

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4725/MUM/2025
Assessment Year : 2013-14

**Deputy Commissioner of Income Tax,
Central Circle - 7(1),**

Room No.653,
6th Floor Aayakar Bhavan,
M.K. Road,
Mumbai – 400020

..... Appellant

v/s

**Yardley Investment and Trading Company
Pvt. Ltd.**

1, Pearl Mansion N,
91, M.K. Road,
Mumbai – 400020
PAN: AAACY0327M

..... Respondent

CO No.223/MUM/2025
(Arising out of ITA No.4725/Mum/2025)
Assessment Year : 2013-14

Yardley Investment and Trading Company Pvt. Ltd.

1, Pearl Mansion N,
91, M.K. Road,
Mumbai – 400020
PAN: AAACY0327M

..... Cross Objector
(Original Respondent)

v/s

**Deputy Commissioner of Income Tax,
Central Circle - 7(1),**

Room No.653,
6th Floor Aayakar Bhavan,
M.K. Road,
Mumbai – 400020

..... Respondent
(Original Appellant)

Assessee by : Shri Snehal Shah

Revenue by : Shri Arun Kanti Datta, CIT-DR

Date of Hearing – 09/10/2025

Date of Order – 02/01/2026

ORDER**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal by the Revenue and cross-objection by the assessee have been filed against the impugned order dated 16.05.2025, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals)-49, Mumbai, ["learned CIT(A)"], for the assessment year 2013-14.

2. In its appeal, the Revenue has raised the following grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the repayment of the unsecured loans along with sources of repayment and reasons thereof.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(4) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the creditworthiness of the lenders and the genuineness of the transactions.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(4) erred in allowing the appeal of the assessee despite the fact that assessee could not provide any satisfactory explanation about the nature and source of the amount credited in its books of accounts, and therefore, the 10 was justified in holding that the amounts totaling to Rs. 7,25,00,000/- found credited in the books of accounts of the assessee during the year under consideration as unsecured loans are nothing but accommodation entries.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the entire chain of flow of funds which involved complex layering such that accommodation entries were passed through a structured mechanism using paper companies to channel funds and inflate turnover as demonstrated in the assessment order."

3. While the assessee has raised the following grounds of appeal in its cross-objection: -

"1. The Learned DDIT(Inv.) Unit-1(2), Mumbai, erred in issuing search warrant No. MUM C/U-4/18-19/06 dated 17.04.2018, led by Team-JWO-6, without having any information in its possession on the basis of which a reasonable belief can be founded that the respondent has omitted or failed to produce

books of accounts or other documents before conducting search action u/s 132 of the Act or that the respondent was in possession of any money, bullion, jewellery or other valuable article which represents wholly or partly any income or property, which has not been disclosed by the respondent. In view of the same, the search warrant No. MUM C/U-4/18-19/06 dated 17.04.2018, led by Team-JWO-6, is clearly illegal, bad in law and ultra-vires the provisions of the Income Tax Act, 1961.

2. The Learned DDIT(Inv.). Unit-1(2), Mumbai, erred in issuing search warrant No. MUM C/U-4/18-19/06 dated 17.04.2018, led by Team-JWO-6, in the name of the respondent on the pretext of search action being actually conducted on M/s. Asuti Trading Pvt Ltd. that does not operate from the address viz. 1, Pearl Mansion [NJ], 91, M. Karve Road, Mumbai - 400 020.

3. The Learned Assessing Officer erred in issuing notice u/s 153A of the Income Tax Act, 1961 without appreciating the fact that there are no incriminating documents in seized material suggesting that any income has escaped assessment. Hence, the notice issued u/s 153A of the Act is clearly Bad in Law, illegal and ultra-vires the provision of the Act”

4. In its appeal, the Revenue has challenged the deletion of the addition made under section 68 of the Act on account of a loan received by the assessee. While the assessee, vide its cross-objection, has, *inter alia*, challenged the assumption of jurisdiction under section 153A of the Act in the absence of any incriminating material. Since the cross-objection filed by the assessee has raised the jurisdictional issue, which goes to the root of the matter, we are considering the same at the outset.

5. We have considered the submissions of both sides and perused the material available on record. For the year under consideration, the assessee filed its return of income on 30.08.2013, declaring a total income of Rs.6,19,520/-. It is undisputed that the original return of income filed by the assessee was not selected for scrutiny assessment proceeding under section 143(3) of the Act. Subsequently, a search and seizure operation under section 132(1) of the Act was conducted in the case of Jatia Group and other related Groups at their business premises and residential premises of Directors on

17.04.2018. During the search, the premises of the assessee were also covered under section 132 of the Act and the search was concluded on 21.04.2018. Consequent to the search action, the case of the assessee was centralised with DCIT, Central Circle-7(1), Mumbai, for coordinated investigation, assessment, and for having a uniform view on the common issues pertaining to various Jatia Group cases. Accordingly, a notice under section 153A of the Act was issued on 23.10.2019 to the assessee. In response to the above notice, the assessee filed its return of income on 09.11.2019, declaring a total income of Rs.6,19,520/-. Thus, the time period for issuance of notice under section 143(2) of the Act had already expired on the date of search, and no assessment proceedings were pending for the year under consideration on the date of search, i.e., 17.04.2018. Therefore, in the present case, it cannot be disputed that the year under consideration is an unabated assessment year as per the second proviso to section 153A(1) of the Act. Thus, the existence of incriminating material is *sine qua non* in order to initiate the proceedings under section 143A of the Act. The said aspect has been affirmed by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd., reported in (2023) 149 taxmann.com 399 (SC), wherein the Hon'ble Supreme Court held that if no incriminating material is found during the search, the Assessing Officer ("AO") cannot make any addition to the unabated assessment.

6. The expression "*incriminating material*" has not been defined under the Act. We find that while examining the meaning of the expression "*incriminating material*", the Co-ordinate Bench of the Tribunal in DCIT vs.

Shri Dilip B. Jiwrajka (*supra*), in ITA No.2349/Mum/2021, etc., vide order dated 29.11.2022, observed as follows: -

"13. The next aspect to be considered is to understand the meaning of the expression "incriminating material" or evidence. As rightly noted by Ld. CIT(A), there is no definition set out in the Act and the meaning of this term has to be discerned from its judicial interpretation made by different judicial forums. We understand that there can be several forms of incriminating material or evidence. In order to constitute an incriminating material or evidence, it is necessary for the AO to establish that the information, document or material, whether tangible or intangible, is of such nature which incriminates or militates against the person from whom it is found. Some common forms of incriminating material are for instance, where the search action u/s 132 of the Act reveals information (oral or documented) that the assets found from the possession of the assessee in form of land, building, jewellery, deposits or other valuable assets etc. do not corroborate with his returned income and/or there is a material difference in the actual valuation of such assets and the value declared in the books of accounts. Further, incriminating evidence may also constitute of information, tangible or intangible which suggests or leads to an inference that the assessee is carrying out certain activities outside books of accounts which is not disclosed to the Department. Incriminating material also comprises of document or evidence found in search which demonstrates or proves that what is apparent is not real or what is real is not apparent. In other words, if an assessee has recorded transactions in his books or other documents maintained in the ordinary course then in order to hold the material or evidence found in the course of search to be incriminating in nature, document should lead to conclusion that the entries made in the books of the assessee do not represent true and correct state of affairs. Rather the evidence unearthed or found in the course of search should establish that the real transaction of the assessee was something different than what was recorded in the regular books and therefore the entries in the books did not represent true and correct state of affairs i.e. the assessee has undisclosed income/expense outside the books or that the assessee is conducting income earning activity outside the books of accounts or all the revenue earning activities are not disclosed to the tax authorities in the books regular maintained or the returns filed with the authorities from time to time etc. The nature of the evidence or information gathered during the search should be of such nature that it should not merely raise doubt or suspicion but should be of such nature which would prima facie prove that real and true nature of transaction between the parties is something different from the one recorded in the books or documents maintained in ordinary course of business. In some instances, the information, document or evidence gathered in the course of search, may raise serious doubts or suspicion in relation to transaction reflected in regular books or documents maintained in the ordinary course of business, but in such case the AO is not permitted to straightaway treat such material to 'incriminating' in nature unless the AO thereafter brings on record further corroborative material or evidence to substantiate his suspicion and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs. these conditions are satisfied, it cannot be held that every seized material or document or information is, incriminating in nature justifying the additions in unabated assessments."

7. In the present case, *before* deciding the issue of whether the material found during the search was incriminating material, it is pertinent to note the business profile of the assessee. As the assessee's name suggests, it is engaged in investment and trading. From the perusal of the financial statement of the assessee, as provided in the paper book filed by the assessee, we find that the entire revenue from operations amounting to Rs. 3,63,495/- earned by the assessee as on 31.03.2013 arose from the sale of shares, dividends received from associates and dividends received from others. Apart from the above, the assessee also earned interest income amounting to Rs. 6,54,925/- during the year. Further, the expenses incurred by the assessee were primarily related to the sale of shares and securities. For completeness, the relevant portion of the financial statements of the assessee for the year ending 31.03.2013 is reproduced as follows: -

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YARDLEY INVESTMENT & TRADING COMPANY PRIVATE LIMITED
Notes to the Financial Statements for the year ended 31st March, 2013

Note 10 Short Term Loans and Advances

Particulars	31.03.2013	31.03.2012
Unsecured, considered good		
a) Loans & Advance to Related Party	4,766,303	4,071,871
b) Balances with Government Authorities I Advance Income Tax	9,367,019	9,439,383
Total	14,133,322	13,511,254

Note 11 Revenue from Operations

Particulars	31.03.2013	31.03.2012
a) Sales of Shares	92,736	-
b) Dividen Received from Associates	40,553	67,588
c) Dividen Received from Others	230,205	229,805
Total	363,494	297,393

Note 12 Other Income

Particulars	31.03.2013	31.03.2012
a) Interest Income	654,925	428,215
b) Interest Received on Income Tax Refund	-	15,400
Total	654,925	443,615

Note 13 (Increase) / Decrease in Stock

Particulars	31.03.2013	31.03.2012
Shares and Securities		
Closing Stocks	24,779,876	24,782,624
Opening Stocks	24,782,624	24,782,624
Total	2,748	-

Note 14 Employees Benefit Expenses

Particulars	31.03.2013	31.03.2012
Salary	60,000	60,000
Bonus	20,000	5,000
Total	80,000	65,000

Note 15 Other Expenses

Particulars	31.03.2013	31.03.2012
Payments to Auditors (Refer Note (16) below)	7,000	22,472
Bank Charges	338	-
Security Transaction Tax	93	-
Miscellaneous Expenses	-	63
Legal & Professional Charges	33,059	86,728
Profession Tax	5,000	5,000
Total	45,490	114,263

Note 16 Payment to Statutory Auditors

Particulars	31.03.2013	31.03.2012
Statutory Audit Fees	7,000	22,472
Total	7,000	22,472



8. From the perusal of the assessment order, we find that during the search and seizure action under section 132 of the Act, the books of account of the assessee in the Tally software were seized. The AO alleged that, as per the

detailed analysis of the seized material, the assessee was found not to be conducting any business activity, and there was no iota of evidence to indicate any transactions involving the actual movement of material. The AO further held that all the documents merely pointed to invoices backed by no material movement, and there were no documents vis-à-vis material movement, sales, marketing, inventory management, and CRM/SCM. The AO further held that from the perusal of the seized tally documents, it was found that the searched entities were indulged in large scale of booking of bogus entries running into crores of rupees by way of bogus sales and purchases through various paper entities. Further, it was held that on physical verification of business premises of these companies, it was found that these companies have not been doing any genuine business and were engaged in providing accommodation bills and sales and purchases entries from the paper companies, as document such as purchase order, sales order, weighment slips, lorry receipts, etc., were neither submitted during the assessment proceedings nor during the search proceedings. Thus, the AO held that the physical movement of goods was not actually being done and the searched entities were providing accommodation entries by doing bogus purchases from various papers/shell entities of Topworth, Uttam Galva and Lloyds Group of companies. The findings of the AO in this regard are reproduced as follows: -

"5.5. Key findings in the case of searched entities: Following findings are relevant in the case of the assessee since for the transaction entered between the assessee company and the searched entity, the assessee company is on the other side of the transaction.

- It is seen that a specific modus operandi was followed by group companies to record Back-To-Back purchase and sales entries. In this modus operandi, main company (Lopworth Group, Uttam Group or Llyod Group) formed shell company, who raises bogus sales invoices to the second company (Vinod Jatia group of companies). Second company made payment to shell company*

through the L/C issued by the Bank. Therefore, the shell company received money without selling any goods but only for generating bogus invoices.

- During the course of search proceedings, post search proceedings, assessment proceedings, the statement of various directors or employees were taken on records wherein basic details with regard to the stock register, transportation details, communication with vendor & customers, weightment slip, Gate pass, Lorry receipt in order to prove the genuineness of the entire transaction and involvement of actual goods. In response to the same, it was replied that, transaction has been taken place on consignor-consignee model. If the reply provided is considered then no one was able to provide any details or explanation or evidence on manufacturer of goods, place where goods are stored, godown details, entire supply chain of the transaction, ultimate customers, manner in which order was placed. This clearly shows there were no underlying goods involved in this entire transaction and it was mere paper entries entered within shell / paper entities.

- Directors of the Vinod Jatia Group Company failed to give any satisfactory reasons on account of genuineness of these purchases and sales transactions. The Searched entities were unable to submit even basic documents/evidences related to Back-To-Back purchases and sales entries i.e. lorry invoices, sales & purchases invoices, Inward & Outward Register, details of transporters, purchase order, etc.

- It is clearly seen from the money mapping that the payment received from one party immediately transferred to other parties on same day. Almost same trend was followed with respect to all parties.

- No actual/physical delivery of goods was done as established in the light of detailed analysis/investigation.

- No credit guarantee / security obtained from Topworth group of Companies and UttamGalwa Group of Companies. Entire purchases are backed by LC payment to vendors.

- Details like Purchase order, Sales order, Weightment Slip, Lorry receipts or any other form of communication on the basis of which the orders were placed/delivered were found to be unavailable.

- The address of the party to whom the material had to be delivered to and in the absence of lorry receipts the actual movement of the goods could not be ascertained.

- There is no evidence to substantiate whether any communication ever took place between the searched entities firm and its vendor and customer during the trade. In general business practice, parties do interact to exchange quotations, agreements, follow ups etc. vide emails, facsimile or letters sent through courier or registered post.

- All the vendors and customers were potentially related amongst themselves on the basis of Common Key managerial person / common signatories / Common address. Further, there is no credit guarantee/ security obtained from the customers. However, entire purchases are backed by LC payment to vendors.

- *All the above mentioned entities to whom bogus sales made are shell companies/entities which do not have the capacity or resources required for carrying out such huge trading of steel.*
- *Summons u/s 131 of the I.T. Act, 1961 were issued to these bogus as well all related companies asking to produce the sales & purchases bills, proofs of delivery of goods, details of transporters, Inward & Outward register etc. None of the entities have produced these supporting details to proof the genuineness of their transactions made with aforesaid shell entities.*
- *Directors, entry operators or key persons of above mentioned entities to whom sales are made, have admitted that no actual goods is delivered and only bills have issued against these bogus purchases.*
- *Directors of the searched entities failed to give any satisfactory reasons and did not provide any substantial documentary evidences to establish the genuineness of these transaction's.*
- *No actual/physical delivery of goods was done as established in the light of detailed analysis/investigation as already discussed.*
- *Thus, in collusion with these shell companies/entities, the searched entities group has managed to inflate its expenses in its books and suppressed its taxable income in different A.Ys.*
- *Shri Vinod Jatia denied the statement of his employee but did not submit any documentary evidences like sales invoices, lorry bills, details of transporters, inward & outward register to establish the genuineness of the transactions made with above mentioned shell entities. Therefore, it is evident that the statement of employee was denied merely to avoid penal actions.*
- *From the TDS / ROI analysis, it has been proven once again that these companies are shell companies that merely exist to provide accommodation entries to interested parties.*
- *Interests on delayed payments were recovered at the time of receipts from parties and Trade Discounts were paid later. Further it is seen that, wherein the Trade Discounts were offered were at a higher percent as compared to the proportionate rate of interest on delayed payment."*

9. Accordingly, the AO arrived at the conclusion that the search entities have not done any genuine activities and have misused the banking facility by way of using the letter of credit and were engaged in the practice of providing back-to-back sales and purchases of accommodation entries from various shell companies and providing the letter of credit from the various banks.

10. After recording the aforesaid findings in relation to the material seized during the course of search, the AO vide order dated 31.03.2021 passed under section 153A read with section 143(3) of the Act, *inter alia*, proceeded to make the addition under section 68 of the Act in respect of loan amounting to Rs.7,25,00,000/- received by the assessee from Uttam Value Steels Ltd. by treating the loan as bogus.

11. In its appeal before the learned CIT(A), the assessee specifically raised the ground challenging the impugned addition in the absence of an incriminating document being found during the course of the search. However, the learned CIT(A) rejected the said ground by observing as follows: -

"7.4. In the present case, during the search action, the books of accounts in form of Tally data were found and seized. It was found that the entities of Jatia group, including the appellant concern had entered into the back-to-back the transactions of sale and purchase with the entities of three groups namely Llyod, Topworth and Uttam Value group, However, no evidence of actual movement of goods from the point of purchase or to the point of sale were found during the search. Further, other evidence such as outwards & inward register, purchase orders, sales orders, Weighment Slips, Lorry receipts etc or evidences of activities such as sales & marketing, inventory management etc were neither found during the search nor were produced during the search action or post search proceedings. The appellant could not prove that sale and purchase transaction as per the seized tally data had actually taken place. In this context, reference is made to the decision in the case of ACIT Vs Himalaya Darshan Developers (Gujarat) Pvt. Ltd., IT(SS)A No. 264/AHD/2018, order dated 12.04.2021 in which it is held that "The documents/ any fact/evidence which could suggest that the documents/transactions claimed or submitted in any earlier proceedings were not genuine, being only a device/make belief based on nonexistent facts or suppressed/misrepresented facts, fulfilling the ingredients of undisclosed income, would constitute the documents sufficient to make assessment for the purposes of the Act. The Hon'ble Courts have referred such documents as an incriminating material. In the present case, the seized tally data did not reflect the true nature of the appellant's business. It was based on non-existent fact of bogus sales and purchase transactions and therefore can be termed as an incriminating piece of evidence. It was evident that the appellant group has booking artificial/bogus sales and purchases for the purpose of availing the Letter of credit facility from the banks. The funds obtained from the letter of credit facility were allowed to be used by the entities of these three group. The findings of the search were further corroborated by the statements recorded during the search action. The entity from whom the appellant had taken unsecured loans had entered into number of such bogus

transactions of sale and purchase with the entities of the Jatia group. It was held by the AO that the said loan transaction is the part of the bogus transactions between the lender and the appellant. Therefore, it can be said that the additions to the income are made on the basis of such incriminating evidence found during the search."

12. From the perusal of the assessment order, as well as the impugned order passed by the learned CIT(A), it is pertinent to note that entire emphasis of the Revenue, by placing reliance on the documents seized during the course of search action under section 132 of the Act, are on the findings that the entities of Jatia Group were involved in accommodation entry transaction of back-to-back purchase and sales transaction with entities of three groups namely Topworth, Uttam Galva and Lloyds Group of companies and there is no evidence of actual movement of goods from the point of purchase to the point of sale. Further, documents proving the physical movement of goods were not furnished despite multiple opportunities.

13. As noted in the foregoing paragraphs, the assessee is only engaged in investment and trading of shares and securities, which is sufficiently proved from the financial statement as noted above. Therefore, even if the books of account of the assessee in Tally software were seized during the search, the same only shows that the assessee was into investment and trading of shares and securities, in the absence of any finding by the AO that the said books of account found from the Tally software were parallel books of accounts showing the assessee being involved in some other transaction not recorded in the regular books of accounts. Thus, we are of the considered view that the detailed findings of the AO on the basis of search documents have no relevance to the business of the assessee, as it was not involved in the sale

and purchase of any physical goods, and instead it was only engaged in investment and trading of shares and securities.

14. At the same time, it is pertinent to note that since the search and seizure action under section 132 of the Act was carried out on other companies of Jatia, Topworth, Uttam Galva and Lloyds Group of companies, we are of the considered that such findings of accommodation entry transaction of back-to-back purchase and sale of goods without physical delivery through various paper companies may have a relevance in case of other entities, which can be examined vis-à-vis the facts of each case. However, such findings of the AO have no relevance in the instant case, as the assessee is not involved in the sale and purchase of any goods and is only involved in the investment and trading of shares and securities. Therefore, we are of the considered view that the material found during the course of search in the case of the assessee is not in the nature of incriminating material and the impugned addition under section 68 of the Act by treating the loan received from Uttam Value Steels Ltd. as bogus has no relation to the material found during the course of search. Accordingly, in the light of the decision of the Hon'ble Supreme Court in *Abhisar Buildwell Pvt. Ltd. (supra)*, in the absence of any incriminating material or information found during the search in relation to the impugned addition in the present case, we uphold the plea of the assessee and the impugned addition challenged before us is directed to be deleted.

15. Since relief has been granted to the assessee on this issue, the other grounds raised in the cross-objection are rendered academic and, therefore,

are left open. Accordingly, the cross-objection filed by the assessee is allowed, and the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 02/01/2026

Sd/-

**PRABHASH SHANKAR
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 02/01/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai