

The Acit, Central Circle-1(3), ... vs M/S. Benifit Tradelinks Ltd., ... on 25 April, 2025

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IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

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BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER I.T(SS).A. No.535/Ahd/2019 (Assessment Year: 2011-12) Assistant Commissioner of Vs. M/s. Benefit Tradelink Ltd., Income Tax, 508, Setu Sevanti, Opp.

Central Circle-1(3),
Ahmedabad
[PAN No.AADCB3468K]
(Appellant)

Bawarchi Restaurant, Off.
C.G. Road, Ahmedabad
.. (Respondent)

I.T(SS).A. No.506/Ahd/2019
(Assessment Year: 2012-13)

Assistant Commissioner of
Income Tax,
Central Circle-1(3),
Ahmedabad
[PAN No.AADCB3468K]
(Appellant)

Vs. M/s. Benefit Tradelink Ltd.,
508, Setu Sevanti, Opp.
Bawarchi Restaurant, Off.
C.G. Road, Ahmedabad
.. (Respondent)

I.T(SS).A. No.507/Ahd/2019
(Assessment Year: 2013-14)

Assistant Commissioner of
Income Tax,
Central Circle-1(3),
Ahmedabad
[PAN No.AADCB3468K]
(Appellant)

Vs. M/s. Benefit Tradelink Ltd.,
508, Setu Sevanti, Opp.
Bawarchi Restaurant, Off.
C.G. Road, Ahmedabad
.. (Respondent)

IT(SS)A No.535/ahd/2019 & 13 Others
ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

I.T(SS).A. No.508/Ahd/2019
(Assessment Year: 2014-15)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AADCB3468K] (Appellant)	Vs. M/s. Benefit Tradelink Ltd., 508, Setu Sevanti, Opp. Bawarchi Restaurant, Off. C.G. Road, Ahmedabad .. (Respondent)
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I.T(SS).A. No.565/Ahd/2019
(Assessment Year: 2015-16)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AADCB3468K] (Appellant)	Vs. M/s. Benefit Tradelink Ltd., 508, Setu Sevanti, Opp. Bawarchi Restaurant, Off. C.G. Road, Ahmedabad .. (Respondent)
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I.T(SS).A. No.558/Ahd/2019
(Assessment Year: 2015-16)

M/s. Benefit Trade Links Ltd., Vs. Deputy Commissioner of KSD & Associates, Chartered Income Tax, Accountants, 608-609, Central Circle-1(3), Pratiksha Complex, Mahalaxmi Ahmedabad Paanch Rashta, Nr. Paldi Cross Road, Ahmedabad-380007 [PAN No.AADCB3468K] (Appellant) .. (Respondent) I.T(SS).A. No.501/Ahd/2019 (Assessment Year: 2011-12) Assistant Commissioner of Vs. M/s. Elegance Realty Ltd., Income Tax, 508, Setu Sevanti, Opp.

Central Circle-1(3), Ahmedabad [PAN No.AACCE2985M] (Appellant)	Bawarchi Restaurant, Off. C.G. Road, Ahmedabad .. (Respondent)
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IT(SS)A No.535/ahd/2019 & 13 Others
ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

I.T(SS).A. No.502/Ahd/2019
(Assessment Year: 2013-14)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AACCE2985M]	Vs. M/s. Elegance Realty Ltd., 508, Setu Sevanti, Opp. Bawarchi Restaurant, Off. C.G. Road, Ahmedabad
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(Appellant) .. (Respondent)

I.T(SS).A. No.564/Ahd/2019
(Assessment Year: 2015-16)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AACCE2985M] (Appellant)	Vs. M/s. Elegance Realty Ltd., 508, Setu Sevanti, Opp. Bawarchi Restaurant, Off. C.G. Road, Ahmedabad .. (Respondent)
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I.T(SS).A. No.559/Ahd/2019
(Assessment Year: 2015-16)

M/s. Ellegance Realty Ltd., KSD & Associates, Chartered Accountants, 608-609, Pratiksha Complex, Mahalaxmi Paanch Rashta, Nr. Paldi Cross Road, Ahmedabad-380007 [PAN No.AACCE2985M] (Appellant)	Vs. Deputy Commissioner of Income Tax, Central Circle-1(3), Ahmedabad .. (Respondent)
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I.T(SS).A. No.503/Ahd/2019
(Assessment Year: 2012-13)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AELPP3251R] (Appellant)	Vs. Smt. Harshaben B. Popat, 508, Sevi Sevanti, Opp. Bawarchi Restarurant, Nr. Girish Cold Drinks Cross Road, C.G. Road, Ahme dabad .. (Respondent)
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IT(SS)A No.535/ahd/2019 & 13 Others
ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

I.T(SS).A. No.504/Ahd/2019
(Assessment Year: 2013-14)

Assistant Commissioner of Income Tax, Central Circle-1(3), Ahmedabad [PAN No.AELPP3251R] (Appellant)	Vs. Smt. Harshaben B. Popat, 508, Sevi Sevanti, Opp. Bawarchi Restarurant, Nr. Girish Cold Drinks Cross Road, C.G. Road, Ahmedabad .. (Respondent)
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I.T(SS).A. No.20/Ahd/2020
(Assessment Year: 2015-16)

Smt. Harshaben Bharatbhai Vs. Deputy Commissioner of
Popat Income Tax,
KSD & Associates, Chartered Central Circle-1(3),
Accountsnts, 608-609, Ahmedabad
Pratiksha Complex, Mahalaxmi
Paanch Rashta, Nr. Paldi Cross
Road, Ahmedabad-380007
[PAN No.AELPP3251R]
(Appellant) .. (Respondent)

I.T(SS).A. No.27/Ahd/2020
(Assessment Year: 2015-16)

Assistant Commissioner of Vs. Smt. Harshaben B. Popat,
Income Tax, 508, Sevi Sevanti, Opp.
Central Circle-1(3), Bawarchi Restaurant, Off.
Ahmedabad C.G. Road, Ahmedabad
[PAN No.AELPP3251R]
(Appellant) .. (Respondent)

Assessee by : Shri Tushar Hemani, Sr. Advocate &
Shri Parimalsinh B. Parmar, A.R.
Revenue by : Adjournment Application filed

/ Date of Hear ing : 23/04/2025
i / Date of Pronouncement: 25/04/2025

IT(SS)A No.535/ahd/2019 &
ACIT vs. M/s.Benefit Tradelink L
Asst. Years : 2011-1

¢/O R D E R

PER BENCH:

These 14 appeals were originally heard by the Division Bench consisting of Hon'ble Judicial Member and Hon'ble Accountant Member. On account of a difference of opinion between the Hon'ble Members on certain issues arising in these appeals, the following point(s) of difference were framed and referred to the Hon'ble President of the Tribunal under Section 255(4) of the Income Tax Act, 1961:

"1. Whether in the facts and circumstances of the case, the assessment u/s 153A of the Act in the case of unabated / completed year(s) is to be completed only on the basis of incriminating material found during the search, or, once some incriminating materials are found during the course of search, the Assessing Officer is empowered to also take into account any "other material" which may be available with the Assessing Officer and/or information as available from the return of income as well; keeping in view the ratio of decision of Hon'ble Supreme Court in the case of PCIT v.

Abhishar Buildwell (P.) Ltd., reported in [2023] 149 taxmann.com 399 (SC)?"

2. The Hon'ble President, in exercise of powers under Section 255(4) of the Act, nominated a Third Member to resolve the point(s) of difference. The Hon'ble Third Member has since rendered his opinion vide order dated 07.04.2025.

Order of the Hon'ble Judicial Member:

Per Shri Siddhartha Nautiyal:

3. These are appeals filed by the Assessee and the Department against the order passed by Ld. CIT(A)-11, Ahmedabad vide separate orders dated 05.08.2019, 06.08.2019, 09.10.2019, 23.10.2019 and 06.11.2019 for Assessment Years 2011-12 to 2015-16. Since common facts and issues for consideration are before us for all the years under IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 consideration, all the appeals are being disposed of by way of a common order.

We shall start with IT(SS)A No. 535/Ahd/2019 (A.Y. 2011-12) (M/s. Benefit Tradelink Ltd.) (Department's Appeal).

Assessment Year 2011-12:-

2. The Department has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153B specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after

31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.1,49,39,000/- being unexplained cash deposits in bank accounts, addition of Rs.4,56,927/- made on account of unexplained credits entries u/s 68 of the Act, disallowance of Rs.26,77,188/- on account of non-deduction of TDS u/s 40(a)(ia) of the Act and addition on account of unexplained credit in the bank account of Benefit Information Ltd. of Rs.88,00,000/- are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

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Asst. Years : 2011-12 to 2015-16

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating additions made overlooking the facts that the AO has taken into cognizance of seized material for making additions on the above issues.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO for making addition of Rs.1,49,39,000/- being unexplained cash deposits, addition of Rs.4,56,927/- made on account of unexplained credits entries u/s 68 of the Act, disallowance of Rs.26,77,188/- or/account of non-deduction of TDS u/s 40(a)(ia) of the Act and addition on account of unexplained credit in the bank account of Benefit Information Ltd. of Rs. 88,00,000/-.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

9. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

3. Before starting with the matter we would like to place on record that various assessment years ranging from A.Y. 2011-12 to A.Y. 2015- 16 are involved in this case for M/s. Benefit Tradelink Ltd. While A.Y. 2011-12 to A.Y. 2014-15 are unabated assessment years i.e. those years were the

assessments have either been completed or the time limit for initiating assessment proceedings have expired, and A.Y. 2015-16 is an unabated assessment year i.e. where the time for completion of assessment has yet not completed, at the time when the search action was initiated.

4. Ground Nos. 1 to 4 of the Department's appeal are general in nature and do not require any specific adjudication.

5. Vide Grounds 5 to 7 the Department has challenged the relief granted by Ld. CIT(A) with respect to various additions made by the Assessing Officer.

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6. We shall deal with each of the additions made by the Assessing Officer and thereafter we shall discuss the observations / relief granted by Ld. CIT(A) with respect to each of the additions.

Addition of Rs. 1,49,39,000/- being unexplained cash deposits in the bank accounts

7. The brief facts of the case in relation to this ground of appeal are that the assessee company is engaged in the business of building supply material, TMT bar, steel etc. A search and seizure action was carried out in the case of Shri Mahendra Shantilal Patel (in short "MSP") and his group concerns on 06.02.2017, and his statement was also recorded under Section 132(4) of the Act. The search action resulted in collection of evidences which brought to the knowledge of the Department that MSP through a web a various concerns was engaged in providing bogus accommodation entries and bogus bills to various parties. This was also admitted by him in his statement under Section 132(4) of the Act. The Department observed that MSP was holding five PAN numbers in which four different dates of birth had been mentioned. However, MSP had not filed it's return of income. On carrying out further investigation, the Department found that all entities run by MSP were non-existent. The various concerns of MSP were only paper concerns created for the purpose of providing accommodation entries of bogus bills and bogus accommodation entries. MSP was running as many as 27 different concerns and all concerns were having only one address namely 58, Saket Row House, Sulabh Cooperative Housing Society Ltd., Memnagar. MSP in his statement also admitted that no business IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 activities were being carried out by the assessee from this address. In the statement given by MSP, he explained his modus operandi of providing accommodation entries in detail. He provided bogus bills as well as cheque / RTGS against cash. There are two sets of beneficiaries. In one set of beneficiaries, certain persons get bogus bills from him. These persons give cheque / RTGS to him and against the receipt of cheque / RTGS, he gives back cash to beneficiaries, after deducting his commission. In case of other set of beneficiaries, certain persons give cash to him. He issued cheque / RTGS to these beneficiaries. Against the receipt of this cash, cheque / RTGS is issued by him, after deducting his commission. MSP admitted that the concerns operated by him are non-existent. He did not have any godown and office etc. He carried out activity of providing accommodation entries from his home only. He admitted that he did not supply any goods and services. He merely issues bogus bills and therefore, he has no

supporting documents reflecting transportation charges, labour charges etc.

8. On the basis of information, a search under Section 132 of the Act was also carried out at the business premises of the assessee on 06.02.2017. During the course of search and survey action on the assessee and his group companies, the Department found various evidences on the basis of seized / impounded documents that the assessee and his group had provided accommodation entries in lieu of commission. For instance during the course of survey under Section 133A on 06.02.2017 at the premises of M/s. Tile Touch Ceramics, 4, Baba IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Ramdev Complex, Opp. Sajan Party Plot, Near Parshwanath Jain Temple BRTS, Sola Road, Ahmedabad one diary was found containing details of accommodation entries and commission income earned by the assessee. On the basis of diary impounded from the premises of the assessee, the Department observed that Shri Bharat Popat, key person in the assessee company had given a sum of Rs. 10 lakhs in cash for providing accommodation entry to MSP. Further, the Department also impounded letter heads and bills books of MSPs various bogus concerns from the premises of M/s. Tile Touch Ceramics (associated concern of the assessee) in the search carried out at 4, Baba Ramdev Complex. The assessee also filed letter dated 22.08.2018 during the course of assessment proceedings and stated that assessee has neither carried out any business nor provided any services and he was only engaged in providing accommodation bills / accommodation entries to the interested parties in exchange for a commission ranging from 0.50% to 2%. Further, on 17.04.2017 MSP filed an affidavit to the effect that he had provided accommodation entries of bogus bills for commission. The pre-search investigation carried out by the Department revealed that significant part of unaccounted cash received in bank accounts of MSP group was finally landing in the bank accounts of Benefit Tradelink and associated group companies namely Benefit Tradelinks Ltd. and Ellegance Reality Ltd. The Benefit group is headed by Shri Bharat Popat. During the course of search conducted at the premises of Shri Bharat Popat, Benefit Tradelinks Ltd. and Ellegance Reality Ltd. at Benefit House, City Bank Street, Nr. Municipal Market, C.G. Road, IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Navrangpura, Ahmedabad, several incriminating documents were found and seized by the Department. On analyzing the documents during the course of search, several documents were found where information about unaccounted transactions made in either cash or through banking channel by the assessee alongwith his proprietorship concerns to the other person / companies / firm / proprietorship concerns was seen. During the course of search operation, the Department found books of accounts on various concerns which were being maintained in tally software at Benefit House.

9. During the course of search, a Ms. Excel file named "Cheque Book Data Base" was found from the laptop used by Mr. Bharat Popat. On perusal of the Excel sheet, the Department observed that the said sheet contains details of bank accounts of various parties having live nexus with Benefit group. From the contents of the Excel sheet, the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Department observed that Shri Bharat Popat is actually controlling these bank accounts. The Department also conducted a search action on Shri Vishal Pandya on 06.02.2017 in which various incriminating documents were found. The Department observed that substantial cash was deposited in the bank accounts of Shri Vishal Pandya during the demonetization period. During the post search assessment proceedings, Shri

Vishal Pandya filed an affidavit and stated that various bank accounts were controlled by Bharat Popat. Further, the Department also observed that during the course of post search assessment, Shri Mahendra Shantilal Patel had stated that he has given accommodation entries, vague bills in the name of various concerns of Shri Bharat Popat. MSP also admitted in his affidavit under oath that few of his account was were completely managed and controlled by Shri Bharat Popat. However, the Department observed that Shri Bharat Popat did not consider the entries of cash deposits / withdrawals while preparing books of accounts of himself and his concerns. The Department issued notice under Section 153A to the assessee dated 14.08.2017 for A.Y. 2011-12 to A.Y. 2016-17 requiring the assessee to file return of income for the impugned years under consideration. In response to notice under Section 153A of the Act dated 14.08.2017, the assessee filed return of income on 27.09.2018 for A.Y. 2011-12 declaring total income of Rs. 3,01,780/-. Thereafter, notice under Section 142(1) of the Act was issued to the assessee and as many as 13 dates of hearing during the period 27.09.2017 to 18.12.2018, were given and the assessee sought adjournments on most of the occasions and only filed partial / IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 irrelevant submissions. Finally, the Department issued show-cause notice dated 17.12.2018, in which the entire modus operandi was confronted to the assessee, wherein it was pointed out that on the basis of incriminating documents seized during the course of search at office cum residence of Shri Bharat Popat, (document dated 07.12.2016), it was found that substantial cash was first deposited in the bank account of Vishal Pandya and thereafter the funds was immidiately transferred to Benefit Tradelink Ltd. Further, substantial cash was also deposited in the firms belong to MSP group from which substantial amount was also transferred to the bank account of Benefit Tradelink. The Department, on analysis of the bank account of SVP Corporation (proprietorship concern of Shri Vishal Pandya) observed that the assessee and his group concerns are the beneficiaries of such bank account operated by Shri Vishal Pandya. Mr. Pandya had filed affidavit that his bank account has been utilized by Mr. Bharat Popat for providing accommodation entries. In his affidavit Shri Vishal Pandya has stated that Bharat Popat has taken signed cheque books of his Current Account and Mr. Bharat Popat has full rights and access to his bank account online. Mr. Pandya further submitted that his current accounts in Bank of Maharashtra and Punjab National Bank are used by Shri Bharat Popat and his concerns and that Shri Bharat Popat is misusing his bank accounts as well as issuing sales bills and taking purchase bills in the name of SVP Corporation without taking any actual delivery of goods.

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10. Further, the Department also found an MS Excel file name "Daily Cash Book" from the laptop of Shri Bharat Popat and another Ms. Excel file namely "HETVI Group" located in the computer installed at Benefit House. The Department observed that this file records that cash is received and accommodation entries against such cash have been advanced to various concerns namely Hetvi Developers, Balaji Infrastructure and Ashish Patel. Mr. Bharat Popat admitted that this file contains details of cash, RTGS, barter and trading transactions. In addition to the above, the Department also found various other Excel sheet files from the laptop of Shri Bharat Popat and Harsha Popat containing details of various accommodation entries / bogus bills and other transactions which were being carried out by Shri Bharat Popat and his group concerns.

11. Accordingly, as per extensive information which was unearthed from the search and seizure operation carried out by the Department, it was noticed that assessee had deposited huge amount of cash for various years in his bank accounts. In this regard, the assessee was requested to furnish / explain the source of cash deposited in his bank account for various years. The assessee was requested to furnish information regarding cash deposited in each of the bank accounts and give detailed explanation alongwith documentary evidences of each of the cash deposit, alongwith necessary supporting evidence. The Department observed that on verification of ITR the assessee had declared meager income between A.Y. 2011-12 to A.Y. 2017-18 or IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 booked losses which did not support the substantial cash deposits in the bank accounts of the assessee. Accordingly, the Assessing Officer prepared the following chart for various for various assessment years under consideration and asked the assessee to furnish the detail explanation alongwith documentary evidences for cash deposits:

A.Y.	Cash Credit	Total Credit	Debit
2011-12	14939000	95157488	91677873
2012-13	11872000	144652441	144667967
2013-14	1183782	32105865	32110031
2015-16	6760500	220044456	233133364
2016-17	3923000	261518917	297065200
2017-18	172953000	289350452	261806814
Total	211631282	1042829619	1060461249

12. However, despite issuance of notices to the assessee, the assessee did not furnish any explanation regarding the sources of cash deposits in his bank account. Accordingly, in absence of any explanation from the assessee, the Ld. Assessing Officer held that the cash deposits of Rs. 1,49,39,000/- remained unexplained and accordingly, the same were added to the income of the assessee.

13. In appeal, Ld. CIT(A) allowed the appeal of the assessee on this ground by holding that the additions have not been made on the basis of any incriminating material and the basis of addition is on the basis of facts which are coming from ITS data, Audited accounts etc. The CIT(A) held that the aforesaid addition was not based on any "incriminating material" found during the course of search. The CIT(A) held that for sustaining any addition under Section 153A of the Act, there has to be "incriminating material" recovered during the course of search qua the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 assessee for the purpose of making additions. Accordingly, following the decision of Gujarat High Court in the case Saumya Construction 81 taxmann.com 292 and other decision of various High Courts, the principle which has been laid down is that since no incriminating evidences have been found during the course of search and therefore, no addition can be made under Section 153A of the Act without any reference to any incriminating documents. Accordingly, the CIT(A) deleted the addition on the ground that additions made by the Assessing Officer is not sustainable in law. While passing the order Ld. CIT(A) made the following observations:

"5. Facts of the case, submission of the appellant and assessment order have been carefully considered. Facts of the case, in brief are that the appellant company is engaged in the business of building supply material, TMT Bar, steel etc. A search u/s 132 of the I.T. Act has been carried out at the business premises of the appellant on 06/02/2017. The appellant filed return of income in response to notice u/s 153A declaring income of Rs.3,01,780/-. The AO has made various additions and assessed total income at Rs. 2,71,74,900/-. Addition amounting to Rs. 1,49,39,000/- has been made on account of cash deposited in bank account, on the basis of ITS date as well as bank statements. The AO has further made an addition of Rs.4,56,927/- on account of difference in the balance items as per Balance Sheet filed along with return of income u/s 68 of the IT. Act. Further, the AO has also made disallowance of Rs. 26,77,188/- u/s 40a(ia) of the IT. Act on account of non-deduction of TDS on various expenses. Another addition amounting to Rs. 88,00,000/- has been made on account of unexplained investment in property.

5.1 The ARs of the appellant has made submissions on legal ground as well as on merit of the case. The primary argument is that since the transactions related to all the additions made by the AO are already recorded in the books of accounts and duly reflected in original return filed on 02/01/2012. The additions are not made on the basis of any incriminating material found during the course of search. The additions are made on the basis of ITS DATA, verification of Profit and Loss account and Balance sheet filed along with return of income.

5.2 I have duly considered the assessment order, written submission and relevant provisions and case laws relied upon. The appellant has filed original return on 02/01/2012 and therefore considering the provision of section 153A of the IT. Act, assessment proceedings for the year under consideration were unabated. The principles which are being laid down by the Jurisdictional High court outlines the ambit and scope of powers conferred by section 153A. On plain reading of section 153A it becomes clear that on initiation of the proceedings under section 153A, in respect of the six assessment years is only for the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 assessments which are pending on the date of search under section 132 or making requisition under section 132A, stand abated and not the assessments which are already finalized. Therefore, the principle that has emerged is that in those years where assessments are not abated, additions can be made only on the basis of loose material in terms of incriminating documents found during the course of search. It has been held in the case of Saumya Construction (81 taxmann.com 292) by the Hon'ble Jurisdictional High Court that where it has been held that: "It was admitted position that no incriminating material was found during course of search, however, it was on basis of some material collected by AO much subsequent to search, that additions came to be made. On behalf of revenue, it had been submitted that if any incriminating material was found, notwithstanding that in relation to year under consideration, no incriminating material was found, it would be permissible to make

additions and disallowance in respect of all six AYs-- In opinion of this court, said submission did not merit acceptance, inasmuch as, assessment in respect of each of six AYs was separate and distinct assessment--U/S.153A, assessment had to be made in relation to search or requisition, namely, in relation to material disclosed during search or requisition--If in relation to any AY, no incriminating material was found, no addition or disallowance could be made in relation to that AY in exercise of powers u/s.153A and earlier assessment should have to be reiterated--In this regard, this court was in complete agreement with view adopted by Rajasthan HC-in case of Jai Steel (India), Jodhpur v. Assistant CIT (supra)--Besides, as rightly pointed out by assessee, controversy involved stands concluded by decision of this court in case of CIT -1 v. Jayaben Ratilal Sorathia (supra) wherein it had been held that while it could not be disputed that considering section 153A, AO could reopen and/or assess return with respect to six preceding years; however, there must be some incriminating material available with AO with respect to the sale transactions in particular AY--It was not possible to state that order passed by Tribunal suffered from any legal infirmity so as to give rise to question of law, much less, substantial question of law, warranting interference--Appeal, was, accordingly, dismissed".

Similar view has been taken by various courts on identical facts and are in consonance with the finding of the above decision are as under:

I. Commissioner of Income Tax (Centra)-III V. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) II. Principal Commissioner of Income-Tax, Ahmedabad V. Dipak Jashvantlal Panchal [2017]88 taxmann.com 611(Gujarat), III. Principal Commissioner of Income Tax V. Desai Construction (P.) Ltd.

[2017] 81 taxmann.com 271(Gujarat) IV. In the case of Principal Commissioner of Income Tax-1 V. Devangi [2017] 88 taxmann.com 610 (Gujarat) V. Principal Commissioner of Income-tax V. Sunrise Finlease (P.) Ltd.

[2018] 89 taxmann.com 1 (Gujarat) VI. Commissioner of Income-tax-1 V, Jayaben Ratilal Sorathia [2013] 40 taxmann.com 436(Gujarat) VII. Pr.CIT v. Meeta Gutgutia [2018] 96 taxmann.com 468/257 Taxman 441(SC) VIII. PCIT v. Kurele Paper Mills P. Ltd. (2016) 380 ITR 571 (Delhi)(HC) IX. Commissioner of Income tax-II, Thane V. Continental Warehousing Corporation (Nava Sheva) Ltd. [2015] 58 taxmann.com 78 (Bombay) IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 X. Commissioner of Income-tax, Central - I V. Manish Build Well (P.) Ltd. [2C11]16 127 (Delhi XI. Principal Commissioner of Income-tax - 18 V. Ms. tata Jam [2017]81 taxmann.com 83(Delhi) XII. Principal Commissioner of income-tax, Delhi-2 V. Best infrastructure (India) (P.) Ltd. [2017]84 taxmann.com 2S7(Delhi) XIII. Principal Commissioner of income-tax v/s Vikas Gutgutia [2017] 88 taxmann.com 605 (Delhi) XIV. Commissioner of Income Tax-20 V. Deepak Kumar Agarwal [2017] 86 taxmann.com 3 (Bombay) XV. Commissioner of Income-tax, Central - II, Mumbai V. Gurinder

Singh Bawa [2017]79 taxmann.com 398 (Bombay) XVI. Principal Commissioner of Income-tax, Central-4 V. Jignesh P. Shah [2018]99 taxmann.com 111 (Bombay) XVII. Commissioner of Income-tax V. SKS Ispat Power Ltd. [2018]99 taxrnnann.com 424(Bombay) XVIII. Commissioner of Income-tax (Central), Nagpur V. Muri Agro Products Ltd. [2014]49 taxmann.com 172(Bornbay), XIX. Commissioner of Income-tax, Benglore V. IBC Knowldege Park (P.) Ltd, [2016]69 taxmann.com 108 (Karnataka) XX. Commissioner of income-tax (Central), Kanpur V. Smt. Shaila Agarwal [2011]16 taxmann.com 232(All.) It is a fact that the additions are not made on the basis of any incriminating material, the basis of addition is verification of same sets of facts like ITS data, verification of audited accounts etc. These additions are not based on any incriminating material found during the course of search. There has to be incriminating material recovered during the course of search qua the assessee in each assessment years for the purpose of making additions in the assessment made u/s 153A of the IT. Act. Therefore, respectfully following the decision of Hon'ble Gujarat High Court in the case of Saumya Construction (81 taxrnnann.com

292) and other decisions of the various High Courts, the principle which has been laid down is that since no incriminating evidences have been found during the course of search and therefore, no additions can be made u/s 153A of the I.T. Act without any reference to any incriminating documents, hence the additions made by the AO are not sustainable in law, thus, these are deleted. These grounds of appeal are allowed."

14. The Department is in appeal before us against the aforesaid order passed by the Ld. CIT(A) deleting the additions made by the Ld. Assessing Officer. Before us, the Ld. D.R. submitted that extensive search operations were carried out and on the basis of the statements of various parties which were recorded and substantial documentary evidences which were found, it was clearly established that the assessee IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 was engaged in providing bogus accommodation entries in lieu of commission. From the material unearthed during the course of search and survey action, the Department had discovered the entire bogus accommodation entry operations which were being carried out by the assessee with the help of his associates. During the course of search action, the Department found a number of excel sheets, took on oath statements of various concerned persons and on the basis thereof it was found that a complex web of fraudulent and bogus operations of providing accommodation entries / accommodation bills was being carried out by the assessee for earning commission income. On the basis of data unearthed during the course of search operations, the Department has found that substantial cash was first deposited in the bank account of MSP and his group concerns and thereafter, this cash had subsequently flown to the bank account of either the assessee or his associates, who on sworn have admitted that the bank accounts in their names were in fact being operated by Shri Bharat Popat, who is the key person running various concerns like M/s. Benefit Tradelink, M/s. Elegance Realty Ltd. The Department on the basis of excel sheets during the course of search operations have found that the assessee has been operating several bank accounts with the purpose of providing accommodation bills / entries, without actually

taking delivery of goods. Shri Bharat Popat in his sworn affidavit also admitted to having been engaged in the business of providing accommodation entries. The Ld. D.R. submitted that the entire facts, the bogus operations carried out by the assessee and his associate concerns, the modus operandi resorted IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 to by the assessee for providing accommodation / bogus entries and the supporting evidences to prove that the assessee has alongwith associated firms has been provided bogus cash accommodation entries / bills has been discussed in great detail in the assessment order. However, the Ld. CIT(A) has dismissed the entire effort and search operations extensively carried out by the Department and has simply brushed aside the extensive evidence / material which formed the basis of making additions, without any discussion on why such substantial amount of evidence / information / affidavits and modus operandi found during the course of search operation does not constitute "incriminating material", on the basis of which the additions are liable to be sustained. The Ld. D.R. submitted that the words "incriminating material" have not been discussed / elaborated in any of the judicial precedents. However, the Ld. CIT(A) disregarded the entire search operations and summarily decided the appeal on this issue in favour of the assessee by relying on the case of Saumya Construction and holding that the additions were not made on the basis of "incriminating materials" found during the course of search operations, but additions have been made only on the basis of ITS data / material which was available from the books of accounts of the assessee. The Ld. D.R. submitted before us that despite mentioning the substantial amount of information which was unearthed during the course of search operations, the Ld. CIT(A) without giving even a single comment on the information and material on the basis of which additions were made by the Assessing Officer, and simply allowed the appeal of the assessee on IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 the ground that the additions were not made on the basis of any incriminating material found during the course of search. The Ld. D.R. submitted that there is no discussion whatsoever in the order of Ld. CIT(A) as to why the details and information which were unearthed during the course of search operations and which formed the basis of this addition does not qualify as "incriminating material". Accordingly, the Ld. D.R. submitted that the Ld. CIT(A) has erred in facts and in law in allowing the appeal of the assessee on this issue.

15. In response, the Counsel for the assessee filed written submissions and submitted that the document which was found during the course of search operations cannot be categorized as incriminating material. He further submitted that the details of cash deposited in November 2016 is pertaining to A.Y. 2017-18 and the years under consideration is A.Y. 2011-12 to A.Y. 2015-16 and therefore, information regarding cash deposited relevant for the year under consideration. Accordingly, the Counsel for the assessee none of the additions are made on the basis of incriminating material found during the course of search operations. Further, the Counsel for the assessee submitted that the modus operandi highlighted in the assessment order does not constitute incriminating material and no additions can be based on the basis of such modus operandi highlighted in the assessment order. Accordingly, the Counsel for the assessee relied on observations made by the CIT(A) in the appellate order.

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16. We have heard the rival contentions and perused the material on record.

17. On going through the contents of the order passed by Ld. CIT(A) there are certain noteworthy points. We observe that in the assessment order, a reference has been made by the Assessing Officer to various excel sheets found from the premises of the assessee, in which Shri Bharat Popat, the main person of the assessee was found to be operating various bank accounts and actively engaged in providing accommodation entries, the entire modus operandi of the assessee is duly supported by affidavits of key persons involved in this transaction and the same was duly recorded in the assessment order. However, while holding that the additions have not been made on any incriminating material, the Ld. CIT(A) there is no discussion in his order as to why the substantial information unearthed during the search operations does not constitute "incriminating material" in the hands of the assessee. We observe that Ld. D.R. has correctly pointed out that there is no discussion in the order of Ld. CIT(A) as to why the substantial amount of information which was unearthed during the course of search operations does not qualify as "incriminating material", in the hands of the assessee. We observe that Ld. CIT(A) has simply allowed the appeal of the assessee without any discussion in his order that as to why all the information / data / affidavits / modus operandi discovered by the Department leading to the making of the aforesaid addition, does not qualify as "incriminating material" in the hands of the assessee. Secondly, we observe that the assessee has never IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 disputed the observations regarding "modus operandi" of carrying out the business of providing business bills / accommodation entries being done by the assessee. The assessee has never disputed that it is engaged in the business of providing accommodation entries / bills in lieu of earning commission income. The assessee has never disputed the contents of the allegations made by the Assessing Officer in the assessment order and has also never sought for an opportunity of cross- examining the persons who have filed affidavit giving details of providing accommodation entries / bogus bills involving the assessee and his firms. Therefore, we observe that the assessee has never challenged the contents of the assessment order and the affidavits on the basis of which additions have been made in the assessment order. Thirdly, we observe that substantial material was found during the course of search operations at the premises of the assessee in which it has been clearly found that assessee has been using several bank accounts for the purpose of providing accommodation bills / entries to various parties in lieu of commission. On the basis of search carried out at the premises of the assessee, and other concerns, it has been found that money was first deposited in the bank accounts of MSP and his group concerns and thereafter, such money was transferred to the bank accounts operated by the assessee and associated concerns. The assessee has not been able to give any plausible explanation whatsoever regarding the substantial cash deposits which were made in his bank account and further, the return of income filed by the assessee for the impugned years under consideration also do not lend any support or IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 basis to the substantial amount of cash deposited in the bank account held by the assessee and it's associated concerns. Therefore, in our considered view, the substantial amount of information / data / material unearthed by the Department by carrying out search at various premises of MSP group, their associated personnels involved in such operations, search at premises of Shri Bharat Popat and associated concerns and the substantial material which clearly substantiates that the assessee was engaged to providing accommodation

bills / bogus entries constitutes "incriminating material". Therefore, we are of the considered view that Ld. CIT(A) has erred in holding that the additions are not on the basis of any "incriminating material" found during the course of search and this is particularly in light of the fact that there is no discussion in the order of Ld. CIT(A) as to why the aforesaid material does not constitute as "incriminating material" in the hands of the assessee. Another contention of the Counsel for the assessee is that the details of cash deposited in November 2016 is pertaining to A.Y. 2017- 18 and the years under consideration are A.Y. 2011-12 to 2015-16 and therefore, information regarding cash deposited is not relevant for the years under consideration. The Counsel for the assessee drew our attention to Para 2.1, Page 53 of the assessment order and submitted that there were no transactions in this year with the MSP group and the entire modus operandi started only post demonetization. However, we are of the considered view that these submission of the Ld. Counsel for the assessee are found not to be acceptable for the reason that the assessee has continuously engaged in provided accommodation entries IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 for the impugned assessment year and later years as well. At Para 6 Page 64 the Assessing Officer has observed that the assessee has been actively engaged in transactions relating to the impugned assessment year as well. Further, the Assessing Officer observed that the transactions mentioned in the excel sheets are not reflecting in the books of accounts maintained by the assessee. Further, so far as the cash deposits are concerned, the Assessing Officer observed that there were substantial cash credits amounting to Rs. 1,49,39,000/- which were reflecting in the assessee's bank account for the impugned year under consideration for which the assessee was not able to provide any plausible explanation whatsoever. Therefore, it was in light of the continuous bogus operation carried out by the assessee for various years including the impugned year under consideration, that the Assessing Officer held that the addition are liable to be added in the hands of the assessee on the basis of incriminating material found during the course of search. Further, as observed by us earlier, the assessee has neither challenged the contents of the material discovered during the course of extensive search operation carried out by the Department and neither has Ld. CIT(A), on merit ever examined any material which was found during the course of search operation. As noted by us earlier the Ld. CIT(A) has not given any finding whether "any incriminating material" was found during the course of search and the Ld. CIT(A) in his order has never examined or commented upon why the substantial material found during the course of search operations does not qualify as "incriminating material". Another IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 important point which we have observed is that for A.Y. 2015-16, the Ld. CIT(A) has relied upon the material i.e. the excel sheet working found during the course of search operations of the assessee and it's group concerns and has held that such material qualifies as "incriminating material" and accordingly, sustained addition of Rs. 15 lakhs in the hands of the assessee. While confirming the additions in the hands of the assessee the Ld. CIT(A) has held that since the assessee could not prove the genuineness of the transaction, in terms of identity, creditworthiness and genuineness of the transaction, therefore, the addition of Rs. 15 lakhs made by the Assessing Officer on account of working in excel file in the name of HETVI group is liable to be sustained. It would be useful to reproduce the relevant extract of the order of Ld. CIT(A) for A.Y. 2015-16 where the excel sheet found during search was held to constitute "incriminating material" and additions have been confirmed in the hands of the assessee:-

"6. The AO has made additions of Rs. 15,00,000/- on account of working in excel file in the name of HETVI group. The said addition has been dealt with by the appellant in Ground no. 6 of the paper book. The excel sheet is found during the course of search, the AO has issued show cause notice dated 17/12/2018 requiring detailed explanation and documentary evidence to show whether transactions are reflected in the books of accounts and offered to tax. The assessee vide letter dated 21/12/2018 submitted its reply, however, the AO held that the assessee failed to provide the supporting documents or bring any facts to the notice that such transaction are done in normal course of business and merely because the transactions existed in the books of accounts will not make it genuine or for the purpose of business. The AR of the appellant has made submissions on 17/12/2018 and explained the nature of transactions related to the computer sheet. The appellant explained that it has carried out business transactions with M/s Balaji Infrastructure Pvt. Ltd on 17/10/2014 and 05/02/2015 and accordingly made payment to the said party. The transactions have been recorded in the books of accounts. However, since the appellant could not prove the genuineness of transactions in terms of identity, creditworthiness and genuineness of the transactions as the source of cash received and deposited in the bank account and similar amount of cheques have been issued. Therefore, considering the totality of facts, this ground of appeal is dismissed and the addition of Rs. 15,00,000/- is confirmed."

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18. Therefore, we observe that on similar set of facts as contained in the assessment order, while the CIT(A) has held that the additions have not been based on any "incriminating material" found during the course of search for A.Y. 2011-12, whereas for A.Y. 2015-16 on the similar material / data found during search, the Ld. CIT(A) has confirmed the addition in the hands of the assessee. Therefore, clearly in our considered view, Ld. CIT(A) has been taken contradictory views on the same set of facts and information available with the file of the Assessing Officer.

19. Accordingly, looking into the facts of the instant case the material found during the course of search operations carried out by the Department, the affidavits of various concerned parties and the entire modus operandi of the assessee, we are of the considered view that Ld. CIT(A) has erred in facts and in law in deleting the addition with respect to this ground of appeal. This is particularly in light of the fact that there is no discussion in the appellate order as to why the information / material found during the course of search does not qualify as "incriminating material" and further on the basis of similar material in the assessment order, the Ld. CIT(A) has taken a contradictory view and sustained the additions made in the hands of the assessee for A.Y. 2015-

16.

20. In the result, this addition of Rs. 14,93,900/- in the hands of the assessee is liable to be sustained. Accordingly, the appeal of the Department with respect to this addition is allowed.

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21. The other grounds filed by the Department relate to relief granted by Ld. CIT(A) with respect to additions of Rs. 4,56,927/- made on account of unexplained credit entries under Section 68 of the Act, and disallowance of Rs. 26,77,188/- on account of non-deduction of tax deducted at source under Section 40(a)(ia) of the Act.

22. The brief facts in relation to the additions are that the Assessing Officer made the aforesaid additions, during the course of assessment proceedings on the basis of analysis of Profit & Loss Account, balance sheet, return of income and computation of income filed by the assessee.

23. However, Ld. CIT(A) gave relief to the assessee by observing that in case of unabated assessment year, various courts have consistently held that additions can only be made on the basis of incriminating material found during the course of search. This view also find support from the decision of Gujarat High Court in the case of Saumya Construction 81 taxmann.com 292 and also by the decision of Delhi High Court in the case of Kabul Chawla 61 taxmann.com 412 (Delhi). Accordingly, Ld. CIT(A) gave relief to the assessee with the following observations:

"It is a fact that the additions are not made on the basis of any incriminating material, the basis of addition is verification of same sets of facts like ITS data, verification of audited accounts etc. These additions are not based on any incriminating material found during the course of search. There has to be incriminating material recovered during the course of search qua the assessee in each assessment years for the purpose of making additions in the assessment made u/s 153A of the IT. Act. Therefore, respectfully following the decision of Hon'ble Gujarat High Court in the case of Saumya Construction (81 taxrnann.com

292) and other decisions of the various High Courts, the principle which has been laid down is that since no incriminating evidences have been found during the course of search and therefore, no additions can be made u/s 153A of the I.T. Act without any reference to any incriminating documents, hence the additions made by the AO are not sustainable in law, thus, these are deleted. These grounds of appeal are allowed."

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24. With respect to the aforesaid additions, we find no infirmity in the order of the Ld. CIT(A), wherein the Ld. CIT(A) has correctly observed that where assessment are not abated, additions under Section 153A of the Act r.w.s. 143(3) of the Act can be made only on the basis of loose materials in terms of incriminating documents found during the course of search. The following decisions have consistently laid down the above proposition, which have been reproduce below:

(i) Saumya Construction 81 taxmann.com 292 (Gujarat - HC)

(ii) Kabul Chawla 61 taxmann.com 412 (Delhi)

25. Accordingly, we find no infirmity in the order of Ld. CIT(A) in deleting the disallowances / additions made by the Assessing Officer. Since the aforesaid additions were not made on the basis of any incriminating material found during the course of search.

Additions of Rs. 88,00,000/- on account of amount received from Benefit Information Ltd.

26. The brief facts in relation to this ground of appeal are that the Assessing Officer received information from the office of DDIT (Investigation), Rajkot on 22.03.2018 that M/s. Aryavat Pvt. Ltd. received accommodation entries in his bank account maintained with Social Cooperative Bank Ltd. through the conduit of bank account of M/s. Benefit Information Ltd., which converted it's name as M/s. Benefit Tradelink Ltd. On further investigation, the Assessing Officer observed that the assessee has not been able to establish the identity, creditworthiness and genuineness of the transaction.

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27. We observe that this addition has been made by Ld. Assessing Officer on the basis of information received from DDIT (Investigation), at a date later / subsequent to date of search action. In the case of Dipak Jashvantlal Panchal 88 taxmann.com 611 (Gujarat), the High Court held that Appellate Tribunal was correct in law in holding that the scope of Section 153A is limited to assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income, that comes to the notice of the Assessing Officer. It was held that Assessing Officer while framing assessment under Section 153A for block period may make addition considering the incriminating material found for year under consideration only which was collected during search.

28. In the case of Rajat Minerals Pvt. Ltd. 114 taxmann.com 536 (Ranchi - Tribunal), the ITAT held that where no incriminating evidence against assessee was found or seized during course of search, invocation of provisions of Section 153A and making additions/disallowances on basis of a tax evasion petition found much after search was unjustified.

29. In the case of Smt. Jami Nirmala 132 taxmann.com 267 (Orissa), the High Court held that where assessment order did not refer to any document unearthed during course of search, assumption of jurisdiction under Section 153A for reopening of assessment was without any illegal basis.

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30. In the case of Oxygen Business Park Pvt. Ltd. 157 taxmann.com 175 (Delhi), the High Court held that where no assessment was pending on date of search and no incriminating material was found

during search, fresh material/information received after date of search would not be sufficient to reopen assessment under Section 153A of the Act.

31. Accordingly, in light of the above judicial precedents, we are of the considered view that in this case since the aforesaid addition of Rs. 88 lakhs on account of amount received from Benefit Information Ltd. was made on basis of Investigation Report which was received by the Ld. Assessing Officer after the date of search and such addition was not on the basis of any incriminating material found during the course of search, there is no infirmity in the order of Ld. CIT(A) in giving relief to the assessee on this issue, so as to call for any interference.

32. In the result, Department's appeal with respect to addition of Rs. 88,00,000/- is hereby dismissed.

Benefit Tradelink Ltd. (IT(SS)A No. 506/Ahd/2019 A.Y. 2012-13) (Department's Appeal)

33. The Department has raised the following Grounds of Appeal:

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s.132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation

of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.1,18,72,000/- being unexplained cash deposits in bank accounts, Rs.2,00,55,981/- being unexplained credits and Rs.2,00,55,981/- being disallowance u/s 40(a)(ia) of the Act are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material for making additions on the issue of unexplained cash deposits in bank accounts and unexplained credits.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO for making addition of Rs.1,18,72,000/- being unexplained cash deposits in bank accounts, Rs.2,00,55,981/- being unexplained credits and Rs.88,33,599/- being disallowance u/s 40(a)(ia) of the Act.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

9. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

34. Ground Nos. 1 to 4 of the Department's appeal are general in nature and do not require any specific adjudication.

35. The addition amounting to Rs. 1,18,72,000/- under Section 68 of the Act is on identical set of facts as for A.Y. 2011-12 (where we have IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 held that addition of Rs. 1,49,39,000/- is liable to be sustained since the same was on the basis of incriminating material found during the course of search), we are of the considered view that this addition is liable to be upheld, since the same is on the basis of "incriminating material"

found during the course of search and Ld. CIT(A) has erred in facts and in law allowing the appeal of the assessee on this issue.

36. With regards to balance additions amounting to Rs. 2,00,55,981/- under Section 68 of the Act and Rs. 88,33,599/- on account of non- deduction of TDS, we are of the considered view that since

the same are not on the basis of any "incriminating material" found during the course of search and therefore, Ld. CIT(A) has not erred in facts and in law in allowing relief to the assessee with respect to this addition.

37. In the result, the Department's appeal with respect to this addition is hereby dismissed.

M/s. Benefit Tradelink Ltd. (IT(SS)A No. 507/Ahd/2019 A.Y. 2013-14) (Department's Appeal)

38. The Department has raised the following Grounds of Appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s.132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.11,83,782/- being unexplained cash deposits in bank accounts, Rs.10,21,41,570/- being unexplained credit entries u/s. 68 of the Act and disallowance of Rs. Rs.44,10,353/- on non-deduction of TDS u/s 40(a)(ia) of the Act are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material for making additions on the issue of unexplained cash deposits in bank accounts and unexplained credits.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO for making addition of Rs.11,83,782/- being unexplained cash deposits in bank accounts, addition of Rs.10,21,41,570/- made on account of unexplained credit entries u/s 68 of the Act and disallowance of Rs.44,10,353/- on non-deduction of TDS u/s 40(a)(ia) of the Act.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

9. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

39. Ground Nos. 1 to 4 of the Department's appeal are general in nature and do not require any specific adjudication.

40. The addition amounting to Rs. 11,83,782/- under Section 68 of the Act is on identical set of facts as for A.Y. 2011-12 (where we have held that addition of Rs. 1,49,39,000/- is liable to be sustained since the same IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 was on the basis of "incriminating material" found during the course of search), we are of the considered view that this addition is liable to be upheld, since the same is on the basis of incriminating material found during the course of search and Ld. CIT(A) has erred in facts and in law allowing the appeal of the assessee on this issue.

41. With regards to balance additions amounting to Rs. 10,21,41,570/- under Section 68 of the Act and addition of Rs. 44,10,353/- on account of non-deduction of TDS under Section 40(a)(ia) of the Act, we are of the considered view that since the same are not on the basis of any incriminating material found during the course of search and therefore, Ld. CIT(A) has not erred in facts and in law in allowing relief to the assessee with respect to this addition.

42. In the result, the Department's appeal with respect to these two additions is hereby dismissed.

M/s. Benefit Tradelink Ltd. (IT(SS)A No. 508/Ahd/2019 A.Y. 2014-15) (Department's Appeal)

43. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.6,23,64,685/- being unexplained credit and Rs.72,30,000/-being disallowance u/s 40(a)(ia) of the Act are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred In holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance of seized material for making additions on the issue of unexplained credits.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred In not considering the material facts and evidences brought on record by the AO for making addition of Rs.6,23,64,685/- being unexplained credit and Rs.72,30,000/- being disallowance u/s 40(a)(ia) of the Act.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

9. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

44. Ground Nos. 1 to 4 of the Department's appeal are general in nature and do not require any specific adjudication.

45. With regards to additions amounting to Rs. 6,23,64,685/- under Section 68 of the Act and addition of Rs. 72,30,000/- on account of non- deduction of TDS under Section 40(a)(ia) of the Act, we are of the considered view that since the same are not on the basis of any IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 incriminating material found during the course of search and therefore, Ld. CIT(A) has not erred in facts and in law in allowing relief to the assessee with respect to this addition.

46. In the result, the Department's appeal with respect to these additions is hereby dismissed.

M/s. Benefit Tradelink Ltd. (IT(SS)A No. 565/Ahd/2019 A.Y. 2015-16) (Department's Appeal)

47. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s. 153A has to be confined to the incriminating material found during the course of search u/s.132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating

material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/u.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.55,35,489/- made on account of unexplained entries contained in IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 seized materials beyond the scope of section 153A of the Act and thus deleting the said addition.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.67,60,500/- made on account of unexplained cash deposits in bank accounts is beyond the scope of section 153A of the Act and thus deleting the said addition.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.6,24,95,734/- made on account of unexplained credit entry u/s 68 of the Act is beyond the scope of section 153A of the Act and thus deleting the said addition.

8. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that disallowance of Rs. 9,35,652/- made on account of disallowance u/s 14A of the Act is beyond the scope of section 153A of the Act and thus deleting the said disallowance.

9. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that disallowance of Rs 1,38,78,273/- made on account of non-deduction of TDS u/s 40(a)(ia) of the Act is beyond the scope of section 153A of the Act and thus deleting the said disallowance.

10. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that no incriminating documents were found relating to additions made overlooking the facts that the AO has taken into cognizance seized material for making additions on the issue of unexplained credits.

11. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO for making addition of Rs.55,35,489/- made on account of unexplained entries contained in seized material, Rs.67,60,500/- on account of unexplained cash deposits in bank accounts, Rs.6,24,95,734/- on account of unexplained credit entry u/s 68 of the Act and disallowance of Rs.9,35,652/- on account of disallowance u/s 14A of the Act and Rs.1,38,78,273/- on account of non- deduction of TDS u/s 40(a)(ia) of the Act.

12. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

13. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

47.1 The assessee has raised the Grounds of Appeal in IT(SS)A No. 558/Ahd/2019 for A.Y. 2015-16.

"1. That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs. 15,00,000/- on account of working found in excel file.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

2. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.

3. That, the appellant craves to add, amend, alter or delete any of the above grounds of appeals."

The assessee raised the grounds of appeal not decided by Ld. CIT(A) under rule 27 of ITAT Rules:

"That, the Learned Assessing Officer has wrongly made addition amounting to Rs. 55,35,489/- on account of unexplained entries in seized material.

That, the Learned Assessing Officer has wrongly made addition amounting to Rs. 67,60,500/- on account of cash deposited in bank account as unexplained cash credit u/s 68 of the I.T. Act.

That, the Learned Assessing Officer has wrongly made addition amounting to Rs. 6,24,95,734/- on account of difference in Trade payables and Long Term Borrowing as per Balance Sheet u/s 68 of the I.T. Act.

That, the Learned Assessing Officer has wrongly made addition on amounting to Rs. 9,35,652/- on account of disallowance of 14A.

That, the Learned Assessing Officer has wrongly made disallowance of expenses amounting to Rs. 1,38,78,273/- u/s 40(a)(ia) of the I.T. Act."

48. Ground Nos. 1 to 4 of the Department's appeal are general in nature and do not require any specific adjudication.

49. Ground Nos. 5 to 9 of the Department's appeal relate to various additions made by the Assessing Officer during the course of assessment proceedings.

50. After detailed discussion regarding the modus operandi of the assessee during the course of assessment proceedings, and on the basis of incriminating material found during the course of search, the Assessing Officer made addition of Rs. 67,60,500/- under Section 68 of the Act and another sum of Rs. 15,00,000/-, again on the basis of incriminating material found during the course of search.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

51. In appeal, while the Ld. CIT(A) allowed the appeal of the assessee on the ground that the additions were not made on the basis of incriminating material found during the course of search, whereas with respect to addition of Rs. 15,00,000/-, CIT(A) allowed the appeal of the assessee on the ground that since this addition has been made by the Assessing Officer on the basis of excel sheet found during the course of search, for which the assessee has not been able to give any explanation and was not able to prove the genuineness of the transaction in terms of identity, creditworthiness and genuineness of the transaction, Ld. CIT(A) has sustained the additions made by the Assessing Officer.

We shall first deal with the aforesaid two additions

52. First of all it needs to be pointed out that this is an "abated" assessment year. In this case, notice under Section 143(2) of the Act was issued dated 19.09.2016, however, the assessment proceedings were abated as per the provisions of the Act as the search was conducted in this case vide Warrant No. 6252 on 06.02.2017. Therefore, this is a case where the assessment proceedings had "abated" and the time limit for completing the assessments had not expired as on the date of search.

53. Having observed the above, we are of the considered view that Ld. CIT(A) has erred in facts and in law in taking contrary position, wherein additions of Rs. 67,60,500/- was deleted by holding that it was not on the basis of any incriminating material, whereas addition of Rs. 15 lakhs was sustained on the ground that this addition was on the basis of "incriminating material" found during the course of search.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

54. In this case, two things are noteworthy, firstly, Ld. CIT(A) has allowed relief to the assessee on the legal ground with respect to the addition of Rs. 67,60,500/- on the ground that in case of "unabated assessment year", i.e. where the time limit for completion of assessment has expired, only on the basis of incriminating materials found during the course of search. However, Ld. CIT(A) held that since in this case no incriminating material was found, no addition can be made in view of the decision of Saumya Construction and other cases relied upon by the Ld. CIT(A). However, Ld. CIT(A) failed to appreciate that this is a case where the assessment proceedings had "abated" and the time limit of assessment proceedings had not yet expired at the time of initiation of search action against the assessee. However, Ld. CIT(A) gave relief of Rs. 67,60,500/- on the erroneous presumption and by relying on judicial precedents relating to / relevant to cases of "unabated" assessment year without appreciating that for Assessment Year 2015-16 the assessment proceedings had abated owing to initiation of search at the premises of assessee and other group concerns. Accordingly, in our considered view, Ld. CIT(A) has erred in facts and in law in applying judicial precedents viz. Saumya Construction relation to unabated assessment years, without realizing / appreciating that A.Y. 2015-16 was the year where the assessment proceedings had in fact "abated" pursuant to initiation of search action against the assessee and other associated group entities.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

55. Secondly, the Ld. CIT(A) has taken a contrary position wherein additions on the similar facts, based on incriminating material found during the course of search have been sustained for a sum of Rs. 15 lakhs, wherein the addition made by the Assessing Officer on the basis of incriminating material amounting to Rs. 67,60,500/- has been deleted. In the preceding paragraph, we have given a detailed finding as to how this addition was directly emanating from the extensive search conducted by the Department and on the basis of incriminating materials found during the course of search. Accordingly, in our considered view both the additions amounting to Rs. 67,60,500/- and Rs. 15 lakhs made by the Assessing Officer are liable to be confirmed in the hands of the assessee and Ld. CIT(A), in our considered view has erred in facts and in law deleting the addition of Rs. 67,60,500/- by holding that the same is not on the basis of any "incriminating material"

found during the course of search.

56. Further, as noted by us, the impugned Assessment Year 2015-16 being an abated assessment year, the Assessing Officer was not under the legal restriction to make addition only on the basis of incriminating materials found during the course of search but was at liberty to conduct necessary enquiries and thereafter make appropriate additions, in case the assessee could not give any explanation with regards to enquiries made during the course of assessment proceedings, in accordance with law.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

57. With regards to addition of Rs. 6,24,95,734/- (fresh credit entries in the books of account), despite multiple opportunities to the assessee, the assessee failed to provide any explanation / evidence with respect to identity, creditworthiness and genuineness of transaction for the above mentioned credit entries in the books of accounts. Accordingly, the Assessing Officer confirmed the additions in the hands of the assessee. With regards to disallowance of Rs. 9,35,652/- under Section 14A of the Act, the Assessing Officer made the addition by observing that the assessee has failed to submit any bifurcation of his expenses incurred for earning exempt income and taxable income. With regards to addition of Rs. 1,38,78,273/- under Section 40(a)(ia) of the Act, the Assessing Officer made the addition by observing that despite being given a number of opportunities, since the assessee did not furnish any explanation regarding non-deduction of taxes at source, accordingly, the Assessing Officer made the additions in the hands of the assessee.

58. In appeal, Ld. CIT(A) deleted all the additions only on the basis that additions are not sustainable since they are not based on any incriminating material found during the course of search, without appreciating that this is a case of an abated assessment year and the Assessing Officer was not under any legal restriction to only make additions with regards to incriminating material found during the course of search and the Assessing Officer was at liberty to conducted appropriate enquiry and make additions in accordance with law.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

59. Accordingly, we are of the considered view that Ld. CIT(A) has erred in facts and in law in allowing relief to the assessee and deleting the additions made by the Assessing Officer. Further, even upon going through the records for the impugned assessment year, we observe that the assessee had not filed any substantive evidence with respect to these additions and accordingly, we are of the considered view that Ld. CIT(A) has erred in facts and in law in directing to delete this additions.

60. In the result, Department's appeal is allowed with respect all grounds of appeal for A.Y. 2015-16 (ITA No. 565/Ahd/2018) and assessee's appeal for the same assessment year relating to addition of Rs. 15 lakhs is hereby dismissed.

Now we shall deal with another related entity group M/s. Elegance Realty Ltd. for A.Y. 2011-12, 2012-13 and 2015-16

61. The additions made of this entity for the relevant assessment years are in relation to similar search conducted on the MSP group and M/s. Benefit Tradelink Ltd. and certain additions were made on the basis of search conducted on 06.02.2017.

62. Since the facts in the case of M/s. Benefit Tradelink Ltd. are similar to the facts in the case of M/s. Elegance Realty Ltd., we shall not be discussing the facts in details and our observations in the case of M/s. Benefit Tradelink Ltd. would apply to M/s. Elegance Realty Ltd. as well.

We shall first deal with Department's appeal in the case of M/s. Elegance Realty Ltd. for the A.Y. 2011-12 in IT(SS)A No. 501/Ahd/2019 IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

63. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s.132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s. 158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB fails, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the ld. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that additions of Rs.1,00,000/- made on account of unexplained cash deposits, Rs.53,70,400/- on account of unexplained credit entries, disallowance of

Rs.15,63,174/- on account of non-deduction of TDS u/s 40(a)(ia) of the Act, addition of Rs.43,22,500/- on account of unexplained source of purchase of immovable property and Rs.98,78,640/- on account of unexplained sale proceeds of immovable property are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

8. It is, therefore, prayed that, the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent"

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

64. The brief facts of the case are that on the basis of search carried out in the case of MSP group and also in the case of the assessee on 06.02.2017, the Assessing Officer observed that the assessee is engaged in the business of providing bogus accommodation entries / bills. After discussing in detail regarding the modus operandi of the MSP group and of M/s. Elegance Realty Ltd., the Assessing Officer made an addition of Rs. 1,00,000/- under Section 68 of the Act, on the basis of incriminating documents found during the course of search.

65. In the preceding paragraphs of our order, in case of search action in the case of M/s. Benefit Tradelink Ltd., we have discussed in detail as to why the material on the basis of which addition has been made in the hands of the assessee qualifies as "incriminating material". Accordingly, in light of the observations in the preceding paragraphs, we are hereby allowing the appeal of the Department on this issue, since we are of the considered view that the addition of Rs. 1,00,000/- under Section 68 of the Act has been made on the basis of "incriminating material" unearthed and the entire gamut of modus operandi of giving accommodation entries / bills discussed in the assessment order.

66. In the result, the ground relating to addition of Rs. 1,00,000/- is allowed in favour of the Department.

67. The balance additions during the course of assessment pertained to addition on account of unexplained credit entries of Rs. 53,70,400/-, addition under Section 40(a)(ia) of the Act (Rs. 15,63,174/-), addition of Rs. 43,22,500/- on account of unexplained source for purchase of IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 immovable property and addition of Rs. 98,78,640/- on account of unexplained sale of

immovable property.

68. We observe that the aforesaid additions have been made by the Assessing Officer on the basis of verification of Profit & Loss Account or on verification of ITS data, but the said additions have not been made on the basis of "incriminating material" unearthed during the course of search action on the assessee and neither is it emanating from the modus operandi of bogus operations analysed in the body of the assessment order. Accordingly, in our view, Ld. CIT(A) has not erred in facts and in law in relying upon the decision of Saumya Construction and other judicial precedents to hold that this is an unabated assessment year, no addition can be sustained in absence of incriminating materials found during the course of search.

69. Since the aforesaid additions have not been made on the basis of incriminating materials found during the course of search, the Ld. CIT(A), in our considered view has correctly directed to delete these additions.

70. In the result, the Department's appeal with respect to the aforesaid four additions, against the order of Ld. CIT(A) is dismissed.

71. We would also like to state that the Ld. D.R. had taken legal argument before us that in our view of the Decision of Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd., in case of unabated assessment year once certain additions have been made on the basis of IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 certain incriminating materials found during the course of search then in that case the entire assessment proceedings are subject to scrutiny and the Assessing Officer would be at liberty to make appropriate additions even on the basis of material not found during the course of search.

72. However, in our considered view, we are unable to agree with the contention of the Ld. D.R. that in case of unabated (completed) assessment year, the Hon'ble Supreme Court in the case of Abhisar Buildwell has suggested that once jurisdiction under Section 153A of the Act is assumed by the Assessing Officer on the basis of certain incriminating material found during the course of search, then the entire assessment is open to scrutiny and the Assessing Officer can assess income of the assessee taking into consideration material which was not found during the course of search, i.e. the Assessing Officer would be at liberty to conduct assessment afresh, taking into consideration even the material which was not found during the course of search action.

73. It would be useful to produce the relevant extract of the decision of Abhisar Buildwell, which have dealt with this issue:

"12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is

linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

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."

74. Accordingly, in view of the above observations, we are of the considered view that Abhisar Buildwell does not lay down the proposition that in case of unabated assessment year, once some incriminating material is found, then it would empower / enable the Assessing Officer to re-initiate the entire assessment proceedings and conduct a fresh assessment even if the same is not related to any incriminating material found during the course of search. If this proposition were to be accepted as correct, then this would give unfettered powers to the Tax Authorities to re-compute / re-assess the entire total income of the assessee and conduct fresh assessment on the assessee, in cases of concluded assessments, by using all possible material, whether found during the course of search or not.

75. In the result, the Department's appeal with respect to the aforesaid four additions are dismissed.

M/s. Elegance Realty Ltd. (A.Y. 2013-14) (IT(SS)A No. 502/Ahd/2019) (Department's Appeal) IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

76. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period u/s. 158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that additions of Rs.23,31,000/- on account of unexplained cash deposits, Rs.1,88,54,354/- on account of unexplained credit entries, disallowance of RS.80,30,000/- account of non-deduction of TDS u/s 40(a)(ia) of the Act and Rs.44,82,150/- on account of unexplained sale proceeds of immovable property are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

7. On the facts and in the circumstances of the case and in law, the Ld. CST(A) ought to have upheld the order of the A.O.

8. It is, therefore, prayed that the order of Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

77. In view of the foregoing discussion for A.Y. 2011-12 we are hereby allowing the Department's appeal with respect to addition of Rs. 23,31,000/- since, the same is on the basis of incriminating materials and detailed modus operandi of providing accommodation entry / accommodation bogus bills by the assessee and it's associated group concerns during the course of search. Accordingly, we are of the considered view that Ld. CIT(A) has erred in facts and in law in holding that the addition of Rs. 23,31,000/- is not on the basis of any incriminating material found during the course of search. The Ld. CIT(A) has not given any finding with regards to the various incriminating documents which find mention in the assessment order and without discussing any of the materials on the basis of which the additions were made and without giving any findings with regard to the detailed modus operandi of the assessee for providing accommodation entries / accommodation bills mentioned in the body of the assessment order, the Ld. CIT(A) has simply allowed the appeal of the assessee with respect to this addition by summarily holding that no addition was made by the Assessing Officer on the basis of incriminating material found during the course of search. While allowing the appeal of the assessee, neither has the Ld. CIT(A) discussed / mentioned the material which was found during the course of search and neither was any observation given by Ld. CIT(A) as to why such material is not "incriminating material", looking into the assessee's set of facts.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

78. In the result, the Department's appeal with respect to relief of Rs. 23,31,000/- given by the Ld. CIT(A) is allowed.

79. However, with regard to the balance additions of Rs. 1,88,54,354/- (addition on account of unexplained credit entries), addition of Rs. 80,30,000/- (addition under Section 40(a)(ia) of the Act), and addition of Rs. 44,82,150/- (addition on account of unexplained sale of immovable properties), we observe that all the above additions have not been made on the basis of any incriminating material found during the course of search action on the assessee or it's group concerns, but the additions have been made on the basis of verification of Profit & Loss Account and other books on account of the assessee during the course of assessment proceedings or on the basis of verification of ITS data.

80. Accordingly, we agree with the view of Ld. CIT(A) that A.Y. 2013- 14, being an unabated assessment year, the Assessing Officer could not have made additions which were not based on incriminating materials found during the course of search.

81. Accordingly, with respect to the aforesaid three additions we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

82. In the result, the Department's appeal with respect to the aforesaid three additions are dismissed.

Now we shall take up A.Y. 2015-16 in the case of M/s. Elegance Realty Ltd., both the Department and assessee are in appeal before us

83. The assessee has raised the following grounds of appeal:

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16 IT(SS)A No. 559/Ahd/2019 (A.Y. 2015-16) "1. That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs.

91,00,000/- on basis of working found in the excel file.

2. That , the findings of the Ld. CIT(A) are not justified and are bad-in-law.

3. That, the appellant craves to add, amend, alter or delete any of the above grounds of appeals."

84. The Department has raised the following grounds of appeal:

IT(SS)A No. 564/Ahd/2019 (A.Y. 2015-16) "1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period U/S.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec. 158BB falls, would not be applied where a search was initiated u/s.132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s.132 is conducted in the case of the assessee, and that if the interpretation

of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.5,26,23,841/- made on account of unexplained credit entries being difference in the balance of trade payable & current liabilities as per Balance Sheet is beyond the scope of section 153A of the Act and thus deleting the said addition/disallowance.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that addition of Rs.46,06,765/- being unexplained investment in purchase of property u/s 69B of the Act is beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

9. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

We shall first take up the Assessee's appeal for A.Y. 2015-16 in IT(SS)A No. 564/Ahd/2019

85. The brief facts in relation to this ground of appeal are similar to earlier assessment year wherein certain additions were made on the basis of search action carried out in the case of the assessee on 06.02.2017. In this case, assessment proceedings under Section 143(2) of the Act were not initiated by the Assessing Officer and the time limit for initiating assessment proceedings had expired on 30.09.2016. Therefore, since there was no existing assessment proceedings as on the date of search, assessment year 2015-16 is an "unabated" assessment year as well. Accordingly, in view of our detailed observations in the preceding paragraphs, we find no infirmity in the order of Ld. CIT(A), wherein he has sustained addition of Rs. 91,00,000/- on account of working in excel file in the name of HETVI group, by observing that this addition has been made on the basis of incriminating material found during the course of search. The Ld. CIT(A) while passing the order has made the following observations at para 6 of the order:

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 "6. The AO has made another additions of Rs.

91,00,000/- on account of working in excel file in the name of HETVI group. The said addition has been dealt with by the appellant in Ground no. 4 of the paper book. The excel sheet is found during the course of search, the AO has issued show cause notice dated 17/12/2018 requiring detailed explanation and documentary evidence to show whether transactions are reflected in the books of accounts and offered to tax. The assessee vide letter dated 21/12/2018 submitted its reply, however, the AO held that the assessee failed to provide the supporting documents or bring any facts to the notice that such transactions are done in normal course of business and merely because the transactions existed in the books of accounts will not make it genuine or for the purpose of business. The AR of the appellant has made submissions on 17/12/2018 and explained the nature of transactions related to the computer sheet. The appellant explained that it has carried out business transactions with various parties namely M/s Balaji Infrastructure Pvt. Ltd, Mr. Ashish Gandhi and M/s Hetvi Developers on various dates and accordingly made payment to the said parties. The transactions have been recorded in the books of accounts. However, since the appellant could not prove the genuineness of transactions in terms of identity, creditworthiness and genuineness of the transactions as the source of cash received and deposited in the bank account and similar amount of cheques have been issued. Therefore, considering the totality of facts, this ground of appeal is dismissed and the addition of Rs. 91,00,000/- is confirmed."

86. Accordingly, since the aforesaid addition of Rs. 91,00,000/- has been made on the basis of "incriminating material" found during the course of search, Ld. CIT(A) has not erred in facts and in law in confirming the addition of Rs. 91,00,000/- in the hands of the assessee, the same being on the basis of "incriminating materials" founds during the course of search.

87. In the result, the assessee's appeal against the order of Ld. CIT(A) with respect to this addition is hereby dismissed in IT(SS)A No. 559/Ahd/2019.

88. With regards to the balance additions of Rs. 5,26,23,841/-

(unexplained credit entries), and addition of Rs. 46,06,765/- (addition on account of unexplained source of funds for addition in fixed asset was, we are of the considered view that the aforesaid additions have been made only on the basis of verification of Profit & Loss Account, IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 balance sheet etc. of the assessee and not on account of any incriminating material found during the course of search. Accordingly, in our considered view Ld. CIT(A) has correctly held that since the aforesaid additions were not made on the basis of any incriminating documents found during the course of search and assessment year 2015- 16 in the case of M/s. Elegance Realty Ltd. was a unabated assessment year, the aforesaid additions were liable to be deleted.

89. In the result, the Department's appeal with respect to the aforesaid two additions for A.Y. 2015-16 is hereby dismissed.

Now we shall discuss with the appeals of the assessee and Department file in the case of Smt. Harshaben B. Popat for A.Y. 2012- 13, 2013-14 and 2015-16 Smt. Harshaben B. Popat (A.Y. 2012-13 in IT(SS)A No. 503/Ahd/2019) (Department's Appeal)

90. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the Incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period U/S.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec. 153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that additions of Rs.51,44,000/- on account of unexplained cash deposits in bank accounts, addition of Rs.1,78,50,000/- on account of unexplained source of purchase of properties, addition of Rs.67,50,000/- on account of unexplained sale

proceed of properties, addition of Rs. 5,72,774/- on account of disallowance of interest expenses, addition of Rs. 56,48,322/- on account of undisclosed receipts based on 26AS, disallowance of deduction under Chapter VI A of Rs.1,00,000/- disallowance of purchase cost of properties of Rs.1,13,59,174/- under the head 'short term capital gain' and disallowance of business expenditure of Rs.74,75,267/- are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

8. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

91. The facts for the case are similar to those of other group cases which we have discussed in the preceding paragraphs. In this case, the additions were made pursuant to search action conducted on MSP and other group concerns, wherein the Assessing Officer after a detailed discussion in the assessment order has given a detailed finding on the basis of various material unearthed during the course of search, that the assessee and various other parties on which search action was initiated were involved in providing bogus entries / bogus accommodation bills to various persons in lieu of commission income.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

92. After detailed findings in the assessment order, the Assessing Officer made addition of Rs. 51,44,000/- in the hands of the assessee under Section 68 of the Act since the assessee was unable to explain the source of cash deposit of the above amount in his bank account. Besides the above, the Assessing Officer also made various other disallowances in the assessment order.

93. In appeal, Ld. CIT(A) deleted the entire additions made by the Assessing Officer on the ground that this being an unabated assessment year, since the additions were not made on the basis of any incriminating material found during the course of search, the additions are liable to be deleted.

94. The Department is in appeal before us against the aforesaid order passed by the Ld. CIT(A).

95. In view of the discussion in the preceding part of the order, we are of the considered view that the addition of Rs. 51,44,000/- deleted by the Ld. CIT(A) is on an incorrect premise that the same not on the basis of incriminating materials found during the course of search. We are of the

considered view that the additions are on the basis of incriminating materials found during the course of search, wherein the Assessing Officer after looking into consideration the modus operandi of providing accommodation entries / bogus accommodation bills to various parties and on the basis of various documents / excel sheets / affidavits of various persons taken on record had come to the conclusion that additions are liable to be sustained in the hands of the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 assessee. Accordingly, we are of the considered view that Ld. CIT(A) has erred in facts and in law in holding that the addition of Rs. 51,44,000/- was not on the basis of incriminating materials found during the course of search.

96. However, before us the Counsel for the assessee has taken a specific argument that this amount has already been added in the hands of the assessee's husband and the appeal of assessee's husband is pending before the Ld. CIT(A) for the impugned year under consideration.

97. In view of the above observation of the Counsel for the assessee while we are of the considered view that the addition of Rs. 51,44,000/- has been made on the basis of incriminating materials found during the course of search, however, this issue is restored to the file of the Ld. CIT(A) for the limited purposes of ascertaining whether similar additions have also been made in the hands of the husband of the assessee, Shri Bharatbhai Popat. If similar additions have also been made in the hands of the assessee's husband as well, then appropriate relief may be granted to the assessee, after carrying out due verification.

98. In the result, the Department's appeal with respect to the addition of Rs. 51,44,000/- is allowed for statistical purposes.

99. With regards to the balance additions made by the Assessing Officer during the course of assessment proceedings, we are of the considered view that the same were not on the basis of any IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 incriminating materials found during the course of search, but were on the basis of information coming from the books of accounts, return of income, the computation of income etc. filed by the assessee or verification of ITS data etc.

100. Accordingly, with respect to the balance additions we are of the considered view that Ld. CIT(A) has correctly deleted the addition on the ground that the same is not on the basis of any incriminating material found during the course of search, and in view of the decision of Saumya Construction and various other judicial precedents on the subject, in case of unabated assessment year, additions can be made in the hands of the assessee only on the basis of incriminating material found during the course of search.

101. In the result, Department's appeal with respect to various other additions, with respect to which relief was granted by Ld. CIT(A), is dismissed.

102. In the result, the Department's appeal for A.Y. 2012-13 is partly allowed for statistical purposes.

Smt. Harshaben B. Popat (IT(SS)A No. 504/Ahd/2019 A.Y. 2013-14) (Department's Appeal)

103. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s,153A has to be confined to the incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others
Asst. Years : 2011-12 to 2015-16

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period U/S.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec.153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that additions of Rs12,80,100/-, on account of unexplained cash deposits in bank accounts, addition of Rs.2,99,00,000/- on account of unexplained source of purchase of properties, addition of Rs.81,50,000/- on account of unaccounted sale proceed of properties, addition of Rs. 7,25,348/- on account of disallowance of interest expenses, addition of Rs.84,50,596/- on account of undisclosed receipts based on 6AS, addition of Rs.1,20,901/- on account of disallowance under Chapter

VIA, addition of Rs. 40,68,740/- on account of disallowance of purchase cost of properties under the head 'short term capital gain' and addition of Rs.1,01,09,935/- on account of disallowance of business expenditure are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

8. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

104. The facts for A.Y. 2013-14 are similar to A.Y. 2012-13 and accordingly, the same are not being repeated. With regards to the addition of Rs. 12,80,100/-, we are of the considered view that the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 addition has been made on the basis of incriminating materials found during the course of search (as per our detailed discussion in the preceding paragraphs).

105. However, the assessee has raised the additions ground / arguments that out of the above sum, addition of Rs. 11,84,100/- has already been made in the hands of the husband of the assessee and accordingly, it would amount to double addition if this amount is again added in the hands of the assessee.

106. Accordingly, in the interest of justice, the matter is restored to the file of Ld. CIT(A) to carry out necessary verification to see if this amount has also been added in the hands of the assessee's husband and if that be the case, appropriate relief may be afforded to the assessee.

107. With respect to balance additions, we are of the considered view that Ld. CIT(A) has correctly observed that since the same have not been made on the basis of incriminating materials found during the course of search (we observe that this addition shad been made on the basis of return of income, books of accounts filed by the assessee and verification of ITS data etc.), the additions are liable to be deleted in view of the decisions of Saumya Construction and other judicial precedents which have consistently held that in case of an unabated assessment year, no additions made in the hands of the assessee which are not on the basis of incriminating materials found during the course of search. Accordingly, Department's appeal with respect to these balance additions is dismissed.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

108. In the result, the Department's appeal is partly allowed for statistical purposes.

Smt. Harshaben Bharatbhai Popat (IT(SS)A No. 20/Ahd/2020 (A.Y. 2015-16) (Assessee's Appeal)

109. The assessee has raised the following grounds of appeal:

- "1. That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs. 5,00,000/- on account of working found in excel file.
2. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.
3. That, the appellant craves to add, amend, alter or delete any of the above grounds of appeals."

110. The brief facts in relation to this ground of appeal are that the Assessing Officer, after detailed analysis of modus operandi of providing bogus entries / bogus accommodation bills to various parties made an addition of Rs. 50,00,000/- in the hands of the assessee on the basis of incriminating materials found during the course of search.

111. In appeal, Ld. CIT(A) dismissed the appeal of the assessee by holding that the additions have been made on the basis of incriminating materials found during the course of search and the assessee could not prove the genuineness of such transaction. While dismissing the appeal of the assessee with respect to this addition, Ld. CIT(A) made the following observations:

"6. The AO has also made additions of Rs. 50,00,000/- on account of working in excel file in the name of HETVI group. The said addition has been dealt with by the appellant in Ground no. 9 of the paper book. The excel sheet is found during the course of search, the AO has issued show cause notice dated 17/12/2018 requiring detailed explanation and documentary evidence to show whether transactions are reflected in the books of accounts and offered to tax. The assessee vide letter dated 21/12/2018 submitted its reply, however, the AO held that the assessee failed to provide the supporting documents or bring any facts IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 to the notice that such transaction are done in normal course of business and merely because the transactions existed in the books of accounts will not make it genuine or for the purpose of business. The AR of the appellant has made submissions on 17/12/2018 and explained the nature of transactions related to the computer sheet. The appellant explained that it has carried out business transactions with M/s Balaji Infrastructure Pvt. Ltd on various dates and accordingly made payment to the said party. The transactions have been recorded in the books-of accounts. However, since the appellant could not prove the genuineness of transactions in terms of identity, creditworthiness and genuineness of the transactions as the source of cash received and deposited in the bank account and similar amount of cheques have been issued. Therefore, considering the totality of facts, this ground of appeal is dismissed and the addition of Rs. 50,00,000/- is confirmed."

112. In view of our detailed discussion in the preceding paragraphs, we have expressed our opinion that this addition was made in the hands of the assessee on the basis of "incriminating material" found during the course of search. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

113. In the result, the assessee's appeal with respect to this ground of appeal is hereby dismissed.

Now we shall discuss the Department's appeal for A.Y. 2015-16 (in IT(SS)A No. 27/Ahd/2020

114. The Department has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that any addition during the assessment u/s.153A has to be confined to the Incriminating material found during the course of search u/s. 132(1) of the Act, even though, there is no such stipulation in sec.153A of the Act.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that sec.153A requires a notice to be issued requiring the assessee to furnish his return of income in respect of each assessment year falling within six assessment years and to assess or re-assess the total income of those six assessment years, and that the scheme of assessment or re-assessment of the total income of a person searched will be brought to naught if no addition is allowed to be made for those six assessment years in the absence of any seized incriminating material.

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that while computation of undisclosed income of the block period IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 U/S.158BB was to be made on the basis of evidence found as a result of search or requisition of books of accounts, there is no such stipulation in sec.153A and sec. 153BI specifically states that the provisions of Chapter-XIV-B, under which sec.158BB falls, would not be applied where a search was initiated u/s. 132 after 31/5/2003.

4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that assessment in relation to certain issues not related to the search and seizure may arise in any of the said six assessment years after the search u/s. 132 is conducted in the case of the assessee, and that if the interpretation of the Id. CIT(A) were to hold it will not be possible to assess such income in the 153A proceedings, while no other parallel proceedings to assess such other income can be initiated, leading to no possibility of assessing such other income, which could not have been the intention of the legislature.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that additions of Rs.21,13,500/- on account of unexplained cash deposits in bank accounts, addition of Rs.21,07,313/- on account of disallowance of interest expenses, addition of RS. 21,50,92,000/- on account of unexplained source of purchase of properties and additions of Rs. 1,06,70,696/- on account of undisclosed receipts based on 26AS are beyond the scope of section 153A of the Act and thus deleting the said additions/disallowances.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that not considering the material facts and evidences brought on record by the AO in the assessment order and thus wrongly concluded that the additions are not based on seized materials.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

8. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

115. With respect to the addition of Rs. 23,13,500/- is concerned, the same is related to the business of providing accommodation entries by the assessee and on being asked the assessee was not in a position to give any explanation regarding the source of such cash deposit during the year under consideration. Accordingly, in view of our detailed discussion in the preceding paragraphs, wherein we have held that this addition was made on the basis of incriminating material found during the course of search, we are of the considered view that Ld. CIT(A) has erred in facts and in law in holding that the additions have not been IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 made on the basis of incriminating material, and accordingly, the Department's appeal with respect to this addition succeeds.

116. However, with respect to balance additions made by the Assessing Officer, we are of the considered view that the additions have not been made on the basis of any incriminating material found during the course of search and accordingly, Ld. CIT(A) has not erred in facts and in law holding that no addition can be sustained in the hands of the assessee in case of unabated assessment years which are not on the basis of incriminating material found during the course of search.

117. In the result, with respect to the balance additions which have been deleted by Ld. CIT(A) we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

118. In the combined result, the Department's appeal is partly allowed for statistical purposes and the assessee's appeal is also partly allowed.

Order of the Hon'ble Accountant Member:

Per Shri N.P. Sinha:

1. Article 141 of the Constitution of India establishes the binding precedence of judgements delivered by the Supreme Court and declares:

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

2. I have gone through the order of my Ld. Brother Judicial Member and have given my thought to the reasoning, view and finding of the learned brother. However, I could not agree and concur with his views and findings on the issue of completion of search assessment u/s 153A of the Income Tax Act (hereinafter referred to as 'the Act') in respect of unabated year. The difference is primarily owing to the interpretation of the judgement of Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC).

3. In the course of hearing, the Revenue had taken a legal argument before us that in view of the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), if certain additions are made on the basis of incriminating material found during search in respect of unabated year, then the entire assessment proceedings can be subjected to scrutiny and the AO would be at liberty to make appropriate addition even on the basis of the material not found during the course of search. The Ld. Brother has discussed this aspect in paras 71 to 74 of the order and is of the opinion that the judgment in the case of Abhisar Buildwell (supra) doesn't lay down any such proposition. According to him, when some incriminating material is found in respect of unabated assessment year, this doesn't empower the AO to travel beyond the incriminating material. According to him, the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 addition has to be restricted only to the incriminating material found during the search.

4. Prior to the judgment of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), the majority view of various High Courts was that no addition can be made in respect of completed/unabated assessment in the absence of any incriminating material. The lead judgments in this respect were that of the Hon'ble Delhi High Court in the case of Kabul Chawla (61 taxmann.com 412)(Del) and by the Hon'ble Gujarat High Court in the case of Saumya Constructions (81 taxmann.com 291)(Guj). The Allahabad High Court, however, in the case of CIT v. Mehndipur Balaji [2023] (147 taxmann.com

201)(All) had taken a contrary view.

5. The Hon'ble Supreme Court in the case of Abhisar Buildwell (supra) has taken note of all these decisions and while agreeing with the decision of Delhi High Court in Kabul Chawla (supra) and with Gujarat High Court in Saumya Contruction (supra) held, in no uncertain terms, that no addition can be made in respect of completed assessments in the absence of any incriminating

material. However, the Court has nowhere mandated that the addition in the completed assessments has to be only on the basis of incriminating material found during the search. The Hon'ble Apex Court has gone through the erstwhile scheme of block assessment under IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Section 158BA of the Act, analyzed the object and purpose of introduction of Section 153A of the Act pertaining to block assessment and taken note of the difference of opinion in the judicial pronouncements of different High Courts. The conclusion as recorded by the Apex Court in Para 14 of the order in the case of Abhisar Buildwell (supra) is found to be as under:

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. (emphasis supplied)

6. It is evident from the ratio of this decision as enumerated in Para 14(iii) that the scope of unabated / completed assessment is not confined only to the incriminating material found during search. The Hon'ble Apex Court has categorically held that the AO would assume the jurisdiction to assess or re-assessee the "total income" by taking into IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 consideration the incriminating material unearthed during the search and the 'other material' available with the AO, including the income declared in the returns. In view of this categorical declaration of law by the Hon'ble Supreme Court, one cannot confine the determination of "total income" for unabated assessment year only on the basis of incriminating material found during the search and ignoring the 'other materials' available with the AO. From the conjoint reading of the ratio as recorded in clauses 14(iii) & 14(iv) of the judgement, it is crystal clear that the addition in respect of 'other material' can be made in the block proceeding only if incriminating material is found during the

search. In case no incriminating material is unearthed during the search, the AO cannot utilize the 'other materials' in the completed / unabated assessments. In such an eventuality, the only option available with the AO would be to initiate proceeding under Section 147/148 of the Act, subject to fulfillment of conditions as envisaged therein.

7. It is thus evident from the above analysis that the Hon'ble Apex Court has categorically held that the 'other materials' can also be utilized along with the incriminating materials found during the search to complete the assessment of unabated/completed year under the provisions of Section 153A of the Act. In para 11 of the order also, the Hon'ble Apex Court held as under:

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income...(emphasis supplied) The essence of the judgement is that the incriminating material found during the search gives the AO the jurisdiction to assess or reassess the 'total income' u/s 153A of the Act of the unabated/completed assessment. In the absence of any incriminating material the AO would not have the jurisdiction to proceed in the unabated/completed year(s). However, once the jurisdiction is assumed by the AO on the strength of incriminating material found during the search, the AO has to assess or reassess the 'total income' of the unabated year not only on the basis of incriminating material found during the search but also taking into account the 'other material' as available with him as well as the return of income.

8. The Supreme Court has also taken note of the discordant view of Hon'ble Allahabad High Court in the case of Mehndipur Balaji (supra) and upheld the order of the Hon'ble Court. The relevant portion of the judgement in para 15.1 is found to be as under:

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference....(emphasis supplied)

9. From the analysis of the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), it is evident that the ratio decidendi is to consider not only the incriminating material found during the search but also the 'other material' available with the AO including the income declared in the return as well as the material that was available with the AO at the time of original assessment, in order to finalize the assessment under Section 153A of the Act in the case of unabated year. Further, this finding of the Hon'ble Court is not a mere observation or remark in the passing, and cannot be considered as obiter dicta. Rather the Hon'ble Court has reiterated this principle in the judgment on a number of occasions, after considering the entire scheme of the provision of section 153A of the Act, and is, thus, ratio decidendi.

10. The principle as laid down by the Hon'ble Supreme Court is binding on all the sub-ordinate Courts and the Tribunals. Once the Supreme Court pronounces a judgment on a legal issue, it becomes the law of the land and must be followed by all courts, including lower courts, tribunals, and even High Courts. The lower courts are bound not only by the specific rulings of the Supreme Court but also by the legal IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 principles and doctrines established in those judgments. Any contrary course of action of suo moto disregarding the view of the Supreme Court destroys the fabric of judicial discipline. After the declaration of law on the issue by the Hon'ble Apex Court, reference and reliance on various other decisions of different High Courts, will be otiose. The doctrine of precedence is absolute for the lower courts and only the Hon'ble Supreme Court itself, has the power to depart from its previous judgments.

11. On an overview of the legal position emanating from the judgment of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra) and the above discussions, I am of the considered opinion that the AO was empowered to make addition not only on the basis of incriminating material found during the search but also on the basis of the 'other materials' as available with him as well as the information as available in the income tax return itself, while completing the block assessment under Section 153A of the Act for the unabated / completed year(s).

12. As a result of this difference of opinion, we also differ in respect of conclusion arrived by the Ld. Brother in respect of final outcome of these appeals. In my considered opinion, the AO was empowered to make additions by taking into account the 'other materials' as available with him and, therefore, the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 additions as made by the AO cannot be faulted. Accordingly, all the additions made on the basis of 'other material' are sustained in all the appeals, except in the cases where no addition was based on any incriminating material found during the search. However, the Ld. CIT(A) had deleted the additions on the technical ground that no addition can be made in the absence of any incriminating material and in his opinion no incriminating material was found during the search. I agree with the detailed finding of the Ld. Brother that incriminating materials were indeed found in the course of search, based on which he has sustained certain additions. Nevertheless, the fact remains that the merit of the additions based on the incriminating material as well as on the basis of 'other materials' was not looked into and examined by the Ld. CIT(A). Therefore, all the additions which were based on incriminating materials as well as on the basis of 'other materials' as available with the AO, are required to be set aside to the file of the Ld. CIT(A) to

examine the matter on their merit.

"Order of the Hon'ble Vice President (Third Member):

The Hon'ble Third Member, after considering the rival contentions and the record, and applying the applicable legal principles, has decided the referred question(s) as under:

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 A reference u/s 255(4) of the Income Tax Act, 1961 (hereinafter also called as 'the Act') has been made by the Hon'ble President, ITAT for opinion as Third Member in the captioned appeals for the Assessment Years 2011-12 to 2015-16.

2. On account of difference of opinion among the learned Members, who constituted "A" Bench of ITAT, Ahmedabad in respect of the aforesaid appeals, this matter has been referred to VP(AZ) as Third Member by the Hon'ble President, ITAT for consideration and disposal under Section 255(4) of the Income Tax Act, 1961, vide order dated 26.08.2024.

Accordingly, notices have been issued for hearing on 28.11.2024 to both the parties. The case has been adjourned on 16.12.2024, 16.01.2025, 14.02.2025 & 13.03.2025 and was finally heard on 20.03.2025. Shri Tushar Hemani, Sr. Advocate and Shri Parimalsinh B. Parmar, represented the assessee(s) and the Revenue has been represented by Shri H. Phani Raju, CIT(DR) in all the cases.

3. The following question was framed by both the Members which is required to be resolved by Third Member after hearing the arguments of the appellants and the respondents:

"Whether in the facts and circumstances of the case, the assessment u/s 153A of the Act in the case of unabated / completed year(s) is to be completed only on the basis of incriminating material found during the search, or, once some incriminating materials are found during the course of search, the Assessing Officer is empowered to also take into account any "other material" which may be available with the Assessing Officer and/or information as available from the return of income as well; keeping in view the ratio of decision of Hon'ble Supreme Court in the case of PCIT v. Abhishar Buildwell (P.) Ltd., reported in [2023] 149 taxmann.com 399 (SC)?"

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Background

4. The factual matrix of the case leading to the issue was that a search and seizure action was carried out in the case of Shri Mahendra Shantilal Patel (in short "MS Patel") and his group concerns on 06.02.2017 who are engaged in the business of building supply material, TMT bar, steel etc. As briefed in the order of the Ld. Judicial Member, the search action resulted in collection of evidences

proving that the assessee was engaged in providing bogus accommodation entries and bogus bills to various parties through a web of different concerns floated by him. This fact was clearly admitted by him in his statement recorded under Section 132(4) of the Act. Revenue observed that MS Patel was holding five PAN numbers with four different dates of birth and also had not filed any return of income. The Revenue held that the 27 entities of MS Patel were only paper concerns created for the purpose of providing bogus bills / accommodation entries. All the 27 entities have only one address namely 58, Saket Row House, Sulabh Cooperative Housing Society Ltd., Memnagar. MS Patel in his statement also admitted that no business activities were being carried out by the assessee from this address. In the statement given by MS Patel, he explained his modus operandi of providing accommodation entries in detail. He provided bogus bills as well as cheque / RTGS against cash. There are two sets of beneficiaries. In one set of beneficiaries, certain persons get bogus bills from him. These persons give cheque / RTGS to him and against the receipt of cheque / RTGS, he gives back cash to beneficiaries, after deducting his commission. In case of other set of beneficiaries, certain persons give cash to him. MS Patel issued cheque / RTGS to these beneficiaries. Against the receipt of this cash, cheque / RTGS IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 is issued by him, after deducting his commission. He admitted that he did not supply any goods and services. He merely issues bogus bills and therefore, he has no supporting documents reflecting transportation charges, labour charges etc. Based on the information, Department has taken further action. For instance, during the course of survey under Section 133A on 06.02.2017 at the premises of M/s. Tile Touch Ceramics, 4, Baba Ramdev Complex, Opp. Sajjan Party Plot, Near Parshwanath Jain Temple BRTS, Sola Road, Ahmedabad, one diary was found containing details of accommodation entries and commission income earned by the assessee. On the basis of diary impounded from the premises of the assessee, the Department observed that Shri Bharat Popat, key person in the assessee company had given a sum of Rs. 10 lakhs in cash for providing accommodation entry to MS Patel. Further, the Department also impounded letter heads and bills books of MS Patel's various bogus concerns from the premises of M/s. Tile Touch Ceramics in the search carried out at 4, Baba Ramdev Complex. The assessee also filed letter dated 22.08.2018 during the course of assessment proceedings and stated that assessee has neither carried out any business nor provided any services and he was only engaged in providing accommodation bills / accommodation entries to the interested parties in exchange for a commission ranging from 0.50% to 2%. Further, on 17.04.2017, MS Patel filed an affidavit to the effect that he had provided accommodation entries of bogus bills for commission.

5. The pre-search investigation carried out by the Department revealed that significant part of unaccounted cash received in bank accounts of MS Patel group was finally landing in the bank accounts of IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Benefit Tradelink and associated group companies namely Benefit Tradelinks Ltd. and Ellegance Reality Ltd. The Benefit group is headed by Shri Bharat Popat. During the course of search conducted at the premises of Shri Bharat Popat, Benefit Tradelinks Ltd. and Ellegance Reality Ltd. at Benefit House, City Bank Street, Nr. Municipal Market, C.G. Road, Navrangpura, Ahmedabad, several incriminating documents were found and seized by the Department. On analyzing the documents during the course of search, several documents were found where information about unaccounted transactions made in either cash or through banking channel by the assessee alongwith his proprietorship concerns to the other person/companies/firm/

proprietorship concerns was seen. During the course of search operation, the Department found books of accounts on various concerns which were being maintained in tally software at Benefit House.

Issue 1

6. During the course of search, a MS Excel file named "Cheque Book Data Base" was found from the laptop used by Mr. Bharat Popat. On perusal of the Excel sheet, the Department observed that the said sheet contains details of bank accounts of various parties having live nexus with Benefit group. From the contents of the Excel sheet, the Department observed that Shri Bharat Popat is actually controlling these bank accounts. The Department also conducted a search action on Shri Vishal Pandya on 06.02.2017 in which various incriminating documents were found. The Department observed that substantial cash was deposited in the bank accounts of Shri Vishal Pandya during the demonetization period. During the post search assessment proceedings, Shri Vishal Pandya filed IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 an affidavit and stated that various bank accounts were controlled by Bharat Popat. Further, the Department also observed that during the course of post search assessment, Shri Mahendra Shantilal Patel had stated that he has given accommodation entries, vague bills in the name of various concerns of Shri Bharat Popat. MS Patel also admitted in his affidavit under oath that few of his accounts were completely managed and controlled by Shri Bharat Popat.

7. The Revenue issued show-cause notice, in which the entire modus operandi was confronted to the assessee, wherein it was pointed out that on the basis of incriminating documents seized during the course of search at office cum residence of Shri Bharat Popat, it was found that substantial cash was first deposited in the bank account of Vishal Pandya and thereafter the funds were transferred among Benefit Tradelink Ltd., MS Patel, Shri Vishal Pandya. Mr. Pandya had also filed affidavit that his bank account has been utilized by Mr. Bharat Popat for providing accommodation entries. In his affidavit Shri Vishal Pandya has stated that Bharat Popat has taken signed cheque books of his Current Account and Mr. Bharat Popat has full rights and access to his bank account online. Mr. Pandya further submitted that his current accounts in Bank of Maharashtra and Punjab National Bank are used by Shri Bharat Popat and his concerns and that Shri Bharat Popat is misusing his bank accounts as well as issuing sales bills and taking purchase bills in the name of SVP Corporation without taking any actual delivery of goods. During the action, the Revenue found an MS Excel file name "Daily Cash Book" from the laptop of Shri Bharat Popat and another Ms. Excel file namely "HETVI Group" located in the computer installed at Benefit House. The IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Department observed that this excel records reveal that cash is received and accommodation entries against such cash have been advanced to various concerns namely Hetvi Developers, Balaji Infrastructure and Ashish Patel. Mr. Bharat Popat admitted that this file contains details of cash, RTGS, barter and trading transactions. The Department also found various other Excel sheet files from the laptop of Shri Bharat Popat and Harsha Popat containing details of various accommodation entries / bogus bills and other transactions which were being carried out by Shri Bharat Popat and his group concerns. As per extensive information, which was unearthed from the search and seizure operation carried out by the Department, it was noticed that assessee had

deposited huge amount of cash for various years in his bank accounts. The Department observed that on verification of ITR, the assessee had declared meager income between A.Y. 2011-12 to A.Y. 2017-18 or booked losses which did not support the substantial cash deposits in the bank accounts of the assessee. Accordingly, the Assessing Officer prepared the following chart for various assessment years under consideration and asked the assessee to furnish detailed explanation alongwith documentary evidences for cash deposits:

A.Y.	Cash Credit	Total Credit	Debit
2011-12	14939000	95157488	91677873
2012-13	11872000	144652441	144667967
2013-14	1183782	32105865	32110031
2015-16	6760500	220044456	233133364
2016-17	3923000	261518917	297065200
2017-18	172953000	289350452	261806814
Total	211631282	1042829619	1060461249

Owing to the absence of any reply, the Assessing Officer held that the cash deposits of Rs. 1,49,39,000/- remained unexplained and accordingly, the same were added to the income of the assessee.

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8. In appeal, Ld. CIT(A) allowed the appeal of the assessee on this ground by holding that the additions have not been made on the basis of any incriminating material and the basis of addition is on the basis of facts which are coming from ITS data, Audited accounts etc. The CIT(A) held that the aforesaid addition was not based on any "incriminating material" found during the course of search. The CIT(A) held that for sustaining any addition under Section 153A of the Act, there has to be "incriminating material" recovered during the course of search qua the assessee for the purpose of making additions. Accordingly, following the decision of Hon'ble Gujarat High Court in the case Saumya Construction, 81 taxmann.com 292, and other decision of various High Courts, the principle which has been laid down is that since no incriminating evidences have been found during the course of search and therefore, no addition can be made under Section 153A of the Act. The Ld. CIT(A) has also relied on 20 case-laws. To mention a few, I. Commissioner of Income Tax (Centra)-III V. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) II. Principal Commissioner of Income-Tax, Ahmedabad V. Dipak Jashvantlal Panchal [2017]88 taxmann.com 611(Gujarat), III. Principal Commissioner of Income Tax V. Desai Construction (P.) Ltd.

[2017] 81 taxmann.com 271(Gujarat) IV. In the case of Principal Commissioner of Income Tax-1 V. Devangi [2017] 88 taxmann.com 610 (Gujarat) V. Principal Commissioner of Income-tax V. Sunrise Finlease (P.) Ltd.

9. Aggrieved, the Revenue filed appeal before the Tribunal and argued that the Ld. CIT(A) has simply allowed the appeal of the assessee without any discussion in his order that as to why all the information / data / affidavits / modus operandi discovered by the IT(SS)A No.535/ahd/2019 & 13

Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Department leading to the making of the aforesaid addition, does not qualify as "incriminating material" in the hands of the assessee.

Issue-2

10. Post search, during the assessment proceedings, the Assessing Officer received information from the office of DDIT (Investigation), Rajkot on 22.03.2018 that M/s. Aryavat Pvt. Ltd. received accommodation entries in his bank account maintained with Social Cooperative Bank Ltd. through the conduit of bank account of M/s. Benefit Information Ltd., which converted its name as M/s. Benefit Tradelink Ltd. On further investigation, the Assessing Officer observed that the assessee has not been able to establish the identity, creditworthiness and genuineness of the transactions. The Hon'ble JM held that the addition has been made by the Assessing Officer on the basis of information received from DDIT (Investigation), at a date later / subsequent to date of search action. Relying on the orders in the case of Rajat Minerals Pvt. Ltd., 114 taxmann.com 536 (Ranchi - Tribunal), Smt. Jami Nirmala, 132 taxmann.com 267 (Orissa) and Oxygen Business Park Pvt. Ltd., 157 taxmann.com 175 (Delhi), Hon'ble JM held that since the addition has been made by the Assessing Officer based on the subsequent information received but not based on any incriminating material found during the course of search, the action of the Assessing Officer cannot be sustained.

11. In the instant case, the Hon'ble JM has held that the material was incriminating in nature, hence the additions have been rightly made. With regard to the other additions made based on the information received from DDIT, Rajkot which I call it "information other than the search per se"

but pertaining to the same year in which proceedings u/s 153A are being IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 continued. The Hon'ble JM held that the information received was after the date of search and the addition was not on the basis of any incriminating material found during the course of search, hence it cannot be brought to tax in the assessment u/s 153A of the Act. The Hon'ble AM could not concur with this view of the Hon'ble JM and held that the scope of assessment is not confined only to the equivalent material found during the search but the "other material" has to be considered to determine the "total income". The Hon'ble JM held that there is a fundamental difference between the determination of "undisclosed income" and the "total income"

and the words "assess", "reassess" and "other materials" have to be interpreted rightly in the backdrop of the judgment of the Hon'ble Apex Court in the case of PCIT Vs. Abhisar Buildwell (P.) Ltd., 149 taxmann.com 399 (SC). Hence the question "Whether in the facts and circumstances of the case, the assessment u/s 153A of the Act in the case of unabated / completed year(s) is to be completed only on the basis of incriminating material found during the search, or, once some incriminating materials are found during the course of search, the Assessing Officer is empowered to also take into account any "other material" which may be available with the Assessing Officer and/or information as available from the return of income as well; keeping in view the ratio of

decision of Hon'ble Supreme Court in the case of PCIT v. Abhishar Buildwell (P.) Ltd., reported in [2023] 149 taxmann.com 399 (SC)?"

12. During the hearing held on 20.03.2025, Shri Tushar Hemani, Sr. Advocate argued that the controversy on hand essentially revolves around the accurate interpretation of the decision of the Hon'ble Apex Court in the case of PCIT v. Abhishar Buildwell (P.) Ltd. - (2023) 149 taxmann.com 399 (SC). At the outset, he submitted that it is well settled that decision of Hon'ble Apex Court has to be read in context of the 'question' which was posed for consideration before the Hon'ble Apex Court. It is neither IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 desirable nor permissible to pick out a word or a sentence from the judgment of Hon'ble Apex Court, divorced from the context of the question under consideration, and treat the same to be the complete 'law' declared by Hon'ble Apex Court. Placing reliance on the judgment of Hon'ble Apex Court in the case of 'CIT vs. Sun Engineering Works P. Ltd. -198 ITR 297 (SC)', the Ld. Sr. Advocate argued that an interpretation of a judgment should not be out of context in which the questions arose for decision in that case. He argued that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of Court, divorced from the context of the question under consideration, and treat it to be the complete 'law' declared by the Court. Relying on the judgment, the Ld. Counsel argued that any judgment has to be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. It was relied that a decision of the Court takes its colour from the questions involved in that case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and must not pick out words or sentences from the judgment, divorced from the context of the questions under consideration. The Ld. Sr. Counsel relied on the following decisions with regard to the legal principles of interpretation and applicability of the judgment viz.

• UOI vs. Amrit Lal Manchanda -- (2004) 3 SCC 75 • P. S. Sathappan v Andhra Bank Ltd -- (2004) 11 SCC 672 • State of Orissa v. MD Illiyas -- (2006) 1 SCC 275 • CCE v. Srikumar Agencies - (2009) 1 SCC 469 • Goan Real Estate and Construction Ltd. - (2010) 5 SCC 388 IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

13. The Ld. Sr. Counsel submitted that insofar as completed/unabated assessments are concerned, assessment u/s 143(3) r.w.s. 153A of the Act has to be framed strictly on the basis of incriminating material found during the course of search. The Ld. Sr. Counsel relied on the following judgments to buttress his arguments :-

□PCIT v Saumya Construction - 387 ITR 529;

□CIT v Kabul Chawla - 380 ITR 573;

	transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false	unearthed during search
Para 5	We have heard learned counsel for the respective parties at length.	/ This para clearly points to the 'question' which was posed for consideration of Hon'ble Apex Court and the same is as follows:
	The question which is posed for consideration in the present set of appeals is,	

as to whether in respect of completed

assessments / unabated assessments,

whether the jurisdiction of AO to make

assessment is confined to incriminating

material found during the course of

search under section 132 or requisition

under section 132A or not, i.e., whether

any 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

132 A of the Act, 1961 or not.

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whether 'any addition' made by the AO in 'abse any 'incriminating material' found during course of search under requisition under S.132 Act, 1961 or not.

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

/ Hon'ble Court, in cryst terms, held that it is complete agreement with view taken by the Delhi Court in Kabul Chawla a Gujarat High Court in S Construction wherein th following view has been 'No addition' can be m respect of 'co assessment' in 'absenc any 'incriminating mat

Para 11 As per the provisions of Section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the

/ Hon'ble Apex Court has categorically held as f

The intention does n to be to re-open the 'completed / un assessments, unless a 'incriminating materi found with respect to

period of six assessment years 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. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under subsection (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in subsection (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income.

However, in case during the search no incriminating material is found, in case of

concerned assessment year falling within last six years preceding the search.

Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under section 132 or requisition under section 132A and during the search any incriminating material is found, even in case of 'unabated/completed assessment', AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration 'incriminating material' collected during search and 'other material' which would include 'income declared in the returns', if any, furnished by the assessee as well as the 'undisclosed income' (meaning thereof is already explained by SC in preceding para).

While holding so, Hon'ble the Apex Court has clearly held as to what would constitute as 'other material' i.e. it has been held that 'other material' would include 'income declared in the returns', if any, furnished by assessee as well as 'undisclosed income'.

- 'Undisclosed income' has also been defined u/s 158B(b).
- Thus, Hon'ble the Apex Court has clearly held in Para 11

completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the

search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

Para 12 If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring

that insofar as 'unabated / completed assessments' are concerned, addition is to be made strictly on the basis of the following items:

- 'incriminating material' found during the course of search;
 - &
 - 'other material' which would include
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'income declared in returns if any, furnished by the assessee as well as undisclosed income'

• Perusal of Para 11 further makes it clear that insofar as 'unabated / completed assessment' are concerned, addition cannot be made in respect of every item found under the Sun. Rather, 'addition' can be made 'only in respect of something unearthed during the course of search'.

• Hon'ble Apex Court has held that as per 2nd proviso to S.153A of the Act, only 'pending assessment or reassessment' shall stand 'abated'.

under tax the undisclosed income which is found during the course of search or

pursuant to search or requisition. Therefore,

only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law

Para 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.

Para 14(iii) In view of the above and for the reasons stated above, it is concluded as under:

XXX

(iii) in case any incriminating material is found / unearthed, even, in case of unabated/completed assessments,

- It does not provide that 'completed / unabated assessments shall 'abate
- Legislature has consciously provided for 'revival of 'abated assessment' if Legislature has consciously not provided for 'revival of 'completed / unabated assessment'. This further shows that the intent of the Legislature is that insofar as 'completed unabated assessment' is concerned, the same cannot be disturbed only if any incriminating material is found during the course of search.

/ Hon'ble Court reiterates that it is in complete agreement with the view taken by the Hon'ble Court in IT(SS)A No.535/A-2013, ACIT vs. M/s.Benefit Tradelinks Pvt. Ltd., Asst. Years

High Court in Kabul Chawla and the Gujarat High Court in Saumya Construction. The decisions of the other High Courts taking the view that no addition can be made in respect of the 'completed assessments' in the absence of any 'incriminating material' are not binding on the Hon'ble the Apex Court. The 'categorical conclusion' of the Hon'ble the Apex Court is well as the meaning of the term 'other material' in Para 11.

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

XXX...

- 'Para 14' cannot isolation. R 'conclusion' has with the ' reasons/findings the Apex Court

/ Accordingly, by sim on Para 14(iii), it to say that the sco material' is wide e empower AO to make in respect of any i irrespective of the whether the same is any seized material

- Para 14(iii) r. w. decision makes is beyond any stretc imagination that 'completed assessment', 'no can be made dehor 'incriminating found during sear as 'other materia already been defi 11 and would incl declared in the r furnished by asse 'undisclosed inco

15. The Ld. CIT (DR), Shri H. Phani Raju has primarily relied on the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell P. IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Ltd (Supra) and argued extensively with regard to conditions of assumption of jurisdiction u/s 153A of the Act, scope of assessment of total income, the issue of parallel proceedings in case of a single assessee for the same year under different provisions of the Act and complications thereof and the settled legal position as per the Revenue.

16. With regard to the jurisdiction to assess / reassess under section 153A of the Act, the Ld. DR argued that the provisions of section 153A of the Act were brought into the Act primarily to make assessment in the cases where the Department had initiated search action u/s 132 of the Act or books of account, other documents or assets are requisitioned u/s 132A of the Act. Therefore, jurisdiction to make assessment / re-assessment under the Act is the existence of incriminating

material/showing undisclosed income detected as a result of search. The said meaning is evident from the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (Supra) and the relevant part of the judgment as quoted by the Ld. DR is as under:

"9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under:

Section 158BA of the Act, 1961. The erstwhile Scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search."

17. The Ld. DR argued that the provisions of section 153A of the Act also provide that the assessment / reassessment proceedings pending as on the date of initiation of the search under section 132 or making of requisition under section 132A shall abate. Therefore, the Assessing Officer assumes jurisdiction to make assessment/ re-assessment for that relevant year under the provisions of section 153A of the Act irrespective of the fact whether incriminating material was unearthed for that relevant year during the course of search action u/s 132 of the Act.

18. Adverting to the jurisdiction of the Assessing Officer to assess "total income" under section 153A of the Act, the Ld. DR argued that provisions of section 153A of the Act have clearly specified the scope of assessment that as per 153A(1)(b) it allows 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 such search is conducted or requisition is made and for the relevant

assessment year or years. Relying on the provisions of Section 153A(1)(b) of the Act, the Ld. DR argued that it is the mandate of the Assessing Officer to assess the "total income" of the relevant assessment year. Referring to section 2(45) of the Act, the Ld. DR submitted that as per section 2 of the Act, the "total income"

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 means the total amount of income referred to in section 5 of the Act and computed in the manner laid down in the Act. Taking further the provision 5 of the Act, the Ld. DR submitted that the total income of any previous year of a person who is a resident includes all income from whatever source derived. Therefore, he argued that as per the provisions of section 5 of the Act, the scope of "total income" includes all income from whatever source derived by the resident and for non-resident it includes all income from whatever source derived which is received or accrued in India. Hence, the meaning of "total income" is clearly defined under the Income Tax Act and the same includes all incomes including undisclosed income unearthed during the course of search proceedings u/s 132 of the Act or found in the books of account, other documents or assets are requisitioned u/s 132A of the Act. The Ld. DR argued that if the meaning of "total income" under section 153A of the Act is restricted to assessment of only "undisclosed income" unearthed during the course of search proceedings u/s 132 of the Act or found in the books of account, other documents or assets are requisitioned u/s 132A of the Act, it would also mean that even in the case of abated assessments under second proviso to Section 153A(1) of the Act, only undisclosed income can be assessed. Such an interpretation would negate the purpose of the second proviso to Section 153A(1) of the Act and will not satisfy the rule of "Harmonious Interpretation of Statutes". The Ld. DR argued that restriction of meaning of "total income" under section 153A of the Act to mean only "undisclosed income" unearthed during the course of search proceedings u/s 132 of the Act or found in the books of account, other documents or assets are requisitioned u/s 132A of the Act would amount to reading down the provisions of the Act. The Hon'ble Supreme Court in the case of Calcutta IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Guj. Education Society & Anr. Vs. Calcutta Municipal Corporation & Ors, Case No.: Appeal (Civil) 5203 of 2000, date of judgment: 25.08.2003, has defined the scope of reading down in interpretation of Statutes and the relevant part of the said decision is as under:

"The rule of "reading down" a provision of law is now well recognized. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes. See the following observations of this

Court in the case of BR Enterprises vs. State of UP [1999(9) SCC 700]:

"First attempt should be made by the courts to uphold the charged provisions and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavoring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. cumulatively, it is to sub-serve the object of the legislation. Old golden rule is of respecting the wisdom of legislature, that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet, in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble. Objects, the scheme of the act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power." [Emphasis Supplied] IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

19. Referring to the judgement of Hon'ble Apex Court in the case of UoI Vs. M/s. Ind Swift Laboratories Ltd in CA No. 1976 of 2011, Ld. DR argued that a taxing statute must be interpreted in the light of what is clearly expressed. He relied on the part of the judgement wherein it was held that "a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency". Ld. DR argued that taxing statute cannot be interpreted on presumptions and assumptions and one must interpret in the light of what is clearly expressed in the statute. Taking a cue from the above judgement, Ld. DR submitted that the meaning of "total Income"

mentioned under section 153A(1)(b) of the Act cannot be restricted to mean only "undisclosed income" in the case of unabated assessment if the Assessing Officer had assumed jurisdiction to assess / re-assess the relevant unabated assessment year based on incriminating material seized.

20. The other issue argued by the Ld. DR was that the provisions of section 153A of the Act have substituted the erstwhile scheme of block assessment under section 158BA of the Act primarily to do away with scheme of parallel assessments for the same assessment year as under the provisions of section 158BA of the Act only "undisclosed income" could be assessed and for any other income to be assessed the proceedings u/s 143 or u/s 147 were to be invoked. Referring to the para 9.1 of the judgement of Abhisar Buildwell P. Ltd. (supra), the Ld. DR argued that Section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute where the tax rate is same. The Ld. DR argued that the legislative intention for bringing the provisions of Section 153A of the Act is to ensure that there are no parallel proceedings for any assessment years by way of proviso to Section 153A(1). As per this section, there shall be no parallel proceedings for any assessment year in the case of search assessments u/s 153A which is different from the earlier scheme of block assessment u/s 158BA of the Act.

21. Submitting his arguments in writing, the Ld. DR submitted that the Hon'ble Supreme Court had clearly answered the scope of assessment in the case of unabated assessment where incriminating material is found, in para 14(3) of its order and held that Assessing Officer gets jurisdiction to assess total income taking into consideration the incriminating material unearthed during the search and 'other material' available with the Assessing Officer. For the sake of completeness and ready reference, the written argument of the Ld. DR on the settled position of legal issue is as under:-

a) In the case of Abhisar Buildwell (P) Ltd. (Supra), the issue before the Hon'ble Supreme Court was not only the issue raised by the Department regarding validity of addition made in respect of the completed assessments in absence of any incriminating material but IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 also the issue raised by the Assessee regarding whether in case any incriminating material is found during search then even completed assessments can be assessed or reassessed taking into consideration the incriminating material and other material in possession of the Assessing Officer. This is evident from para 1 of the order of the Court, which reads as under:

" 1. As common question of law and facts arise in this group of appeals, they are being disposed of by this common judgment and order.

Civil Appeal No. 6580 of 2021 and other connected appeals as mentioned above have been preferred by the Revenue. However Civil Appeal No. 15617 of 2017 and other allied appeals as mentioned above have been preferred by the respective assesseees

challenging the order passed by the respective High Courts taking the view that in case any incriminating material is found during search then even completed assessments can be assessed or reassessed taking into consideration the incriminating material and other material in possession of the Assessing Officer." [Emphasis Supplied]

b) Further, the issue questions of law taken up by Hon'ble Supreme Court in this case is summarized by Court in Para 2, which reads as under:

"2. The core issue involved in the present batch of appeals is the scope of assessment under section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act. 1961'). According to the Revenue, the Assessing Officer (hereinafter referred to as the 'AO') is competent to consider all the material that is available on record, including that found during the search, and make an assessment of 'total income'. Some of the High Courts have agreed with the said proposition. However, according to the respective assessee's end as per some of the High Courts' decisions, if no assessment proceeding is pending on the date of initiation of the search, the AO may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source." [Emphasis Supplied] IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

c) Hon'ble Supreme Court, after completely examining the scope of assessment u/s 153A of the Act, it had summarized the scope of assessment in para 14 of the order and the same is as under:

"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."

[Emphasis Supplied]

d) Hon'ble Supreme Court had clearly answered the scope of assessment in the case of unabated assessments where incriminating material is found in Para 14(iii) of its order and held that the Assessing Officer gets jurisdiction to assess '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. Further, the Hon'ble Supreme Court has also not limited the meaning of 'total income' u/s 153A of the Act to mean only 'undisclosed income'.

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e) Further, Hon'ble Supreme Court had answered the legal question raised by the Assessee before it in Civil Appeal Nos.7738- 7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021 on the issue of jurisdiction of Assessing Officer to assess total income in unabated assessments when incriminating material is seized and held vide para 15 & 15.1 as under:

'15. Insofar as the aforesaid Civil Appeals preferred by the assessee M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 6-9-2016 passed in ITA Nos. 270/2014 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21-9-2017 passed in the review applications. It is required to be noted that the issue before the Allahabad High Court was whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under section 143(1)(a) or 143(3) of the Act, 1961 and to reassess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee -

M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs." [Emphasis Supplied]

f) Therefore, in view of the detailed discussion made by Hon'ble Supreme Court in its decision, as above, regarding the scope of assessment u/s 153A of the Act which was summarized in para 14 of the order as well as the ratio decidendi in para 15 & 15.1 answering the legal issue raised in the appeal filed by the Assessee, the legal issue IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 raised by the Department before the Hon'ble ITAT, Ahmedabad is no longer res Integra.

8. The Submissions made in the above paragraphs on the legal issue raised by the Department on the scope of assessment in the case of unabated assessments are summarized here under:

a) The Assessing Officer gets jurisdiction to assess / reassess in the case of unabated assessments if incriminating material is unearthed in the course of search action u/s 132 of the Act or as per the books of account, other documents or assets are requisitioned u/s 132A of the Act.

b) The jurisdiction to assess u/s 153 A of the Act is for assessment of "total Income" as per the provisions of the Act. The expression "total Income" is defined in Section 2(45) of the Act read with section 5 of the Act is an inclusion definition and includes all income from whatever source derived. Hence, the meaning of "total income" u/s 153A of the Act cannot be restricted.

c) Restriction of meaning of "total Income" u/s 153A of the Act to mean only "undisclosed income" would be contrary to the law laid by Hon'ble Supreme Court with regard to principles of reading down the provisions of Statute.

d) Restriction of meaning of "total Income" in the case of unabated assessments would lead to existence of parallel assessments for the same assessment year which is not permissible under the Act. This is clearly evident from the provisions of section 153 A of the Act as well as from the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (Supra).

In conclusion, the Ld. DR argued that Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (Supra) had answered the said question at para numbers 14, 15 & 15.1 of the decision and the same be followed.

22. The arguments taken by both the parties, provisions of the Act, all other judgements relied by both the parties with specific emphasis on the judgment in the case of Abhisar Buildwell Pvt Ltd have been examined in detail.

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23. The judgement referred by the Ld. Sr. Counsel in the case of DCIT Vs. Friends Salt Works and Allied Industries, 160 Taxman 676, has been examined wherein Hon'ble High Court held that no question of law much less any substantial question of law arises from the impugned order of the Tribunal. In the case of Sun Engineering Works Pvt Ltd, 64 taxman 442, the Hon'ble Supreme Court at para 37 directed that an interpretation should be in the context of questions arose for decision in that case. The Hon'ble Apex Court held that it is neither desirable nor permissible to pick a word or a sentence from a judgment of the Court divorced from the context of question under consideration and treat it to be complete law declared by the Court. The judgement must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the question involved in the case in which it is rendered and while applying the decision to the latter case, one must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgments divorced from the context of the questions under consideration [para 37].

24. The Judgment of the Hon'ble Allahabad High Court in the case of Keserwani Zarda Bhandar, ITA No. 270 of 2014, the Hon'ble Court referring to the judgment in the case of CIT Vs. Rajkumar Arora, 367 ITR 517, held that Assessing Officer has powers to reassess the returns of the assessee not only for the undisclosed income which was found during search operation but also with regard to the material that was found available at the time of original assessment. The judgment has been considered by the Hon'ble Apex Court subsequently. The CBDT directed IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 the field authorities vide instruction No. 1 of 2023 wherein action u/s 148 needs to be taken in the situations stated in the Court in para 14(iv) of the said order in view of the Section 150 of the Act. The issue narrows down to 'other material' to be considered in case of unabated assessment.

25. It need not be emphasized that assessment u/s 153A of the Act in abated assessment is concluded by taking into consideration the seized material and all other material available to the Assessing Officer and culminates into passing of single order with a uniform tax rate for the additions made on account of incriminating materials found and seized and any other material. In case of unabated assessment, the assessment is completed u/s 153A and no addition ought to have been made in the absence of any incriminating material. There is a third situation where in case of unabated assessment, some incriminating material is available which was found and sized during search and some other information is available which is not a part of the search, in that situation can there be more than two assessments, one under section 153A and the other u/s 153C or u/s 148 of the Act.

26. I have perused the arguments of Ld. Sr. Counsel with reference to para 2 of the order of the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt Ltd (supra) which dealt with the core issue with respect to scope of unabated assessment years post search u/s 153A of the Act. The para 2 of the order reads "the core issue involved in the present batch of appeals is the scope of assessment under section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961'). According to the Revenue, the Assessing Officer (hereinafter referred to as the 'AO') is competent to consider all the material that is available on record, including that found IT(SS)A No.535/ahd/2019 & 13

Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 during the search, and make an assessment of 'total income'. Some of the High Courts have agreed with the said proposition. However, according to the respective assessee and as per some of the High Courts' decisions, if no assessment proceeding is pending on the date of initiation of the search, the AO may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source."

27. The Ld. Sr. Counsel (vide submission at page No.6) argued that the Hon'ble Apex Court has clearly held as to what would constitute the 'other material' i.e. it has been held that the other material would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. The argument to this extent is acceptable but it is very clear that the 'other material' would invariably mean and include the material other than the 'income declared' in the return. As succinctly argued by the Ld. Sr. Counsel that the Legislature has consciously provided for 'revival' of only 'abated assessment' i.e. the Legislature has consciously not provided for 'revival' of 'completed / unabated assessment'. This further shows that the intention of the Legislature is that insofar as 'completed/unabated assessment' is concerned, the same can be disturbed only if any incriminating material is found during the course of search. I am in agreement with this argument. The Ld. Sr. Counsel, referring to para 13 of the order wherein the Hon'ble Supreme Court observed that they "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 IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 assessments in absence of any incriminating material", reiterated the established principle that no addition sans incriminating material in an unabated assessment, the proposition of which I am in total agreement. With regard to the assumption of jurisdiction u/s 153A of the Act and issue of notice for all the years, whether there is any incriminating material seized or not, and then expecting the assessee to reply that there was no incriminating material and consequently completing the assessment without making any addition as there was no incriminating material is akin to dropping of the proceedings. Shouldn't the Revenue Authorities determine the availability of any incriminating material seized or not before issue of notice u/s 153A of the Act? It is found that the assumption of jurisdiction u/s 153A is automatic and is mandatory in the scheme of the Act. However, for the purpose of making any addition in an unabated assessment some incriminating material found and seized during the search is a sine qua non. What is to be determined u/s 153A is the 'total income'. In the absence of any incriminating material, no undisclosed income is determinable in an unabated assessment and hence the total income remains same as disclosed in the return of income. There is no dispute between the judgment of the Hon'ble Apex Court, the case of Kabul Chawla and the case of Saumya Construction as far as assessment devoid of incriminating material in an unabated assessment. To that extent, the Counsel, the Revenue, the Hon'ble Members and the author are on the same page.

28. The Ld. Sr. Counsel argued that even if there is an incriminating material unearthed during the search and the addition was based on such incriminating material, there cannot be any other material which can be IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 brought or considered for completion of assessment u/s

153A of the Act. Such action of the Assessing Officer is against the scheme of the Act and against the series of judgments pronounced and each addition has to be made based on the incriminating material unearthed during the search which the Revenue refuted.

29. The assumption of jurisdiction u/s 153A of the Act being automatic consequent to search and seizure action u/s 132 of the Act, the assessments are completed based on the entire material before the Assessing Officer in the case of abated assessment. The moment action u/s 132 takes place, all the assessments pending as on the date shall abate.

Section 153A reads as under:-

153A. (1) 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 but on or before the 31st day of March, 2021, 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 and for the relevant assessment year or 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 and for the relevant assessment year or years :

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

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub- 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 :

Section 132 reads as under:-

Search and seizure.

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--

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(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 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then,--

(A) 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, as the case may be, may authorise any Additional Director or Additional Commissioner IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or (B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, (the officer so authorised in all cases being hereinafter referred to as the authorised officer) to--

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about

his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], but such [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner has no IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 jurisdiction over the person referred to in clause (a) or clause (b) or clause

(c), then, notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such

valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business: Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

[(1A) Where any [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the [Principal Director General or] Director General or [Principal Director or] Director or any other [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.] (2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 (3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation.--For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1). (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 under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act. 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.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed--

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true ; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) [***] (6) [***] IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 (7) [***] (8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding thirty days from the date of the order of assessment under section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director for such retention is obtained :

Provided that the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf. (9A) Where the authorised officer has no jurisdiction over

the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer. (10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. (11) [***] (11A) [***] (12) [***] (13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer--

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.--For the purposes of sub-section (9A), "execution of an authorisation for search" shall have the same meaning as assigned to it in Explanation 2 to section 158BE.

Explanation 2.--In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

30. What was the purpose of abatement of all pending assessments on the date of initiation of search? The pending assessments could be assessment u/s 143(3), 153C or 148 of the Act. As rightly argued by the Ld. Sr. Counsel, the Legislature has consciously provided for abatement of assessment, it is to obviate a necessity of making two assessments in respect of one year for which

proceedings are pending, the second proviso provides that pending assessments shall abate, which means that only one assessment under Section 153A shall be made comprising of all the assessments which have been pending. The Legislature does not intend to IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 have two parallel proceedings in case of one assessee for same year as held by the Hon'ble Apex Court. In the case of a completed assessment or where no assessment is pending, there is an automatic provision of assumption of jurisdiction u/s 153A of the Act. When no assessment is pending, the question of abatement does not arise. When the proceedings u/s 153A are initiated, can there be re-opening of any assessment so that there are two proceedings being undertaken parallel for the same assessee for the same assessment years. If the Assessing Officer is allowed to reopen an issue for the same year where proceedings u/s 153A are being undertaken, does not it amount to having parallel proceedings for the same year which is against the intend of the Legislature wherein the pending assessments were made to abate. This leads to a situation of approbate and reprobate which is based on the maxim "*allegans contraria non est audiendus*". At one side, the Legislature intends one assessment for one year and on the other hand, the assessee is exhorting for multiple assessments which cannot be accepted. Taking further, what was the intention of the Legislature when there was 'incriminating' material found and seized in unabated assessment and there was some 'other material' available with the Assessing Officer? To solve the issue of determination of the 'total income' and the 'other material' to be used in an unabated assessment where there is an existence of incriminating material, one need to look into literal rule of interpretation or the rule of harmonious construction that would apply to interpret the Section 153A of the Act and also the ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt Ltd. Hence, the issued is being dealt by considering literal rule of interpretation, reading down of the Statute as a whole and harmonious construction of the Statute. When it comes to deciding the issue of IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 considering the 'other material' along with seized material for determining the total income based on the primary rule of interpretation, then the intention has to be found by the words used by the Legislature itself. A search action is conducted after recording of satisfaction in consequence to the information in their possession and has reasons to believe that the documents or valuables leading to bringing of unaccounted income to tax would be found. Provisions of Section 153A stipulates automatic issue of notice and completion of assessment determining total income. The Hon'ble Supreme Court in the case of Prakash Nath Khanna v. CIT has held that "the first and foremost rule of construction is that the intention has to be found from the words used by the legislature itself. The Courts interpret the law and do not legislate the law..." Only when the literal interpretation of the statutory provision leads to unjust result contrary to intension of the legislature, the Court might adapt the language used by the legislature so as to meet the intention of the legislature resulting in a rational and compatible construction. The provisions have to be read harmoniously keeping in view the intend and purpose. The Hon'ble Supreme Court of India held that "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." Hence, I am in agreement with the argument of the Ld. CIT(DR) that the first proviso should be read in harmony with the second proviso under Section 153A. The second proviso expressly states that only the proceedings pending at the time of search or seizure would abate, which led to the conclusion that completed assessments do not abate and hence stand as it is. A harmonious construction of the entire provision would lead to the conclusion that the word 'assess' has been

used in the context of abated proceedings and 'reassess' has been used for completed assessment IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 proceedings. I am in agreement with the argument that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. The purpose of second proviso is to prevent multiplicity of proceedings and to ensure that there are no two conflicting authorities on the same point. The first and second proviso have to read with in tandem. The words 'assess' and 'reassess' used in the provision signify two different connotations. The word 'assessment' is used in context of proceedings, which shall abate because of second proviso, and 'reassessment' has been used in context of the completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition. The Ld. DR has also referred to the decision of the Hon'ble Apex Court in the case of Calcutta Guj. Education Society Vs. Calcutta Municipal Corporation in CA No. 5203 of 2000, wherein the Hon'ble Apex Court defined the scope of 'reading down' in interpretation of Statutes. The Hon'ble Court held that "the rule of "reading down" a provision of law is now well recognized. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring; it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes."

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

31. It is also clear that Section 153A envisages assessment of 'total income', not of undisclosed income. Section 2(45) defines 'total income' - means the total amount of income referred in Section 5 and scope of total income as per Section 5(1) is the total income of any previous year of a person who is resident includes all income from 'whatever source' derived. Hence, the meaning of "total income" is clearly defined under the Income Tax Act and the same includes all incomes including undisclosed income unearthed during the course of search proceedings u/s 132 of the Act or found in the books of account, other documents or assets are requisitioned u/s 132A of the Act. If the meaning of "total income" under section 153A of the Act is restricted to assessment of only "undisclosed income"

unearthed during the course of search proceedings u/s 132 of the Act or found in the books of account other documents or assets are requisitioned u/s 132A of the Act, it would also mean that even in the case of abated assessments under second proviso to Section 153A(1) of the Act, only undisclosed income can be assessed. Such an interpretation would negate the purpose of the second proviso to Section 153A(1) of the Act and will not satisfy the rule of "Harmonious Interpretation of Statutes".

32. With regard to the issue of parallel assessment, the judgement of the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt Ltd (supra) has been perused. It could be found that the provisions of

section 153A of the Act have substituted the erstwhile scheme of block assessment under section 158BA of the Act primarily to do away with scheme of parallel assessments for the same assessment year as under the provisions of section 158BA of the Act only "undisclosed income" could be assessed and for any other income to be assessed the proceedings u/s 143 or u/s 147 IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 were to be invoked. The purpose of introduction of the provisions of section 153A of the Act has been explained by of Hon'ble Supreme Court and the relevant part of the said decision is as under:

"9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961. The erstwhile scheme of block assessment under section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153 A and in case of search, there shall be block assessment for six years....."

33. Thus, it is very clear that Legislature's intention has been interpreted by the Hon'ble Apex Court that there cannot be parallel assessments. The second proviso Section 153A(1) thus directed abeyance of all other proceedings. Once even the on-going proceedings are abated, so that there are no multiple proceedings, there is no logic to reopen cases when proceedings u/s 153A are being underway which is the focal difference between the earlier scheme of block assessment u/s 158BA where there was a regular assessment along with block assessment, which has been done away with the introduction of Section 153A.

34. With regard to the controversy between the determination of undisclosed income and the total income in the case of unabated assessment has been rightly explained by the Ld. DR which is as under:-

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 "i) If a search action is conducted on an Assessee on 01.01.2022, then the assessment years covered u/s 153A of the Act would be from 2017-18 to 2022-23.

ii) In the course of the search proceedings, incriminating material is gathered for all the assessment years from 2017-18 to 2022-23.

iii) Further, subsequent to the search action on 01.01.2022, the Assessing Officer received information from third party with regard to huge cash deposits exceeding Rs. 1 crore in the Bank account of the Account of the Assessee which was not disclosed to the department in the returns of income filed by the Assessee.

iv) As there are no proceedings pending u/s 147 of the Act for the AY 2017- 18 as on the date of the search, the assessment for the AY 2017-18 would be unabated assessment.

v) Therefore, if in the assessment made u/s 153A of the Act, only the undisclosed income unearthed during the course of search proceedings can assessed, then the Assessing Officer will have to invoke the provisions of section 147 of the Act to assess the unexplained cash deposits in the undisclosed Bank account of the Assessee u/s 69A of the Act.

vi) Such an action of the Assessing Officer would clearly lead to parallel assessment proceedings for the same assessment year 2017-18."

35. Hence, it can be held that as per the scheme of provisions of section 153A of the Act, parallel assessments proceedings are not permissible and therefore, provisions of section 153A of the Act cannot be interpreted to mean that only undisclosed income can be assessed in the case of unabated assessment years. In the case of Nilofer Hameed vs. ITO reported in 235 ITR 161 (Kerala) the Hon'ble Kerala High Court after referring to a number of judgments of other Hon'ble High Courts held, "if an assessment is pending either by way of original assessment or by way of re-assessment proceedings, the assessing officer cannot issue a notice u/s 148 but if no proceedings are pending either by way of original assessment or by way of re-assessment, he can issue a notice u/s 148 within the time mentioned." This judgment of the Hon'ble Kerala High Court was also followed by the Hon'ble Delhi High Court in the case of CIT vs. Sanjay Kumar Garg in ITA Nos. 92 to 96/2012 vide order dated 02.09.2015. A similar view has been IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 taken by the Hon'ble Rajasthan High Court in the case of Smt. Pushpa Rajawati vs. CIT in ITA no.205/2015 vide order dated 25.10.2017 wherein the Hon'ble Rajasthan High Court held that where the original proceedings were pending before the CIT(A), the adjudicating authority could not have issued second show cause notice u/s 148 of the Act.

36. In a situation where proceedings u/s 147 are pending in a case wherein the proceedings u/s 153A are being initiated consequence to action u/s 132A of the Act, the proceedings u/s 147 are kept in abeyance as per the Statute. Can the Department be allowed to initiate 147 proceedings while proceedings u/s 153A are in process? No. While merging of assessments is the norm, issuing a notice u/s 147 to bring to tax with regard to any other material is an anti-thesis.

37. With regard to the meaning of 'other material' and as to what constitute 'other material', the Ld. AR submitted that the other material includes income declared in the returns, if any. It is hereby held that the other material includes return of income and any other information or material. The

word 'other material' cannot be restricted only to the income declared in the return.

38. The interplay between Sections 153A, 153C, 147, undisclosed income, total income, abatement, unabated assessments, incriminating material, other material has to be treaded with utmost diligence and crucial in understanding how the principle against multiple assessments is upheld in the context of search and reassessment proceedings. One potential scenario for multiple assessments could arise if the Assessing Officer initiates proceedings u/s 147 for assessment years that are already IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 covered under the block period of Section 153A, particularly based on the other material and facts emanated from the search proceedings during the assessment u/s 153A of the Act. Judicial pronouncements have aimed to clarify that once an assessment is made under Section 153A for a particular assessment year within the block period, the scope for reopening that assessment under Section 147 is limited. The Legislature do not aim to burden its own citizens with multiplicity of proceedings under various assessments for the same year.

39. To conclude, the judgement of the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt Ltd (supra) is again being referred to.

1. Para 4.1 - The submissions on behalf of the assessee in a tabulated form are as under:

Sr. Particulars Assessment u/s Reassessment u/s 147 Unabated No. 143(3) pending pending and abated assessments and abated iv Incriminating Assessing Officer Scope of assessment Assessment u/s material found entitled to assess u/s 153A must be 153A could only during search entire income restricted to be done in only on issue "A" including Issue A respect of issue A other and / or Issue B (a) Grounds on which relating to information / proceedings which material reopened; and incriminating available or (b) Issue A detected material is found from any during search; found during external sources and search. On (not in search) (c) Issue B for which conclusion of in respect of information assessment u/s issue "B" available. 153A, Revenue Assessing Officer may, basis other not entitled to information, reopen entire proceed u/s 147 assessment and and / or 263 undertake roving/fishing enquiries.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 This is the core argument taken up by the assessee before the Hon'ble Apex Court. The Hon'ble Apex Court examined the question which is as under:-

"The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any 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 132 A of the Act, 1961 or not."

The Hon'ble Apex Court has examined the views of various High Courts:-

"7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr.

Commissioner Of Income Tax v. Mehndipur Balaji, 2022 SCC OnLine All 444 : (2022) 447 ITR 517 has taken a contrary view."

Having examined various judgements of High Courts, the Hon'ble Apex Court held as under:-

Finding 1 :-

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

Finding-2 :-

11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years 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. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case

of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search.

Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 148 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

Finding 3:-

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub- section (2) of Section 153A would be redundant and/or re- writing the said provisions, which is not permissible under the law.

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Finding 4 :-

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. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

To have clear clarity at the cost repetition, the para 14.3 is reproduced as under:-

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16

- 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;

which leaves no scope of further interpretation or analysis on the core issue raised at para 4.1 (iv).

40. In view of the foregoing discussion, I agree with the Hon'ble AM that there is no legal impediment in making an addition, the basis of 'other material' found during search, in an

assessment u/s 153A for a year whose assessment was not pending on the date of search.

41. Before I close, I must place on record my sincere appreciation to the Ld. Sr. Advocate Shri Tushar Hemani and the Ld. PCIT (DR) Shri H. Phani Raju for their erudite presentation and in-depth analysis of the intricate and nuanced issues of jurisprudence involved in these appeals.

42. The Registry of the Tribunal is directed to list this matter before the Division Bench for passing an order in accordance with the majority view.

Sd/-

(DR. BRR KUMAR) VICE PRESIDENT Ahmedabad; Dated 07/04/2025"

6. Final Disposal of the Appeal:

In accordance with the majority opinion, comprising the opinion of the Hon'ble Accountant Member and the Hon'ble Third Member, the appeals are decided as under:

IT(SS)A No.535/ahd/2019 & 13 Others ACIT vs. M/s.Benefit Tradelink Ltd. & Others Asst. Years : 2011-12 to 2015-16 Hon'ble AM: "All the additions which were based on incriminating material as well as on the basis of other materials as available with the AO are required to be set-aside to the file of Ld. CIT(A) to examine the matter on their merit".

Hon'ble Vice President (Third Member): "I agree with the Hon'ble AM that there is no legal impediment in making an addition, the basis of 'other material' found during search, in an assessment u/s 153A for a year whose assessment was not pending on the date of search."

For assessment years, where some incriminating materials have been found to exist as per the findings of ITAT, the matter is hereby being restored to the file of Ld. CIT(A) for deciding the grounds taken by the assessee on merits.

7. Conclusion:

In the combined result, all the appeals filed by the Department and assessee are partly allowed for statistical purposes.

Order pronounced in the Open Court on 25th April, 2025 at Ahmedabad.

Sd/-
(NARENDRA P. SINHA)
ACCOUNTANT MEMBER
/Ahmedabad,
Tanmay, Sr. P.S.

/Dated 25/04/2025
True Copy

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

¢ i /Copy of the Order forwarded to :

1. / The Appellant
2. / The Respondent.
3. / Concerned CIT
4. ()/ The CIT(A)-
5. f § , , /DR,ITAT, Ahmedabad.
6. § ¤ ' /Guard file.

¢ / BY ORDER, “ (Asstt. Registrar) , ITAT,
Ahmedabad