

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3872/Del/2024
(ASSESSMENT YEAR 2013-14)

ITA No.3873/Del/2024
(ASSESSMENT YEAR 2014-15)

ITA No.3874/Del/2024
(ASSESSMENT YEAR 2015-16)

ITA No.3875/Del/2024
(ASSESSMENT YEAR 2016-17)

M/s Gulshan Investment Pvt. Ltd. No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AACCCG0597R	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

ITA No.3871/Del/2024
(ASSESSMENT YEAR 2016-17)

ITA No.3870/Del/2024
(ASSESSMENT YEAR 2013-14)

M/s Eshan Financial Services Pvt. Ltd. No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AAACE222Q	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

ITA No.3869/Del/2024
(ASSESSMENT YEAR 2013-14)

M/s Pneumatic Services Pvt. Ltd., No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AADCP1871C	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

ITA No.3868/Del/2024
(ASSESSMENT YEAR 2013-14)

M/s Prabudh Securities Pvt. Ltd., No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AAACP5592P	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

ITA No.3867/Del/2024
(ASSESSMENT YEAR 2013-14)

M/s Satvik Securities Pvt. Ltd. No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AABCS3304F	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

ITA No.3866/Del/2024
(ASSESSMENT YEAR 2013-14)

M/s Corroborate Venture Services Private Limited, No.11, Barbar Lane Bangali Market, New Delhi-110022 PAN:AABCC0571A	Vs.	JCIT(OSD), Central Circle-1, Noida.
(Appellant)		(Respondent)

Assessee by	Shri S.K. Tulsiyan, Adv. Ms. Bhoomija Verma, Adv. And Sh. Lakshya Budhiraja, FCA
Department by	Shri Surender Pal, CIT-DR
Date of Hearing	17/03/2025
Date of Pronouncement	16/04/2025

ORDER

PER MANISH AGARWAL, AM,

The captioned appeals are filed by various assesseees' against the separate orders of Ld. Commissioner of Income Tax (Appeals)-3, [CIT(A), in short], Noida dated 28.10.2021 passed u/s 250(6) of the Income Tax Act, 1961 (the Act, in short).

2. At the outset during the course of hearing, the Ld. AR of the assessee submitted that the legal issue taken in ground of appeal No. 2 is common in all these appeals wherein the assessee has challenged the additions made in the assessment completed u/s 153A of the Act without referring to incriminating material unearth during the course of search carried out in the case of each respective assessee when the assessment year involved is

unabated year. Therefore, he requested to take the appeal no.3872/Del/2024 in the case of M/s Gulshan Investment Pvt Ltd. vs. JCIT for Assessment Year 2013-14 as a lead case. The Ld. CIT-DR also confirmed this fact that this issue is common in all the appeals and, therefore, he has not objected to the request of the Ld. AR of making arguments in the case of Gulshan Investments Pvt. Ltd. for 2013-14 as lead case in ITA No. 3872/Del/2024.

3. From the perusal of all the appeals, the legal ground that additions were made in the assessment order passed u/s 153A of the Act without referring to any incriminating material found/seized as a result of search from its possession is common in all the cases, therefore, the legal issue challenged in ground of appeal No. 2 in all the cases is heard first together and is disposed-off by this common order.

4. First we take up ITA No.3872/Del/2024 for Asst. Year 2013-14 as a lead case.

5. Brief facts of the case are that assessee is a private limited company and working as NBFC licenced by RBI. A search and seizure operation u/s 132 was carried on 11.10.2018 at the business premises of the assessee. During the course of search no money, bullion, jewellery, valuable articles or thing was found and seized from the possession of the assessee company. The proceedings were commenced u/s 153A by way of issue of notice on 31.08.2022. In response to which, the assessee had filed the return of income declaring total loss of Rs.3,79,37,236/- as was originally declared in the return filed u/s 139(1) of the Act. The

Assessing Officer based on the statement of one Shri Raj Kumar Modi of PMC group recorded during the course of search carried out independently in this own case, held that during the year under appeal, the assessee company has obtained accommodation entry in the shape of unsecured loans and made the addition of Rs. 8.75 Crores u/s 68 of the Act which was the peak balance of unsecured loans taken from various companies allegedly operated and managed by Sh. Raj Kumar Modi. The AO further made the addition of Rs. 35 lacs as commission @ 4% by alleging the same was paid in cash to obtain such accommodation entries of unsecured loans. Besides this, interest paid at Rs.10,01,590/- was also disallowed being non genuine payment. Further addition of Rs. 2.65 Crores was made by holding the unsecured loan taken during the year from one M/s Unisex Software and Holdings Industries Ltd., as accommodation entry by alleging that the said companies was managed/operated by one Sh. Jagdish Purohit solely on the basis of his statements recorded u/s 132(4) during the course of search carried out in his case in the year 2015. Further an addition of Rs. 75 lacs was made on account of unsecured loan received from M/s Sukuma Info Solutions Pvt. Ltd. u/s 68 of the Act by holding the same as unaccounted income. Accordingly, as against the loss of Rs. 3,79,37,236/- declared by the assessee, the income of the assessee was assessed at Rs.12,17,61,590/-.

6. Against such order, assessee preferred appeal before the Ld. CIT(A) who vide impugned order dated 24.06.2024 in appeal No. CIT(Appeals), Kanpur-4/10131/2012-13 has dismissed the appeal of the assessee.

7. Aggrieved by the said order of Ld. CIT(A), the assessee is in appeal before the Tribunal wherein following grounds of appeal are taken by the assessee:

"1. That on facts and in law, the impugned assessment order dated 28.09.2021 and the impugned order dated 24.06.2024 is arbitrary, erroneous, without jurisdiction and justification and hence unsustainable in law.

2. That the Ld. A.O and the Ld. CIT(A) have erred in ignoring the mandate of Sec. 153A of the Act (as it existed on the date of search) and the settled position of law that categorically requires additions for unabated assessment years to be made solely on the basis of "incriminating material" unearthed during the course of the Assessee's search.

3. That the Ld. A.O and the Ld. CIT(A) have erred in ignoring the mandate of Sec. 142 of the Act, by failing to conduct such independent investigation, enquiry and/or recording of statements on his own u/s 142(2) of the Act, to thereafter put such adverse material gathered u/s 142(2) to the Assessee u/s 142(3) of the Act, which is consonance to the Appellant's right to cross examination under the principles of Natural Justice

4. That the Ld. A.O. and the Ld. CIT(A) have erred in disallowing /sustaining the peak credit of Rs. 8,75,00,000/-of the total unsecured loans taken during A.Y. from M/s Economy Suppliers Pvt. Ltd., M/s Embassy Sales Pvt. Ltd., M/s Nishant Inbuild Ltd., and M/s PMC Fincorp Ltd., by alleging the same to be bogus and in genuine; in complete ignorance of the submissions and the documentary evidences placed on record establishing the ingredients of identity, genuineness and creditworthiness of the transaction.

5. That the Ld. A.O. and the Ld. CIT(A) have consequentially also erred in adding back / sustaining Rs. 35,00,000/- (being 4% of the peak credit of the alleged bogus unsecured loans) as the alleged commission paid by the Appellant.

6. That the Ld. A.O. and the Ld. CIT(A) have consequentially also erred in adding back/sustaining Rs. 10,01,590/-being the interest paid on the alleged bogus unsecured loans on the erroneous reasoning that when the loans are ingenuine, the interest payment is also ingenuine.

7. That the Ld. A.O. and the Ld. CIT(A) have erred in disallowing/sustaining the peak credit of Rs. 2,65,00,000/-of the total unsecured loans taken during A.Y. from Uniysis Software and Holdings Industries Ltd. by alleging the same to be bogus and ingenuine; in complete ignorance of the submissions and the documentary evidences placed on record establishing the ingredients of identity, genuineness and creditworthiness of the transaction.

8. That the Ld. A.O. and the Ld. CIT(A) have consequentially also erred in adding back / sustaining Rs. 75,00,000/-being the interest paid on the alleged bogus unsecured loans on the erroneous reasoning that when the loans are ingenuine, the interest payment is also ingenuine.

9. That the Ld. A.O. and the Ld. CIT(A) has consequentially also erred in adding back / sustaining Rs. 10,60,000/- being 4% of of the alleged bogus unsecured loans as the alleged commission paid by the Appellant.

10. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

8. Ground No.1 taken by the assessee is general in nature.

9. Ground of Appeal No.2 is in relation to the addition made in unabated year in the order passed u/s 153A of the Act without referring to any incriminating material unearth during the course of search in the case of assessee itself.

10. Brief facts leading to this ground of appeal are that a search and seizure operation was carried out in “Amit Jain Group” on 11.10.2018 of which the assessee company is one of the member. During the course of search not a single loose paper/document was found and seized what to say an “incriminating material” as defined in section 132(1)(c) and 132(4) of the Act. The AO in para 3.2 of the assessment order observed that on the same day a search action was simultaneously carried out in the case of “PMC Group” which include Shri Raj Kumar Modi and other business concerns managed and controlled by him to examine various forms of accommodation entities in the shape of LTCG/STCG/unsecured loans. During the course of search in the case of Shri Raj Kumar Modi of PMC group, it was admitted by Shri Raj Kumar Modi in the statements recorded u/s 132(4) that he was involved in providing accommodation entries in the

shape of LTCG/STCG, unsecured loan and share capital through various business entities managed by him. Based on the statements of Shri Raj Kumar Modi and his associates recorded during the course of search and post search investigation, the AO concluded that assessee has obtained accommodation entries of unsecured loans from the following companies managed and controlled by Shri Raj Kumar Modi.

S. No.	Name of Company	Amount
1	M/s Economy Supplies Pvt. Ltd.	3,00,000/-
2	M/s Embassy Sales Pvt. Ltd.	1,75,00,000/-
3	M/s Nishant Inbuild Ltd.	1,50,00,000/-
4.	Preeti Merchantile Ltd.	7,50,00,000/-

10.1 Thereafter, the AO discussed the modus operandi opted by Shri Raj Kumar Modi, statements of his associates and results of enquiries conducted by him in para 3.2 to para 5.5 of the order. In para 5.1, AO made a table of datewise inflow and outflow of funds from the aforesaid four companies and worked out the peak balance at Rs.8,75,00,000/- and vide para 5.6 of the order concluded that the said amount of Rs.8,75,00,000/- is the unaccounted income of the assessee and made the addition u/s 68 of the Act of the same. The AO observed that statements of Shri Raj Kumar Modi recorded u/s 132(4) is the incriminating material for the purpose of making additions in the hands of assessee company for the impugned assessment year. The AO also made additions of Rs.35,00,000/- u/s 69C of the Act by holding the same as commission paid in cash @ 4% for obtaining the accommodation entries of 8.75 Crores as unexplained

expenditure. Further during the year under appeal assessee company has paid interest to the tune of Rs.10,01,590/- to these four companies which was also disallowed. The AO further relied upon the statements of one Shri Jagdish Purohit recorded u/s 132(4) on 21.01.2015 and on various other dates which are reproduced in para 6 to 6.1 of the order and after considering the replies of the assessee, in para 6.9 of the order, concluded that assessee has obtained accommodation entry of Rs.2,65,00,000/- from M/s Unisays Software and Holding Industries Ltd. managed by Shri Jagdish Purohit and made the addition u/s 68 of the Act. Further, an addition of Rs.10,60,000/- is made u/s 69C by holding that assessee has paid commission in cash @ 4% for obtaining the accommodation entry of Rs. 2,65,00,000/-. Incidentally both the statements i.e. of Shri Raj Kumar Modi and Shri Jagdish Purohit were retreated by them before the investigation wing. Besides the above, after examining the financial of one M/s Sukuma Info Solutions Pvt. Ltd. from whom the assessee had taken unsecured loan of Rs. 75.00 lacs, AO reached to the conclusion that genuineness and creditworthiness of transactions is not proved and made the addition 75.00 lacs u/s 68 of the Act.

11. Before us, the Ld. AR of the assessee argued that no money, bullion, jewellery, valuable article or thing had been found or seized during the course of search in the case of the assessee. Further, no books of accounts, electronic data or other material was seized indicating any transactions carried by the assessee with reference to such money bullion, jewellery valuable article or thing that has not been disclosed or nor otherwise

would be disclosed. He further submitted that in the case of the assessee, for Assessment Years 2013-14 and 2014-15, assessments were completed u/s 143(3) wherein proper enquiry and investigations were carried out and no doubts were raised with regard to these loans. According to the Ld. AR, the addition has been made solely on the basis of the statements of 3rd party namely Sh. Raj Kumar Modi and Sh. Jagdish Purohit, which statements were also retracted by both the persons within few days from the date of search in their respective cases. Ld. AR submitted that the assessee company belonged to Shri. Amit Jain Group where as a result of search no document whatsoever was found or seized that could be termed as incriminating material nor any corroborative material was found indicating that the loans taken by the assessee from various companies alleged as managed and controlled by Shri Raj Kumar Modi and Shri Jagdish Purohit are mere accommodation entries.

11.1. Ld. AR drew our attention to the provision of section 132(1)(c) of the Act wherein it is provided that before conducting a search in the case of a person the authorities as a consequence of information in possession should have been reason to believe that such person, is in possession of money bullion, jewellery valuable article or thing and such money bullion, jewellery 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 Indian Income Tax. Ld. AR thus, submit that even to empower the authorised officer to carry out a search in the case of a person there must be reason to believe that money bullion, jewellery valuable article or thing including books of account and

documents must be found in possession of persons searched which was his undisclosed income or property. It is further stated by Ld. AR that that u/s 132(4), the authorised officer during the course of search can examine on oath any persons who is found to be in possession or control of any books of accounts, documents, money bullion, jewellery valuable article or thing and any statement made by such person during such examination may thereafter be used as evidence in any proceedings under the Act.

11.2. Accordingly, the Ld. AR submitted that in the instant case admittedly no money bullion, jewellery, valuable article or thing or books of accounts or documents were found from the possession of the assessee which was not disclosed or would not be disclosed and undisclosed in the nature. Ld. AR thus submitted that there was no incriminating material not disclosed would not undisclosed and submitted that there was no incriminating material based on which additions could be made u/s 153A of the Act in the hands of the assessee. Ld. AR further submitted that in the case of *Abhisar Buildwell Pvt. Ltd.* reported in [2023] 454 ITR 212 (SC), the Hon'ble Supreme Court has held that no addition could be made for any unabated year without any incriminating material found from the possession of person searched u/s 153A of the Act.

11.3. Ld. AR further submitted that since, the statements relied upon Revenue of Shri Raj Kumar Modi and Shri Jagdish Purohit are retracted by them, therefore, they cannot be made basis for making addition unless there is direct link of

incriminating material found as result of search from the possession of the assessee. In the instant case, according to Ld. AR, the AO has miserably failed to brought on record any corroborative material found and seized as a result of search either from the possession of the assessee or from the possession of any for its Directors which could lead to belief that there were some money, bullion, jewellery, valuable article or thing and books of accounts which was not disclosed and could be termed as “incriminating material” based on which additions could have been made in the hands of the assessee company in the assessment completed u/s 153A of the Act.

11.4. For this proposition, reliance is placed on the judgments of Hon’ble Jurisdictional High Court in the case of DCIT vs. Best Infrastructure (India) Pvt. Ltd. [2017] 84 taxmann.com 287 (Delhi) wherein Hon’ble High Court observed that without a direct link to tangible evidence discovered from the assessee premises, a mere statement, even if detailed, lacks the requisite probative value to form the basis an addition.

11.5. Ld. AR thus submitted that in the case of the assessee, the addition made in the order passed u/s 153A of the Act are bad in law and since, the Assessing Officer has used the statement of third parties i.e. Sh. Raj Kumar Midi and Jagdish Purohit for making additions, which were recorded during the course of search carried out in their cases, therefore, they can only be used against the assessee in the proceedings initiated u/s 153C of the Act and not under section 153A.

11.6. Ld. AR further submitted that if for argument sake it is presumed that additions could be made u/s 153C of the Act in the hands of the assessee, in such case the due procedure for invocation of proceedings u/s 153C is to be followed. In the instant case, according to Ld. AR no such procedure was followed by AO. Ld. AR further submitted that the Hon'ble Supreme Court in the case of CIT vs. Culcutta Knitwears [2014] 43 taxmann.com 446 has mandated that before initiating proceedings based on the incriminating material found during course of search from third party, recording of satisfaction of the Assessing Officer of person searched is necessary pre-requisite and such satisfaction note must be prepared by the AO before he transferred the record to the other AO who has jurisdiction over the such other persons. Following such order of Hon'ble Supreme Court, the CBDT vide Circular No.24 of 2015 dated 31.12.2015 issued directions to the Assessing Officers for following this procedure in all the assessments taken up in search cases. In the said notification it is also observed by the CBDT that provisions of section 158B are similar and *pari materia* to the provisions of section 153C, therefore, even in the case of 153C also such procedure needs to be followed. In the instant case, since statements recorded during the search in the case of third parties were used by the Assessing Officer, therefore, first the AO of the search persons i.e. of Sh. Raj Kumar Modi and Shri Jagdish Purohit should record satisfaction that the statements recorded during the course of search of Sh. Raj Kumar Modi and Shri Jagdish Purohit contained incriminating material related to the assessee and, thereafter, copies of all such statement along with other material should be

handed over to the Assessing Officer of the assessee, who, after receiving such statements and material should record his satisfaction and initiate the proceedings u/s 153C of the Act, in the case of assessee. Since, this process was not followed in the case of the assessee, no addition could be made in the proceedings initiated u/s 153A of the Act as the statements third persons could not have been held to be incriminating material for the purpose of making additions in the order passed u/s 153A, and, therefore, the additions made based on such statements the third parties in the order passed u/s 153A deserves to be deleted.

11.7 Besides this, the addition of Rs. 75.00 lacs on account of unsecured loan taken from M/s Sukuma Info Solutions Pvt. Ltd. is neither supported by any incriminating material found as a result of search thus could not be made in in the order passed u/s 153A of the Act and deserves to be deleted.

12. On the other hand, the Ld. DR vehemently supported the order of lower authorities and submitted that the Assessing Officer in para 4.1 to 4.8 of the order has elaborately discussed the statements recorded of various persons during the course of search carried on the same day when the search was simultaneously carried out in the case of the assessee company where the sole reason of search was to unearth the racket of bogus accommodation entries of LTCG/STCG, unsecured loans and department was succeeded in it by recording confessional statement of the Key Person i.e. Raj Kumar Modi. He further argued that the AO has referred the material found and seized during the search from the possession of Sh. Raj Kumar Modi

which clearly establish that the assessee company has obtained accommodation entry in the shape of unsecured loans from the companies controlled and managed by Sh. Raj Kumar Modi which is based on the evidences of movement of cash etc. Ld. CIT-DR further submitted that in the statement recorded of Sh. Raj Kumar Modi u/s 132(4), he categorically admitted that he had provided accommodation entry of unsecured loans to Sh. Amit Jain and his group companies and also brought on record the statements of such other persons who were involved in movement of cash for such accommodation entry. He further submitted that all these facts were considered by Ld. CIT(A) who after considering the facts has observed that since statements recorded of Sh. Raj Kumar Modi and Jagdish Purohit are critical documents based on which assessment were completed u/s 153A and if the argument of the assessee is accepted that the Department may not be constructed to frame the assessment u/s 153A on particular person limited only to the document seized from particular premises leading to absurd situation. Therefore, where the search is carried u/s 132 of the Act in the case of the assessee and simultaneously in other cases also though they are not part of the same group, however if it is found that such other person has direct link with the assessee, the statements recorded of such other person can be used as tangible material for making additions in the hands of the assessee u/s 153A of the Act. Accordingly, ld. DR prayed for the confirmation of the additions so made and upheld by Ld. CIT(A).

13. In rejoinder, the Ld. AR submitted that in the instant case proper course of action for making additions, if any, based

on the statements of third parties should be u/s 153C of the Act which has not been done. Therefore, additions made in the order passed u/s 153A based on the statements of third persons deserves to be deleted. He further submitted that such statements can be treated as information for the purpose of taking action u/s 148 but since these statements are retracted by the respective persons, the burden is on the revenue to establish the allegation made with the help of tangible and cogent material thus even otherwise no action is permissible u/s 148 of the Act in the facts of the instant case. He also placed on record written submissions which reads as under:

"This Supplementary Submission is filed in furtherance of the Primary Submissions (already on record) and seeks to delineate the restricted scope of "incriminating material" as defined under Sections 132(1)(c) and 132(4) of the Income Tax Act, 1961.

As set forth in our Primary Submissions, during the course of the search and seizure conducted under Section 132 of the Act on 11.10.2018 and 12.10.2018 at the premises of various entities of the Anoop Jain Group, not a single item - whether money, bullion, jewelry, or any other valuable article- that had not been or was unlikely to be disclosed, was recovered. Equally, no books of account, electronic data, or related documents were seized which could have any bearing on -such money, bullion, jewelry, valuable article or thing, that has not been disclosed nor was likely to be disclosed.

Furthermore, it was brought to the notice of this Hon'ble Bench that all the assessment years involved are unabated. Out of the 10 appeals listed before the Hon'ble Bench namely, those concerning Corroborate Venture Pvt. Ltd. (2013-2014), Eshan Financial Pvt. Ltd. (2013-14), Gulshan Investment Pvt. Ltd. (for the years 2013-14, 2014-15), Pneumatic Services Pvt. Ltd. (2013-2014), Prabudh Securities Pvt. Ltd. (2013-22014) - the original assessments in each of the 6 cases were completed under Section 143(3) after proper enquiry and investigation.

The only material relied upon by the Department for the impugned additions comprises the retracted third-party statement of Mr. Raj Kumar Modi and an old statement of Mr. Jagdish Purohit. It was brought to the notice of this Hon'ble Bench that during the extensive search conducted at the premises of the Anoop Jain Group, not a single piece of incriminating material was uncovered to validate the findings recorded in these third-party statements. In other words, no money, bullion, jewellery, valuable article or thing, nor any books of account, or electronic data that might substantiate the claims of undisclosed income or bogus accommodation entries - was found in connection with these third-party assertions. The absence of such corroborative evidence confirms that the statements, which are now retracted and outdated, cannot be relied upon to justify any additions under Section 153A.

Now, we must examine whether such statements can legitimately be deemed "incriminating material" for the purpose of fastening an addition under Section 153A, particularly in the wake of the Supreme Court's decision in *Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212*.

It is well established that a statement, on its own, does not automatically acquire the status of "incriminating material" unless it is substantiated by material evidence unearthed during the Assessee's search which must comprise of either a) money, bullion, jewelry, or any other valuable article that had not been or was unlikely to be disclosed (or) b) books of account, electronic data, or related documents which could have any bearing on such money, bullion, jewelry, valuable article or thing, that has not been disclosed nor was likely to be disclosed.

Numerous High Court rulings have reiterated that a statement recorded under Section 132(4) can never serve as a basis for an addition unless it is directly linked to incriminating evidence found on the Assessee's premises. In the present matter, the retracted statements of Mr. Raj Kumar Modi and Mr. Jagdish Purohit, having no corroborative documentary or physical evidence from the search, fail to meet this threshold.

It is well established in law that a statement recorded under Section 132(4) cannot serve as the sole basis for fastening an addition unless it is corroborated by incriminating evidence or undisclosed income discovered during the Assessee's own search.

In CIT vs. Ram Das Motors Transport, (2015) 55 taxmann.com 176 (Andhra Pradesh) the Hon'ble High Court unequivocally held that in the absence of any unaccounted documents or incriminating material found during the search, a statement recorded under section 132(4) had been retracted cannot be invoked to justify an addition. The principle is further reinforced by the decision in Principal Commissioner of Income-tax, Delhi v. Best Infrastructure (India) P. Ltd. [2017] 84 Taxmann.com 287 (Delhi), where the Hon'ble High Court observed that without a direct link to tangible evidence discovered from the assessee's premises, a mere statement, even if detailed, lacks the requisite probative value to form the basis of an addition.

Together, these decisions confirm that unless a statement under Section 132(4) is supported by concrete, search-derived evidence of undisclosed income or property, it cannot be treated as "incriminating material" for the purpose of invoking Section 153A.

Having said that let us examine, what may be called an incriminating material. The search and seizure powers under the I.T. Act are derived by the authority from Sec. 132. The power to conduct search and seizure is based on the reason to believe and such reason to believe, basically emanated from Sec.132(1)(c):

Books of Accounts Under Section 132(1)(c)-Link-to Section 132(4) Statements Recorded Section 132(1)(c) of the Act provides that:

"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 possession, 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 Income-tax Act, 1922, of this Act..."

Accordingly, the authorized officer is empowered to search and seize money, bullion, jewellery, valuable article or thing, including books of account, and documents - if there is reason to believe that these items represent undisclosed income or property.

Section 132(4) further provides that:

"132. (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding..."

In addition, the Explanation to Section 132(4) declares that:

"Explanation. For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act."

As clarified by the Explanation to Section 132(4), the examination of any person may extend to all matters relevant for the purposes of any investigation under the Act. However, the ultimate evidentiary value of the statement depends on its linkage to Sec. 132(1)(c) where either a) money, bullion, jewelry, or any other valuable article that had not been or was unlikely to be disclosed (or) b) books of account, electronic data, or related documents which could have any bearing on such money, bullion, jewelry, valuable article or thing, that has not been disclosed nor was likely to be disclosed - have been found during the search. Absence of any corroborating items from the assessee's search premises, would render any statement no matter how detailed as "non incriminating".

What Constitutes Incriminating Material under Section 132(1)(c)

Section 132(1)(c) empowers the authorized officer to search and seize any money, bullion, jewellery, or other valuable articles if there is reason to believe that such items represent income or property that has not been, or would not be, disclosed for tax purposes. For material to be considered "incriminating" under this provision, the following conditions must be met:

<i>"Incriminating Material" Defined</i>	<p><i>For material to qualify under Section 132(1)(c) it has to be:</i></p> <p><i>Any money, bullion, jewelry or other valuable article or thing and such money, bullion, jewelry 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 this Act.</i></p> <p><i>OR</i></p> <p><i>Or such books of accounts and documents, seized which contains any money, bullion, jewelry or other valuable article which has not been disclosed or not likely to be disclosed for the purposes of this Act.</i></p>
<i>Direct Connection to Undisclosed Income or Property</i>	<p><i>The seized material must have a direct nexus transactions or assets that are not reflected in the taxpayer's declared accounts. It should provided clear evidence that the assessee has attempted to hide income or property.</i></p>

In essence, Section 132(1)(c) considers only discovery of either money, bullion, jewelry or other valuable article or thing (or) books of accounts or documents which contains evidence of such money, bullion, jewelry or other valuable article or thing which has not been disclosed or not likely to be disclosed - as incriminating material. This is what stands proved when we further go to Sec. 132(4) of the Act, as below:

What Constitutes an Incriminating Statement under Section 132(4)

Section 132(4) of the Income-tax Act provides that:

132. (4) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding."

This provision is intrinsically linked to Section 132(1)(c), which empowers the officer to seize items such as money, bullion, jewellery, valuable article or thing (and/or) books of account/documents that represent such money, bullion, jewellery, valuable article or thing that have not been disclosed nor was likely to be disclosed; if there is reason to believe they represent undisclosed income or property. In essence, the purpose of conducting a search under Section 132 is to discover unaccounted assets or evidence of undisclosed income.

Thus, the scope of Section 132(4) is limited to obtaining statements that have a direct nexus with the material evidence; and any statement that does not relate to or corroborate with the existence of such unaccounted assets cannot, by its very nature, be considered a statement made under Section 132(4) for evidentiary purposes.

If a search is conducted and fails to uncover money, bullion, jewellery, or any other undisclosed assets, then the statements obtained in that search are devoid of incriminating value. Likewise, if a search fails to reveal the requisite unaccounted assets or evidentiary documents - namely, money, bullion, jewellery, valuable article or thing (and) books of account /documents that represent such money, bullion, jewellery, valuable article or thing that has not been disclosed or was not likely to be disclosed as contemplated under Section 132(1)(c), then the entire process of search and seizure loses its significance, and the subsequent initiation of proceedings under Section 153A is rendered untenable.

Therefore, any statement, which is not having any bearing on either such undisclosed assets or such books of accounts or documents - is in essence is not a statement u/s 132(4) - and such a statement cannot incriminate an assessee because the very essence of conducting search is to discover unaccounted asset or evidence of unaccounted asset.

Furthermore, with respect to searches conducted at third-party premises, any asset or books of accounts belonging to or pertaining to the assessee must be dealt with under Section 153C. If such evidence is discovered, the A.O. of the searched person is required to record a satisfaction confirming that the document or asset pertains to the other person and then hand it over to the A.O. of that other person, who must then initiate proceedings under Section 153C. This procedure

prescribed must be strictly followed, as mandated by CBDT Circular No. 24/2015 dated 31 December 2015, issued by the Central Board of Direct Taxes in light of the Supreme Court decision in CIT vs. Calcutta Knitwears (2014) 43 Taxmann.com 446 (SC). The Proviso to Section 153C in such a cases states that: the initiation of the search in the case of the other person shall be the date when the assets or books of accounts are handed over by the A.O. of

the searched person to the A.O. of the other person. In this case, no such eventuality/transfer has taken place, and no Section 153C proceeding was initiated.

In conclusion, the search conducted at the Appellants' premises failed to uncover any incriminating material or record any incriminating statements under Section 132(4). Therefore, as per the established ratio in Abhisar Buildwell Pvt. Ltd. (supra) for completed / unabated assessments, without 'incriminating material' unearthed during the course of the assessee's search, no disturbance to a completed assessment can be made. Moreover, nor was any proceedings initiated under Sec. 153C, warranting any addition based on third party material. Therefore, the entire assessment under Section 153A is legally unsustainable, bereft of jurisdiction and non est in the eyes of the law, as it rests solely on surmises and conjectures, bereft of any incriminating material discovered during the Assessee's search.

We hope you find the same to your satisfaction."

14. We have heard the rival submissions and perused the material available on record. The Ld. CIT(A) in para 4 of its order has summarized the conclusions drawn by AO, which is as under:

- *PMC Fincop Ltd. and related entities are providing bogus accommodation entries.*
- *Search was conducted on PMC Group and five subgroups who were the major beneficiaries.*
- *Various dummy companies including M/s Shivdarshan Sales Pvt. Ltd., M/s Famous Investment and Consultant Pvt. Ltd., M/s Seabird Distributors Pvt. Ltd., M/s Seabird Retails Pvt. Ltd., M/s Seabird Vincon Pvt. Ltd., M/s Embassy Sales Pvt. Ltd., M/s Economy Suppliers Pvt. Ltd. & M/s Rolex Vinimay Pvt. Ltd. were recognized and they could not be found at their Kolkata address despite issuance of commission u/s 131(1d).*
- *During the search proceedings, WhatsApp messages were found which mentioned about movement of cash and details of bank accounts etc.*
- *Sh. Raj Kumar Modi during questioning admitted to involvement of cash.*
- *Sh. Raj Kumar Modi admitted on oath that by taking equivalent amount of cash, accommodation entries were provided as desired by the beneficiaries.*
- *Sh. Raj Kumar Modi admitted that sometimes the beneficiaries sent cash directly at his office/residence.*
- *Sh. Dharendra Kumar Gupta employee of Sh. Raj Kumar Modi admitted on oath that he collects money from various beneficiaries.*

- *Sh. Raj Kumar Modi further admitted that agents like Manish Gupta and Ankur Agrawal converted cash into cheques and the money was credited to the desired business entities.*
- *The above facts have been also admitted by Sh. Dharendra Kumar Gupta and he further admitted that the delivery of cash received from beneficiaries of accommodation entries was made to Sh. Manish Gupta, at his office/residence.*
- *In post search investigation the detail of Sh. Manish Gupta was investigated and it was found that he operates various proprietorship concerns and small amount is credited in the bank accounts of his proprietorship concerns in cash as well as DD in very high frequency and simultaneously, the amount (collectively in huge numbers) is transferred to the desired business concerns operated by Sh. Raj Kumar Modi. The same fact was admitted by Sh. Manish Gupta on oath in his statement recorded u/s 131(1A) of IT Act, 1961 on 13.11.2018.*
- *During assessment proceedings the same facts have emerged and duly submitted by Sh. Manish Gupta in reply of notice u/s 133(6).*
- *The eight companies which have received funds from the agents like Sh. Manish Gupta and Sh. Ankur Agrawal and have given accommodation entries directly or transferred the amount to the others business concerns of Sh. Raj Kumar Modi (who subsequently sent it to the beneficiaries) are as under:*
 - ❖ *M/s Shivdarshan Sales Pvt. Ltd.*
 - ❖ *M/s Famous Investment and Consultant Pvt. Ltd.*
 - ❖ *M/s Seabird Distributors Pvt. Ltd.*
 - ❖ *M/s Seabird Retails Pvt. Ltd.*
 - ❖ *M/s Seabird Vincon Pvt. Ltd.*
 - ❖ *M/s Embassy Sales Pvt. Ltd.*
 - ❖ *M/s Economy Suppliers Pvt. Ltd.*
 - ❖ *M/s Rolex Vinimay Pvt. Ltd.*
- *During search proceedings, to enquire about the Involvement of above said companies, commission was issued to Investigation Wing Kolkata but said companies were not found existing at their registered office addresses based at Kolkata.*
- *During search proceedings, it is found that staff of Sh. Raj Kumar Modi are Directors in some of companies. During search some incriminating documents in form of cheque leaves (where frequent transaction of huge amounts between the business concerns controlled by Raj Kumar Modi and the eight concerns mentioned above) were found and seized as LP-1, 81 and LP-5, 86 at the residence of Sh. R.K. Modi at Rajendra Nagar, Delhi. When the same facts were confronted during search to Sh. Raj*

Kumar Modi he admitted that these concerns are directly/indirectly operated by him. In many of the companies, his staff, Sh. Jay Prakash Pal & Sh. Dhirendra Kumar Gupta are directors. Besides his brother-in-law (Sh. Dileep Kumar Agrawal) is also director in few companies.

- *The same facts were confronted to Sh. Dhirendra Kumar Gupta during search who admitted on oath that he and Sh. Jai Prakash Pal are directors in various companies and work as dummy directors and signed the documents as per directions of Sh. Raj Kumar Modi.*
- *In his statement on oath, Sh. Manish Gupta also admitted that he transferred the money to these eight concerns (which are actually controlled by Sh. Raj Kumar Modi) as per the directions of Sh. Raj Kumar Modi and the same facts have been proved after verification of various bank accounts of the proprietorship concerns of Sh. Manish Gupta.*
- *During search various incriminating materials in the form of bank account statements of the above-mentioned companies were found and seized as LP-2 (36,37,38 & 51), LP-3 (132 to 135, 151 to 167) and LP-5 (1 to 66, 87,88, 92 to 97) where in the transactions with the proprietorship concerns of Sh. Manish Gupta are apparent.*
- *The eight concerns mentioned above, are registered at ROC Kolkata but are actually operated from the office of Sh. Raj Kumar Modi based at Delhi and during search their books of accounts were found to be maintained on tally along with other companies of Sh. Raj Kumar Modi and the same have been seized in the hard disk during search.*
- *During search, the above facts were confronted to Sh. Raj Kumar Modi and he admitted the following:*
 - ❖ *He is an accommodation entry provider.*
 - ❖ *Entries were given in form of LTCG, STCG unsecured loans etc.*
 - ❖ *The LTCG is not genuine and based on assurance given by operator to provide the huge profit. (LTCG)*
 - ❖ *The cash received from beneficiaries was routed through the business concerns of Sh. Raj Kumar Modi which was subsequently used for the purposes of providing accommodation entries.*
 - ❖ *Sh. Raj Kumar Modi provided the name of large beneficiaries and the name of persons who contacted him for the same.*
 - ❖ *Besides, Sh. Anoop Jain is personally known to him and huge unsecured loan has been received by business concerns of Sh. Anoop Jain from the business concerns of Sh. Raj Kumar Modi.*
 - ❖ *Sh. Raj Kumar Modi explained the modus operandi of accommodation entries and provided the details of commission received from the same.*

- Statement of Sh. Dharendra Kumar Gupta recorded on oath during search and his admission regarding involvement and movement of cash (collection from beneficiaries as well as delivery of the same at Manish Gupta's premise) proves the contents of Sh. Raj Kumar Modi's statement as well.
- Further statement of Sh. Manish Gupta, his admissions and analysis of bank accounts of the proprietorship concerns of Sh. Manish Gupta are relevant facts as per section 6 of Evidence Act and proves the contents of the statement of Sh. Raj Kumar Modi.
- Non-Existence of the above mentioned eight concerns at their registered office at Kolkata, maintaining their books of accounts at the office of Sh. Raj Kumar Modi and the fact that the directors of above eight business concerns namely Sh. Dharendra Kumar Gupta, Sh. Jai Prakash Pal and Sh. Dilip Kumar Agrawal are either employees or relatives of Sh. Raj Kumar Modi proves that the concerns were under control of Sh. Raj Kumar Modi, Transfer of money in form of RTGS/NEFT to the desired company and the use of the same for price rigging and as exit provider are the circumstantial evidences that prove the contents of statement of Sh. Raj Kumar Modi.
- Admission of cash and commission in cash for LTCG by Sh. Raj Kumar Modi, collection of cash as well as movement and delivery by Sh. Dharendra Kumar Gupta and conversion of cash in cheques, its transfer to the companies as desired by Sh. Raj Kumar Modi and cash commission received by Sh. Manish Gupta for his involvement established that the accommodation entries given by the companies of Sh. Raj Kumar Modi are not genuine and the companies have no creditworthiness for the same.
- During search and survey some incriminating evidences in form of messages, documents, electronic records have been found and relying on which the issue of accommodation entries was investigated and a detailed statement of Sh. Raj Kumar Modi was recorded on oath in presence of 2 PANCHAS wherein he admitted that the unsecured loans, LTCG/STCG etc. are bogus are not genuine. The statement of Sh. Raj Kumar Modi was again confronted to him post search u/s 131(IA) wherein he admitted and confirmed the same facts.

The statement of Sh. Raj Kumar Modi recorded on oath u/s 132(4) is an incriminating material which is further supported by circumstantial evidences and relevant facts unearthed during search, post search and assessment proceedings.

Sh. Raj Kumar Modi vide letter dated 22.10.2018 filed retraction against the statement recorded during the course of search. The said retraction was dismissed by the AO in the assessment order by giving a detailed reasoning.

During search various seized materials in form of WhatsApp messages, books of account of the eight companies mentioned here-in above and their bank account statements wherein credit entries from the proprietorship concerns

are clearly visible have been confronted to the Sh. Raj Kumar Modi and the fact admitted by him is duly supported by the statement of Sh. Dharendra Kumar Gupta and Sh. Manish Gupta with supporting relevant facts. As per AO, following the principle of Res-Gestae these relevant facts can't be ignored and excluded, as they form part of the same transactions which are spread over a variety of facts.

Hence, it was concluded that the scrip i.e. M/s PMC Fincorp Ltd., its director cum operator namely Sh. Raj Kumar Modi along with companies controlled by him with the help of Sh. Manish Gupta had formed a nexus wherein there is a prior commitment of LTCG/STCG/LTCL/STCL entries to the beneficiaries and in the form of colourable device of unsecured loan, LTCG, the unaccounted cash of the assessee is converted.

So, as per AO, in this case there is a conspiracy by the beneficiaries of the accommodation entries to obtain unsecured loans and Sh. Raj Kumar Modi and his entire team arranged the unsecured loan to the beneficiaries for the equivalent amount of cash (along with commission) and in the whole exercise the operator got the commission.

The AO further mentioned that the assessee has obtained loans from entities controlled by entry provider Sh. Jagdish Purohit. The AO inter-alia stated as under:

- That the assessee company has received unsecured loan from Unisys Software and Holding industries which is a Kolkata based company operated by Sh. Jagdish Purohit.*
- The AO has reproduced the statement of Sh. Jagdish Purohit recorded u/s 132(4) of the Income Tax Act, 1961 during the course of search at the residential premises of Sh. Jagdish Purohit on 21.01.2015. Also, various other statements of Sh. Jagdish Purohit recorded by the investigation Directorate have been reproduced in the assessment order.*
- In response to questions no. 9 & 10, Sh. Jagdish Purohit has mentioned that 246 companies were managed & controlled by him which were used for providing accommodation entries to ultimate beneficiaries.*
- In response to question no. 10, Sh. Jagdish Purohit has clearly stated that liquid cash was received from beneficiaries and funds were routed through multiple companies for layering and finally given to the beneficiary company.*
- The statement of Sh. Jagdish Purohit was confronted to the assessee during the assessment proceedings.*
- Perusal of the statements of Sh. Jagdish Purohit recorded at various times by the Investigation Directorate shows that he has admitted to providing accommodation entries to various companies.*

- *Sh. Jagdish Purohit admitted that Unisys Software and Holding Industries has been used for the purpose of providing accommodation entries.*
- *SEBI has also imposed penalty on Unisys Software and Holding Industries for indulging in fraudulent trading in the scrip.*
- *Notice u/s 133(6) issued by the AO to Unisys Software and Holding Industries remained un-complied.*
- *The AO has further stated that the genuineness of the transactions could not be established as to why a Kolkata based company would give huge loans to the assessee company without pledging any security.”*

14.1. In the instant case, as could be seen from the conclusions drawn by the AO as summarized by Id. CIT(A), it is an admitted position that no loose paper or document or any money bullion, jewellery valuable article or thing was found and seized from the possession of the assessee based on which additions could be made in the order passed u/s 153A of the Act in the hands of assessee company. The entire additions made can be bifurcated in three categories which are:

- A. Addition of Rs. 8.75 Crores and Rs. 35.00 lacs as commission and disallowance of interest paid at Rs.10.01,590/- based on the statement of Sh. Raj Kumar Modi recorded during the course of search in the case of PMC group wherein Shri Raj Kumar Modi admitted to have been engaged in providing accommodation entry in the shape of LTCG/STCG/ unsecured loans.
- B. Addition of Rs. 2.65 crores and of Rs. 10.60 lacs as 4% commission were also made towards unsecured loan taken from one company namely M/s Unisys Software & Holdings Industries Ltd. which was alleged as controlled and

managed by Sh. Jagdish Purohit, whose statement were also recorded u/s 132(4) during the course of search carried out in his case independently in the year 2015 and made sole basis for making addition in the hands of the assessee company.

C. Further an addition of Rs.75.00 lacs was also made for unsecured loan received from M/s Sukuma Infosolutions Pvt. Ltd. by holding that the loner has no creditworthiness without referring to any incriminating material found as a result of search in the case of the assessee.

14.2. Under the category “C” above, an addition of Rs.75.00 lacs was made by holding the unsecured loan received from M/s Sukuma Infosolutions Pvt. Ltd. as unexplained however, from the perusal of the assessment order or the appellate order, it is seen that in nowhere the lower authorities had referred any incriminating material found as a result of search in the case of assessee indicating this loan as bogus. The order passed u/s 153A of the Act is for Ay 2013-14 which is unabated and completed year. The Hon’ble Supreme Court in the case of Abhisar Buildwell (supra) has held that the addition u/s 153A should be made based on the incriminating material found from the person searched during the course of search. As such, their Lordships has held 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 assessments/unabated of 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.

14.3. Since in the present case no incriminating material was found from the possession of the assessee company and its directors with regard to the unsecured loan of Rs. 75.00 lacs from M/s M/s Sukuma Infosolutions Pvt. Ltd., therefore, by respectfully following the ratio laid down by Hon'ble Apex Court in the case of Abhisar Buildwell (supra) we hold that no addition could be made in the order passed u/s 153A of the Act. Accordingly, the addition of Rs.75.00 lacs is hereby deleted.

14.4. Under category "A" & "B" above, the additions were made on the basis of the statements of Shri Raj Kumar Modi and Shri Jagdish Purohit, recorded u/s 132(4) during the course of search carried out in their own cases by the department. It is also relevant to state that such statements were retracted by both Sh. Raj Kumar Modi and Shri Jagdish Purohit within a short period of time during the post search investigation proceedings.

14.5. It is also seen that both Shri Raj Kumar Modi and Shri Jagdish Purohit are not at all related to the assessee company in any manner and therefore, they are foreign parties with respect to the assessee company. The Ld. CIT(A) confirming the action of the AO in using such statements in the hands of the assessee company for making addition in the order passed u/s 153A. The Ld. CIT(A) relied upon the judgments of Hon'ble Allahabad High Court in the case of Tapasya Projects Ltd. Vs. ACIT [2009] Tax LR 30, wherein the Hon'ble Court has held as under

"The word person as used in Section 153A cannot be given a restricted interpretation so as to exclude the servants and agents of that person because of the obvious undesirable result to which such strict interpretation would lead. Thus, the search conducted on the premises of the directors has to be treated to be a search initiated in respect of the petitioner company."

14.6. From the perusal of the observations of the Hon'ble High Court, we find that the Hon'ble High Court has held that the company could be considered as searched in case where the search was carried out on its servant and agents such as Director of the company. In the instant case, as observed above, the statements of two independent and non-related parties i.e. of Sh. Raj Kumar Modi and Sh. Jagdish Purohit were used by the AO for making additions in the order passed u/s 153A in the hands of the assessee company. These two persons are neither the servants of the assessee company as they were not the employees nor the Director nor related to the assessee company in any manner, therefore, the ratio laid down by Hon'ble Allahabad High Court in the case of Tapasya Projects (supra) is not applicable to the instant case.

14.7. The Hon,ble Punjab & Haryana High Court in the case of PCIT vs. M3M India Holdings in ITA No.97/2023 has held as under:

“14. Further contention of the appellant with regard to as assertion section of incriminating material being found in the premises of the respondent, however, is without any basis. We have carefully gone through the Satisfaction Report and found f that only incriminating material which has been made the basis for initiating proceedings under Section 153 A of the Act is the so called laptop of one Bina Shah recovered from Mumbai. We also noticed that recovery of the said Laptop is not from the office belonging to the assessee. The search operation in which the laptop was recovered was of different firm and it was not during the course of search operation conducted against the respondent-firm respondent firm or its partners that incriminating DB material was recovered. If there was any indication of violation of provisions of the Act or suppression of income or any other incriminating material, which may have been recovered from the premises, the proceedings under Section 153-A can be said to be justified and legal. However, since no such material was collected or found from the premises of the respondent-assessee, assessee, we are unable to sustain the proceedings initiated under Section 153-A of the Act.”

14.8. It is further seen that Assessing Officer has referred WhatsApp chats of few persons wherein movement of cash is stated to have been found recorded in the mobile phone found from the possession of Shri Raj Kumar Modi. Further from the perusal of such chat as appearing in the assessment order, it is seen that these chats are for the period from May 2017 to November, 2017 which period is falling under financial year 2017-18 relevant to Asst. Year 2018-19 and not for any Assessment Year before us. Also such chat was since found from the mobile phone of third person, the same cannot be made basis of the additions in the assessment completed u/s 153A of the Act.

14.9. It is also seen that the Assessing Officer in para 4.6 of the order has referred that the statement of Sh. Raj Kumar Modi wherein in reply to question No. 80 he identified Sh. Anoop Jain, Director of the assessee company as one of the beneficiary of LTCG of more than 35 Crores. From the perusal of the assessment order, it is seen that no addition with respect to long term capital gain is made in the case of assessee, therefore, these statements are not relevant to the facts of the instant case.

14.10. In the instant case, the best course of action would be u/s 153C after following the procedure of recording of satisfaction to this effect as provided by the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra). The assessing officer should have completed the proceedings initiated in terms of the notice issued u/s 153A of the Act for the year under appeal since it is an unabated assessment year, and then must followed the procedure as laid down by the hon'ble supreme court in the case of Calcutta Knitwears (supra), which was not followed by the AO thus now no action could be taken u/s 153C of the Act also for the year under appeal. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153C of the Act w.e.f. 01.06.2015. Clause 36 reads as under:

“Clause 36 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person. The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer

having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person.

It is proposed to amend sub-section (1) of the said section so as to provide that where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the of account or documents or assets, seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets, seized or requisitioned, have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

This amendment will take effect from 1st June, 2015.”

14.11. On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining / relating to a person other than the person searched from the searched premises as was referred u/s 153A of the Act was to be handed over by the investigation wing to the AO of such other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s 153C of the Act and then to assess / reassess income of such other not searched person.

14.12. The Hon'ble Jurisdictional High Court in the case of PCIT (Central)-3 vs. Anand Kumar Jain (HUF) [ITA 23, 26-31/2021] has held as under:

"Even if a search was conducted upon the premises of the assessee, if the AO was relying upon the incriminating material found from the search of third party, then the same cannot be used for assessment u/s 153A and AO should have restored to section 153C of the Act.

14.13. The Co-ordinate Bench of ITAT in the case of Trilok Chand Chaudhary, New Delhi vs ACIT, Central Circle- 26, New Delhi on 20 August, 2019 under identical circumstances has held as under:

"In our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party, then provision of section 153C of the Act would be applicable and have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings under section 153A in hand, which were initiated by way of notice dated 30/06/2014 and thereafter, he was at liberty to take action under section 153C of the Act for bringing the material found from the premise of Sh. Ashok Chaudhri to tax in the hands of the assessee. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person."

14.14. Similarly, the Co-ordinate Bench of ITAT Delhi in the case of PCIT vs. Shivalik Mahajan in ITA No.5585/Del/2015 has held as under:

"Obviously, the reference to the incriminating material in the above decisions of Hon'ble Jurisdictional High Court is in regard to incriminating material found as a result of search of the assessee's premises and not of any other assessee. The legislature has provided Section 153C by invoking the same the Revenue can utilize the

incriminating material found in the case of search of any other person to the different assessee.”

14.15. Similar view is expressed by the Coordinate Bench of ITAT Delhi in its recent judgment in the case of Om Prakash Tantia vs DCIT in ITA NO.4737/Del/2018 vide order dated 07.03.2025.

14.16 Thus, it could be safely concluded that in the assessment order passed u/s 153A of the Act on the basis of an income-tax search conducted on the assessee, the impugned amount of undisclosed/unexplained income, allegedly based on some incriminating material in the shape of statement of third persons recorded elsewhere, could not be assessed in the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of the section 153C of the Act and then to pass a separate assessment order u/s 153A r.w.s. 153C of the Act. Had recourse to section 153C of the Act been adopted by the revenue, then it would be in accordance with the decision of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra). Admittedly, no money, bullion, valuable article or thing or property which was not disclosed or would not be disclosed was found during the search carried out by the department in the case of the assessee. Under these circumstances, by respectfully following the decisions of Hon'ble Jurisdictional High Court in the case of Anand Jain, HUF (supra) and coordinate benches of the Tribunal in various cases, we hold that no addition could be

made in the assessment completed u/s 153A of the Act on the basis of statements of third party recorded during the search in their own case and the incriminating material, if any, found during the course of search of the assessee could only be utilized for making addition.

14.17. In view of the above facts and discussions made, we direct to delete the additions as referred in category 'A' & 'B' in para 14.1 above. Further vide para 14.3 above, we have already directed to delete the addition of Rs.75.00 lacs as referred in category 'C' above, therefore, the entire additions made under all the three categories are hereby deleted.

15. Since, we have allowed the legal issue raised by the assessee in ground of appeal No. 2, therefore, the remaining grounds of appeal taken are not adjudicated as they become academic.

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

17. With regard to the other appeals, bearing ITA Nos. 3866/Del/2024 to ITA 3871/Del/2024 and 3873/Del/2024 to 3875/Del/2024. Findings made by us while allowing the appeal of assessee in ITA No.3872/Del/2024 are *mutatis mutandis* applied. Accordingly, by following the said findings, the legal ground taken in all these appeals with regard to the issue of additions made in the order passed u/s 153A on the basis of statements and material found from the possession of third person is allowed. Remaining grounds in these appeals became academic thus are not adjudicated.

18. As a result, the appeal of the assessee in following cases are allowed.

Order pronounced on 16.04.2025.

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated 16.04.2025

PK/Sr. PS

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi