

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.2871/Mum/2025 (Assessment year: 2012-13)
ITA No.2872/Mum/2025 (Assessment year: 2015-16)
ITA No.3208/Mum/2025 (Assessment year: 2016-17)
ITA No.3418/Mum/2025 (Assessment year: 2014-15)

Bechar Raghvji Patel Plot No.111, Akshardham, Kansai Section, Ambernath (E), Kalyan-Dombivali Maharashtra- 421501 PAN: AAXPP8345C	vs	ACIT, C.C.-2, Thane Ashar IT Park, 6 th floor, Wagale Industrial Estate, Thane-4000604

ITA No.3248/Mum/2025 (Assessment year: 2019-20)

Hiren Bechar Patel Plot No.111 Akshardam Floor No.5/6, Kansai Section Ambernath (E), Mumbai- 421501 PAN :AOLPP7438Q	Vs	DCIT Central Circle-2 Thane Room No.13, A Wing, 6 floor, Asar IT Park, Thane-400604
APPELLANT		RESPONDENT

ITA No.4062/Mum/2025 (Assessment year: 2019-20)

DCIT Central Circle-2 Thane Room No.13, A Wing, 6 floor, Asar IT Park, Thane-400604	Vs	Hiren Bechar Patel Plot No.111 Akshardam Floor No.5/6, Kansai Section Ambernath(E), Mumbai-421501 PAN :AOLPP7438Q
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2. Since all the appeals pertain to the three assesses and one appeal pertain to the revenue, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, The ITA No. 2871, 2872, 3208 & 3418/Mum/2025 are taken together and **ITA No 2871/Mum/2025** for **AY 2012-13** is treated as lead case, and the decision rendered therein shall apply mutatis mutandis to other appeals.

ITA No.2871/Mum/2025

3. The assessee has taken the following grounds:-

“1. That, the learned CIT(A)-11, Pune has grossly erred in not considering the impugned block assessment order passed is against natural justice and bad in law. The AO may please be directed to annul the impugned block assessment order.

2. That, the learned CIT(A)-11, Pune is not justified in upholding the addition of Rs.50,00,000 in case of Olender Manufacture & Credit Ltd u/s.68 r.w.s 115BBE on the basis of non-incriminating material. The Assessing Officer may please be directed to delete such addition.

3. The appellant craves leave to add, alter, and amend any ground/s of an appeal on or before hearing of the appeal.”

4. The Ld. AR contended that the assessment order was passed u/sec. 143(3) r.w.s. 153A of the Act and accordingly the said order was passed during the assessment year related to the search occurred on 08.08.2019 in the M/s Patel RPL Reality Group. The assessee challenged the jurisdiction of the Ld. AO for assessment U/s. 153A without relying on any incriminating documents carried out from the search. The said issue was duly agitated before the Ld. CIT(A) during the appeal. The Ld. CIT(A) made the observations on the said legal issue which is

noted in page no.12 para no.10 of the impugned appellate order which is reproduced as below:

“10. I have considered the facts of the case and the submissions made by the appellant. The first contention of the appellant is that the addition made by the AO is not based on any incriminating material. Before deciding the contention raised by the appellant, it is necessary to consider as to what constitutes an incriminating material. Though the said term has not been defined in the Act, incriminating material may comprise 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. The nature of the evidence or information gathered during the search should be of such nature that it should prima facie show that the 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. If such conditions are satisfied, it can be held that the material found or collected during the course of search as incriminating in nature. Hence, if a search is conducted to investigate certain allegations which are found to be correct during search and based on the various evidences collected during the search action, specific information or finding is generated on account of inquiries conducted during search process which has a bearing on the determination of total income of an assessee, the AO would be within his power to proceed under section 153A of the Act against such person on the basis of such finding which would also constitute incriminating material. Hence, if during the course of search action, elaborate and thorough investigations are carried out to verify/examine modus operandi of an illegal scheme orchestrated by certain persons and during such investigations, based on ascertainment of various facts, examination of seized books, recording of statements and analysis of documents of a number of entities in coordination with each other, certain information is generated that (i) the scheme violates the provisions of the Act and that (ii) such scheme has assisted various parties> who have taken benefit of such scheme in introduction of their unaccounted income in their books in the form of eligible and non-taxable income, thus affecting determination of their total income, then, this information is clearly covered by section 153A/153C of the Act.”

5. The Ld. AR advanced his arguments and submitted that the same search action was conducted in the case of M/s J.S. Infrastructure, which belongs to the M/s Patel RPL Realty Group. It was contended that M/s J.S. Infrastructure had challenged the legality of the assessment on the ground that it was framed in the absence of any incriminating material, before the ITAT, Mumbai Bench. The Coordinate Bench of the ITAT, Mumbai, in the case of **M/s J.S. Infrastructure vs. ACIT, IT(SS)A No. 3120/Mum/2025**, vide order dated **23.12.2025**, examined and adjudicated the said issue. The Bench held that, in the absence of any incriminating material found during the course of search, the assessment order is invalid in law. The relevant observations of the Bench are reproduced hereunder:

"9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has raised various contentions pertaining to "no incriminating material" found during the search for which the Ld. A.R.'s contention was the seized material was only the ledger account of the assessee which was part of the regular books of account of the assessee firm. Pursuant to the search action in the case of Patel RPL Realty Group, ledger accounts of various parties were seized which revealed transactions that were already appearing in the assessee's balance sheet. During the assessment proceedings the assessee had furnished details of confirmation of accounts along with bank entries for the impugned loan transaction along with details of repayment made, sufficiently corroborated by documentary evidences. It is evident from the assessment order as well as from the Ld. CIT(A)'s order that these documents were not disputed by the lower authorities nor was it held to be non-genuine. Further, it is also observed that no discussion of the documentary evidences furnished by the assessee was found in the order of the lower authorities. There is no iota of doubt that the assessee has discharged the primary onus casted upon it u/s. 68 of the Act to establish the identity and creditworthiness of the lenders and the genuineness of the transactions. This fact was also not disputed by the Ld. D.R. during the appellate proceedings when confronted with. It

is also the settled proposition of law by the Hon'ble Apex Court in the case of Abhisar Buildwell (P.) Ltd. (2023) 149 taxmann.com 399 (SC) that in respect of completed or unabated assessment no addition can be made by the Ld. AO in the absence of any incriminating material found during the course of search. In the present case in hand, except for the ledger account of the assessee which was already forming part of the regular books of account, no incriminating material was found during the search operation. From the above observation, we deem it fit to hold that the assessee has furnished complete details of the unsecured loan received and subsequently repaid through banking channels which are appearing in the books of accounts of the parties, corroborated by bank statements, financial statements, confirmation letters and details of return of income filed by the parties. We are also conscious of the fact that no incriminating material pertaining to the assessee was seized during the search in the case of M/s. Patel RPL Realty Group.

10. On the above factual matrix, we deem it fit to hold that the impugned addition made in the hands of the assessee ought to be deleted as there is no justification in making an addition on the aforementioned facts of the case.

11. Thus, the grounds of appeal raised by the assessee are hereby allowed."

5. The Ld. DR argued but was not able to produce any contrary findings against the submission of the Ld. AR.

6. We have heard the rival submissions and carefully examined the material available on record. It is an undisputed fact that the search action in the case of M/s Patel RPL Realty Group was conducted on 08.08.2019 and that the impugned assessment year 2012–13 is an unabated year. In respect of completed/unabated assessments, it is now a settled position of law that no addition can be made under Section 153A of the Act in the absence of any incriminating material found during the course of search. On perusal of the assessment order as well as the

material placed before us, we find that no incriminating material pertaining to the assessee was unearthed during the search proceedings. The addition made by the Assessing Officer is not based on any seized document or evidence discovered during the search. In such circumstances, the assumption of jurisdiction under Section 153A of the Act, for making the impugned addition in an unabated assessment year, is beyond the scope of the statutory provisions. We further note that the Coordinate Bench of the ITAT, Mumbai, in the case of **M/s J.S. Infrastructure** (supra), arising out of the same search action, has adjudicated an identical issue and, following the decision of the Hon'ble Supreme Court in the case of **Abhisar Buildwell (P.) Ltd. (2023) 149 taxmann.com 399 (SC)**, held that in the absence of incriminating material, the assessment framed under Section 153A is invalid in law.

Respectfully following the ratio laid down therein, we hold that the assessment order passed under Section 153A for AY 2012–13 is bad in law. Consequently, the addition of Rs.11,77,110/- made therein is hereby quashed.

In the result, the appeal of the assessee is allowed.

ITA No.3248, 3240 and 4062/Mum/2025

7. All three appeals are taken together & heard together. With the consent of the parties, The ITA No. 3248, 3240 & 4062/Mum/2025 are taken together and assessee's appeal **ITA No 3248 /Mum/2025** & revenue's appeal **ITA No. 4062/Mum/2025** for **AY 2019-20** are taken as lead cases and the decision rendered therein shall apply mutatis mutandis to other appeal.

8. The Ld. AR argued and filed a paper book containing **pages 1 to 191** which has been placed on record. The Ld. AR submitted that it is pertinent to note that the Ld. AO himself had worked out the alleged difference between the interest paid/interest received as reflected in the seized sheet and the figures appearing in the regular books of account of the assessee. However, while making the addition, the Ld. AO added the entire amount of the so-called interest paid or received, instead of restricting the addition to the alleged differential amount. It was contended that had the assessee been confronted and called upon to reconcile the figures appearing in the seized sheet vis-à-vis the regular books of account, the assessee would have furnished a detailed reconciliation and explanation. However, no show cause notice (SCN) was issued before making the addition. The addition was made without affording an opportunity of being heard and without the knowledge of the appellant. It was argued that it is a settled principle of law, as laid down in several judicial pronouncements, that any addition made unilaterally and without issuance of a proper show cause notice is violative of the principles of natural justice and is liable to be deleted.

Without prejudice to the above submissions, the Ld. AR further contended that the appellant had sufficient interest-free funds available in the form of capital account amounting to Rs.1,70,93,564/-. Even assuming, for the sake of argument, that the so-called interest receivable computed by the learned CIT(A) at Rs.4,66,124/- calculated at 12% per annum is to be considered, the corresponding interest-free advance would work out to Rs.38,84,367/-. Against such amount, the assessee possessed substantial interest-free own capital of Rs.1,70,93,564/-, which is more than adequate to cover the said advances. Therefore, no disallowance or addition on account of alleged interest income is warranted.

The Ld. AR further pointed out that, surprisingly, although the Ld. AO had worked out only the difference in interest received/paid, he proceeded to add the entire amount of the so-called interest received and paid as appearing in the seized extract from "Tally Software." This, according to the Ld. AR, clearly demonstrates non-application of mind on the part of the Assessing Officer. The additions, therefore, lack any sound legal or factual basis and deserve to be deleted. It was reiterated that, legally speaking, the addition has been made without issuance of any show cause notice and without granting the appellant an opportunity of being heard. Such unilateral action, in violation of the principles of natural justice, renders the impugned addition bad in law and liable to be quashed.

9. The Ld. AR invited our attention in impugned appellate order. The relevant part of the said order is reproduced as below:-

"46. I have considered the facts of the case and the submissions made by the appellant. The Additions for Rs. 92,63,035/- (unaccounted interest received) and Rs. 87,96,911/- (unexplained interest expenditure) have been made by the AO on the basis of page 3, 4, 5 and 6 of bundle no. 10, party no. AB-3. These seized pages have been scanned by the AO in the assessment order. The appellant has contended that these are rough workings in the tally software and interest was neither received from all the parties nor paid to all the parties mentioned in the seized documents. The appellant has contended that only those entries have been considered in the ITR which finally materialized. I have considered this contention of the appellant and do not find any force in same. As per seized documents, interest was computed party-wise and against many of these names, the phrase 'booked' is mentioned. It is further seen from the computation of income filed by the appellant that many parties for which TDS has been claimed by the appellant are appearing in these seized documents. Also, most of the names appearing in the seized document are appearing in the balance sheet of the appellant. It is further seen that income on account of interest received is being declared as business income and not as 'income

from other sources'. Thus, the income accrued on account of interest receivable is required to be recognized by the appellant and cannot be deferred to subsequent years. Therefore, contention of the appellant that many of these entries were not finally included in the books of account on the ground that same were not received, cannot be accepted.

47. It is further seen that the AO has made additions for both the interest received/receivable as well as interest paid/payable separately. The interest income has been considered as unexplained money and addition has been made u/s. 69A of the Act. In my opinion, the said decision of the AO is not correct because the provisions of section 69A are applicable only when nature and source of acquisition of money, bullion, jewellery, etc. is not explained by the assessee. In the present case, the seized documents suggest that these receipts are towards interest which is received/receivable on various loans given by the appellant to the persons mentioned in the seized documents. Thus, both the nature as well as source of these receipts are clearly coming out from the seized documents. Therefore, the provisions of section 69A will not be applicable for such interest receipts. It is further seen that the appellant is declaring interest receipts as his business receipts, therefore, the said interest receipts as found recorded in the seized documents shall be taxable as business income.

48. Similarly, the AO has treated the interest paid/payable as unaccounted expenditure which is taxable u/s. 69C of the Act. In my opinion, when the interest receipts are being treated as business receipts, therefore, while determining the income on the basis of seized documents, net interest receipts are required to be considered as income.”

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“51. Thus, the net interest income on the basis of notings on seized pages no. 3 to 6 comes to Rs. 4,66,124/- (92,63,035-87,96,911). It is further seen from the assessment order that the assessee has declared net interest income of Rs. 28,794/- (76,40,941-76,12,147). It is not the case of the AO that no interest income mentioned in the seized pages has been recorded in the books of accounts. Rather, it can be seen from the seized document that at many places, the phrase 'booked' has been used. These notings suggest that part of interest payments as well as receipts

have been recorded in the books of accounts. The appellant has also contended that the AO in para 7.2 of the assessment order has worked out the unaccounted interest receipts as Rs. 16,22,094/- and unaccounted interest payments as Rs. 11,84,764/-, however, while making addition, no benefit of interest payments and receipts recorded in the books of accounts has been given by the AO. Considering the totality of facts of the case, net undisclosed income is worked out at Rs. 4,37,330/-(4.66,124-28,794). Thus, the addition to the extent of Rs. 4,37,330/- is upheld being the undisclosed interest income for the year under consideration. Further, the said income shall be taxable as business income. The AO is directed accordingly.

52. To sum up, it is held that the interest receipts of Rs. 92,63,035/- and interest expenses of Rs. 87,96,911/-, shall not be taxable separately u/s. 69A and 69C respectively, as done by the AO. Rather, on the basis of seized pages no. 3, 4, 5 and 6, the net undisclosed interest income is worked out at Rs. 4,37,330/- which shall be taxable as business income. The AO is directed accordingly. The ground no. 2 and 3 are disposed accordingly.”

10. The Ld. DR argued and submitted the written submission before the bench. The relevant part of the submission is reproduced as below:

“The above-mentioned Departmental appeal was heard before the Hon'ble ITAT E' Bench, Mumbai on **29.01.2026**.

The issue before Hon'ble Bench was addition of Rs. 92,63,035/-u/s.69A and Rs. 87,96,911/-u/s. 69C (Interest receipts and interest payments)

It is submitted that CIT(A) erred in holding that interest receipts were identifiable and had a known source. Assessee failed to furnish any supporting documentary evidence such as loan agreements, confirmation from borrowers / lenders or bank statements to substantiate genuineness of the transactions. Findings of CIT(A) was solely based on unverified notings in seized documents which cannot be accepted without independent corroboration,

The treatment of interest income as business income is also factually incorrect as assessee neither disclosed this activity in return of income nor offered any documentary evidence to prove that such lending was part of regular business operations.

In the absence of proof that assessee was engaged in regular money lending business, income cannot be taxed on a net basis, and gross amount rightly falls under ambit of section 69A.

Therefore, it is respectfully submitted that disallowance of AO is justified and ought to have been sustained by the CIT(A)."

Yours sincerely,"

11. We have heard the rival submissions and carefully perused the material placed on record, including the paper book filed by the assessee and the written submissions of the Ld. DR. On examination of the seized material as well as the assessment order, it is evident that the Assessing Officer himself had worked out the differential amount of interest received/paid on the basis of the seized sheets vis-à-vis the regular books of account. However, while making the addition, the Ld. AO proceeded to add the entire amount of the so-called interest receipts and payments without restricting the addition to the differential figure and without granting due credit for entries already recorded in the books. We further find merit in the contention of the Ld. AR that no specific show cause notice was issued before making the impugned additions. The assessee was not afforded a proper opportunity to reconcile the figures appearing in the seized material with the regular books of account. Any addition made without confronting the assessee and without providing an effective opportunity of being heard is violative of the principles of natural justice and cannot be sustained. Coming to the findings of the learned CIT(A), we note that he has rightly observed that the provisions of Sections 69A and 69C are not applicable in the present case. The seized documents clearly indicate that the entries pertain to interest receipts and interest payments arising out of loan transactions. Therefore, both the nature and source of such receipts stand explained from the seized material itself. Once the

interest receipts are treated as business receipts, the income, if any, has to be computed on a net basis and cannot be brought to tax separately under Sections 69A and 69C.

