

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 910 and 911/MUM/2025
Assessment Year: 2015-16 and 2016-17**

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| Span Creators 502, Inizio, Cardinal Cracious Road, Opp. P&G Plazza, Chakala, Andheri (East), Mumbai -400099 [PAN: ACMFS7811F] | Vs. | Deputy Commissioner of Income-tax, Central Circle 1, Thane |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri Tarang Mehta, CA
Revenue : Shri R.A Dhyani, CIT DR

Date of Hearing : 09.10.2025
Date of Pronouncement : 31.10.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the orders of CIT (A), Pune - 11, vide order Nos. ITBA/APL/S/250/2024-25/1071396526(1) and ITBA/APL/S/250/2024-25/1071397067(1), dated 20.12.2024 passed against the assessment order by DCIT, Central Circle-1, Thane, u/s. 143(3) r.w.s. 153A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.03.2022 for AY Assessment years 2015-16 and 2016-17, respectively.

2. Grounds taken by assessee are reproduced as under:

ITA No. 910/MUM/2025

1. *The learned CIT(A) has erred in confirming the order passed by the Assessing Officer u/s 153A of the Income Tax Act, 1961 ("the Act") which is bad in law, illegal and void.*
2. *The learned CIT(A) has erred in not holding that the assessment order is bad in law for want of approval u/s. 153D of the Act.*
3. *The learned CIT(A) has erred in not holding that the assessment order is bad in law as the DIN was not mentioned on the approval granted u/s. 153D of the Act as per the CBDT Circular No. 19/2019 dated 14 August 2019.*
4. *The learned CIT(A) has erred in not holding that the assessment order is bad in law considering the fact that approval obtained u/s. 153D of the Act is without application of mind.*
5. *The learned. CIT(A) has erred in confirming the addition of Rs. 1,00,00,000/- arising due to alleged accommodation loan without appreciating that no incriminating evidence has been found during the course of search in respect of alleged accommodation loan,*
6. *The learned CIT(A) has erred in not appreciating the fact that the AO has not provided sufficient opportunity to the appellant to make the submission. Accordingly, the assessment order passed by making the addition is in violation of principle of natural justice.*
7. *The learned CIT(A) has erred in rejecting the documents filed by the appellant as additional evidence treating the same as make-believe documents and holding the same as not sufficient to discharge the onus u/s. 68 of the Act.*

ITA No.911/MUM/2025

1. *The learned CIT(A) has erred in confirming the order passed by the Assessing Officer u/s 153A of the Income Tax Act, 1961 ("the Act") which is bad in law, illegal and void.*
2. *The learned CIT(A) has erred in not holding that the assessment order is bad in law for want of approval u/s. 153D of the Act.*
3. *The learned CIT(A) has erred in not holding that the assessment order is bad in law as the DIN was not mentioned on the approval granted u/s. 153D of the Act as per the CBDT Circular No. 19/2019 dated 14 August 2019.*
4. *The learned CIT(A) has erred in not holding that the assessment order is bad in law considering the fact that approval obtained u/s. 153D of the Act is without application of mind.*
5. *The learned. CIT(A) has erred in confirming the addition of Rs. 2,00,000/-, arising due to alleged accommodation loan without appreciating that no incriminating evidence has been found during the course of search in respect of alleged accommodation loan.*
6. *The learned CIT(A) has erred in not appreciating the fact that the AO has not provided sufficient opportunity to the appellant to make the submission, Accordingly, the assessment order passed by making the addition is in violation of principle of natural justice.*
7. *The learned CIT(A) has erred in rejecting the documents filed by the appellant as additional evidence treating the same as make-believe documents and holding the same as not sufficient to discharge the onus u/s. 68 of the Act.*

8. *The learned CIT(A) has erred in confirming the addition of Rs. 2,00,000/-, being alleged negative cash balance, arising due to alleged accommodation loan of Rs. 92,00,000/-*

2.1. The moot contention of the assessee, out of the above stated grounds of appeal is on ground no.5 whereby it is contested that addition made of Rs.1 Crore in Assessment Year 2015-16 and of Rs.2 lacs in Assessment Year 2016-17 in alleging it as accommodation loan is not based on any incriminating material found and seized during the course of search of the assessee.

3. Brief facts of the case to deal with the above stated issue are that assessee is a part of group engaged in the business of construction and sale of residential and commercial buildings. A search and seizure action u/s.132 was carried out on 12.01.2021 on the business as well as residential premises of the Span Group including the assessee. Considering the date of search, both the years under consideration before us are unabated years within the meaning of section 153A on which there is no dispute. Assessee had originally filed its return of income on 28.08.2015 for Assessment Year 2015-16, reporting total income at Rs.2,331/-. Consequent to search, notice u/s.153A was issued on 16.07.2021. In course of post search assessment, ld. Assessing Officer noted about the pre-search investigation and study carried out which gave rise to an understanding that assessee group has taken several loans from dummy companies which are nothing but mere accommodation loans taken in lieu of cash payments. Explanations were called for against which assessee denied the loans to be accommodation loans and claimed them to be genuine.

3.1. Further, ld. Assessing Officer took note of a search/survey action conducted in the case of Rajesh Lifespace Group on 10.03.2016

alongwith its associated entities. From this search, it was noted that Rajesh Lifespace Group had admitted on oath that the loans received from Yuvika Impex Pvt. Ltd. are accommodation entries in lieu of cash. He further, noted that income on these loan transactions has been offered by Rajesh Estate and Nirman Pvt. Ltd. as its income which formed the basis for the ld. Assessing Officer to conclude that loan taken by Rajesh Estate and Nirman Pvt. Ltd. and given by Yuvika Impex Pvt. Ltd. are transactions of accommodation entry. For the assessee, he noted that it had taken accommodation loan amounting to Rs.1 Crore from Yuvika Impex Pvt. Ltd., which is alleged as a dummy company. A cash flow was prepared by the ld. Assessing Officer in order to ascertain the exact and correct quantum involved in these accommodation loans taken, with year-wise break up, which is as noted below:

| Sr. No. | Assessment Year | Amount |
|---------|-----------------|-------------|
| 1. | 2015-16 | Rs. 1 Crore |
| 2. | 2016-17 | Rs. 2 lakh |

3.2. Thus, by taking the details arising from the search action on 10.03.2016 in the case of Rajesh Lifespace Group, ld. Assessing Officer completed the assessment by making an addition of Rs.1 Crore in Assessment Year 2015-16 and Rs.2 lakh in Assessment Year 2016-17, u/s.68. In the first appeal, ld. CIT(A) confirmed the additions so made by ld. Assessing Officer.

4. Before us, at the outset, ld. Counsel for the assessee asserted that the addition made by ld. Assessing Officer are devoid of any incriminating material relating to the said addition found during the course of search in the case of the assessee, more particularly when the assessment years involved are unabated years. He submitted that ld. Assessing Officer had in fact relied upon the information obtained from

the search conducted in the case of “other person” for making the impugned addition. Ld. Assessing Officer ought to have assessed the said income, if at all warranted, u/s.153C by complying with the requirements of the said section and not in the impugned assessment made u/s.153A. For this, reliance is placed on the decision of the Hon'ble Jurisdictional High Court of Bombay in the case of Sejal Jewellery and another W.P. No. 3057 of 2019, dated 18.02.2019.

4.1. Per contra, ld. CIT DR placed reliance on the orders of the authorities below and asserted that assessee failed to prove genuineness and credit worthiness of the loans and hence the addition made is justified.

5. We have heard both the parties and perused the material on record. Undisputed facts are that the years involved in the present appeal are unabated years considering the date of search in the case of assessee. Also, the addition made is based on material found during the course of search action in the case of Rajesh Lifespace Group which was undertaken on 10.03.2016. In the impugned assessment order, from its perusal, we note that there is no reference to any specific incriminating material found and seized from the assessee in the case of its own search conducted on 12.01.2021. Also, while resorting to the material found during the course of search action in the case of Rajesh Lifespace Group which took place on 10.03.2016, there is no specific reference to any incriminating material except for general statement of making a reference of “*bundles seized from the premises indicates on-money received by various entities of the group and also expenses incurred in cash by them*”. In these given set of facts, issue raised before us through ground no.5 is no longer *res integra* as settled by Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Private Ltd. [454] ITR

212 (SC), wherein, it is held that no addition can be made by the Assessing Officer in absence of any incriminating material found and seized during the course of search.

5.1. Hon'ble Supreme Court in para 14 in the above case has categorically held as follows :-

"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.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

6. In these circumstances, respectfully following the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (supra), as no incriminating material has been unearthed during the course of search of the assessee for the relevant assessment year, no addition can be made by the AO in the impugned assessment. Consequently, the addition so made by the Id. Assessing Officer is deleted. Ground no.5 is allowed in both the appeals, since the factual position is identical except for quantum of addition. Since both the appeals of the assessee are

allowed in terms of above findings, all other ground raised by the assessee are rendered academic and therefore not adjudicated upon.

7. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 31 October, 2025

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 October, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai