

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2569/Chny/2025

निर्धारण वर्ष / **Assessment Year: 2011-12**

<b>Jothi Narayanan,</b> No.24, Annai Illam, 46 <sup>th</sup> Street, Mangaiyarkarasi Nagar, Nanganallur, Chennai – 600 061.	vs.	<b>DCIT,</b> Central Circle -2(2), Chennai.
<b>[PAN: ACTPJ-2778-B]</b> (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. G. Tarun, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anitha, Addl. CIT

आयकर अपील सं./ITA Nos.: 2570, 2571, 2573, 2574, 2575, 2576 &  
2577/Chny/2025

निर्धारण वर्ष / **Assessment Years: 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2018-19**

<b>Thanushkodi Narayanan,</b> No.24, Annai Illam, 46 <sup>th</sup> Street, Mangaiyarkarasi Nagar, Nanganallur, Chennai – 600 061.	vs.	<b>DCIT,</b> Central Circle -2(2), Chennai.
<b>[PAN: AAEPN-4579-K]</b> (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N. Arjun Raj, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. Bipin C.N, CIT

सुनवाई की तारीख/Date of Hearing : 17.12.2025

घोषणा की तारीख/Date of Pronouncement : 09.03.2026

**आदेश / O R D E R**

**PER BENCH:****ITA No(s). 2571, 2573 - 2577/CHNY/2025 for the Assessment Year: 2012-13 to 2016-17 & 2018-19:**

The assessee aggrieved by the order(s) of the Learned Commissioner of Income Tax (Appeals) – (in short “ld.CIT(A)”) for the Assessment Year(s) – (in short “A.Y.”) 2012-13 to 2016-17 & 2018-19 dated 24.07.2025, has filed the present batch of 6 appeals before this Tribunal.

2. Since, the facts are the identical across all the appeals / for all the assessment years, except for the nature of the additions / disallowances varying in few of the Assessment Year(s) before this Tribunal in the present batch of 6 appeals, the appeal arising from the A.Y. 2012-13 is being taken up as the lead case with the consent of the both the Ld. AR as well as the Departmental Representatives.

3. The brief fact of the present case is that the assessee, Shri Thanushkodi Narayanan, is the Managing Director of M/s.Annai Builders Real Estates Pvt Ltd. The assessee filed his original return of income for the A.Y. 2012-13 on 27.09.2012 in declaring a total income of Rs.24,87,430/-.

4. A search and seizure operation was carried out in terms of Section 132 of the Act on 04.10.2017 in the residential premises of the assessee and also in the premises of M/s.Annai Builders Real Estates Pvt. Ltd. in which the assessee is the Managing Director.

5. Thereafter, a notice u/s.153A of the Act for the A.Y.2012-13 was issued on 25.09.2018 to the assessee by the Assessing Officer (in short “AO”) and in response to the same, the assessee had filed e-return of income for the A.Y. 2012-13 on 17.08.2019 in declaring total income of Rs.14,53,440/-.

6. The AO had issued the notice u/s.143(2) of the Act on 26.08.2019, followed by a notice u/s.142(1) of the Act dated 06.09.2019 in calling for certain information, which were responded to by the authorised representative of the assessee by filing details as called for during the course of search assessment proceedings u/s.153A of the Act.

7. The AO had thereafter issued a letter dated 11.12.2019 to the assessee in proposing to refer the pending assessment of the individual to Special Audit in terms of Section 142(2A) of the Act for the following reasoning:

*"Please refer to the above Shri Narayanan is the Managing Director of M/s. Annai Builders Real Estates Pvt Ltd. A search action u/s 132 of the Income Tax Act, 1961 was initiated in the case of Shri. T. Narayanan, M/s Annai Builders Real Estates Pvt Ltd and others on 04.10.2017 and the search assessment of the company and Shri Narayanan for A.Y 2012-13 is pending in this office.*

*The case of M/s. Annai Builders Real Estates Pvt Ltd for AY 2012-13 is being proposed for Special Audit as provided u/s.142(2A) of the Act due to the following reasons:-*

*1. It is seen that during the relevant year you were doing more than 10 real estate projects involving sale of both layouts and constructed flats. However, you have not maintained project wise Balance sheet and Profit & loss account.*

*2. It is seen that during the relevant year you were doing more than 10 real estate projects involving sale of both layouts and constructed flats. However, you have not maintained project wise Balance sheet and Profit & loss account.*

*3. There is no clarity as to how the closing stock is valued.*

*4. Advances received from customers are not grouped under "Liabilities" as such but grouped deceptively under Current Assets and Sundry Debtors.*

*5. There is no clarity as to who are the suppliers/ sub-contractors for each project. Also it is not clear whether a particular supplier/ sub-contractor has worked for more than one project and if so how the costs are apportioned between the projects*

*6. Also the number of transactions during the year is significantly higher. Further information submitted in response to notices issued U/s 142(1) dated 28.08.2019, 30.10.2019, 22.11.2019, 25.11.2019 & 29.11.2019 were not complete and hence didn't help to resolve the complexities in the case.*

*In the case of Shri.T.Narayanan also, there are numerous transactions with M/s Annai Builders Real Estates Pvt Ltd. There are credits in his capital/current account for which proper narrations are not available. Further the results of Special Audit of M/s Annai Builders Real Estates Pvt Ltd has a direct bearing on the total income assessable in the hands of Shri.T.Narayanan.*

*In view of the above, considering the volume of accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts of Shri.T.Narayanan and the interest of revenue, I am of the opinion that this is a fit case for Special Audit as per Section 142(2A) of IT Act, 1961.*

*In this connection, you are requested to show cause why your case for AY 2012-13 should not be referred to Special Audit as per Section 142(2A) of IT Act, 1961. You are requested to file your response on or before 16.12.2019 failing which it will be construed that you have no objection for the same."*

8. The assessee vide response dated 16.12.2019 had expressed no objection to the proposal to refer the pending assessment for special audit u/s.142(2A) of the Act.

9. The AO with the prior approval of the PCIT, Central-1, vide letter dated 27.12.2019 had directed the assessee to get his books of accounts audited as required u/s.142(2A) of the Act by the special auditor appointed for the said purpose within 30 days from the date of receipt of the said communication from the AO.

10. However, on account of the COVID – 19 Pandemic, the time limit for furnishing the said special audit report was extended and ultimately the same came to be submitted by the Special auditor on 11.11.2020.

11. The AO upon receipt of the said special audit report had issued the Show cause Notice on 20.11.2020 in proposing to complete the pending search assessment proceedings u/s.153A of the Act by making various additions to the returned income as pointed out therein, i.e. the special audit report.

12. It is seen that the assessee had filed a settlement application u/s.245C(1) of the Act along with M/s.Annai Builders Real Estates Pvt. Ltd (Specified Person) and the assessee's wife, Smt.Jothi Narayanan before the Settlement commission in settlement application No.TN/CN51/2020-21/17-IT on 05.01.2021 for the A.Y. 2012-13 to 2018-19.

13. However, the Settlement commission vide their order dated 19.01.2021 passed u/s.245D(1) of the Act had rejected the settlement application filed by the assessee for the reason that M/s. Annai Builders Real Estate Pvt. Ltd. (Specified Person) did not pay the full amount of taxes payable on the settlement application as required u/s.245C(1) of the Act.

14. The AO upon receipt of the rejection order passed by the Settlement commission u/s.245D(1) of the Act, had issued had issued notice(s) calling for details in support of the Show Cause Notice(s) dated 11.11.2020 issued by them earlier during the course of search assessment proceedings.

15. It is further seen from the records that the assessee had furnished details as called for during the course of the said proceedings and ultimately the search assessment order was passed u/s.153A r.w.s.143(3) of the Act dated 15.01.2022 in determining the taxable total income at Rs.2,59,72,170/- while incorporating the following additions / disallowances in the computation of taxable total income:

16. Subject to the above, the total income of the assessee is assessed as under:

A.	Income from salaries as returned	--	Rs. 40,55,400/-	
Add:	Perquisite u/s 17(2) (as in para 11.5)	--	Rs. 5,690/-	
			-----	Rs. 40,61,090/-
B.	Loss from House property as returned	--	(Rs. 35,27,428/-)	
Add:	Interest on borrowed capital disallowed (as in para 13.4)	--	Rs. 8,14,484/-	
Add:	Addition to deemed rental income (as in para 12.5)	--	Rs. 1,68,000/-	
Add:	Disallowance of deduction u/s 24(a) (as in para 12.6)	--	Rs. 25,200/-	
Add:	Further estimated addition in respect Of Nanganallur and Velacherry			

Properties towards low Fair rent (as in para 12.7)	--	Rs. 3,40,000/- -----	(Rs. 21,79,744/-)
C. Income from Business as returned	--		Rs. 4,65,000/-
D. Income from Other Sources as returned	--	Rs. 5,60,470/-	
Add: Deemed dividend u/s 2(22)(e) (as in paras 14.1 to 14.13)	--	Rs. 1,38,70,048/-	
Add: Addition u/s 56(2)(vii)(c) (as in paras 15.1 to 15.5)	--	Rs. 92,95,305/- -----	Rs. 2,37,25,823/- -----
Gross Total income	--		Rs. 2,60,72,169/-
Less: Deduction under Chapter VIA	--		Rs. 1,00,000/- -----
Total income	--		Rs. 2,59,72,169/-
Assessed income	--		Rs. 2,59,72,170/-

16. The assessee aggrieved with the passing of the said search assessment order dated 15.01.2022, passed u/s.153A r.w.s 143(3) of the Act for the Assessment Year 2012 -13, had challenged the same by filing statutory appeal before the Ld.CIT(A).

17. It is seen from the records the assessee during the course of first appellate proceedings, had filed additional grounds of appeal on 06.02.2025 with regard to the challenge against the validity of assumption of jurisdiction u/s.153A of the Act for the assessment year under consideration.

18. The assessee had contented before the First Appellate Authority that the assumption of jurisdiction u/s.153A of the Act for the A.Y. under consideration and the consequential search assessment order passed in terms of Section 153A r.w.s 143(3) of the Act making the disputed additions / disallowances was wrong and not sustainable in law in the absence of any seized incriminating material in the relation to the same. The assessee had placed reliance on the financial statements and returns of income for the said Assessment Years prior to the date of search inasmuch the same were filed much prior to the date of search being carried out in the premises of the assessee herein.

19. The assessee had further contended before the First Appellate Authority that audited accounts which were already placed on record by way of the returns of income u/s.139 of the Act alone were seized by drawing reference to the Panchanama as well as the list of seized material/inventory issued, wherein it was certified that the audited ledgers and the corresponding vouchers along with hard disk containing the tally accounts of the assessee were only seized.

20. The assessee accordingly submitted before the Ld.CIT(A) that the audited books of accounts were subjected to special audit u/s.142 (2A) of the Act and the findings of the said special audit was carried out in the search assessment order(s) of assessment as additions / disallowances in concluding that the seizure of the audited accounts which were already made available by way of filing returns of income on the conduct of the special audit on the said reported audited accounts cannot amount to any incriminating material / undisclosed income for the purpose of framing the assessment u/s.153A of the Act.

21. The assessee with regard to the additions / disallowances forming part of the search assessment order passed u/s.153A of the Act on merits, i.e. on merits before the first appeal, had filed submissions along with documentary evidence in support thereof in pleading for deleting the additions / disallowances on merits as well.

22. The Ld.CIT(A), however vide impugned order dated 24.07.2025 had adjudicated the additional grounds of appeal raised challenging the validity of assumption of jurisdiction u/s.153A of the Act by holding that the seized Tally of M/s.Annai Builders Real Estate Pvt. Ltd. is to be considered as incriminating material as the same was found in the special audit carried out subsequent to the search inasmuch that the said books of accounts maintained by the said searched entity also had bearing on the determination of taxable total income of the assessee herein.

23. The relevant findings of the Ld.CIT(A) in this regard is as extracted as follows:

*“6.1.2. The primary contention of the appellant is that the year under consideration is falling under the unabated/completed assessments as per second proviso to section 153A of the Act. However, as per the appellant, the AO had made the additions/disallowances in the absence of seized incriminating material and concluded the assessment. Further, the appellant had also contended that the audited accounts were filed along with the return of income for the year under consideration much prior to the date of search and the seized material contains only the printout of audited ledgers and the corresponding vouchers along with a hard disk containing the Tally accounts of the appellant, was only seized and therefore, the audited accounts which were already placed on record by way of return of income were only seized. The appellant has also contended that the audited books of accounts seized at the time of search were subjected to special audit u/s 142(2A) of the Act and the findings of the special audit were carried out in the impugned order. Therefore, the said regular audited books of accounts seized during the course of search which were already made available to the AO by way of filing return of income cannot amount to any incriminating material for the purpose of framing assessment u/s 153A of the Act.*

*6.1.3. With respect to the above contention of the appellant, it is noticed that during the course of search in the premises of the M/s ABREPL, the hard disk containing the Tally accounts on the basis of which the appellant had filed the return of income were seized vide annexure ANN/VP/ABREPL/ED/S. Subsequent to the seizure of the said Tally accounts, on examination of the contents of the said Tally accounts, it was noted by the AO that the appellant had numerous transactions with the company and for the credits in his capital /current accounts, proper narration were not available. Since the case of M/s ABREL was referred to special audit u/s 142(2A) of the Act which would have a direct bearing on the total income assessable in the hands of the appellant also, the AO had requested the appellant to explain why his case also should not be referred for special audit u/s 142(2A) of the Act. In response, the appellant filed a letter dated 16.12.2019 expressing no objection for ordering special audit u/s 142(2A) of the Act. Subsequently, the AO referred the case for special audit with prior approval of the Pr.CIT, Central-1, Chennai with the special areas to be considered during the special audit vide letter dated 27.12.2019. Accordingly, the special audit was carried out by the special auditor and the special audit report was submitted vide its letter dated 09.11.2020. In the said report, the special auditor had found inconsistencies such as assets purchased with the company's fund for the appellant's residence which qualify as perquisite u/s 17(2) of the Act, transfer of funds from the company to the appellant, etc. On the basis of findings of the special audit, the AO had proceeded with the assessment u/s 153A of the Act and made the additions in the respective years under consideration. On these facts and circumstances, it is observed that the seized Tally accounts of M/s ABREPL in the course of search proceedings itself is in the nature of incriminating material which had resulted in the finding that the appellant did not include any perquisite income u/s 17(2) of the Act in his return of income. But for the search, the entire books of accounts of M/s ABREPL maintained in Tally could not have come into possession of the AO. Meaning thereby, the search had resulted in seizure of the Tally accounts of M/s ABREPL, which was otherwise not available with the AO before the search, is to be considered as incriminating in nature for the purpose of making assessment u/s 153A of the Act. Further, the contention of the appellant that the audited books of accounts were filed along with the return of income for the years under consideration could not be accepted for the reason that what is being filed*

*along with the return of income are only the audited financials of the appellant and at no point of time, the entire books of accounts were made available to the AO either at the time of filing the return of income or even in the regular assessment proceedings. Hence, I am of the opinion that the seized Tally of M/s ABREPL is to be considered as incriminating material as it was found in the special audit carried out subsequent to the search that the said books of accounts maintained by the M/s ABREPL had bearing on the total income of the appellant. I am also of the opinion that the AO had made addition of perquisites u/s 17(2) of the Act in the year under consideration on the basis of findings of special audit of the seized Tally accounts of M/s ABREPL, which is also to be considered as arising out of incriminating material.*

*6.1.4. From the above, it can be concluded that the AO had incriminating material unearthed during the course of search in his possession and rightly assumed jurisdiction u/s 153A of the Act as held by the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt Ltd for the year under consideration. Hence, the AO is having jurisdiction arising from the incriminating material and also other issue which arises from the return of income filed for the year under consideration. Accordingly, these grounds of appeal are dismissed."*

24. The Ld.CIT(A) with regard to the grounds of appeal raised challenging the additions / disallowances on merits, had confirmed the addition of Rs.5,690/- made u/s.17(2) of the Act at para 6.3.6., had directed the AO to re-determine the Gross Annual Value of house properties and thereafter re-compute the Income from House Property by following the procedure laid down under the Act at para 6.4.6., had confirmed the addition of Rs.1,38,70,048/- made as deemed dividend u/s.2(22)(e) of the Act at para 6.5.3 and confirmed the addition of Rs.92,95,305/- made u/s.56(2)(viii)(c) of the Act at para 6.6.5 of the impugned order of the first appeal.

25. The assessee aggrieved with the said order of the Ld.CIT(A) had filed the present appeal before us, by raising grounds of appeal challenging the validity of the assumption of jurisdiction u/s.153A of the Act as well as on merits.

26. Since the assessee had raised the validity of the assumption of jurisdiction u/s.153A of the Act in the present batch of appeal, which issue strikes the matter back to the root in the appeals, the Bench finds it pertinent to examine the same before adjudicating the issues on merits and accordingly hearing in the said batch of appeals was with regard to validity of assumption of jurisdiction u/s.153A of the Act.

27. We find that the appeals pertaining to the A.Y. 2012-13 to 2016-17 were completed assessments/unabated assessments prior to the date of search in the premises of the assessee on 04.10.2017. The chart furnished by the Ld. AR during the course of hearing of the said appeal is extracted for immediate reference:

Sl. No.	Assessment Year	Date of filing of ROI	Due date of issuance of Notice under Section 143(2) of the Act
1.	2012 – 13	27.09.2012	30.09.2013
2.	2013 – 14	25.07.2013	30.09.2014
3.	2014 – 15	29.11.2014	30.09.2015
4.	2015 – 16	06.06.2016	30.09.2016
5.	2016 – 17	18.04.2017	30.09.2017
6.	2017 – 18	12.03.2018	30.09.2018
7.	2018 – 19	31.03.2019	30.09.2019

Thus, we accordingly take up the appeals for the Assessment Year 2012-13 to 2016-17 hearing first.

28. Before us, the Ld.AR argued that there was no incriminating material that was seized from the premises of the assessee during the course of search warranting the additions / disallowances for the A.Ys. under consideration. Further, it was argued that the contents forming part of the special audit report furnished u/s.142(2A) of the Act was *per se* acted upon the AO, which further supports the fact of lack of any incriminating material seized from the premises of the assessee herein.

29. The Ld.AR accordingly placed reliance upon the decision of the Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd, reported in 454 ITR 212, wherein the Hon'ble Supreme Court had held that in respect of completed assessments/unabated assessments, no addition could be made by AO in absence of any incriminating material found during course of search u/s.132 of the Act.

30. The Ld.AR argued that the Tally in hard disk seized vide Annexure No.ANN/VP/ABREPL/ED/S, containing the Tally account of the company M/s.Annai Builders Real Estate Private Limited could not be reckoned as incriminating material for the purpose of making an addition u/s.153A of the Act, since the same forms part of the return(s) of income filed by said entity for the respective assessment year(s). The Ld.AR argued that the special audit report furnished in terms of Section 142(2A) of the Act is mere interpretation of the books of accounts of the Special auditor with regard to the books of accounts of the assessee herein and such interpretation being incorporated as additions / disallowances in the search assessment order passed u/s.153A of the Act cannot automatically result in same being understood as “incriminating material” within the ambit in provisions in Section 153A of the Act.

31. The Ld.AR argued that in the apparent absence of any incriminating material for the Assessment Year(s) 2012-13 to 2016-17, the additions / disallowances could not have been made by the AO while passing the search assessment order u/s.153A of the Act.

32. Per Contra, the learned Departmental Representative (Ld.DR) argued that the tally account seized by the Income Tax Department are very much to construed as incriminating material within the ambit of Section 153A of the Act in view of the fact the said Tally account would have never come to the possession of the AO unless otherwise it was seized during the search u/s.132 of the Act. It was argued that the Tally Accounts seized during the search operations coupled with the fact of the assessee’s inability to explain the transactions in the Tally account during the course assessment proceedings would itself make the seized document as incriminating, warranting additions / disallowances which follows therefrom in the search assessment order passed u/s.153A of the Act for the Assessment Year 2012-13 to 2016-17. The Id.DR accordingly, pleaded for confirming the assumption of jurisdiction u/s.153A of

the Act for the Assessment Year. The Id.DR had filed written submissions in regard and the same is re-produced herein below:

**“1.Facts of the case:**

*There was a Search and Seizure operations in the group of Thanushkodi Narayanan and others on 04.10.2017 u/s 132 of the Income Tax Act 1961. During the Search operations, a hard disk along with other documents were seized and the hard disk contained a Tally Account as well.*

*The Ld. AR argued that the Tally account, part of the Hard Disk seized during the search and seizure operations does not constitute an incriminating material.*

**2. Prerequisite to initiate an Assessment u/s 153A:**

*2.1. The prerequisite for initiating the proceedings under Section 153A is that there shall be a search and seizure operation initiated under Section 132 of the Income Tax Act 1961. The Section under Section 153A is reproduced as follows for clarity;*

**Section 153A:**

*“153A. Assessment in case of search or requisition.—Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person **where a search is initiated** under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, **the Assessing Officer shall—***

*(a) **issue notice to** such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

*(b) **assess or reassess** the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:*

***Provided*** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

***Provided further*** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

*Explanation.—For the removal of doubts, it is hereby declared that,—*

*(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;*

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.”

2.2. It is submitted that **when there is a search initiated** in the case of any assessee, the Notice under Section **153A shall be issued** and assessment proceedings commence under Section 153A of the Act. Thereafter only the question of the incriminating material arises in the case of any assessee. It is submitted that the prerequisite to initiate the assessment proceedings under section 153A is not the presence or absence of any incriminating material.

2.3. The presence or absence of the incriminating material need to be considered during the assessment proceedings u/s 153A only and the Judgement in the case of M/s Abhisar Builders applicable at that point of time.

### **3. Incriminating Material:**

3.1. The word “Incriminating Material” hasn’t been defined under the Income Tax Act 1961. In general parlance, the definition of the same is not exhaustive and it depends on facts and circumstances of each case and whether any fact or evidence or transaction is incriminating. The meaning of the word “incriminating” as per different dictionaries are as follows;

Sl. No	Dictionary	Meaning
1	Cambridge Dictionary	making it seem that someone is guilty, especially of a crime
2	Merriam- Webster Dictionary	to charge with or show evidence or proof of involvement in a crime or fault
3	Vocabulary	charging or suggestive of guilt or blame
4	Cambridge learners dictionary	that seems to show that somebody has done something wrong or illegal

3.2. The various meanings indicates that the list of what constitutes incriminating material is not exhaustive and it depends upon the given facts and circumstances in each situation. It is unambiguous that the term “incriminating material” has a very wide meaning and it cannot be restricted to any regular definitions. Therefore, the “Incriminating material” could be anything that shows that a person or assessee has done something wrong or illegal with respect to the Return of income filed and verified before the Income Tax Department.

3.3. The incriminating material can be in any form like evidence in the nature of;

1. A document, content of a document;
2. An asset;
3. Entry in the books of accounts;

4. Statement given on oath;
5. Absence of any book being found during search;
6. Absence of any fact claimed earlier but came to notice during the course of search;
7. Absence of office/business premises as claimed during the returns filed or any other documents;
8. Documents or material seized from a different person and not from the assessee.
9. Any fact or transaction or evidence that is not explained or not explained satisfactorily
10. Absence of any evidence that should have been present in normal course

3.4. It is submitted that the list is not exhaustive. Therefore, any fact or evidence or transaction which reveals that documents/transactions claimed or submitted in the Return of Income or any old proceedings were not genuine, being only a device/make belief based on non-existent facts or suppressed/misrepresented facts, fulfilling the ingredients of undisclosed income, shall constitute an incriminating material.

3.5. In other words, any material or fact or the transaction or evidence that is found during the search is undisclosed or unexplained and the income earned out of such transaction or fact or evidence has escaped the scope of taxation while it should have been Returned to income or assessed to tax had it been disclosed in the right manner. Incriminating material need not necessarily be something tangible. It not only includes any assets, documents, entry in books of accounts, etc, but also any information stored in electronic form or any confession by a person relating to escapement of income. It is not only the presence of the material but absence of the material also would be incriminating in the given facts and circumstances.

#### **4. Assessment issue Vs Search issue:**

4.1. The Income Tax Act does not differentiate between any issue that can be detected during the assessment proceedings or during the search operations. **Any issue that is found during the search and seizure operations based on any incriminating material / fact / evidence /transaction is to be assessed under the search assessments under Section 153A of the Income Tax Act.** When it is detected during the search operations, that become part of the search assessment.

4.2. Undoubtedly, any issue that is recorded in the books of accounts which is not explainable or which doesn't have an explanation and which is based on any information or findings of the search is absolutely incriminating. The wordings "**found during the search**" have very wide meaning and it includes any material/ fact/ evidence / transaction etc found during the search which is incriminating, irrespective of the fact that the same is part of the books of accounts or not.

#### **5. Substance Vs Form of Incriminating Material**

5.1. It is to be noted that the "**substance**" and not the "**form**" is the determining factor in incriminating material. The "**substance of any incriminating material**" found during the Search and Seizure operations is to be considered in determining the presence of incriminating material and "**not the form of the incriminating material**" under Section 153A of the Income tax Act 1961.

5.2. In brief, the **golden rule that determines the incriminating material is not the “form” of the incriminating material but the facts /transactions/ evidence that emanates from the found or seized document / material/ /account makes it incriminating.** Therefore, the discussion on whether the Tally account can be considered as an incriminating material does not have any merits. Therefore, any material as per the Section 153A found during the Search and seizure operations which comes under the exhaustive definition of the incriminating material shall constitute an incriminating material and the same shall be considered accordingly for the purpose of the Section 153A of the Act.

#### **6. Tally Account seized during the search operation in the case of the assessee:**

6.1. During the search and seizure operation in the case of Thanushkodi Narayanan, the hard disk is seized ANN/VP/ABREPL/ED/S which contain the Tally account of the company Annai Builders Real Estate Private Limited. During the assessment proceedings the same was investigated. The relevant part of the Assessment order is reproduced as follows;

“It was seen from the books of Annai Builders Real Estates Limited, the assessee had numerous transactions with the company and for the credits in his capital / current accounts proper narrations were not available. Since the case of Annai Builders Real Estate Private Limited was referred to the special Audit u/s 142(2A) which would have a direct bearing on the total income assessable in this assessee’s hands, and even **the Authorised Representative of the assessee could not furnish proper explanation during the course of hearing** on 16.12.2019, the AR was requested to show cause / explain why the case of the assessee should not be referred for special audit as per section 142 (2A) of the Act. The assessee filed a letter dated 16. 12.2019 expressing no objection for ordering special audit u/s 142(2A).”

6.2. It is to be noted that the Authorised Representative of the assessee could not explain the transactions of the assessee in the Tally account. **The very fact that the AR of the assessee could not explain the transactions of the assessee in the seized hard disk / the Tally account, makes the transactions absolutely incriminating.** Irrespective of whether the seized material was a Tally account or any other document, any fact/ transaction/ evidence whether it is explainable or not explainable is the fact that need to be considered in determining whether the seized document is incriminating material or not.

7. In this context, the relevant part of the order of the CIT(A) is reproduced as follows;

“But for the search, the entire books of accounts of the ABREPL maintained in Tally could not have come into the possession of the AO. Meaning thereby, the search had resulted in seizure of the Tally Accounts of ABREPL, **which otherwise not available with the AO before the search, is to be considered as incriminating in nature** for the purpose of making assessment u/s 153A of the Act.”

7.1. It is very important to note the findings of the CIT(A) that the Tally account never comes into the possession of the Assessing Officer but seized during the Search operations. The very fact that the Tally Accounts were seized during the search operations

and the assessee's **Authorised Representative could not explain the transactions** in the Tally account during the assessment proceedings makes the seized document as absolutely incriminating.

**Prayer:**

It is submitted that the **substance** of any incriminating material found during the Search and Seizure operations is to be considered in determining the presence of incriminating material and **not the form** of the incriminating material under Section 153A of the Income tax Act 1961.”

33. We have heard both the parties, perused the material available on record and orders of the authorities along with the paperbook(s) filed by the assessee before us. The primary contention of the assessee is that for the Assessment Year(s) 2012-13 to 2016-17, no additions / disallowances could have been made by the AO in the search assessment order passed u/s.153A of the Act. The said argument was put forth before us by placing reliance on the decision of the Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd, reported in 454 ITR 212, wherein the Hon'ble Supreme Court had held that in respect of completed assessments/unabated assessments, no addition could be made by AO in absence of any incriminating material found during course of search u/s.132 of the Act.

34. The Hon'ble Supreme Court in the aforesaid judgement had settled the law with regard to the passing of search assessment order u/s.153A of the Act pursuant to search u/s.132 of the Act by holding as follows:

*“13. For the reasons stated hereinabove, 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) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

*14. In view of the above and for the reasons stated above, it is concluded as under:  
(i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*(ii) all pending assessments/reassessments shall stand abated;*

*(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material*

*unearthed during the search and the other material available with the AO including the income declared in the returns; and*

*(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

Thus, keeping in mind the aforesaid law laid down by the Hon'ble Supreme Court, the present appeal(s) for the Assessment Year 2012-13 to 2016-17 are being disposed of.

35. We find that that on a plain reading of the provisions in Section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search u/s.132 or a requisition u/s.132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice u/s.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.

36. Since the assessment u/s.153A of the Act is linked with search and requisition u/s.132 and 132A of the Act, it is evident that the object of the said 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 AO 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 u/s.132 or requisition u/s.132A of the Act, 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.

37. Thus, any proceeding of assessment or reassessment falling within six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined u/s.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 u/s.153A of the Act is annulled in appeal or any other proceeding.

38. The Section 153A of the Act bears the heading "**Assessment in case of search or requisition**". Thus, it can be said that 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

39. 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 AO 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.

40. In case no incriminating material is found, as held by the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd (supra)*, the earlier assessment would have to be reiterated. In case where pending assessments have abated, the AO 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.

41. Thus, these provisions can be invoked only in cases where the Income-tax Department has exercised its extra ordinary powers of conducting search and seizure operations after complying with stringent pre-conditions prescribed in Section 132 of the Act.

42. Further, we find that section 153A of the Act itself creates the fine distinction/differentiation amongst specified six assessment years depending whether prior to the date of search, the assessment proceedings are pending or not before the AO. We note that the relevant section itself clarifies that where an assessment was already completed against an assessee and any appeals or further proceedings are pending, then such appeals or other proceedings do not abate. We should keep in mind that merely because an assessee is subjected to search u/s.132 of the Act, such an action by itself does not give carte blanche to the Department to subject such an assessee to the rigors of the assessment afresh for all the six years.

43. It is for this reason that the Parliament in its wisdom has categorically created two classes among the six years, (a) un-abated assessment and (b) abated assessments. Consequent to a search conducted u/s.132 of the Act, the AO is required to issue notices u/s.153A of the Act to assess the income of the

assessee for six assessment years preceding the date of search. These six assessment years comprise of assessments which are not abated (non-pending assessment before AO on the date of search); and assessments which are pending before the AO on the date of search, which would be treated as abated. In the case of abated assessments, the AO is free to frame the assessment in regular manner and determine the correct taxable income for the relevant year *inter alia* including the undisclosed income un-earthed during search, having regard to the provisions of the Act.

44. However, in relation to unabated assessments (AYs), which were not pending on the date of search, there is a restriction on the powers of the AO. In case of unabated assessments, the AO can re-assess the income only to the extent and with reference to any incriminating material which the Revenue has unearthed in the course of search. Merely because an assessee is subjected to search, he cannot be placed on a different pedestal or put in a more disadvantageous position than an assessee who is not subjected to search unless in the course of search some incriminating documents or evidence or information or material is gathered by the Investigating authorities so as to vest the AO with the necessary powers to make additions to the total income in relation to assessments which did not abate on account of search.

45. We find that the Hon'ble Kerala High Court in the case of *Sunny Jacob Jewellers v. Commissioner of Income-tax, reported in 473 ITR 159*, by placing reliance upon the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd (supra)* had held that it was necessary on the part of the AO to unearth / seize a incriminating relatable to the Assessment Year falling within the block of 6 years so as to validly pass the search assessment order u/s.153A of the Act for the said Assessment Year. The relevant extract of the said judgement is as follows:

*"9. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, we find that the limited point that arises for*

consideration in these appeals is, whether it was permissible and proper for the Assessing Officer to have re-opened the assessment pertaining to the appellants herein for the assessment years 2002-03 to 2007-08 under Section 153A of the I.T. Act, under circumstances where the search conducted under Section 132 of the I.T. Act did not yield any incriminating material pertaining to the appellants/assesseees for the said assessment years ? While the First Appellate Authority appears to have found that the Department was not justified in doing so, the Appellate Tribunal took a contrary view based solely on the judgments of this Court in *Travancore Diagnostics Pvt. Ltd. v. Asstt. CIT* [2016] 74 taxmann.com 239/244 Taxman 316/390 ITR 167(Ker)] and *CIT v. Hotel Meriya* [2010] 195 Taxman 459/332 ITR 537 (Kerala). It is the correctness of the said view of the Appellate Tribunal that we are called upon to examine in these appeals.

10. In the case of *Hotel Meriya (supra)* the Assessing Officer, during the search operations under Section 132 of the I.T. Act, in the premises of the Hotel had seized certain sale slips, copies of certain bills and also recorded statements of the partner of the Hotel and an employee in-charge of the bar. He then proceeded to finalise the block assessment under Section 158BB of the I.T. Act for the block period of five years from 1996-97 to 2000-01. The Appellate Tribunal, in an appeal preferred by the assessee, found that the statements recorded from the partner of the Hotel and the employee in-charge of the bar, and other materials collected, would not amount to evidence as contemplated under Section 158BB of the I.T. Act, and that the statements recorded under Section 132(4) of the I.T. Act had only very limited application. The reliance of those statements by the Assessing Officer was therefore found to be erroneous in law by the Tribunal. Similarly, while the Assessing Officer in that case found that the statement given by the partner of the Hotel, as also the employee in-charge of the bar, to the effect that only 80% of the actual sales were recorded in the cash book, justified a conclusion that there was a suppression of sale to the extent of 20 to 22%, and that the said suppression could be extended to cover all the assessment years within the block period, the Appellate Tribunal had found that inasmuch as there was no evidence regarding concealment of income for the period from 1996-97 to 2000-01, the assessments for those years could not be re-visited based on the evidence that was available for a subsequent year. The said findings of the Appellate Tribunal were reversed by the High Court, which opined that the statements recorded from the partner of the Hotel and the employee in-charge of the bar could be taken as incriminating evidence for the purposes of Section 132 read with Section 158BB of the I.T. Act, and further that, even if the incriminating material pertained to one of the years in the block period, in view of the admission of the partner of the Hotel that there had been a concealment of sales turnover, there was no reason to assume that there was no similar concealment in any of the other years during the block period. To the same effect is the decision of another Division Bench of this Court in *Travancore Diagnostics Pvt. Ltd. (supra)* where the concealment admitted in the statement made on behalf of the assessee was held to extend to the block period concerned.

11. As against the aforesaid decisions of this Court relied upon by the Appellate Tribunal in the orders impugned before us, we have been referred to a judgment of the Supreme Court in *Pr. CIT, Central-3 v. Abhisar Buildwell Pvt. Ltd.* [2023] 149 taxmann.com 399/293 Taxman 141/ 454 ITR 212/(2024) 2 SCC 433], which deals with the manner in which an assessment under Section 153A for a block period must be made pursuant to a search under Section 132 of the I.T. Act or a requisition under Section 132A of the I.T. Act. In particular, the said decision

*notices the amendments that were brought into the I.T. Act through the Finance Act, 2003 with effect from 01.06.2003, and observes as follows:.....*

**12.** *Taking cue from the above judgment of the Supreme Court, we are of the view that as per the amended provisions of Section 153A of the I.T. Act, while the unearthing of incriminating material would unambiguously clothe an Assessing Officer with the jurisdiction to initiate proceedings in terms of Section 153A of the I.T. Act for the block period of six years contemplated under that Section, when it comes to passing fresh assessment orders in respect of each of those assessment years comprised in the block of six assessment years, the Assessing Officer must necessarily relate such unearthed incriminating material to the assessment year in question. This is more so in view of the specific provisions under Section 153A(b), which requires the Assessing Officer to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or the requisition made, and the proviso thereto which mandates that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. In our view, the statutory provision gives a clear indication that, based on the material obtained during the search, the Assessing Officer who gets the jurisdiction to re-open the assessments, can do so in respect of the individual assessment years comprised in the block period of six years only if the material obtained during the search under Section 132 of the I.T. Act, or any part thereof, relates to the assessment year in question. In the appeals before us, since it is not in dispute that the materials obtained during the search conducted on 21.08.2007 pertain only to the assessment year 2008-09, and there was no incriminating material against the appellants/assesseees pertaining to the assessment years 2002-03 to 2007-08, the finding of the Appellate Tribunal reversing the orders of the First Appellate Authority, cannot be legally sustained. In the result, we set aside the orders of the Appellate Tribunal, to the extent impugned herein, and answer the substantial questions of law raised by the appellants/assesseees in favour of the assesseees and against the Revenue. The appeals are disposed as above.”*

46. Thus, the moot question for us to examine is whether there was any incriminating material that was seized by the Income Tax Department during the course of search in the premises of the assessee on 04.10.2017 relating to the Assessment Year 2012-13 to 2016-17 warranting assumption of jurisdiction u/s.153A of the Act and further in support of the additions / disallowances for the said Assessment Year(s)?

47. This Tribunal finds it necessary to understand what could come within the phrase “incriminating material” for the purpose of search assessment proceedings u/s.153A of the Act. We find that in order to constitute an any material / information as 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.

48. Further, incriminating evidence may also constitute of information, tangible or intangible which suggests or leads to an inference that the assessee is conducting transactions outside the regular books of account which are not disclosed to the Department. On the facts of the present case, we find that the AO while passing the search assessment order for the Assessment Year 2012-13 had recorded as follows:

*“7.1 It was seen from the books of the M/s Annai Builders Real Estates Pvt. Ltd., the assessee had numerous transactions with the company and for the credits in his capital/current accounts, proper narrations were not available. Since, the case of M/s. Annai Builders Real Estate Pvt. Ltd. was referred to special audit u/s. 142(2A) which would have a direct bearing on the total income assessable in this assessee’s hands, and even the authorized representative of the assessee could not furnish proper explanation, during the course of hearing on 16.12.2019, the AR was requested to show cause/explain why the case of the assessee should not be referred for special audit as per section 142(2A) of the Act. The assessee filed a letter dated 16.12.2019 expressing no objection for ordering special audit u/s 142(2A).”*

49. Thus, we find that pursuant to special audit report in terms of Section 142(2A) of the Act, the additions / disallowances were made by the AO for the aforesaid assessment year(s) by incorporating the addition / disallowances as per the Annexures forming part of the Form No.6B [Audit report u/s.142(2A) of the Act].

50. However, we do not find any reference to any other incriminating material that is stated to have been seized from the premises of the assessee in support of the additions / disallowances forming part of the search assessment order passed u/s.153A of the Act. Hence, it finds fit to conclude that the books of accounts of M/s Annai Builders Real Estates Pvt. Ltd as well as the tally records in support thereof were purported as incriminating material by the AO for the purpose of making reference to special audit u/s.142(2A) of the Act and the

consequently incorporating the special audit report as proposal(s) preceding passing of the search assessment order u/s.153A of the Act.

51. We do not agree with the Id.DR that the tally accounts seized by the Income Tax Department would per se constitute incriminating material for the reason that there is no discrepancy between the tally accounts seized and the actual return(s) of income filed by M/s.Annai Builders Real Estates Pvt. Ltd. Hence, when this is the factual scenario, the seizure of the tally accounts which is already forming part of the return of income filed by the said company, the same would not constitute incriminating material for the purpose of Section 153A of the Act.

52. We find that the provisions in Section 132 of the Act which empowers the Income Tax Department to search the premise of any tax payer contemplates search in consequence of information in his possession, has reason to believe that the said tax payer was in possession of money or bullion or jewellery or any such material mentioned therein, which has not been, or would not be, disclosed if such search and seizure action were not to be carried out. The said Section reads as follows:

*“132.(1) Where the Principal Director General or] Director General or [Principal Director or] Director] or the [ [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] [or Additional Director or Additional Commissioner] [or Joint Director or Joint Commissioner] in consequence of information in his pos-session, has reason to believe that-  
.....*

*(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian In-come-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property)”*

Thus, we find that the books of accounts of M/s.Annai Builders Real Estates Pvt.Ltd, return(s) of income filed for the Assessment Year(s) 2012-13 to 2016-

17 were already in possession of the Income Tax Department much prior to the date of search in the premises of the assessee herein.

53. Hence, we are not inclined to accept the arguments of the Id.DR for the reason that if the same is to be accepted that it would result in a scenario where every instance where the Income Tax Department seizes the return of income, books of accounts, tally accounts maintained by the searched person, the same would constitute incriminating material for the purpose of assuming jurisdiction and passing search assessment order u/s.153A of the Act.

54. Having concluded that the tally accounts of M/s.Annai Builders Real Estates Pvt. Ltd would not constitute incriminating material for the purpose of Section 153A of the Act, the next issue for us to consider is whether the special audit report furnished u/s.142(2A) of the Act would itself constitute incriminating material for the purpose of Section 153A of the Act.

55. We find that on plain reading of sub-section (2A) of section 142 of the Act, it can be said that the AO is invested with the power to direct the assessee to get its accounts audited at any stage of the proceedings, with the previous approval of the authority specified in that provision, if in his opinion it is necessary to do so, having regard to the following:

- (i) Nature and complexity of the accounts.
- (ii) Volume of the accounts.
- (iii) Doubts about the correctness of the accounts.
- (iv) Multiplicity of the transactions in the accounts or specialized nature of the assessee's business activities.
- (v) Lastly, bearing in mind the interest of the revenue.

Thus, it is the interpretation of the AO with regard to the veracity of the books of accounts of the said tax payer that would warrant special audit in terms of Section 142(2A) of the Act. Such inference drawn by the AO, even if the same is adverse to the tax payer, the same would not automatically result in the

conclusion that the said books of accounts warranting special audit in terms of Section 142(2A) of the Act was in the nature of incriminating material for the purpose of Section 153A of the Act.

56. The next question that would arise is whether the special audit report furnished u/s.142(2A) of the Act pursuant to such reference made by the AO would constitute incriminating material for the purpose of Section 153A of the Act.

57. We find that the co-ordinate bench of the Tribunal, Delhi bench in the case of M/s.ATS Infrastructure Ltd., K-19, Sector 18, Noida. vs. ACIT, Central Circle, Meerut, in ITA No.5811, 5812, 5813/Del/2014 dated 31.08.2018 under identical circumstances, while examining the special audit report u/s.142(2A) of the Act would constitute incriminating material for the purpose of Section 153A of the Act had held as follows:

*“8. Bare perusal of para 5 of the impugned order passed by the Id.CIT(A) goes to prove that undisputedly, no incriminating material has come on record during the search and seizure operation conducted at the premises of the assessee on 15.02.2008 rather the additions made by the AO and confirmed by Id.CIT(A) are based upon the fresh appreciation of facts that too on the basis of special audit report.*

*9. Ld.AR for the assessee challenging the impugned order further contended inter alia that the Assessing Officer has no seized material to reassess the total income on the basis of search operation conducted on 27.03.2012; that since on the date of search, assessment already stood completed and no fresh material was unearthed to make reassessment, the assessment order is not sustainable and relied upon the judgment cited as CIT vs. Kabul Chawla - 380 ITR 173 (Del.).*

*10. Assessee brought on record copy of computation of income along with acknowledgement of return for income, copy of special audit report furnished u/s.142(2A) and reply filed by the assessee to the special audit report, available in the paper book containing pages 1 to 75, for the AYs 2002-03 and 2003-04. Assessee also brought on record copy of the tax audit report u/s 44AB of the Act, available at pages 23 to 32 and pages 19 to 28A of the paper book for AYs 2002-03 and 2003-04 respectively. Special audit report and reply filed by the assessee go to prove that the entire assessment made u/s 153A/143 (3) for AYs 2002-03 & 2003-04 hinges upon special tax audit report and not on any incriminating material.*

*11. Identical issue has come up before the Hon'ble jurisdictional High Court in the case cited as Kabul Chawla (supra) wherein all the earlier decisions delivered*

*by the Hon'ble High Courts have been considered and legal position decided by the Hon'ble jurisdictional High Court is summarized for ready reference as under :-...*

*12. In view of the law laid down by Hon'ble jurisdictional High Court in Kabul Chawla (supra) case, we are of the considered view that when no incriminating material has come on record during the search and seizure operation conducted at the premises of the assessee rather assessment has been based upon special audit report whereas such facts were already brought on record by the assessee by filing original return of income along with computation, the assessment framed u/s.153A read with section 143 (3) is not sustainable in the eyes of law, hence the assessments for AYs 2002-03 & 2003-04 are ordered to be quashed."*

58. We find that the decision relied upon by the co-ordinate bench of Income Tax Appellate Tribunal, Delhi Bench in the case of CIT vs. Kabul Chawla, judgement of the Hon'ble Delhi High Court, reported in 380 ITR 173 was upheld by the Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd (supra).

59. Further, we find that the Hon'ble Delhi High Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd. ITA No. 239/2018 & ITA No. 240/2019, while adjudicating the issue of whether Special audit report u/s.142(2A) of the Act would constitute incriminating material, had observed as follows:

*"2. These are two appeals filed against the impugned common order dated 4th July 2017 passed by the ITAT in ITA No.4877/Del/14 & 2878/Del/2014 for the Assessment Years (AYs) 2007-08 and 2008-09, respectively.*

*3. The issue urged in the present appeals is whether the ITAT erred in deleting the additions' made by the Assessing Officer in the assessments framed under Section 153A of the Income Tax Act, 1961 (the Act) on the basis that there was no incriminating material qua the Assessee.*

*4. The facts in brief are that a search was conducted on 21st January, 2011 in Dharampal Satyapal group of cases. Consequent thereto, a notice under Section 153A of the Act was issued to the Respondent Assessee, an entity created on demerger of rubber thread unit of Dharampal Satyapal Ltd. (DSL). The Assessee, in the return filed in response to the notice, declared a loss in each of the AYs. The Assessee claimed depreciation in the sum of Rs.1,05,84,885/- for AY 2007-2008 and Rs.9,50,75,091/- for AY 2008-2009. The Assessing Officer (AO) acted on the report of Special Audit ordered in the case of DSL under Section 142 (2A) of the Act, after the search, and concluded that the depreciation could not have been claimed in respect of assets acquired by DSL out of the deferred government grant in terms of Explanation 10 to Section 43 (1) of the Act.*

*5. The Commissioner of Income Tax (Appeals) [CIT(A)] by the common order dated 25th April 2014 allowed the Assessee's appeals for the AYs in question on the ground that no incriminating material qua the Assessee was recovered during*

*the search. On this ground account the CIT (A) deleted the additions made by the AO.*

*6. The ITAT has dismissed the Revenue's appeal relying essentially on the decisions of this Court in CIT v. Kabul Chawla (2015) 380 ITR 573 (Del) and Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals (2017) 395 ITR 526*

*7. Learned counsel for the Revenue repeated the submission made before the ITAT viz, that the report of Special Audit should be treated as incriminating evidence. Clearly the report of the Special Auditor, having been commissioned subsequent to the search, and during the assessment proceedings against DSL, cannot obviously be treated as incriminating material qua the Assessee, recovered during the course of search, in order to justify the addition made in the assessment under section 153A of the Act. This is consistent with the legal position explained in both CIT v. Kabul Chawla (supra) (which still holds the field) and Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals (supra). Dr. Rakesh Gupta, learned counsel for the Assessee appearing on advance notice produced before this Court copy of an order dated 2nd July 2018 passed by the Supreme Court dismissing the Revenue's Special Leave Petition against the aforementioned judgment in Pr. CIT v. Meeta Gutgutia Proprietor Ferns 'N' Petals (supra) on merits. The said order is reported as Pr. CIT v. Meeta Gutgutia (2018) 257 Taxman 441 (SC)."*

The aforesaid judgement of the Hon'ble Delhi High Court was subsequently confirmed by the Hon'ble Supreme Court in Civil Appeal No. 6580 OF 2021 & Ors, reported in 454 ITR 212 (Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd).

60. Thus, respectfully following the above decision of the Hon'ble Delhi High Court, confirmed by the Hon'ble Supreme Court that additions made solely on the basis of a Special Audit Report in a search case is not sustainable, as there is ought to be incriminating material found during the course of search and such special audit report was commissioned subsequent to the search and furnished much later to the date of search in the premises of the assessee herein.

61. Having concluded that the special audit report furnished u/s.142(2A) of the Act does not constitute incriminating material, let us examine the nature of the additions / disallowances made forming part of the search assessment order(s) passed for the Assessment Year 2012-13 to 2016-17.

62. The Ld. AR during the course of hearing had furnished the Issue wise Chart and the same is reproduced herein below:

Amount in Rs.						
Issue / AY	2012 - 13	2013 - 14	2014 - 15	2015 - 16	2016 - 17	2018 - 19
Allowance in salary	-	-		1,54,200 (11.1 - 11.3)	1,54,200 (11.1 - 11.5)	
Addition u/s 17(2)	5,690 (11.5)	2,48,407 (11.5)	3,96,016 (11.5)	3,96,016 (12.5)	3,96,016 (12.5)	3,96,016 (9.5)
Interest of borrowed capital	8,14,484 (13.4)	8,24,774 (13.4)	8,25,418 (13.4)	8,27,999 (13.4)	2,55,013 (13.4)	2,00,000 (11.1 - 11.2)
Deemed rental income	1,68,000 (12.5)	1,68,000 (12.5)	1,68,000 (12.5)	1,68,000 (13.5)	1,68,000 (13.5)	9,00,000 (10.1 - 10.4)
Disallowance u/s 24a	25,200 (12.6)	25,200 (12.6)	25,200 (12.6)	25,200 (13.6)	25,200 (13.6)	
Fair rent	3,40,000 (12.7)	3,40,000 (12.7)	3,40,000 (12.7)	3,40,000 (12.7)	3,40,000 (13.7)	
Deemed dividend	1,38,70,048 (14.1 - 14.13)	-	-	-	-	-
Addition under Section 56(2)(vii)(c)	92,95,305 (15.1 - 15.5)	-	-	-	-	-
Foreign Travel Expenses			1,50,000 (14.1 - 14.6)	1,50,000 (15.1 - 15.6)	1,50,000 (15.1 - 15.6)	1,50,000 (13.1 - 13.6)
Unexplained investment u/s 69	-	-	-	-	2,81,25,000 (16.1-16.5)	
Unexplained money						3,00,000 (12.1 - 12.5) 158 - 169

63. We find that the additions made in the search assessment order for the Assessment Year 2012-13 to 2016-17 are extract replicate of the annexures forming part of the Special Audit report furnished u/s.142(2A) of the Act [Page No.58 to 173].

64. With regard to the First Issue of Allowance in salary, the Special Audit report had observed as follows for Assessment Year: 2015-16 & 2016-17:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

## Annexure-1: Computation of Income from Salary

Thanushkodi Narayanan	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19	
Salary Income	40,55,400	40,56,442	40,55,400	42,10,599	42,00,000	96,00,000	90,85,800	As per ITR
Allowances	1,44,600	1,43,558	1,44,600	-	-	-	5,14,200	
Gross Salary	42,00,000	42,00,000	42,00,000	42,10,599	42,00,000	96,00,000	96,00,000	
Salary Income	40,55,400	40,56,442	40,55,400	40,65,999	40,45,800	90,85,800		153A
Allowances	1,44,600	1,43,558	1,44,600	1,44,600	1,54,200	5,14,200		
Gross Salary	42,00,000	42,00,000	42,00,000	42,10,599	42,00,000	96,00,000		
Additional Allowances- claimed	-	-	-	1,44,600	1,54,200	5,14,200		



65. With regard to the second issue of Addition u/s.17(2) of the Act, the Special audit report had observed as follows for all the Assessment Year(s):

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

## Annexure-3: Computation of Perquisite for usage of Furniture and Fixtures

Assesment Year	10% of cost	Amount Recovered	Perquisite
AY 2012-13	5,690	-	5,690
AY 2013-14	2,48,407	-	2,48,407
AY 2014-15	3,96,016	-	3,96,016
AY 2015-16	3,96,016	-	3,96,016
AY 2016-17	3,96,016	-	3,96,016
AY 2017-18	3,96,016	-	3,96,016
AY 2018-19	3,96,016	-	3,96,016

Group	Date	No of days	Debit	Remarks / Observations on vouching
Office Equipment	25-01-2012	67.00	3,10,000	TV purchased for MD house and Travelling and visa expenses of MD and others included
Furniture	05-05-2012	330.0	4,40,745	Customs duty paid for purchase of furnitures from CASA Shamuzzi LLC.
Furniture	05-05-2012	330.0	15,24,916	Furniture for Mahalingapuram house.
Furniture	04-01-2013	86.0	16,84,500	Furniture for MD house.
			39,60,161	



66. With regard to the third, fourth, fifth and sixth issue of addition made on Interest of borrowed capital, Deemed rental income, Disallowance u/s.24a of the Act and Fair rent, the Special audit report had observed as follows for the A.Y.2012-13:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

Annexure-2: Income from House Property - AY 2012-13

Sl No	Property Address	Ownership %	Type of Property	FY 2011-12 As per ITR-153A				FY 2011-12 As per ITR-153A				Remarks
				Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	
1	NO.4,(OLD NO.16),RAMANATHAN ST., MAHALINGAPURAM	50%	Deemed Let Out	9,00,000	2,70,000	38,23,214	-31,93,214	9,00,000	2,70,000	38,23,214	-31,93,214	
2	NO.77, MEDAVAKKAM MAIN ROAD, MADIPAKKAM	50%	Let Out	4,80,000	1,44,000	5,18,673	-1,82,673	4,80,000	1,44,000	-	3,36,000	capital was not borrowed for the purpose of Acquisition or construction or repair. Loan borrowed on November 3, 2007 (loan against Property)
3	NO.154/123,SADASIVAM NAGAR,BAZZAR ROAD, MADIPAKKAM	50%	Let Out	62,100	18,630	-	43,470	62,100	18,630	-	43,470	
4	BAKTHA REDDY GARDEN	50%	Deemed Let Out	60,000	18,000	-	42,000	60,000	18,000	-	42,000	
5	PONNIAMMAN KOIL STREET	50%	Deemed Let Out	24,000	7200	-	16,800	24,000	7200	-	16,800	
6	NAVIN S BUILDING,NO.76, MEDAVAKKAM MAIN ROAD, MADIPAKKAM, CHENNAI - 600091	50%	Deemed Let Out	60000	18000	2,95,811	-258811	60000	18000	-	42,000	capital was not borrowed for the purpose of Acquisition or construction or repair (LBCH0001668876 -loan against property)
7	Velacherry, Chennai, TAMIL NADU -600042	100%	Deemed Let Out	-	-	-	-	-	-	-	-	
8	Tuticorin, TAMIL NADU, 628001	100%	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied, Native Place
9	Nanganallur Residential House, Chennai 600061	100%	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied - Deemed Let out not considered and Funds not borrowed for acquisition or Construction of the House Property - Home Equity Loan
							<b>-35,27,428</b>				<b>-27,12,944</b>	



For the Assessment Year: 2013-14:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

Annexure-2: Income from House Property - AY 2013-14

Sl No	Property Address	Type of Property	FY 2013-13				FY 2013-13				Remarks
			Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	
1	NO.4,(OLD NO.16),RAMANATHAN ST., MAHALINGAPURAM	Deemed Let Out	9,00,000	2,70,000	36,74,438	-30,44,438	9,00,000	2,70,000	36,74,438	-30,44,438	
2	NO.77, MEDAVAKKAM MAIN ROAD, MADIPAKKAM	Let Out	4,80,000	1,44,000	5,25,225	-1,89,225	4,80,000	1,44,000	-	3,36,000	capital was not borrowed for the purpose of Acquisition or construction or repair. Loan borrowed on November 3, 2007 (loan against Property)
3	NO.154/123,SADASIVAM NAGAR,BAZZAR ROAD, MADIPAKKAM	Let Out	62,100	18,630	-	43,470	62,100	18,630	-	43,470	
4	BAKTHA REDDY GARDEN	Deemed Let Out	60,000	18,000	-	42,000	60,000	18,000	-	42,000	
5	PONNIAMMAN KOIL STREET	Deemed Let Out	24,000	7,200	-	16,800	24,000	7,200	-	16,800	
6	NAVIN S BUILDING,NO.76, MEDAVAKKAM MAIN ROAD, MADIPAKKAM, CHENNAI - 600091	Deemed Let Out	60,000	18,000	2,99,548	-2,57,548	60,000	18,000	-	42,000	capital was not borrowed for the purpose of Acquisition or construction or repair (LBCH0001668876 -loan against property)
7	Velacherry, Chennai, TAMIL NADU -600042	Deemed Let Out	-	-	-	-	-	-	-	-	No Income offered
8	Tuticorin, TAMIL NADU, 628001	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied
9	Nanganallur Residential House, Chennai 600061	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied - Deemed Let out not considered and Funds not borrowed for acquisition or Construction of the House Property - Home Equity Loan
							<b>-55,88,941</b>			<b>-25,64,188</b>	



for the Assessment Year: 2014-15:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

Annexure-2: Income from House Property - AY 2014-15

Sl No	Property Address	Type of Property	FY 2013-14				FY 2013-14				Remarks
			Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	
1	NO.4,(OLD NO.16),RAMANATHAN ST., MAHALINGAPURAM	Deemed Let Out	9,00,000	2,70,000	28,69,023	-22,39,023	9,00,000	2,70,000	28,69,023	-22,39,023	
2	NO.77, MEDAVAKKAM MAIN ROAD, MADIPAKKAM	Let Out	4,80,000	1,44,000	5,25,636	-1,89,636	4,80,000	1,44,000	-	3,36,000	capital was not borrowed for the purpose of Acquisition or construction or repair. Loan borrowed on November 3, 2007 (loan against Property)
3	NO.154/123,SADASIVAM NAGAR,BAZZAR ROAD, MADIPAKKAM	Let Out	1,03,845	31,154	-	72,692	1,03,845	31,154	-	72,692	
4	BAKTHA REDDY GARDEN	Deemed Let Out	60,000	18,000	-	42,000	60,000	18,000	-	42,000	
5	PONNIAMMAN KOIL STREET	Deemed Let Out	24,000	7,200	-	16,800	24,000	7,200	-	16,800	
6	NAVIN S BUILDING,NO.76, MEDAVAKKAM MAIN ROAD, MADIPAKKAM, CHENNAI - 600091	Deemed Let Out	60,000	18,000	2,99,782	-2,57,782	60,000	18,000	-	42,000	capital was not borrowed for the purpose of Acquisition or construction or repair (LBCH0001668876 -loan against property)
7	Velacherry, Chennai, TAMIL NADU -600042	Deemed Let Out	-	-	-	-	-	-	-	-	
8	Tuticorin, TAMIL NADU, 628001	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied
9	Nanganallur Residential House, Chennai 600061	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied - Deemed Let out not considered and Funds not borrowed for acquisition or Construction of the House Property - Home Equity Loan
						-25,54,950				-17,29,532	



for the Assessment Year: 2015-16:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

Annexure-2: Income from House Property - AY 2015-16

Sl No	Property Address	Type of Property	FY 2014-15 As per ITR-153A				FY 2014-15 As per Special Audit				Remarks
			Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	
1	NO.4,(OLD NO.16),RAMANATHAN ST., MAHALINGAPURAM	Deemed Let Out	9,00,000	2,70,000	30,28,537	-23,98,537	9,00,000	2,70,000	30,28,537	-23,98,537	
2	NO.77, MEDAVAKKAM MAIN ROAD, MADIPAKKAM	Let Out	4,80,000	1,44,000	5,27,279	-1,91,279	4,80,000	1,44,000	-	3,36,000	capital was not borrowed for the purpose of Acquisition or construction or repair. Loan borrowed on November 3, 2007 (loan against Property)
3	NO.154/123,SADASIVAM NAGAR,BAZZAR ROAD, MADIPAKKAM	Let Out	1,11,090	33,327	-	77,763	1,11,090	33,327	-	77,763	
4	BAKTHA REDDY GARDEN	Deemed Let Out	60,000	18,000	-	42,000	60,000	18,000	-	42,000	
5	PONNIAMMAN KOIL STREET	Deemed Let Out	24,000	7,200	-	16,800	24,000	7,200	-	16,800	
6	NAVIN S BUILDING,NO.76, MEDAVAKKAM MAIN ROAD, MADIPAKKAM, CHENNAI - 600091	Deemed Let Out	60,000	18,000	3,00,720	-2,58,720	60,000	18,000	-	42,000	capital was not borrowed for the purpose of Acquisition or construction or repair (LBCH0001668876 -loan against property)
7	Velacherry, Chennai, TAMIL NADU -600042	Deemed Let Out	-	-	-	-	-	-	-	-	
8	Tuticorin, TAMIL NADU, 628001	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied
9	Nanganallur Residential House, Chennai 600061	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied - Deemed Let out not considered and Funds not borrowed for acquisition or Construction of the House Property - Home Equity Loan
						-27,11,973				-18,83,974	



for the Assessment Year: 2016-17:

Mr. Thanushkodi Narayanan  
PAN: AAEPN4579K

Annexure-2: Income from House Property - AY 2016-17

Sl No	Property Address	Type of Property	FY 2015-16 As per ITR-153A				FY 2015-16 As per Special Audit				Remarks
			Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	Annual Lettable Value	30% Deduction	Interest on Borrowed Capital	Income or Loss	
1	NO.4,(OLD NO.16),RAMANATHAN ST., MAHALINGAPURAM	Deemed Let Out	9,00,000	2,70,000	30,31,554	-24,01,554	9,00,000	2,70,000	30,31,554	-24,01,554	
2	NO.77, MEDAVAKKAM MAIN ROAD, MADIPAKKAM	Let Out	3,93,750	1,18,125	1,62,395	1,13,230	3,93,750	1,18,125	-	2,75,625	capital was not borrowed for the purpose of Acquisition or construction or repair. Loan borrowed on November 3, 2007 (loan against Property)
3	NO.154/123,SADASIVAM NAGAR,BAZZAR ROAD, MADIPAKKAM	Let Out	1,11,090	33,327		77,763	1,11,090	33,327		77,763	
4	BAKTHA REDDY GARDEN	Deemed Let Out	60,000	18,000		42,000	60,000	18,000		42,000	
5	PONNIAMMAN KOIL STREET	Deemed Let Out	24,000	7,200		16,800	24,000	7,200		16,800	
6	NAVIN S BUILDING,NO.76, MEDAVAKKAM MAIN ROAD, MADIPAKKAM, CHENNAI - 600091	Deemed Let Out	60,000	18,000	92,618	-50,618	60,000	18,000		42,000	capital was not borrowed for the purpose of Acquisition or construction or repair (LBCH0001668876 -loan against property)
7	Velacherry, Chennai, TAMIL NADU -600042	Deemed Let Out	-	-	-	-	-	-	-	-	
8	Tuticorin, TAMIL NADU, 628001	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied
9	Nanganallur Residential House, Chennai 600061	Self Occupied	-	-	-	-	-	-	-	-	Self Occupied - Deemed Let out not considered and Funds not borrowed for acquisition or Construction of the House Property - Home Equity Loan
						-22,02,379				-19,47,366	



With regard to the seventh issue of addition made u/s.56(2)(vii)(c) of the Act, the Special audit report had observed as follows for the A.Y. 2012-13:

Mrs. Thanushkodi Narayanan  
Special Audit u/s 142(2A) of the Income Tax Act 1961 - AY 2012-13

Annexure-4: Deemed Dividend -2(22)(e)

Financial Year	Amount Rs.	Date of Transaction	Remarks
FY 2011-12	24,89,850	Various Dates	Increase in Closing Balance Rs. 64,26,774-38,36,924
FY 2011-12	8,00,000	08-03-2011	Rs. 10,00,00 paid & Rs. 8,00,000 was refunded and the remain Rs. 2,00,000 is covered in closing balance increase.
FY 2011-12	1,55,20,728	31-03-2012	Transfer of Unclaimed Creditors Balances to set off of the debit balances, ignored (Opening Balances as at 01.04.2011)
	<b>1,88,10,578</b>		



67. With regard to the eighth issue of addition made on Foreign Travel Expenses, for the A.Y.2014-15 to 2016-17, we find that during the course of search proceedings in the business premise of M/s.Annai Builders Real Estates Private Limited, in response to Question No.35 in the sworn statement u/s.132(4) of the Act recorded during the course of search on 04.10.2017, the assessee had responded to the same as follows:

*“Q. No.35 It is seen from the passports available at this premises you and Shri P. N. Pandian have made frequent trips abroad during the last six years. Please explain the purpose of your visits along with the sources for the expenses incurred for the foreign travels.”*

*Ans. Sir, except for a couple of visits to Dubai, Singapore and Thailand which were exclusively for the business promotion, our other visits abroad were mostly pleasure trips. All my trips abroad along with Shri P. N. Pandian were met out of my personal source of income which are reflected in my capital account. I shall furnish the statement of records in a couple of days’ time.”*

68. Thereafter, in the statement recorded on 01.12.2017 from the assessee u/s.132(4) of the Act, in response to Question No.10, the assessee responded to as follows:

*“Q.No.10 While answering to Q. No.35 in the sworn statement recorded u/s 132(4) of the Income Tax Act, 1961 on 06.10.2017 from you, you have stated that you will submit the source of foreign travel expenses. So far you are not submitted the details. Please comment on this.”*

*Ans. Sir, I am extremely sorry for the delayed submission. We have gone to foreign countries 10 to 15 times since 2013. I don’t have the exact details of expenses. I hereby offer an amount of Rs. 1,50,000/- each on estimate basis for the Financial Years 2013-14 to 2017-18 as additional income in my individual hands.”*

69. The Assessing Officer after examining the replies filed by the assessee in this regard during the course of assessment proceedings had proceeded to make the addition for the A.Y. 2014-15 to 2016-17 by holding as follows:

*“Thus, the assessee has not satisfactorily explained the source for the foreign travel. Hence, the estimated amount of disclosure of income made by him of Rs. 1,50,000/- for the A.Y. 2015-16 in the sworn statement recorded u/s 132(4) from him on 01.12.2017, is added to the returned income as unexplained expenditure u/s 69C of the Act.”*

70. Thus, it can be said that the addition was made solely made on the sworn statement recorded u/s.132(4) of the Act in the absence of any corroborative material seized in support of such statement record at the time of search. The said addition cannot stand the test of law in view of the settled legal position in this regard by the Hon’ble Madras High Court in the case of The Commissioner of Income Tax, Madurai v. J.Dinesh Mehta in Tax Case (Appeal) No.84 of 2010 dated 05.07.2018, wherein the Madras High Court had held as follows:

*“6. Section 132(4A) merely creates a presumption. Therefore, in the absence of any material to substantiate the said presumption and in the light of the finding rendered by both the Appellate Authority and Tribunal, we do not find any substantial questions of law involved. Admittedly, nothing has been seized from the premises of the assessee. The statements made by the Pathers being independent job workers were found to be contradictory. There was no admission by the assessee. The admission was with respect to the some of the transactions between the assessee and the Pathers and not with respect to the entries made in the diaries. The Pathers were also doing job work of others as seen from their statements. Therefore, we are of the view that it cannot be stated that they are employees of the assessee. In any case, what has been done by the Commissioner of Income Tax (Appeals) as confirmed by the Tribunal, is on appreciation of fact. Thus, we do not find any reason to interfere with the findings of the Tribunal. In such view of the matter, the decision relied upon by the learned counsel appearing for the Revenue in COMMISSIONER OF INCOME-TAX VS. AMBIKA APPALAM DEPOT ((2012) 340 ITR 497) has got no application to the case on hand as in the abovesaid case, the Court did find corroborative evidence to substantiate along with the presumption created under Section 132(4- A) of the Act. After all the presumption under the abovesaid provision is rebuttable in nature. Accordingly, we do not find any substantial questions of law involved and the tax case appeal stands dismissed. No costs.”*

71. Further, the Hon'ble Madras High Court in another case of Dr. M. Malliga v. The Assistant / Deputy Commissioner of Income Tax, Central Circle, Salem in T.C.A.No.284 of 2011 dated 21.11.2024, under identical circumstances had held as follows:

*“6. Based on the statement, the assessing authority brings to tax a sum of Rs.9 lakhs. At the outset, it is unclear as to why, when statement refers to a sum of Rs.25 lakhs as loan, the assessing authority has brought to tax only a sum of Rs.9 lakhs. In any event, the order of assessment does not reveal the existence of any incriminating material barring the statement recorded, to confirm on the basis on which the addition could have been made. Section 158BC requires that any addition made as undisclosed income must flow from the incriminating materials found in the course of search.*

*7. While undisputedly, a statement recorded under Section 132(4) would constitute evidence, and a valuable one at that, it cannot be the sole basis upon which an addition may be made in the context of block assessment. For the aforesaid reasons, the appeal succeeds and substantial question of law qua no.1 is answered in favour of the assessee.”*

72. Thus, respectfully following the aforesaid decisions of the Hon'ble Madras High Court, we hold that the sworn statement recorded u/s.132(4) of the Act in

the absence of any corroborative material seized in support thereof cannot be construed as incriminating material for the purpose of Section 153A of the Act.

73. With regard to the ninth issue of addition of Unexplained investment u/s.69 of the Act, we find that the AO had analysed the bank statement of the assessee herein for making the said addition. The reference and inferences drawn from the bank statement of the assessee cannot be possibly construed as incriminating material for the purpose of Section 153A of the Act.

74. Hence, we find the action of the AO making the additions / disallowances for the A.Y. 2012-13 to 2016-17 in the absence of any incriminating material was without jurisdiction and contrary to the law laid down by the Hon'ble Supreme Court and accordingly we quash the search assessment order passed u/s.143(3) r.w.s 153A of the Act for the A.Ys. 2012-13 to 2016-17.

75. Since we have quashed the search assessment order passed u/s.143(3) r.w.s 153A of the Act for the A.Y.2012-13 to 2016-17 for want of jurisdiction, we are not adjudicating the grounds of appeal raised challenging the validity of the additions / disallowances forming part of the said search assessment order.

76. Hence, for the reasoning and findings given in the preceding paragraphs, the appeals filed by the assessee for the A.Y. 2012-13 to 2016-17 are allowed.

77. With regard to the appeal arising for the A.Y.2018-19, we find the said assessment year was the year of search, in view of the fact that the search was carried out in the premises of the assessee on 04.10.2017, during the Financial Year 2017-18 relevant to the A.Y.2018-19. We find that the AO had passed the assessment order u/s.143(3) of the Act dated 17.01.2022 by making the following additions / disallowances:

14.	Subject to the above, the total income of the assessee is assessed as under:		
A.	Income from salaries as returned	--	Rs. 90,85,800/-
Add:	Perquisite u/s 17(2) (as in para 9.5)	--	Rs. 3,96,016/-
			-----
			Rs. 94,81,816/-
B.	Income from House property as returned	--	Rs. 5,87,998/-
Add:	Addition to deemed rental income as in para 10.1 & 10.4)	--	Rs. 9,00,000/-
Add:	Disallowance u/s 24(b) (as in Paras 11.1 & 11.2)	--	Rs. 2,00,000/-
			-----
			Rs. 16,87,998/-
C.	Long Term Capital Gain as returned	--	Rs. 7,13,052/-
D.	Income from Other Sources as returned	--	Rs. 12,29,325/-
E.	Unexplained money (as in paras 12.1 to 12.5)	--	Rs. 3,00,000/-
E.	Foreign travel expenditure added u/s 69C (as in para 13.1 to 13.6)	--	Rs. 1,50,000/-
			-----
	Gross Total income	--	Rs. 1,35,62,191/-
Less:	Deduction under Chapter VIA	--	Rs. 1,60,000/-
			-----
	Assessed income	--	Rs. 1,34,02,191/-
	Assessed income rounded off to	--	Rs. 1,34,02,190/-

78. The assessee had further challenged said assessment order before the Ld.CIT(A) and the Ld.CIT(A) after considering the submissions of the assessee had disposed of the appeal by holding as follows:

*"6.2.1. This ground relates to the addition of Rs.3,96,016/- u/s 17(2) of the Act. The AO had noticed during the assessment proceedings that during the course of special audit, it was seen from the accounts of M/s ABREPL that Television set and furniture items were found to have been purchased for the Managing Director's (i.e. the appellant) house. The details of purchases made and the computation of perquisite as computed in the Special Audit Report are as under:*

.....

*6.2.5. Further, it is seen that the appellant had filed further appeal before the Hon'ble ITAT, Chennai. While disposing the appeal vide order in ITA No. 519/CHNY/2023 dated 08.11.2023, the Hon'ble ITAT had confirmed the order of the CIT(A) and dismissed this issue. In this regard, the relevant paragraphs of the order of the Hon'ble ITAT are reproduced as under:...*

*“13. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in holding the taxable perquisites being electronic items like T.V. sets and furniture items placed in assessee’s residence and claimed the same as tax free amounting to Rs.3,96,016/-*

*14. Brief facts are that the AO during the course of assessment proceedings noticed from the accounts of Annai Builders Real Estate Pvt. Ltd., that from financial year 2011-12 to 2012-13, the assessee purchased TV sets and furniture items amounting to Rs.39,60,161/- and was given to M.D. for his use and assessee claimed exemption of this perquisites of Rs.3,96,016/- as exempt u/s.17(2) of the Act. The AO added this sum of Rs.3,96,016/- towards the assets on the ground that same were used by the assessee at his residence and thus 10% of cost of such equipments/perquisites is charged to tax in the hands of the assessee as per section 17(2) of the Act. The CIT(A) also confirmed the action of the AO.*

*15. We have heard rival contentions and gone through the facts and circumstances of the assessee. Before us, the Id.counsel for the assessee could not adduce any evidence or could not controvert the findings of the CIT(A) or could not make any legal arguments on this. Hence, we have no agitation in confirming the order of CIT(A). This issue of assessee’s appeal is dismissed.”*

*6.2.6. Since the facts and circumstances are exactly similar in the year under consideration, the above decision of the Hon’ble ITAT would apply to this year also. Respectfully following the same, the addition of Rs.3,96,016/- towards perquisite u/s 17(2) of the Act made by the AO is confirmed and this ground of appeal is dismissed*

.....

*6.3.1. This ground is raised in connection with addition of Rs.3,00,000/- as unexplained money u/s 69A of the Act. During the course of search proceedings in the business premise of M/s. ABREPL, cash of Rs.3,70,400/- was found and inventorized vide ANN/VP/ABREPL/CASH/F dated 07.10.2017 whereas the cash balance in the books of M/s. ABREPL was Rs.72,400/-. On being questioned about the source for the remaining cash with proper material documents, Shri T. Narayanan in his sworn statement u/s 132(4) of the Income Tax Act, 1961 dated 06/10/2017 admitted an amount of Rs.3,00,000/- as unaccounted income in his individual hands for the Financial Year 2017-18. Hence, cash of Rs.3,00,000/- was seized from the residential premise of Shri T. Narayanan vide ANN/VP/ABREPL/CASH/F dated 07/10/2017. The relevant portion of the sworn statement recorded from Shri T. Narayanan, u/s 132(4) of the Income Tax Act, 1961 dated 06/10/2017 is reproduced as under:...*

3.3. I have perused the assessment order, remand report and submissions of the appellant. On perusal of the same, it is noted that an amount of Rs.3,70,000/- was found and the cash balance as per books of M/s ABREPL was only Rs.72,400/-. When the difference was questioned to Shri T. Narayanan, he accepted that the excess cash of Rs.3,00,000/- should be treated as his unaccounted income and the same was seized during the course of search. The appellant had tried to explain in the course of assessment proceedings that the source of seized cash of Rs.3,00,000/- was out of cash withdrawals from the bank accounts in the preceding months. However, the appellant could not provide any evidence in the course of assessment proceedings to support his claim and for this reason, the AO had added the amount of Rs.3,00,000/- as unexplained money u/s 69A of the Act. In the course of appeal proceedings, the appellant had submitted the bank statements to show that there are withdrawals from his bank account to claim the same as source for the cash found and seized at the time of search. However, the AO had verified the claim of the appellant in appeal proceedings and found that there are withdrawals of Rs.1,50,000/- on 01.09.2017 and only Rs.5,000/- was withdrawn on 03.10.2017. Further, the appellant did not file any rejoinder or written submissions with regard to the findings of the AO in the remand report. Under these facts and circumstances, I am of the opinion that the appellant could not explain that there are sufficient withdrawals from the bank account of the appellant before the date of search to claim the same as source for the cash found and seized at the time of search. Hence, the addition made by the AO of Rs.3,00,000/- u/s 69A r.w.s. 115BBE of the Act is confirmed and this ground raised by the appellant is dismissed.

....

6.4.1. This ground pertains to addition of Rs.1,50,000/- on account of Foreign Travel Expenses. The AO noticed that during the course of search proceedings in the business premise of M/s. ABREPL, it was seen from the passports available in the premises that the appellant, Shri T. Narayanan and the Company's Manager, Shri P.N. Pandian, had made frequent foreign trips. On being questioned about the source for the foreign trips expenditure, the appellant had stated that except for a couple of visits to Dubai, Singapore and Thailand, which were exclusively for business promotion, all other trips were pleasure trips and the source for the same was out of his personal income. In the statement recorded on 01.12.2017 from the appellant u/s 132(4) of the Act, the appellant had offered Rs.1,50,000/- per year from A.Y. 2014-15 to 2018-19 as additional income in his individual hands. Accordingly, the AO had added Rs.1,50,000/- as income from other sources...

6.4.3. Further, it is seen that the appellant had filed further appeal before the Hon'ble ITAT, Chennai. While disposing the appeal vide order in ITA No. 519/CHNY/2023 dated 08.11.2023, the Hon'ble ITAT had confirmed the order of the CIT(A) and dismissed this issue. In this regard, the relevant paragraphs of the order of the Hon'ble ITAT are reproduced as under

*“24. We have heard rival contentions and gone through facts and circumstances of the case. We noted that even now before us, the assessee could not file any details of his foreign trips and how he made the expenditure. Once details are not available before lower authorities or even now before us, we are of the view that the AO has rightly made addition of foreign travel expenditure of Rs.1,50,000/- treating the same as unexplained expenditure u/s.69C of the Act and CIT(A) has rightly confirmed the same in the absence of any evidence to the contrary. We confirm the addition and dismiss this ground of assessee’s appeal.”*

*6.4.4. Since the facts and circumstances are exactly similar in the year under consideration, the above decision of the Hon’ble ITAT would apply to this year also. Respectfully following the same, the addition of Rs.1,50,000/- towards foreign travel expenditure made by the AO is confirmed and this ground of appeal is dismissed.”*

79. Before us, the Ld.AR argued that the order of this Tribunal in ITA No.519/Chny/2013 dated 08.11.2023 has not attained finality and the same is pending for adjudication before the Madras High Court in Tax Case Appeal No.570/Chny/2023.

80. Be that as it may be, the decision rendered by this Tribunal for the A.Y.2017-18 (pending assessment on the date of search) in assessee’s own case has not been stayed by the Hon’ble Madras High Court in further appeal or reversed by a higher appellate forum at the time of hearing of the present appeal. In the absence of any material change in the facts and in the law, we find no infirmity with the order of the Ld.CIT(A) for the A.Y.2018-19.

81. Hence, we dismiss the appeal filed by the assessee for the A.Y.2018-19.

82. In the result, the appeals filed by the assessee in ITA No.2571, 2573 - 2576/Chny/2025 for the A.Ys. 2012-13 to 2016-17 are allowed and the appeal filed in ITA No.2577/Chny/2025 for the A.Y.2018-19 is dismissed.

**83. ITA No.2570 & 2569/Chny/2025 for the A.Y.2011-12**

The above two appeals are filed by Shri Thanushkodi Narayanan and Smt.Jothi Narayanan for the A.Y.2011-12 against the order(s) of the Id.CIT(A).

84. Since the facts of both the appeals as well as the grievance of the assessee(s) are identical to one other, we are adjudicating both the appeals together.

85. The individuals pursuant to search in their premises on 04.10.2017, was subjected to re-assessment proceedings u/s.147 of the Act by way of issuance of notice u/s.148 of the Act on 30.03.2018 for the A.Y.2011-12. Shri Thanushkodi Narayanan had filed his return of income in response to notice u/s.148 of the Act on 13.04.2018 and Smt.Jothi Narayanan on 13.04.2018.

86. The AO had considered the reply filed by both the individuals and had proceeded to pass the re-assessment order dated 21.12.2018 for Smt.Jothi Narayanan in determining the taxable total income at Rs. 20,88,073/- by computing the income as follows:

<b><u>Computation of income</u></b>		
Income as per return		Rs. 18,04,850
Add. Income from House Property		
1. Commercial property at Ponniamman Koil Street, Madipakkam	Rs. 48,000	
Less 30% standard Deduction	Rs. 14,400	Rs.23,600
2. Residential Property at Selaiyur	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	Rs.84,000
3. Navin Building, Madipakkam	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	Rs.84,000
4. Sadasivam Nagar, Medipakkam	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	Rs.84,000
		<u>Rs. 20,80,450</u>
Income from other sources		
Interest Income		Rs. 7623
<b>Assessed Income</b>		<u><b>Rs. 20,88,073</b></u>

87. Similarly, the re-assessment order was passed u/s.147 of the Act dated 20.12.2018 in the hands of Shri.T.Narayanan in determining the taxable total income at Rs.45,68,255/- by computing the income as follows:

<b><u>Computation of income</u></b>		
Income as per return		Rs. 39,58,180
Add. Income from House Property		
1. Baktha Reddy Nagar, Medavakkam	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	84,000
2. Commercial Property at Ponniamman Koli 1 <sup>st</sup> Street.	Rs. 48,000	
Less 30% standard Deduction	Rs. 14,400	33,600
3. Navin Building, Madipakkam	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	84,000
4. Sadasivam Nagar, Medipakkam	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	84,000
5. Building at Velacherry	Rs. 1,20,000	
Less 30% standard Deduction	Rs. 36,000	84,000
6. Property at Tuticorin	Rs. 24,000	
Less 30% standard Deduction	Rs. 7,200	16,800
		<u>Rs. 3,86,400</u>
Income from other sources		
Interest Income		Rs. 2,23,675
<b>Assessed Income</b>		<u><b>Rs. 45,68,255</b></u>

88. Thereafter, both the individuals had filed a rectification petition u/s.154 of the Act before the AO on 10.01.2019 in seeking rectification of the re-assessment order dated 21.12.2018 / 20.12.2018 for the following reasons:

**In the case of Smt. Jothi Narayanan:**

*“With reference to the above referred Assessment Order received on 27.12.2018, there has been certain mistakes which are apparent on records for which we request your Ld. Authority to kindly rectify them in accordance to the provisions of Section 154 of the Income Tax Act.*

*In this regard, I would like to humbly submit as follows:*

*1. While concluding the re-assessment u/s. 143(3) r.w.s 147 of the Act, your Ld. Authority had added certain rental incomes to the total income as per return of income. In this regard, it has been observed that there are mistakes apparent on record while offering the rental income to tax.*

2. Property at Navin Building, Madipakkam is a property held in joint name of Mrs. Jothi Narayana and Mr. T Narayanan and request your Ld. Authority to rectify the addition made to the extent of Rs. 1,20,000/- in my hands to Rs. 60,000/-. I have submitted the copies of all sale deeds with your Ld. Authority vide submission dated 12-Oct-2018 wherein the evidence of joint ownership is clearly evident.

3. I request your Ld. Authority to consider the interest payment of Rs. 2,60,064/- i.e. ½ share of total interest of Rs. 5,20,129/- as deduction u/s. 24(b) of the Income Tax Act which was paid during the year against the income of Property at Navin Building, Madipakkam. In this regard, I hereby enclose the interest certificate issued by ICICI bank dated 07-Dec-2012 as a proof towards interest payment.

4. Further, I request your Ld. Authority to consider the interest payment of Rs. 7,59,727/- as deduction u/s. 24(b) of the Income Tax Act which was paid during the year against the income of Residential Property at Selaiyur. In this regard, I hereby enclose the interest certificate issued by Citi bank dated 15-Mar-2012 as a proof towards interest payment.

5. Interest u/s. 234A & 234B has to be re-considered as per the Act.

From the above it is clear that there has been mistake apparent on record which need to be rectified in accordance to the provisions of Section 154 of the Act. I further request your Ld. Authority to provide an opportunity to be heard before passing an order u/s. 154.”

### **In the case of Shri. T Narayanan**

With reference to the above referred Assessment Order received on 27.12.2018, it has been observed certain mistakes which are apparent on records for which we request your Ld. Authority to kindly rectify them in accordance to the provisions of Section 154 of the Income Tax Act.

In this regard, I would like to humbly submit as follows:

1. While concluding the re-assessment u/s. 143(3) r.w.s 147 of the Act, your Ld. Authority had added certain rental incomes to the total income as per return of income. In this regard, it has been observed that there are mistakes apparent on record while offering the rental income to tax.

2. Property at Baktha Reddy Nagar, Medavakkam is a property held in joint name of Mr. T Narayanan and Mrs. Jothi Narayana and request your Ld. Authority to rectify the addition made to the extent of Rs. 1,20,000/- in my hands to Rs. 60,000/-. I have submitted the copies of all sale deeds with your Ld. Authority vide submission dated 12-Oct-2018 wherein the evidence of joint ownership is clearly evident.

3. Property at Navin Building, Madipakkam is a property held in joint name of Mr. T Narayanan and Mrs. Jothi Narayana and request your Ld. Authority to rectify the addition made to the extent of Rs. 1,20,000/- in my hands to Rs. 60,000/-. I have

*submitted the copies of all sale deeds with your Ld. Authority vide submission dated 12-Oct-2018 wherein the evidence of joint ownership is clearly evident.*

*4. Further, I request your Ld. Authority to consider the interest payment of Rs. 2,60,064/- i.e. ½ share of total interest of Rs. 5,20,129/- as deduction u/s. 24(b) of the Income Tax Act which was paid during the year against the income of Property at Navin Building, Madipakkam. In this regard, I hereby enclose the interest certificate issued by ICICI bank dated 07-Dec-2012 as a proof towards interest payment.*

*5. I would like to inform your Ld. Authority that during the year under consideration there has been no structure prevailed on the land at Tuticorin. The structure was built only during the financial year 2014-2015. Therefore, for the year under consideration, it was a vacant land and vacant land is not liable for deemed rent. In this regard, I hereby enclose the copy of structural plan approval given by the local authority in order to demonstrate that during the year under consideration it was a vacant land without any structure.*

*6. I would like to inform your Ld. Authority that during the year under consideration there has been no structure prevailed on the land at Tuticorin. The structure was built only during the financial year 2014-2015. Therefore, for the year under consideration, it was a vacant land and vacant land is not liable for deemed rent. In this regard, I hereby enclose the copy of structural plan approval given by the local authority in order to demonstrate that during the year under consideration it was a vacant land without any structure. A Further, I would like to inform your Ld. Authority that during the year under consideration there has been no structure prevailed on the land at Velacherry. temporary structure was built only during the financial year 2016-2017 and used as a branch office. Therefore, for the year under consideration, it was a vacant land and vacant land is not liable for deemed rent. In this regard, I hereby enclose the copy of purchase agreement which is already vide submission dated 12-Oct-2018 in order to demonstrate that during the year under consideration it was a vacant land without any permanent structure.*

*7. Interest u/s. 234A & 234B has to be re-considered as per the Act.*

*From the above it is clear that there has been mistake apparent on record which need to be rectified in accordance to the provisions of Section 154 of the Act. I further request your Ld. Authority to provide an opportunity to be heard before passing an order u/s.154.”*

89. The said rectification petition(s) filed in terms of Section 154 of the Act were disposed of by the AO by holding that the issue sought to be rectified u/s.154 of the Act was not a mistake apparent on records and therefore the same was not amenable to rectification proceedings u/s.154 of the Act.

90. The two individuals aggrieved by the said rectification order(s) passed u/s.154 of the Act had filed appeal(s) before the Ld.CIT(A), who vide their appellate order dated 24.07.2025 had dismissed the appeal arising from the rectification proceedings u/s.154 of the Act.

91. The assessee aggrieved by the said order of the Ld.CIT(A), had filed the present appeals before us.

92. We have heard the arguments of the Ld.AR as well as the Id.DR and pursued the records. We find that the plea for bifurcation of the assessment of the house property income attributable to the Property at Navin Building, Madipakkam in view of the admitted fact of the same being a property held in joint capacity by two the individuals would be amendable to the provisions in Section 154 of the Act especially considering the fact that the said individuals had placed on record the relevant sale deeds before the AO vide reply dated 12.10.2018 wherein the evidence of joint ownership is clearly evident.

93. In so far as the other issues / relief sought for in the rectification proceedings initiated u/s.154 of the Act, we find that same are beyond the scope of the rectification proceedings u/s.154 of the Act and rightfully dismissed by the AO vide rectification order and further confirmed by the Ld.CIT(A). Hence, we do not find any infirmity with order of the Ld.CIT(A) and we do not find it necessary to interfere with the same.

94. Accordingly, we direct the AO to re-compute the house property income attributable to the Property at Navin Building, Madipakkam by adopting 50% of such income each in the hands of two individuals.

95. In the result, the appeals filed by the assesseees in ITA Nos.2570 & 2569/Chny/2025 for the A.Y.2011-12 are partly allowed.

Order pronounced in the open court on 09<sup>th</sup> March, 2026 at Chennai.

**Sd/-**

(मनु कुमर गिरि)

**(MANU KUMAR GIRI)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस. आर. रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 09<sup>th</sup> March, 2026

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF