexplained business receipts of Rs. 20,16,56,000/- on account of unaccounted production of cigarettes in the absence of plausible explanation by the assessee, without-going into the merit of the case ?*
8. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the unexplained business receipts of Rs.2,03,8,000/- on account of unaccounted production of cigarette filters in the absence of plausible explanation by the assessee, without going into the merit of the case?*
7. *The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

DCIT v. Ankur Marwaha in ITA Nos. 266, 337 to 340, 382 and 389 & 390 /Asr/2024 for Asst Years: 2012-13 to 2019-20.

50. Facts of all these cases are identical and our observation and findings in ITA No. 391/ASR/2024, will apply *mutatis mutandis* to the aforesaid appeals and as such we uphold the order of the Ld. CIT(A) on all the grounds contained therein, and consequently, the revenue appeal on all the grounds stands dismissed.

DCIT v. Rajni Marwaha in ITA Nos. 196 and 249 to 251/Asr/ 2024 for Asstt. Years: 2014-15 and 2017-18 to 2019-20.

51. Grounds of appeal taken by the revenue in **ITA No. 196/Asr/2024 for A.Y. 2014-15** in Form No. 36 are as follows:

- “1. Whether on the facts and circumstances of the case and in law, the decision of Id. CIT(A) is perverse as CIT(A) has deleted the addition made in assessment u/s 153A by relying on the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd and holding that in the assessment order the AO has not recognized any incriminating material found during search whereas in para 19 of the Assessment Order, the AO has clearly mentioned that the incriminating material was seized from the residence of assessee?*
- 2. Whether on facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition made by AO u/s 153A of the Act for the A.Y. 2014-15 and ignoring the fact that the addition on the basis of incriminating material was made in the A.Y. 2021-22 and also ignoring the decision of Hon'ble Supreme Court in the case of M/s Kesarwani Zarda Bhandar Sahson, Allahabad in Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021 has upheld the order of Allahabad High Court and held that once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total Income even in Case of completed/unabated assessments?*
- 3. Whether on facts and circumstances of the case and in law, the documents seized from the residence of the assessee pertaining to transaction of payment for change of Land Use (CLU) amounting to Rs. 32,30,580/- source of whose payment could not be explained by the assessee, will not be considered as "incriminating documents" for the purpose of assessment u/s 153A as upheld by the Hon'ble ITAT, Amritsar Bench in ITA No. 171/Asr/2023 in the case of Sh. Manmohan Singh?*

4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the unexplained business receipts of Rs. 8,85,600/- on account of unexplained money u/s 69A of the Act in the absence of plausible explanation by the assessee, without going into the merit of the case?*
5. *Whether n the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,550,00,000/- on account of unverified transaction of unsecured loan received as unexplained money u/s 69A of the Act in the absence of plausible explanation by the assessee, without going into the merit of the case?*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 36,94,002/- on account of unverified transaction of payment Land Use (CLU) received as unexplained money u/s 69A of the Act in the absence of plausible explanation by the assessee, without going into the merit of the case?*
7. *The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appe*

DCIT v. Rajni Marwaha in ITA Nos. 249 to 251/Asr/ 2024 for Asstt. Years: 2017-18 to 2019-20.

52. Facts of all these cases are identical and our observation and findings in ITA No 391/ ASR / 2024, will apply *mutatis mutandis* to the aforesaid appeals and as such we uphold the order of the Ld CIT (A) on all the grounds contained therein, and consequently, the revenue appeal on all the grounds stands dismissed.

53. As such in the instant case also we hold that the AO does not have any material whatsoever in his possession, on the basis of which he could issue a notice u/s 153A of the Act 61, and as such we uphold the order of the Ld. CIT (A) on all the grounds contained therein, and consequently, the revenue appeal on all the grounds stands dismissed.

54. In the result, all the appeals filed by the revenue are dismissed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 30.10.2025

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order