The Ld. CIT(A), after considering the totality of facts, has restricted the addition to the net undisclosed interest income of Rs.4,37,330/- (Rs.4,66,124/- – Rs.28,794/-) and directed that the same be taxed as business income. We find that this conclusion is based on a reasonable appreciation of the seized documents and the entries already recorded in the books of account. The objections raised by the Ld. DR that the interest receipts were not substantiated by independent documentary evidence do not outweigh the factual findings recorded by the Ld. CIT(A), particularly when the Ld. AO himself relied upon the seized material and had not established that the transactions were fictitious or lacked identity and source. In view of the above discussion, we find no infirmity in the order of the Ld. CIT(A) restricting the addition to Rs.4,37,330/- and taxing the same as business income. Accordingly, the grounds raised by the revenue are dismissed.

In the result, the appeal of the assessee & revenue stand dismissed.

ITA No. 3240/Mum/2025, AY 2019-20

12. The Ld. AR argued and contended that the addition amount to Rs. 1,87,142/- is basis of surmises & conjecture. He invited our attention in the order of the Ld. CIT(A). Relevant observation of the Ld. CIT(A) is reproduced as below:-

27. I have considered the facts of the case and submissions made by the appellant. In brief, the AO made an addition on the basis of amount of loan mentioned in the seized document (seized page no. 6) and the amount of loan declared in the balance as on 31.03.2019. The appellant has however not given party-wise list of the loans mentioned at seized page no. 6. Further, the

appellant has also not given any supporting evidence regarding the amount of interest considered by him at row no. 2 and row no. 4 in the above reconciliation table. In the absence of these details, the reconciliation statement submitted by the appellant cannot be relied upon. Accordingly, the addition of Rs. 1,87,142/- made by the AO is upheld. The ground no. 4 raised by appellant is DISMISSED.

13. We have heard the rival submissions and carefully perused the material available on record. The addition of Rs.1,87,142/- has been made on the basis of an alleged difference between the loan amount reflected in the seized document (page no. 6) and the balance as appearing in the books as on 31.03.2019. However, on a careful consideration of the facts, we find that the addition is not supported by any independent incriminating material establishing that the amount represents undisclosed income. It is an admitted position that the figures under consideration pertain to loan transactions which are otherwise recorded in the regular books of account.

Per contra, the Ld. DR supported the findings of the Ld. CIT(A) and submitted that the assessee had failed to furnish party-wise details of the loans appearing in the seized document. The difference pointed out by the Assessing Officer appears to be based on a reconciliation issue rather than on any fresh undisclosed transaction unearthed during search. Merely because certain party-wise details or explanatory workings were not elaborately furnished, the addition cannot be sustained in the absence of any concrete evidence demonstrating suppression of income. The Ld. CIT(A) upheld the addition primarily on the ground that the reconciliation statement could not be relied upon for want of supporting details. However, the burden lies on the revenue to establish, on the basis of cogent material, that the amount in question represents undisclosed income of the

assessee. No such positive material has been brought on record. The addition thus rests on presumptions and not on substantive evidence. In these circumstances, and considering the totality of the facts, we are of the view that the addition of Rs.1,87,142/- is not sustainable in law. Accordingly, the same is deleted.

The ground raised by the assessee is allowed.

14. In the result, the appeals are decided as follows:-

SL	NAME OF ASSESSEE	ITA NO	APPEAL FILED BY	ALLOWED	DISMISSED	REMARKS
1	Mr. Bechar R. Patel	2871,2872,3208 & 3418/Mum/2025	Assessee	All Grounds	NA	Appeals are allowed
2	Mr. Hiren Patel	3248/Mum/2025	Assessee	NA	All Grounds	Appeal is dismissed
3	Mr. Hiren Patel	4062/Mum/2025	Revenue	NA	All Grounds	Appeal is dismissed
4	Mr. Ankit B. Patel	3240/Mum/2025	Assessee	Gr.3	Gr. 1,2 & 4	Appeal is partly allowed.

Order pronounced in the open court on 13th day of February 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 13/02/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI