IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

IT(SS) A Nos.336 & 337/LKW/2025
Assessment Years: 2014-15 & 2015-16

ACIT, Central Circle, Bareilly Kamla Nehru Marg, Civil Lines, Bareilly, Bareilly-243001.	Vs.	**Ankur Anand** 148 Civil Lines, Bareilly, Bareilly-243001.
		TAN/PAN:AGPPA4219C
(Appellant)		(Respondent)

IT(SS)A No.334/LKW/2025
Assessment Year:2015-16

ACIT, Central Circle, Bareilly Kamla Nehru Marg, Civil Lines, Bareilly, Bareilly-243001.	Vs.	**Mohit Anand** 148 Civil Lines, Bareilly, Bareilly-243001.
		TAN/PAN:ABUPA3002H
(Appellant)		(Respondent)

Appellant by :	Shri Neeraj Kumar, CIT (DR)
Respondent by :	Shri Rakesh Garg, Advocate

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

These three appeals are preferred by the Department in cases of two different assessees against the separate orders dated 21.03.2025 passed by the Ld. Commissioner of Income Tax (Appeals)-3, Lucknow {hereinafter called 'CIT (A)} for Assessment Years (AY) 2014-15 and 2015-16. Since the three

Departmental appeals are having identical issues, they were heard together and, therefore, they are being disposed of through this common order for the sake of convenience.

2.0 The brief facts in the case of Shri Mohit Anand for A.Y. 2015-16 in IT(SS)A No.334/LKW/2025 are that in this case, the original return was filed declaring a total income of Rs.16,86,100/- on 14.03.2016. Subsequently, a search and seizure operation was carried out by the Investigation Wing of the Income Tax Department in Harsahaimal Shaimlal Jewellers Pvt. Ltd. group of cases on 21.12.2020 and the case of the assessee was also covered under section 132 of the Income Tax Act, 1961(hereinafter called "the Act'). As per the assessment order, during the course of the above said search and seizure operations, various materials/documents were found and seized/impounded and statements were also recorded. Subsequently, the case of assessee was centralized and notice under section 153A of the Act was issued on 29.10.2021. In response to the said notice, the assessee filed his return of income on 14.12.2021 declaring total income of Rs. 16,86,100/- i.e. the income as per the original return of income.

2.1 During the course of assessment proceedings, the Assessing Officer (hereinafter called "the AO") observed that during the year, the assessee had claimed Long Term Capital Gain (LTCG) exempt under section 10(38) of the Act, amounting to Rs.11,17,87,500/-, on the sale of the Scrip Prem Cap for Rs. 11,47,87,502/- which was initially purchased for Rs. 30,00,000/-. The AO observed that the said scrip had been identified as one of the BSE listed penny stocks which were being used for generating bogus LTCG. The AO required the assessee to establish the genuineness of the LTCG. The response of the assessee was that the payments made for the purchase of the scrip were through proper and authenticated banking channels and that the said shares had been sold on recognized stock exchange and that further the Long-Term Capital Gains earned were completely genuine and were therefore, to be considered as exempt in terms of provisions of section 10(38) of the Act. However, the Assessing Officer did not accept the contention of the assessee in this regard and went on to hold that the assessee's claim of Long Term Capital Gain as being exempt under section 10(38) of the Act was not a genuine claim and that the capital gains claimed as exempt were to be

treated as unaccounted money of the assessee and were to be added to the income of the assessee under section 68 of the Act. The assessment was completed under section 143(3) r.w.s. 153A of the Act at Rs. 11,34,73,600/- after making an addition of Rs. 11,17,87,500/- being addition under section 68 of the Act on account of Long Term Capital Gain.

2.2 Aggrieved, the assessee preferred an appeal before the ld. First Appellate Authority challenging the addition. The ld. First Appellate Authority deleted the entire addition by observing that on perusal of the assessment order, it was clear that there was no incriminating material in possession of the Assessing Officer which would relate to the additions made by the AO. While deleting the addition, the ld. First Appellate Authority relied on numerous judicial precedents including that of the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. reported in [2023] 149taxman.com 399 wherein it had been held that completed/unabated assessments cannot be interfered with while making an assessment under section 153A of the Act unless such interference is on the basis of incriminating material gathered during the course of search.

2.3 Against this deletion, the Department has now approached this Tribunal challenging the deletion of addition by the ld. First Appellate Authority by raising the following grounds of appeal in ITA No. 334 (SS) A/LKW/2025:-

> *"1. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.11,17,87,500/- made under section 68 of the Income - tax Act, 1961 without appreciating the fact that the scrip of Premier Capital Services Limited was a penny stock company.*
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> *2. Whether on the facts and circumstances of the case and in law. the CIT(A) has erred in not appreciating the fact that there is no bar in proceedings under section 153A of the Act that income of the assessee cannot be assessed on the basis of incriminating material in completed/unabated proceedings where the issue has already been examined unlike in the cases where proceedings of income escaping assessments are contemplated in terms of erstwhile first proviso to section 147 of the Act which prohibits assessing officer from reopening assessment beyond four years if the case was already assessed under section 143(3) unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Save as otherwise no assessment was done earlier in the case of the assessee for assessment year 2015-16.*
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> *3. Whether on the facts and circumstances of the case and in law. the CIT(A) has erred in not appreciating the fact that the balance sheet as on 31.03.2013 and 31.03.2014 found in digital form were found and seized during the search*

proceedings in the case of the assessee. and assessee's statement under section 132(4) of the Act was also recorded on this issue.

4. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in ignoring the fact that during assessment proceedings, the assessee failed to establish genuineness of rise of price of shares of Premier Capital Services Limited within a short period of time.

5. Whether on the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate the fact that the shares were split into 1:10 and thus assessee had 400000 equity shares at Face Value of Re. 1/- on 19.03.2014. However, the shares are reflected in Demat account of the assessee, maintained with Indian Finance Guaranty Limited, as on 02.05.2013 as Lock-in Period 04.09.2013 at 40000 shares.

6. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the fact that when someone is deliberately entering into a transaction in shares of penny stock company, it is obvious that all the documentary' evidences will be in order and after all, one has to establish the transactions with reference to the documentary evidences so as to claim the benefit of exemption of LTCG available under the Act and therefore, while examining such evidences, surrounding circumstances also has to be taken into account in order to unravel the true nature of the transactions.

7. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of the Hon hie High Court of Calcutta in the case of PCIT us Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta) wherein

the Hon hie Court has held that "a holistic approach is required to be made and the test of preponderance of probabilities have to be applied and while doing so, we cannot lose sight of the fact that the shares of very little-known companies with insignificant business had a steep rise in the share prices within the period of little over a year. "

8. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of Hon'ble Supreme Court in the case of SEBI u. Rakhi Trading (P.) Ltd. [2018/ 90 taxmann.com 14 7/ 14 6 SCL 163. wherein the Hon'ble Apex Court has held that abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market and that it was unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. It was held by the Hon'ble Apex Court that such trade transactions were obviously only aimed at carrying out manipulative objective.

9. Any other ground that may be adduced at the time of hearing."

3.0 In the case of Shri Ankur Anand for A.Y. 2014-15 in IT(SS)A No.336/LKW/2025, the original return of income was filed on 27.03.2015 declaring total income at Rs. 9,60,490/- and this assessee's case was also covered in the search under section 132 of the Act in Harsahaimal Shaimlal Jewellers Pvt. Ltd. group of cases and notice under section 153A was also

issued in this assessee's case. During the course of assessment proceedings, it was observed by the AO that in this case also, the assessee had claimed LTCG as exempt under section 10(38) of the Act to the tune of Rs. 2,43,02,244/-on account of sale of scrip of Sun Asian for Rs. 2,51,23,920/- and based on similar reasoning as in the case of Shri Mohit Anand, the Assessing Officer proceeded to hold that the assessee had invested his own unaccounted money in the scrip Sun Asian and, therefore, the amount of Rs.2,43,02,244/- being claimed as exempt Long Term Capital Gain under section 10(38) of the Act was to be treated as unaccounted money of the assessee as per the provisions of section 68 of the Act. The assessment in this case was completed at Rs. 2,52,62,734/- under section 143(3) r.w.s. 153A of the Act after making an addition under section 68 of the Act.

3.1 On appeal, the ld. First Appellate Authority, on identical reasoning as in the case of Shri Mohit Anand that in absence of incriminating material no addition can be sustained, deleted the entire addition and now the Department has approached this Tribunal challenging the deletion of addition by raising the following grounds of appeal in IT(SS)A/336/LKW/2025:-

"1. Whether on facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 2,43.02,244/- made under section 68 of the Income - tax Act, 1961 without appreciating the fact that the scrip of Sunrise Asian Limited was a penny stock.

2. Whether on facts and circumstances of the case and in law, the CIT(A(has erred in not appreciating the fact that there is no bar in proceedings under section '53A of the Act that income of the assessee cannot be assessed on the basis of incriminating material in completed/unabated proceedings where the issue has already been examined unlike in the cases where proceedings of income escaping assessments are contemplated in terms of erstwhile first proviso to section 147 of the Act which prohibits assessing officer from reopening assessment beyond four years if the case was already assessed under section 143(3) unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

3. Whether on facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating the fact that the balance sheet as on 31.03.2014 and profit & loss account for FY 2013-14 found in digital form were found and seized during the search proceedings in the case of the assessee, and assessees statement under section 132(4) of the Act was also recorded on this issue.

4. Whether on facts and circumstances of the case and in law. the CIT(A) has erred in ignoring the statement of Shri Vipul Vidur Bhatt recorded during search proceedings in his own case wherein he had admitted that he was an entry' operator and Sunrise Asian Limited was a paper company, controlled by him, is indulged in providing accommodation entry in the form of

capital gains/losses to various beneficiaries and the assessee was found to be one of the beneficiaries.

5. Whether on facts and circumstances of the case and in law. the CIT(A) has erred in ignoring the fact that during assessment proceedings, the assessee failed to establish genuineness of rise of price of shares of M/s Sunrise Asian Limited within a short period of time that too when general market trend was recessive

6.Whether on facts and circumstances of the case and in law, the CIT(A) erred in ignoring the fact that when someone is deliberately entering into a transaction in shares of penny stock company, it is obvious that all the documentary evidences will be in order and after all, one has to establish the transactions with reference to the documentary evidences so as to claim the benefit of exemption of LTCG available under the Act and therefore, while examining such evidences, surrounding circumstances also has to be taken into account in order to unravel the true nature of the transactions.

7. Whether on facts and circumstances of the case and in law, the CIT(A) erred in ignoring the fact that the assesses had not given explanation about reason for purchase of shares of Santoshima Tradelink's Limited in off-market transactions and inordinate delay in dematerialization of those shares when the assessee had earlier also had invested in shares of Reliance Power, as per his statement recorded under section 132(4) of the Act during search proceedings.

8. Whether on facts and circumstances of the case and in law, the C1T(A) erred in ignoring the fact that the SEBI had suspended the trading of shares of M/s Sunrise Asian Limited

and it is immaterial that such suspension was before completion of trading in shares by the assessee. The suspension by SEBI reflects the dubious nature of the transactions, which can't be ignored and which were pursuant to manipulation / abrupt movement in the price of this security as noticed by BSE.

9. Whether on facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of the Hon hie High Court of Calcutta in the case of POT us H Swati Bajaj [2022] 139 taxmann.com 352 [Calcutta] wherein the Hon hie Court has held that "a holistic approach is required to be made and the test of preponderance I of probabilities have to be applied and while doing so, we cannot lose sight of the fact that the shares of very little-known companies with insignificant business had a steep rise in the share prices within the period of little over a year. "

10. Whether on facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of Hon'ble Supreme Court in the case of SEBI vs Rakhi Trading (P.) Ltd. [2018] 90 taxmann.com 147/146 SCL 163, wherein the Hon'ble Apex Court has held that abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, show's that the option in which the party traded was not in demand in the market and that it was unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. It was held by the Hon'ble Apex Court that such trade transactions were obviously only aimed at carrying out manipulative objective.

11. Any other ground that may be adduced at the time of hearing."

4.0 In the case of Shri Ankur Anand for A.Y. 2015-16 in IT (SS)A No.337/LKW/2025, the original return was filed on 14.03.2016 declaring total income of Rs. 13,05,420/- and in this year also, the assessee's case was covered by the search in Harsahaimal Shaimlal Jewellers Pvt. Ltd. group of cases and notice under section 153A of the Act was issued. During the course of assessment proceedings, the ld. AO observed that the assessee had claimed exempt LTCG under section 10(38) of the Act to the tune of Rs. 11,23,13,046/- on the sale of scrip Prem Cap for Rs. 11,53,13,047/- which was purchased for Rs. 30,00,000/-. On identical reasoning as in the two earlier cases, the AO went on to hold that the amount of LTCG being claimed as exempt was the unaccounted money of the assessee and was to be added to the income of the assessee as per provisions of section 68 of the Act. Accordingly, the assessment was completed at Rs. 11,36,18,466/- after making addition of Rs. 11,23,13,046/- under section 68 of the Act.

4.1 On appeal by the assessee before the ld. First Appellate Authority, the ld. First Appellate Authority directed deletion of the entire addition by again placing reliance on the judgment of the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell

Pvt. Ltd. (supra) and by observing that since there was no incriminating material found during the course of the search in the case of the assessee, the addition could not be sustained.

4.2 Aggrieved by the order of the ld. First Appellate Authority, the Department has now approached this Tribunal challenging the deletion by raising the following grounds of appeal in IT(SS)A No.337/LKW/2025:-

> *1. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.11,23,13,046/- made under section 68 of the Income - tax Act, 1961 without appreciating the fact that the scrip of Premier Capital Services Limited was a penny stock company.*
>
> *2. Whether on the facts and circumstances of the case and in law. the CIT(A) has erred in not appreciating the fact that there is no bar in proceedings under section 153A of the Act that income of the assessee cannot be assessed on the basis of incriminating material in completed/unabated proceedings where the issue has already been examined unlike in the cases where proceedings of income escaping assessments are contemplated in terms of erstwhile first proviso to section 147 of the Act which prohibits assessing officer from reopening assessment beyond four years if the case was already assessed under section 143(3) unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Save as otherwise no assessment was done earlier in*

the case of the assessee for assessment year 2015-16.

3. Whether on the facts and circumstances of the case and in law. the CIT(A) has erred in not appreciating the fact that the balance sheet as on 31.03.2013 and 31.03.2014 found in digital form were found and seized during the search proceedings in the case of the assessee. and assessee's statement under section 132(4) of the Act was also recorded on this issue.

4. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in ignoring the fact that during assessment proceedings, the assessee failed to establish genuineness of rise of price of shares of Premier Capital Services Limited within a short period of time.

5. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the fact that when someone is deliberately entering into a transaction in shares of penny stock company, it is obvious that all the documentary' evidences will be in order and after all, one has to establish the transactions with reference to the documentary evidences so as to claim the benefit of exemption of LTCG available under the Act and therefore, while examining such evidences, surrounding circumstances also has to be taken into account in order to unravel the true nature of the transactions.

6. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of the Hon hie High Court of Calcutta in the case of PCIT us Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta) wherein the Hon hie Court has held that "a holistic approach is required to be made and the test of preponderance of probabilities have to be

applied and while doing so, we cannot lose sight of the fact that the shares of very little-known companies with insignificant business had a steep rise in the share prices within the period of little over a year.

7. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring the decision of Hon'ble Supreme Court in the case of SEBI u. Rakhi Trading (P.) Ltd. [2018/ 90 taxmann.com 14 7/ 146 SCL 163. wherein the Hon'ble Apex Court has held that abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market and that it was unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. It was held by the Hon'ble Apex Court that such trade transactions were obviously only aimed at carrying out manipulative objective.

8. Any other ground that may be adduced at the time of hearing

5.0 The ld. CIT DR argued at length and quoted heavily from the assessment order and submitted that in all the three cases, it was very much apparent that the assessee had declared phenomenal amounts of Long Term Capital Gain (LTCG) as part of money laundering operation because no scrip would show such rise in prices within a short span of time. The ld. CIT DR referred to the assessment orders at length and submitted that as per the records available with the Department, the

Investigation Directorate of the Department, based at Kolkata, had undertaken investigation into 84 penny stocks and the two scrips which was sold by the assessees were also a part of those 84 penny stocks. It was submitted that the alleged Long Term Capital Gains (LTCG) were shown with a basic aim to route the unaccounted money of the LTCG beneficiaries into their accounts under the garb of Long Term Capital Gains and in fact, there was no actual Long Term Capital Gains which were earned by the assessee. The ld. CIT DR also referred to the analysis done by the Assessing Officer in the case of these two scrips and submitted that the Assessing Officer has clearly demonstrated that the prices of these scrips had been rigged so as to show Long Term Capital Gains which were in fact bogus.The ld. CIT DR submitted that the ld. First Appellate Authority had wrongly deleted the additions in all the three cases by simply relying on the judicial precedents without appreciating the fact that the details of investments made by the assessees were found in digital form as part of the Balance Sheets and seized during the search proceedings in the case of both the assessees and that statements of the assessees were also recorded under section 132(4) of the Act which would itself

constitute incriminating material in so far as far as these two assessees were concerned. The ld. CIT DR submitted that the ld. First Appellate Authority had ignored the fact that both the assessees were deliberately trying to evade taxes by showing bogus Long Term Capital Gains and that, as is common in such type of cases, all the documentary evidences would be in order and therefore, while adjudicating the legality of the additions, the veil would have to be necessarily lifted to understand the true nature of the transactions. The ld. CIT DR prayed that the appeals of the Department deserved to be allowed.

6.0 In response, the ld. Authorized Representative vehemently supported the orders of the ld. First Appellate Authority and submitted that the ld. First Appellate Authority has recorded a categorical finding that no incriminating material was found and seized during the course of search operations inasmuch as would relate to these two assessees and that the ld. CIT DR has not been able to refute this finding of the ld. First Appellate Authority. The ld. Authorized Representative placed reliance on the numerous judicial precedents of the various Benches of the Tribunal including that of the Lucknow Bench as well as various Hon'ble High Courts as well as the Hon'ble Apex Court

in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra) and submitted that the various judicial authorities have now time and again held that where the assessments are completed/ unabated and where no incriminating material has been found during the course of search, no addition can be made. The ld. AR argued that now it is well-settled that existence of incriminating material found during the course of the search is the very foundation for assuming jurisdiction under section 153A of the Act. The ld. AR also took us through the assessment orders and pointed out that nowhere in any of the three assessment orders has the Assessing Officer made any kind of reference to any kind of incriminating material found during the course of search in the case of both the assessees. It was submitted that in all the three cases, the Assessing Officer brought up the issue of alleged bogus Long Term Capital Gains only during the course of assessment proceedings but has not referred to any such material found during the course of search which would indicate that the assessee had entered into bogus transactions for showing bogus Long Term Capital Gains. The ld. AR prayed that the appeal of the Department deserved to be dismissed.

7.0 We have heard the rival submissions and have also perused the material on record. We have also carefully perused the assessment orders as well as the impugned orders. A reading of all the three assessment orders would make it amply clear that in all the three cases before us, the issue of Long Term Capital Gains was first flagged by the Income Tax Department only during the course of assessment proceedings u/s 153A r.w.s. 143(3) of the Act. The assessment orders have not made any reference to any incriminating material found/seized during the course of search on the captioned two assessees which would indicate the indulgence of the two assessees in booking bogus Long Term Capital Gains as alleged in the assessment order. The details of investments shown in the Balance Sheet and as argued by the Ld. CIT DR cannot be termed as incriminating material as the Balance Sheets are already deemed to be in public domain. As far as the statements recorded under section 132(4) of the Act are concerned, the Hon'ble Delhi High Court has held in PCIT, Delhi vs. Best Infrastructure (India) Pvt. Ltd. (2017) 397 ITR 82 (Del) that statements recorded under section 132(4) of the Act do not themselves constitute incriminating material. In all the three

cases before us, the assessments have been framed u/s 153A of the act consequent to the search action. It is now settled law of the land that existence of incriminating material found during the course of search is a *sine qua non* for making additions pursuant to a search and seizure operation. In the event of no incriminating material being found during search, no additions can be made in respect of those assessments which have become final.

7.1 On a perusal of records, it is evident that in all the three appeals before us the assessments stood completed in as much as in the case of Shri Ankur Anand for AY 2014-15, the issue of LTCG was enquired into and the claim of the assessee was accepted vide order dated 01.06.2016 passed u/s 143(3) of the Act. Subsequently, the case was reopened under section 147 of the Act on the issue of LTCG and the claim was again accepted vide order dated 22.01.2018. For AY 2015-16, in the case of Shri Ankur Anand, the original return of income was processed u/s 143(1) of the Act and the time limit for issuance of notice u/s 143(2) of the Act had expired long before the date of search on the assessee. Similar is the situation in the case of Shri Mohit Anand for AY 2015-16 wherein the original return of

income was processed u/s 143(1) of the Act and the time limit for issuance of notice u/s 143(2) of the Act had expired long before the date of search on the assessee. Thus, it is evident in all the three appeals before us that the assessments had attained finality before the date of search and further no incriminating material was found during the course of such search in case of both the assessees.

7.2 It is seen that the Ld. CIT (A) has deleted the impugned additions by recording a finding of fact that since the assessments were completed and further since no incriminating material was found during the course of search in the case of the two assessees, the principle enunciated by the Hon'ble Apex Court in PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra) would apply. At this juncture, it would be meaningful to reproduce the relevant observations of the Hon'ble Apex Court in the above said Judgment:

> *"38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
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> > *(i) Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding*

the previous year relevant to the AY in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section

153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) and after considering the entire scheme of block assessment under Section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the' assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling

within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub- section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz.,

incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material."

7.3 In view of the above judgment of the Hon'ble Apex Court and on the facts of the three appeals before us, we are of the considered view that the Ld. CIT (A) has rightly deleted the

additions in all the three cases and we, therefore, dismiss the grounds raised by the department in all the three appeals."

8.0 In the final result, all the three appeals of the Department stand dismissed.

(Order pronounced in the open court on 13/02/2026)

Sd/-	**Sd/-**
(NIKHIL CHOUDHARY)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 13/02/2026
Sh/Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow