

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 1341/MUM/2025  
Assessment Year: 2015-16**

Ashish Shashikant Choksi,  
68, Manglik Presidency Society,  
JVPD Scheme, 7<sup>th</sup> N S Road, Vile  
Parle West,  
Mumbai-400049.

**PAN NO. AEBPC 1539 B  
Appellant**

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**Respondent**

**ITA No. 1344/MUM/2025  
Assessment Year: 2015-16**

Sidharth Abhay Choksi,  
24<sup>th</sup> floor, 2404, Indiabulls Sky,  
Plot 882 Senapati Bapat Marg,  
Jupiter Mill Compound, Delisle  
Road,  
Mumbai-400013.

**PAN NO. ACWPC 5349 J  
Appellant**

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**Respondent**

**ITA No. 1345/MUM/2025  
Assessment Year: 2015-16**

Tanu Gautam Choksi,  
Seamont 2201, Walkeshwar  
Road, Near Raj Bhavan, Malabar  
Hill, S.O.  
Mumbai-400006.

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

2

**Ashish Shashikant Choksi, Sicharth  
Abhay Choksi, Tanu Gautam Choksi,  
Vikram Sajanal Choksi, Gaurav Abhay  
Choksi, Gautam Ashok Choksi &  
Vishwas Shasikant Choksi**  
**ITA No. 1341, 1344, 1345, 1391, 1397,  
1398 & 1399/MUM/2025**



**PAN NO. AFDPC 0409 H**  
**Appellant**

**Respondent**

**ITA No. 1391/MUM/2025**  
**Assessment Year: 2015-16**

Vikram Sajanal Choksi,  
68 Mangalik Pressdency Society,  
JVPO Scheme, 7<sup>th</sup> N S Road, Vile  
Parle West,  
Mumbai-400049.

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**PAN NO. ADPKC 8062 F**  
**Appellant**

**Respondent**

**ITA No. 1397/MUM/2025**  
**Assessment Year: 2015-16**

Gaurav Abhay Choksi,  
191-A, Grand Paradi Apartment,  
August Kranti Marg, Dady Seth  
Hill,  
Mumbai-400026.

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**PAN NO. ACSPC 9907 C**  
**Appellant**

**Respondent**

**ITA No. 1398/MUM/2025**  
**Assessment Year: 2015-16**

GAUTAM ASHOK CHOKSI  
Seamont 2201 Walkeshwar Road,  
Near Raj Bhavan, Malabar Hill  
S.O Mumbai  
MUMBAI 400006

**Vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**PAN NO. AABPC 5917 B**  
**Appellant**

**Respondent**

3  
**Ashish Shashikant Choksi, Sicharth  
Abhay Choksi, Tanu Gautam Choksi,  
Vikram Sajanal Choksi, Gaurav Abhay  
Choksi, Gautam Ashok Choksi &  
Vishwas Shasikant Choksi**  
ITA No. 1341, 1344, 1345, 1391, 1397,  
1398 & 1399/MUM/2025



**ITA No. 1399/MUM/2025  
Assessment Year: 2015-16**

VISHWAS SHASHIKANT CHOKSI  
68MANGALIK PRESSDENCY  
SOCIE , JVPO SCHEME  
7TH N S ROADVILE PARLE  
WEST  
MUMBAI 400049  
**PAN NO. AABPC 7934 Q**  
**Appellant**

**vs.**

Asst. CIT Central Circle-6(2),  
Room No. 450, 4<sup>th</sup> floor, Kautilya  
Bhavan, C-41 to C-43, G Block,  
Bandra Kurla Complex, Bandra  
East,  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Ajay Singh,  
Mr. Akshay Pawar  
Revenue by : Mr. Rajesh Kumar Yadav, CIT-DR

Date of Hearing : 22/09/2025  
Date of pronouncement : 26/11/2025

**ORDER**

**PER BENCH**

These appeals by the respective assessee(s) are directed against separate orders dated 31.12.2024 passed by the Ld. Ld. Commissioner of Income-tax (Appeals) – 54, Mumbai [in short ‘the Ld. CIT(A)’ for assessment year 2015-16 respectively.

2. In all these appeal common issue in dispute is involved and therefore, same were heard together and disposed off by way of this consolidated order for the sake of convenience, taking the case of



Ashish Shashikant Choksi as the lead case. The parties agreed that decision of the said case may be applied mutatis mutandis in other cases.

2.1 The grounds raised by the assessee in appeal in ITA No. 1341/Mum/2025 were revised by the assessee by way of letter dated 30.05.2025. The said revised grounds are reproduced as under:

*1. The CIT (A) erred in upholding the assessment u/s. 153A of the Act without appreciating that during the course of search, neither any incriminating documents/papers/evidence have been found in regards to sale of shares of PMC Fincorp Ltd for the year under consideration nor any adverse points has been observed during the course of search, therefore the addition of Rs. 1,34,69,754/- is illegal, invalid, bad-in law and the same should be deleted.*

*2. Further the Ld. CIT (A) erred in stating that appellant has not furnished the copies of panchnamas or statement of appellant recorded during the search proceedings which were never called for during the entire appellate proceedings without prejudice the same are part of assessment records which ought to have perused by the Id CIT(A) before adjudicating the matter.*

*Addition of Rs. 1,34,69,754/- under section 68 of the Act.*

*3. The ld. CIT(A) erred in confirming the addition of Rs. 1,34,69,754/- under section 68 of the Act, by treating the entire Sale Consideration on Sale of Shares of PMC Fincorp Ltd as unexplained Cash Credit without taking the cognizance of the documents and submissions made during the course of assessment and appellate proceedings respectively, therefore the additions ought to be deleted.*

*4 The Ld. CIT(A) erred in confirming the order of Ld. AO by treating the said shares as Penny Script as per the information*



*received from DGIT (inv) Lucknow and relying on order dated 26.02.2021 passed by the SEBI against some entities which were allegedly involved in manipulating the share prices of PMC Fincorp Ltd, without appreciating the fact that appellant is not connected with PMC Fincorp Pvt Ltd and all the purchase and sale transactions was through stock exchange, therefore addition ought to be deleted.*

*5. The Ld. CIT(A) erred in confirming the order of Ld. AO without providing the opportunity to cross examine Mr. Raj Kumar Modi whose statement has been relied upon for making the erroneous addition of sale consideration of Shares of PMC Fincorp Ltd. The Ld. AO has not made any independent enquiry before making such erroneous addition and has merely relied upon the information received from Investigation Wing Lucknow, copies of statement of director of PMC Fin Corp Ltd and orders passed by SEBI, therefore addition be deleted.*

3. Briefly stated, the facts of the case are that the assessee, an individual, derives income under the heads “Salary”, “Capital Gains”, and “Income from Other Sources”. For the year under consideration, he filed his return of income on 18.08.2015 declaring a total income of ₹2,25,60,490/-. Subsequently, a search and seizure action under section 132 of the Income-tax Act, 1961 (“the Act”) was carried out on 24.08.2018 in the case of the *Hindustan Platinum Group*, which also covered the residential premises of the assessee. Pursuant thereto, notice under section 153A of the Act was issued and the assessee filed a return of income in response on 11.10.2019.

3.1 During the assessment proceedings, the Assessing Officer (“AO”) noted that the assessee had sold shares of *M/s PMC Fincorp Ltd.*



(earlier *Priti Mercantile Ltd.*), and the resultant long-term capital gain was treated by the AO as a bogus gain arising from accommodation entries. The AO, therefore, made an addition under section 68 of the Act treating the sale proceeds as unexplained cash credit.

4. In appeal before the CIT(A), the assessee raised a legal challenge to the addition on the ground that no incriminating material pertaining to such share transactions had been found during the search. The assessee also contested the addition on merits. However, the first appellate authority rejected both the legal and the substantive grounds. Aggrieved thereby, the assessee is in further appeal before us.

5. We first take up the legal grounds. Ground No. 1 challenges the very jurisdiction to make the impugned addition under section 153A in the absence of any incriminating material found during search. The law in this regard now stands conclusively settled by the judgment of the Hon'ble Supreme Court in *PCIT (Central)-3 v. Abhisar Buildwell Pvt. Ltd.* (2023) 454 ITR 212 (SC), wherein it has been held that in respect of **unabated** assessments, additions can be made *only on the basis of incriminating material* found during the search. Thus, either of the following two conditions must hold:



- (i) the assessment is pending on the date of search (i.e., abated), or
- (ii) incriminating material is found qua the addition made.

5.1 In the present case, the assessee filed his return on 18.08.2015. The time-limit for issuance of notice under section 143(2) expired on 30.09.2016. Therefore, on the date of search on 24.08.2018, no assessment proceedings were pending. The assessment for this year was thus unabated. Consequently, the impugned addition could have been made only if supported by incriminating material found during the search.

6. The central issue, therefore, is whether any incriminating material pertaining to the impugned share transactions of PMC Fincorp Ltd. was found during the course of the search.

6.1 The learned counsel for the assessee invited our attention to the assessment order as well as the order of the CIT(A), and submitted that neither authority has referred to any seized material relating to the impugned share transactions. On the contrary, the AO himself has noted in the notice under section 142(1) dated 03.02.2021 that, *from the financials of the assessee*, it was observed that exempt long-term capital gains of ₹61,07,884/- had been claimed. Similarly, in para 4 of the assessment order, the AO states that “from the records” it was noticed that the assessee had sold



shares of PMC Fincorp Ltd. Further, the addition is founded primarily on an information report received from the DGIT (Investigation), Lucknow, stating that the assessee was one of the beneficiaries of alleged accommodation entries. It is undisputed that this information was *not* recovered during the search on the assessee, and therefore cannot constitute “incriminating material” for the purposes of section 153A.

6.3 During the hearing on 07.08.2025, the learned DR sought time to verify from the field authorities regarding the specific incriminating material, if any, found during search pertaining to the PMC share transactions. However, despite such opportunity, no such material was produced before us.

6.4 The learned DR filed a written submission traversing both the legal and factual aspects. While the Revenue has relied upon (i) the statement of Shri Rajkumar Modi during search in his case, (ii) the SEBI order dated 26.02.2021, (iii) the general modus operandi unearthed in the PMC group, and (iv) the existence of certain books and documents seized from the assessee, we find that none of these constitute incriminating material *qua the assessee* discovered during his search.



6.5 The SEBI order was passed much after the search; the DGIT report was an external input; and the statement of Shri Rajkumar Modi pertains to proceedings in his own case. Merely because books of account showing the transactions were found does not, in law, render the transaction “incriminating” unless the seized document itself reveals unaccounted income or a falsity not otherwise discernible. In the present case, the transaction is rendered suspicious only by external investigation reports, none of which were part of the seized material. The Ld. DR filed written submission on both the legal as well as merit of the addition which is reproduced as under:

*The assessee, Shri Ashish Choksi, along with several family members, traded in shares of M/s PMC Fincorp Ltd. during AY 2015-16. The Assessing Officer (AO) noted that the trading in these shares was part of a larger modus operandi for generating bogus Long Term Capital Gains (LTCG), as established during a search conducted in the case of the company and its operator, Shri Rajkumar Modi, on 11.10.2018.*

*Shri Rajkumar Modi, the director of PMC Fincorp Ltd., admitted to providing accommodation entries, including bogus LTCG, and explained the modus operandi in detail. The AO also relied upon SEBI's order dated 26.02.2021, which concluded that the entities involved in the trading of PMC Fincorp Ltd. shares manipulated the share prices through circular trading, artificially inflating the share price for tax evasion purposes.*

*The AO relied upon the SEBI order dated 26.02.2021 against entities involved in price manipulation of PMC Fincorp Ltd. shares. The Panchanama drawn during the course of search clearly records seizure of the assessee's books of accounts*



*and documents, as specifically enumerated in Annexure A (2 sheets) at Page No. 105 and Annexure A (1 sheet) at Page No. 107 of the assessee's paperbook. Clearly reveal incriminating material. Further, details relating to investments and other financial dealings were also unearthed during the course of search, substantiating the findings of the Assessing Officer.*

*In this case, not one but 7 members suddenly decided to invest in the shares of this company. Since, the assessee has stated in the submission that the investment is made purely on his own instinct, how the same instinct could have occurred to 7 family members at the same time remains a mystery.*

*Similarly, in the present case, the appellant purchased shares of PMC Fincorp Ltd. and sold them at an extraordinary increase in price, which is not supported by the financials of the company.*

*The Hon'ble Bombay High Court in Sanjay Bimalchand Jain v. Pr. CIT [2018] 89 taxmann.com 196 has categorically held that transactions in penny stock shares, where purchase is at a nominal price and sale at exorbitant prices without any cogent justification, are dubious transactions meant to introduce unaccounted income in the guise of Long Term Capital Gains, and such gains are not eligible for exemption under section 10(38). Applying the ratio of this binding precedent, the AO was fully justified in bringing the impugned sale consideration to tax under Section 68. It is therefore respectfully submitted that the Hon'ble ITAT may be pleased to uphold the addition made by the AO and dismiss the appeal of the assessee.*

*In the present case, the Assessing Officer has rightly relied upon the information from received Lucknow DGIT, search materials, and statements of Rajkumar Modi have establish that the LTCG claimed by the appellant is nothing but a sham transaction and a mere device to evade tax. The appellant has utterly failed to rebut the incriminating materials brought on record, and there exists ample documentary evidence demonstrating clear price manipulation and generation of artificial gain.*

*Further, it is relevant to note that Shri Rajkumar Modi, the Director of PMC Fincorp Ltd., had initially admitted during his search proceedings that the company and its related operators*



*were engaged in providing accommodation entries, including bogus LTCG, and had explained the modus operandi in detail. Subsequently, on 27.10.2018, he filed a retraction affidavit, claiming that his earlier statement was made under stress, depression, mentally and physically breakdown.*

*Importantly, this retraction was unsupported by any contemporaneous documentary evidence. No medical reports, hospital records, or other corroborative materials were furnished to substantiate the alleged mental/physical condition. It is well settled in law that a bald retraction after search, without credible supporting evidence, cannot override a categorical statement made under oath u/s 132(4), which has strong evidentiary value.*

*It is submitted that the assessment framed under Section 153A of the Income-tax Act is valid and legal. Section 153A empowers the Assessing Officer to assess income of a person for any assessment year when a search or seizure operation is carried out, irrespective of whether incriminating material is found for every particular transaction. The statutory mandate does not require that incriminating evidence must be discovered for each transaction; the AO is empowered to examine the entire financial position of the assessee for the relevant years covered by the search.*

*The assessee has contended that he was denied the opportunity to cross-examine Shri Rajkumar Modi, Director of PMC Fincorp Ltd., whose statement was relied upon by the Assessing Officer in making the addition. The law is well settled that the right of formal cross-examination is not a component of natural justice under the Income-tax Act. Natural justice, under the doctrine of audi alteram partem, requires that the assessee should have a fair and reasonable opportunity to see, comment, and criticise the evidence or record relied upon by the AO. It does not mandate a formal cross-examination as per the procedural rules of a Court of law. Reliance is placed on ITAT Bombay, GTC Industries Ltd. v. ACIT [65 ITD 380]: The Tribunal, relying on the Calcutta High Court judgment in Kisanlal Agarwalla v. Collector of Land Customs AIR 1967 Cal 80, held that: "No natural justice requires that there should be a kind of formal cross-examination. Formal cross-examination is procedural justice. Natural justice certainly includes that any statement of a*



*person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it be by way of interrogation or by way of comment does not matter. "The Tribunal further clarified that if a witness provides directly incriminating statements, cross-examination may be required; however, if the statements are collateral or documentary in nature, there is no legal requirement for cross- examination.*

*Allahabad High Court, Motilal Padampat Udyog Ltd. v. CIT [293 ITR 565]: The Court held that the right of cross-examination of persons from whom AO has collected evidence is not required under the Income-tax law. In that case, copies of rough cash books and statements of partners had been provided to the assessee, and the assessee had submitted its replies. The Court held that this constituted adequate opportunity to controvert the material, and the assessment was valid.*

*In the instant matter, all the relevant statements of Shri Rajkumar Modi were part of the assessment records, and the appellant was aware of and had the opportunity to file its replies and submissions during assessment and appellate proceedings. The statement relied upon by the AO forms part of the collateral evidence establishing the modus operandi of PMC Fincorp Ltd. and its manipulation of share prices. There was no requirement under law for the AO to allow formal cross-examination, as the appellant had adequate opportunity to comment and rebut the materials, thereby satisfying the requirements of natural justice."*

7. Having considered the rival submissions, we are of the considered view that the Revenue has failed to demonstrate that any incriminating material relating to the impugned share transactions was found during the search on the assessee. It is well settled that the mere presence of statutory books reflecting recorded transactions cannot be treated as incriminating material per se. The incriminatory character arises only if the books or seized documents themselves reveal undisclosed income. In the present case, the suspicious nature of the transaction surfaces only when read in conjunction with the



DGIT Investigation report — which concededly does *not* originate from the search conducted on the assessee. Thus, in light of the authoritative pronouncement of the Hon'ble Supreme Court in *Abhisar Buildwell* (supra), the addition made in this unabated assessment year cannot survive in the absence of incriminating material.

8. We find that the Ld. DR has referred to the SEBI order dated 26.01.2021 but said report was also not found during the course of the search. Further, according to the Ld. DR books of accounts and documents found as per Punchnama, which is available on Paper Book page 106 were in the nature of the incriminating qua the addition of the cash credit on sale of PMC Fincorp Ltd. But in our opinion, merely books of accounts indicating said transaction, are not itself incriminating material. That transaction becomes incriminating only in view of information received from the DGIT Investigation Wing, Lucknow, which is undisputedly was not found during the course of the search action at the premises of the assessee and therefore, the Id Assessing Officer was not unjustified in making addition in the year under consideration without the aid of any incriminating material found during the course of the search. The Legal ground accordingly is allowed in favour of the assessee.



9. As regards the assessee's additional legal ground alleging that the panchnama and statements recorded during search were not supplied by the CIT(A), we find that the CIT(A) rejected the ground merely on the basis that the assessee did not furnish such documents before him. The finding of the Ld. CIT(A) on this legal ground is reproduced as under:

*“5.3.6 The appellant has also raised a legal ground that there was no incriminating material was found during the search proceedings, therefore, no addition could be made for unabated assessment year. The appellant has relied upon decision in the case of All Cargo Global Logistics Ltd. Vs. DCIT (ITAT Mumbai Special Bench), Commissioner of Income Tax vs. Kabul Chawla High court of Delhi (2015) 93 CCH 0210 DelHC (2015) 281 CTR 0045(Del): (2015) 126 DTR 0130 (Del): (2016) 380 ITR 0573 (Delhi): (2015) 234 TAXMAN0300(Delhi), Commissioner of Income tax vs. Lancy constructions High court of Karnatka (2015) 94 CCH 0256 KarHC (2016) 237 TAXMAN 0728 (Karnatka), (2023) 149 Taxman.com 399 (SC) Supreme Court of India Principal Commissioner of Income Tax central-3 Vs. Abhisar Buildwell (P.) Ltd.. Vijayrattan Balkrishan Mittal Vs. DCIT CC8(1) (2020) 121 taxmann.com 1000 (Mumbai-Trib). Smt. Anjli pandit Vs. ACIT, Central Circle 12, Mumbai (2017) 88 taxmann.com 657 (Mumbai-Trib).*

*It is a fact that in the cvase of the appellant a search action was carried out on 24.08.2018, therefore, A.Y. 2015-16 was unabated assessment year. Thus, respectfully following the decision cited by the appellant no addition was required to be made during the year without any incriminating material. However, during the appellate proceedings, the appellant has not furnished copies of panchnamas or statements of the*



*appellant and other family members recorded during the search proceedings from which it could be verified that inf act there was no incriminating material was found during the search proceedings. In absence of that alternative argument taken by the appellant is rejected.”*

**10.** The CIT(A), however, overlooked the fact that these documents were necessarily within the possession of the AO, and could have been requisitioned for verifying whether any incriminating material existed. The relevant portion of the CIT(A)'s order shows an incorrect approach, which cannot be sustained.

10.1 We accordingly set aside this finding of the CIT(A) as well. However, since we have already allowed the primary legal ground and held that the addition is unsustainable for want of incriminating material, all other grounds — both on the merits of the addition and on procedural issues — are rendered academic and do not require adjudication.

11. In view of the foregoing discussion, the impugned addition made under section 68 in the proceedings under section 153A is held to be unsustainable in law. The appeal of the assessee is allowed on the legal ground.

12. In other appeals also identical grounds have been raised in same set of facts and circumstances and therefore, following our



finding in the case of Ashish Shashikant Choksi result of which is applied *mutatis mutandis* in other cases.

13. In the result, all the appeals of the assessee are allowed.

**Order pronounced in the open Court on 26/11/2025.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 26/11/2025  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**