

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &  
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

**ITA Nos. 1633 to 1637/Del/2025  
(Assessment Years: 2012-13 to 2016-17)**

M/s SNW Smith Consultants Pvt. Ltd. 306 and 307, 3 <sup>rd</sup> Floor, DLF Place, Plot No.A-4 District Centre, Saket, New Delhi – 110017	Vs.	ACIT, Central Circle-05 ARA Center Jhandewalan Extension New Delhi – 110055
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAKCS4626B		
Appellant	..	Respondent

Appellant by :	Hasneeta Matta, Adv, & Mahan Kalra, Adv.
Respondent by :	Sh. Mahesh Kumar, CIT, DR

Date of Hearing	13.11.2025
Date of Pronouncement	21.11.2025

ORDER

**PER KRINWANT SAHAY, AM:**

Appeals in these cases have been filed against the order dated 14.01.2025 passed by the Ld. CIT(A) NFAC, New Delhi for Assessment Years 2012-13 to 2016-17 respectively. Since, ground

of appeals and issues involved in all the appeals are the same and they were heard together, therefore, all these appeals are being decided by this common order for the sake of convenience.

### **ITA No. 1633/Del/2025 (AY: 2012-13)**

- “1. That on the facts & the circumstances of the case and in law, the order dated 14.01.2025 passed by the Ld. Commissioner of Income Tax (Appeals) - 24, Delhi ["Ld. CIT(A)"] to the extent confirming the order dated 30.12.2019 passed u/s.153A/143(3) of the Income Tax Act, 1961 ("Act") by the ACIT Central Circle 5, Delhi ("AO") for AY 2012-13 is bad in law.
2. That contrary to settled law, the Ld. CIT(A) erred in sustaining the action of the AO in assuming unreported commission in the hands of the appellant while passing the impugned order u/s.153A of the Act for AY 2012-13 in the absence of any incriminating material pertaining to the appellant, being a year for which the appellant's assessment stands completed/unabated.
3. That in any case, unreported commission of the group of companies to which the appellant belongs and the seized materials, having been surrendered to tax and adjudicated upon by the Hon'ble ITSC in the case of the group's flagship company, no presumption of unreported commission in the hands of the appellant is sustainable in the absence of any seized material specific to the appellant and/or found not submitted to the ITSC.
4. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in making an addition of Rs. 9,30,297/- by applying the rate of unreported commission determined in the case of the appellant's group flagship company by the Hon'ble ITSC on the seized and surrendered materials, to the reported commission of the appellant, solely on the presumption of common premises and business model, the addition being thus only on conjectures and surmises.

The appellant reserves the right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.”

2. During proceedings before us the Ld. Counsel of the assessee filed synopsis containing issues and arguments related to all the assessment

years involved. The Ld. Counsel also argued on the line of material submitted in the synopsis which is as under:

1. The present appeal arises from the orders dated 14.01.2025 passed by the Hon'ble Commissioner of Income Tax (Appeals) - 24, New Delhi ("Ld. CIT(A)") partially confirming the orders dated 30.12.2019 u/s.153A rws 143(3) of the Income Tax Act, 1961 ("Act") in the case of the captioned appellant for the subject assessment years, AY 2012-13 to AY 2016-17.

Status of Assessments - AY 2012-13 to AY 2016-17 Unabated

2. The status of assessments as on the date of Search for the AYs under consideration is tabulated as under for your Honours' ready reference (pg 125 of the Paperbook, submission dated 26-Dec-2023 before Ld. CIT(A)):

AY	Statutory Due Date for Filing ROI	Date of Filing of ROI u/s.139(1)	Statutory Due Date* for Issue of Notice u/s.143(2)	Date of Issue of Notice u/s.143(2), if any	Date of Search	Status of Assessment post Search
2012-13	30.09.2012	29.09.2012	30.09.2013	NA	28.11.2017	Closed/Unabated as Statutory Time Limit for Issue of Notice
2013-14	30.09.2013	26.09.2013	30.09.2014	NA		
2014-15	30.09.2014	26.09.2014	30.09.2015	NA		

2015-16	30.09.2015	30.09.2015	30.09.2016	NA		u/s.143(2) lapsed
2016-17	17.10.2016**	13.10.2016	30.09.2017	NA		

- As per Proviso to sub-section (2) of S.143 of the Act reproduced as under:

"Provided that no notice under this sub-section shall be served on the assessee after the expiry of [three] months from the end of the financial year in which the return is furnished."

\*\*Due Date Extended vide F.NO 225/195/2016/ITA., dated 09-09-2016 and F. No. 225/195/2016-ITA II, dated 14-09-2016 for all taxpayers whose accounts are audited and who are liable to file return of income by September 30, 2016.

3. In view of the above factual position and the settled law basis Hon'ble Supreme Court in Pr. CIT Central 3 v. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC), that "In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A", the additions for the AYs 2012-13 to AY 2016-17 being unabated assessments, cannot be made in the absence of incriminating material.

### **Backdrop**

4. The appellant company is a part of the Adam Smith Group of companies ("ASG"). The flagship company of ASG is M/s. Adam Smith Associates Pvt. Ltd. ("ASAPL"). ASG is involved in discounting of bills of exchange under letters of credit ("LC"). The Group also provides consultancy in trade financing and other services appurtenant to discounting of LCs.

5. Search u/s.132 of the Income Tax Act, 1961 ("Act") was conducted on all the premises of ASG companies, including the appellant, on 28.11.2017. The offices of ASAPL were at 901 Commercial Tower, Le Meridien, Delhi ("Le Meridien") and Basement, Thapar House, Delhi ("Basement, Thapar House"). The Appellant's office was initially Mezzanine, Thapar House but it shifted to ASAPL's office in Basement, Thapar House in 2017. At the time of Search, the Appellant's office was in the same premises as M/s. ASAPL. A Panchnama was issued in the name of the Appellant, along with others at Basement, Thapar House, Delhi, which was principally the back-office for ASAPL. The explanations/responses to the seized material from all premises of ASG were submitted by the ASAPL to the Investigation Wing.

### **Undisclosed Income - Unbooked Commission - separately recorded - two parallel sets of accounting servers**

6. Materials were seized from the offices of ASG at Le Meridien and Basement Thapar House. At para (second from the bottom) on page 2, the Ld. AO states;

During the course of search and seizure, digital data and documents were found and seized. It was found that ASG is maintaining two parallel sets of accounting servers in its office premises. One is the Tally Server that is used by ASG to show all the accounted income as per the books of accounts; other was the parallel set of books in software called LC Billing & Discounting (LCBD) System which is maintained in SQL. LCBD system had backend database in SQL format. The SQL system comprised of all the data (Booked/accounted and unbooked/unaccounted) for domestic LCs facilitated by ASG from May, 2008 till September, 2016. From

September, 2016 to till date all the booked entries are maintained in tally server and the unbooked LCs are maintained in excel sheets by employees.

### Seized Materials Relied Upon

7. The seized materials relied upon by the Ld. AO (para 6 page 3 of the assessment order) in the case of the appellant is tabulated as under:

Seized Material Annexure	Premises	Comments
A-14	<b>Le Meridien Office Premises of ASAPL &amp; Others, not shared</b> by Appellant	Paper book submitted by Ld. DR comprising <b>Annexure A-14</b>
A-29		-
A-35	<b>Basement Thapar House Office of ASAPL &amp; Others, shared</b> by Appellant	Four Hard Disks.
A-36		Two hard disks contained Tally & related office records of various ASG entities, including the Appellant
A-37		Other two hard disks were miscellaneous junk data
A-38		(61 pages) Cheques of various parties (signed & unsigned) lying in custody
A-39		

8. Para 6 page 3 of the assessment order is reproduced as under for ready reference:

6. Vide notices us 142(1) of the Act dated 16.11.2019, the assessee was asked the following:

A perusal of annexure A-14 & A-29 seized from horel Le Meridian. Windsor Place, Janpath, Delhi and annexures A-35,A-36,A-37,A-38 and A-39 seized from basememt, Thapar House, 124, Janpath, Delhi reveals that you have not accounted for part of your receipts from LC discounting in your books of accounts. From Account Settlement Sheets, seized from your premises as mentioned above, it has been found that average gross commission on your domestic LC discounting comes to 1.28% of LC amount which has not been taken into account while preparing your books of accounts. It has also been found that commission on hundi/LC booked in your books has been reported at a lower rate compared to rate arrived at by averaging the commission as reflected in account settlement sheets. From seized data, it has been found that commission on domestic LC discounting @ 1.28% of LC limit

comes to Rs.3,17,54,1341-during the year whereas you have reported revenue from sales/services of Rs. Nil.

In view of the above, kindly explain as to why unbooked amount of commission on LC discounting should not be brought to tax and assessed in your total taxable income.

**Seized Materials pertaining to Unbooked Commission from all Searched premises submitted by ASAPL to ITSC**

9. Further, as stated in para 6.2 at page 3 of the assessment order, all the seized materials pertaining to unbooked commission were submitted by ASAPL before the Hon'ble Income Tax Settlement Commission ("ITS") as part of its application dated 13.12.2019 u/s.245C of the Act. Para reproduced as under for ready reference:

6.2 Meanwhile, the flagship company, M/s Adam Smith Associates Pvt.Ltd filed an application u/s 245C of the Act before Hon'ble Income Tax Settlement Commission. Also, the

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**Facts not in Dispute - Seized Material pertained only to Booked & Unbooked Commission/Incomes of ASG, not identifiable to any entity**

10. The records of booked and unbooked commission were separate and parallel records.

While Tally was maintained for booked commissions/consultancy incomes, SQL based the LCBD software had records of both booked and unbooked commission/incomes. As noted by the Ld. AO & Ld. CIT(A), the record of unbooked commission/income was not identifiable to any particular entity.

11. As ASAPL carried out more than 95% of the LC Discounting & Trade Finance business of ASG, with ASAPL giving referral business to SNW Smith Consultants (appellant) and Adam Smith Consultancy, being only intermediaries, ASAPL submitted complete details and explanations of all the unbooked transactions to the Investigation Wing.

12. All the documents, physical and digital, and details of the entire unbooked commission/income for the years AY 2012-13 to AY 2018-19 was submitted and surrendered by ASAPL vide its application dated 13.12.2019 u/s.245C of the Act before the Hon'ble Income Tax Settlement Commission/Interim Board for Settlement ("ITSC/IBS") in December 2019. The above facts are a matter of record and not in dispute.

**Settled law - S.245-I of the Act - Order u/s.245D(4) - Conclusive of all matters stated therein**

13. Order dated u/s.245D(4) of the Act was passed by the Hon'ble ITSC/IBS (copy placed at pages 146-163 of the paperbook) accepting the surrendered unbooked transaction details provided by ASAPL for ASG for AY 2012-13 to Ay 2018-19 and determining the net rate of commission on unbooked transactions (0.25% x 30%) as against the arbitrary rate of 1.28%.

Section 2451 of the Act provides as under:

“Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.”

14. In view of the above position in facts and law, the issue of unbooked commission of ASG having been addressed by the Hon'ble ITSC/IBS, the issue stands settled conclusively.

#### **No Finding of any "under-reported" transactions**

15. There is no finding during Search by the Investigation Wing or subsequently in assessment proceedings or the proceedings before the Hon'ble ITSC/IBS of any transaction that has been "under-reported". On the contrary, as stated by the Ld. AO on page 2, there are parallel sets of accounting records for booked and unbooked commission incomes. Even before the Hon'ble ITSC, there is no finding that the booked transactions were under reported, the case being one on unreported transactions only.

#### **16. Key Contention of the Ld. AO - No specific incriminating material**

17. In the present case of the appellant, the Ld. AO does not attribute any of the seized materials to the appellant. The key contention of the Ld. AO is that the Search revealed unbooked commissions of the Adam Smith Group. In view of the same, the Ld. AO proceeded to make an addition in the hands of the Appellant as the assessee had common premises and common business model with ASAPL.

#### **Addition based on Audited & Disclosed Turnover by applying an unsupported extrapolated rate**

18. The addition by the Ld. AO has been made as under:

**Turnover as per audited financial statements & ITR multiplied by 1.28% being an adhoc/extrapolated/cherry-picked rate of commission based on**

**documents seized comprising booked and unbooked transactions for ASG companies.**

There is no finding by the Ld. AO of any transaction that has been under-reported. Even on remand, the Ld. AO failed to submit any document or material specific to the assessee that evidences "under-reported" transactions. Copy of the Remand Report is placed at pages 176-179 of the paperbook.

**DR Paperbook - Incriminating Material - not seized from the office premises of the appellant**

19. The Id. DR submitted a paperbook comprising "incriminating material". The paperbook are 89 loose pages annexurized as Annexure A-14, seized from the office premises of ASAPL at Le Meridien. The Le Meridien office premises are not shared with/common to the appellant.

Hence, the same does not constitute "incriminating material" for purposes of S.153A proceedings. Notwithstanding the same, in compliance with the directions of the Hon'ble Bench on 17-Sep-25, a detailed page by page explanation tabulated in a chart is being submitted which demonstrates that none of the loose sheets have any link with the appellant and/or indicative of any "under-reported" transaction in the case of the appellant.

**LC Numbers in the alleged "incriminating material" Annexure A-14 - No match found**

20. To further demonstrate this, the LC numbers as mentioned in various loose pages in the compilation Annexure -14 are compared with the LC numbers of each transaction in AY 2012-13 to AY 2016-17 as per the audited accounts of the appellant which were submitted to the Ld. AO on 22/23.12.2019. There is no single LC number match between the alleged "incriminating material Annexure A-14" and no single transaction that is "under-reported" on comparison with the LC numbers of reported transactions.

**Findings and Conclusion of the Ld. CIT(A)**

21. In paras 4.4.5 to 4.4.7 at page 33 of his order, the Ld. CIT(A) notes as under:

4.4.5. ...Order also mentions that these materials have been submitted by ASAPL before ITSC

4.4.5 The appellant is engaged in the business of LC Discounting and financial Consultancy Services. It has similar model as it's flagship company, ASAPL. As mentioned in the assessment order, based on materials seized from Le Meridien and Basement Thapar House offices of ASAPL and all Adam Smith Group of companies, the Investigation Wing determined unbooked commission at an average rate of 1.28% over six assessment years, i.e. in AY 2012-13 to AY 2018-19. The order also mentions that these materials have been submitted by ASAPL before

ITSC. There is no independent or specific material in the name of the appellant company which has been relied upon by the AO nor placed on record.

4.4.6 ....Hon'ble ITSC has rejected the gross commission rate of 1.28% determined by the Department from such seized materials and directed to adopt the uniform commission rate of ..... 0.75%

4.4.6 I have perused the records, the assessment order and the ITSC/IBS Orders. The only issue is regarding unbooked commission determined by the AO in the hands of the appellant. It is noted from ITRs that the revenues of the appellant were about 15-20% of ASAPL. The appellant has submitted that appellant was an intermediary with referral business from ASAPL. The appellant has further submitted that all the unbooked commission has already been accounted for by the ASAPL, the flagship company, while submitting its application before Hon'ble ITSC. Hon'ble ITSC in the case of ASAPL, has adjudicated vide its order dated 28.02.2023 on all unbooked LC's as per LCBD software surrendered by ASAPL before the Investigation Wing. Hon'ble ITSC has rejected the gross commission rate of 1.28% determined by the Department from such seized materials and has directed to adopt the commission at the uniform rate of 0.25% while the net profit should be adopted at the uniform rate of @30% on all assessment years covered in the settlement commission determining the net profit of 0.075% (0.25% x 30%).

**4.4.7 Gross commission @1.28% with respect to booked commission, is high looking; Appellant has vehemently argued the fact that Assessing Officer could not identify the exact seized material which shows that there was a unbooked commission related to the appellant company; It is also a fact that the appellant company was operating from same premises from where whole incriminating material was found and seized. ASAPL as well as appellant company, both were having the same business model and operating from the same business premises.**

4.4.7 In the instant case, Assessing Officer has determined the gross commission @ 1.28% with respect to booked commission, which in my opinion is high looking at the gross commission offered by the appellant during the AY 2012-13 to 2016-17. It is pertinent to mention here that appellant has vehemently argued the fact that Assessing Officer could not identify the exact seized material which shows that there was a unbooked commission related to the appellant company. It is also a fact that the appellant company was operating from same premises from where whole incriminating material was found and seized ASAPL as well as appellant company, both were having the same business model and operating from the same business premises

22. Para 4.4.7 continued at page 34 of the order of the Ld. CIT(A)

**Seized material also do not have any specific reference to any company. ASAPL, being the flagship company, has declared the undisclosed income related to those seized material while submitting the application before ITSC..... Accordingly, it is necessary to make alitle adjustment in the net profit earning of the appellat company with regard to booked commission as well.**

Seized material also do not have any specific reference to any company. ASAPL, being the flagship company, has declared the undisclosed income related to those seized material while submitting the application before ITSC. The ITSC order itself proves that the ASAPL group of companies were earning the additional income which was not offered to taxation. Accordingly, it is necessary to make a little adjustment in the net profit earning of the appellat company with regard to booked commission as well. Considering all the facts, along with the order of ITSC in the case of ASAPL, I direct the Assessing Officer to adopt the half the rate which has been adopted by the ITSC in the case of ASAPL i.e. the additional net profit rate would be  $(50/100) * 0.075\%$  (i.e.  $(0.5 * 0.25\%) * 30\%$ ) over and above the income disclosed by the appellat in its return of income. In view of the same, **Ground Nos. 2, 2A and 3 are partly allowed.**

### **Summary**

23. In view of the above, it is respectfully submitted that
- Impugned assessments u/s. 153A are bad in law for want of "incriminating material"
  - In the absence of which, the unabated assessments for AY 2012-13 to AY 2016-17 could not be interfered with as per settled law in (2023) 454 ITR 212
  - Every seized material is not "incriminating"
  - It is settled law, for material to be incriminating, the same should indicate undisclosed income for the relevant AY
  - There is no "incriminating material" brought on record in the case of the assessee, neither during Search nor in the course of assessment to establish that the assessee under-reported it's audited transactions.
  - Section 145(3) of the Act has not been invoked by the Id. AO to reject books of accounts, nor the assessment has been done u/s.144 of the Act
  - On the contrary, the Ld. AO has used the audited and disclosed turnover as per books on which the adhoc arbitrary rate of gross commission of 1.28% has been applied
  - The Id. CIT(A) has erred in confirming the action of the Ld. AO in applying the net rate of 0.75% determined by the ITSC on unbooked commission to the booked commission of the appellat contrary to facts on record and without any underlying material to establish that any of the booked transactions of the appellat are under-reported.

### **Prayer**

In view of the facts and circumstances and position in law, it is respectfully prayed that the impugned unabated assessments u/s.153A rws 143(3) of the Act for AY 2012-13 to AY 2016-17 are vitiated in the absence of any incriminating material. With the entire unbooked commission having been surrendered before the Hon'ble ITSC, the resultant order u/s.2451 of\* the Act attributes conclusiveness concerning unbooked commission through ASAPL of ASG companies, including the appellant. Further, in any case, the Id. AO/CIT(A) have failed to bring any material on record to establish that the assessee had any "under-reported" transactions concerning commission/incomes by applying an additional rate of commission to the reported turnover and without invoking s. 145(3) of the Act.

Accordingly, it is prayed that the sole addition to the returned income on account of alleged under-reported commission may kindly be deleted and assessee be granted such consequential relief as your Honours may deem fit.

For this act of kindness, the assessee shall forever be grateful.”

3. Per contra, the Ld. CIT, DR has also filed a paper book prepared by the Deputy Commissioner of Income Tax, Central Circle-5, New Delhi. In the paper book the Revenue has filed photo copy of some of the loose papers seized from the premises of the assessee during the search conducted under Section 132. The Ld. DR argued that these papers seems to be related to the business of the assessee, therefore, the assessment order passed under 153A on the basis of such incriminating documents are valid assessment orders and they should be considered. On the other hand, the Ld. Counsel of the assessee argued that LC Numbers as mentioned in various loose papers and pages of the compilation filed by the Revenue when compared and matched item wise right from Assessment Year 2012-13 to Assessment Year 2016-17 do not pertain to/belong to the assessee. The Ld. Counsel also argued that assessee's books of account are audited one and complete set of LC Numbers yearwise are available in the audited books of account. The Ld. Counsel brought to the notice of the Bench that not even a single LC

Number which the Revenue claims to be incriminating and found during search are there in the audited/matched books of account. Therefore, what documents the revenue claims to be incriminating documents found during search on the assessee, in fact have got nothing to do with the assessee and in plain and clear words they don't pertain to assessee.

4. We have gone through written submission and arguments made by the Id. Counsel of the assessee during proceedings before us. We have also heard the arguments, perused the documents and paper book filed by the Revenue during proceeding before us and we find that the documents in fact do not belong to the assessee at all. Therefore, any assessment passed on the basis of such documents or any addition made on the basis of such documents cannot be sustained. The Ld. CIT(A) has considered the findings given by the Income Tax Settlement Commission in the case of Adam Smit Group of Companies (in brief ASAPL & ASG) and directed the AO to calculate half of the rate which has been adopted by the Income Tax Settlement Commission in the case of ASAPL as additional net profit rate over and above the income disclosed by the appellant in his return of income. We find that this finding of the Ld. CIT(A) is based on the basis of calculation made keeping in view the so called incriminating documents found during the search of assessee but since it has already demonstrated above by the assessee that these documents do not belong to the assessee, therefore, the direction of the ld. CIT(A) to calculate commission rate as suggested by the Income Tax Settlement Commission does not hold good. Therefore, in our considered view the findings given by the Ld. CIT(A) on this issue cannot be sustained. Accordingly, the assessee's appeals on this ground has allowed.

**ITA Nos. 1634 to 1637/Del/2025 (AYs: 2013-14 to 2016-17)**

5. As the facts and issues are involved in all these appeals are the same as we discussed above in ITA No. 1633/Del/2025, therefore, we are applying the same findings as mutatis mutandis to all these assessment years. Hence, all these appeals are allowed.

6. In the result, assessee's appeals pertaining to Assessment Years 2012-13 to 2016-17 on this ground are allowed.

Order pronounced in the open court on 21.11.2025

Sd/-  
(Mahavir Singh)  
VICE PRESIDENT

Sd/-  
(Krinwant Sahay)  
ACCOUNTANT MEMBER

Dated 21.11.2025  
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI