IN THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH "F"NEW DELHI
(Through Video Conferencing)

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.As. No.4039, 4040, 4041, 4042 & 4043/DEL/2017

Assessment Years: 2007-08, 2008-09, 2009-10, 2010-11, 2011-12

ACIT, Central Circle-30, New Delhi.	vs.	M/s. Prakash Industries Ltd., 15 KM Stone, Delhi Road, Hisar, Haryana.
TAN/PAN: AABCP6765H		
(Appellant)		(Respondent)

I.T.As. No.4064, 4065, 4066, 4067, 4068, 4069, 4070/DEL/2017

Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15

M/s. Prakash Industries Ltd., 5 KM Stone, Delhi Road, Hisar, Haryana.	Vs.	ACIT, Central Circle-30, New Delhi.
TAN/PAN: AABCP6765H		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Wadhwa, Adv.		
Respondent by:	Shri Sushma Singh, CIT-D.R.		
Date of hearing:	24	03	2021
Date of pronouncement:	18	06	2021

O R D E R

PER AMIT SHUKLA, JM:

The captioned appeals have been filed by the above named assessee and the revenue against seperate orders of Ld. Commissioner of Income-tax (Appeals)-30for assessment made under section 153A/143(3) for the Assessment Years 2007-08 to AY 2014-15. Since common issues are permeating through all the appeals arising out of identical set of facts pertaining to the same search, therefore, same were heard together and are being disposed off by way of this consolidated order.

2. Both the parties had stated that if appeal for the Assessment Year 2010-11 is taken into consideration, i.e., in ITA No. 4066/Del/2017 and 4042/Del/2017, the same will cover most of the issues in all the appeals. For the sake of ready reference, the grounds of appeal for various years are reproduced hereunder:

2.1 Grounds of appeal raised by the revenue are reproduced as under:

ITA No.4039/Del/2017

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs. 16,36,62,120/-.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the

addition of Rs. 8,18,311/- as unexplained expenditure on account of brokerage.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153A would only mean undisclosed income discovered from seized / incriminating material.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153A of the Act.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.

7. That the grounds of appeal are without prejudice to each other.

8. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

ITA No.4040/Del/2017

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs. 20,36,62,120/-.

2 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 10,18,310/- as unexplained expenditure on account of brokerage.

3 On the facts and in the circumstances of the case, the Ld, CIT(A) has erred in law and on facts in directing the A.O. to restrict the addition of Rs. 1,28,70,018/- for unaccounted profit @ 1% of the total purchases of scrap to Rs. 96,52,514/- which is 0.75% of the total purchases of scrap.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153A would only mean

undisclosed income discovered from seized / incriminating material.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153A of the Act.

7 On the facts and in the circumstances of the case, the Ld.CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.

8. That the grounds of appeal are without prejudice to each other.

9. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

ITA No.4041/Del/2017

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs 22,82,10,000/- on protective basis and Rs. 77,85,000/- on substantive basis.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the

addition of Rs. 11,79,975/- as unexplained expenditure on account of brokerage.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153A would only mean undisclosed income discovered from seized / incriminating material.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153A of the Act.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.

7. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to restrict the addition of Rs. 2,27,06,450/- for unaccounted profit @ 1% of the

total purchases of scrap to Rs. 1,70,29,838/- which is 0.75% of the total purchases of scrap.

8. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the-A.O. to restrict the addition of Rs. 49,02,650/- for unaccounted income on purchase of bazaar/ kabad @ 1% to Rs. 36,76,987/- which is @ 0.75%.

9. That the grounds of appeal are without prejudice to each other.

10. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

ITA No.4042/Del/2017

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts indirecting the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs. 21,17,69,200/- on protective basis and Rs. 20,40,70,800/- on substantive basis without appreciating the facts brought on record by the A.O.

2 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A O. to delete the addition of Rs. 20,79,200/- as unexplained expenditure on account of brokerage without appreciating the facts brought on record by the A.O.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 23,99,260/- made on the basis of electronic data seized during the search relating to purchase of land.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 76,35,72,743/- made on account of shifting of taxable profit from steel division to exempted profit of power division by charging higher rates of power generated.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to restrict the addition of Rs. 1,39,28,065/- for unaccounted profit @ 1% of the total purchases of scrap to Rs. 1,04,46,052/- which is 0.75% of the total purchases of scrap.

6. That the grounds of appeal are without prejudice to each other.

7. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

ITA No.4043/Del/2017"

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained oasn credits amounting to Rs. 15,81,65,000/- without appreciating the facts brought on record by the A.O.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 7,90,825/- as unexplained expenditure on account of brokerage without appreciating the facts brought on record by the Assessing Officer.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 4,46,600/- made on the basis of electronic data seized during the search relating to purchase of land.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 52,80,20,878/- made on account of shifting of taxable profit from steel division to exempted profit of power division by charging higher rates of power generated.

5 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O to restrict the addition of Rs. 41,68,654/- for unaccounted profit @ 1% of the total purchases of scrap to Rs. 31,26,490/- which is 0.75% of the total purchases of scrap.

6 That the grounds of appeal are without prejudice to each other.

7 That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

2.2 Grounds of appeal raised by the assessee are reproduced as under:

ITA No.4064/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition of Rs 3,11,000/- u/s 69C merely on the basis

certain documents seized during the course of search at third party by holding content of seized documents, Annexure, A-2 and A-6, as true, which were lack of reliability since these were unsigned / undated without bringing any material on record in support of his contention.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred both on facts and in law in confirming addition of Rs 2,46,82,226/- being average of seven days scrap purchases u/s 69C by holding the opinion of the AO as justified, whereas he himself accepted that the addition were made on estimated basis only.

3. That on the facts and in the circumstancesof the appellant's case, the Ld. CIT(A) has erred both on facts and in law in confirming addition to the extent of Rs 96,52,514/- by estimating 0.75% unrecorded profit on scrap purchase as against 1% estimated by the AO without there being any basis for their estimation.

4. That onthefacts andin the circumstancesof the appellant'scase, theLd. CIT(A) has erred in law in confirming addition of Rs 2,46,82,226/- u/s 69C and Rs. 96,52,514/- being 0.75% unrecorded profit on scarp purchased on estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

5. Thatonthefacts andin the circumstancesof the appellant'scase, theLd. CIT(A) has erred both on facts and in law in confirming estimated addition of Rs 2,46,82,226/- u/s 69C

and Rs. 96,52,514/- being 0.75% unrecorded profit on scarp purchased even though he himself accepted.

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided."

ITA No.4065/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition of Rs 4,19,250/- u/s 69C merely on the basis certain documents seized during the course of search at third party by holding content of seized documents, Annexure, A-2 and A-6, as true, which were lack of reliability since these were unsigned / undated without bringing any material on record in support of his contention.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition of Rs 1,88,64,391/- being average of seven days scrap purchases u/s 69C by holding the opinion of the AO as justified, whereas he himself accepted that the addition were made on estimated basis only.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred both on facts and in law in confirming addition to the extent of Rs 1,70,29,838/- by estimating 0.75% unrecorded profit on scrap purchase as against 1%

estimated by the AO without there being any basis for their estimation.

4. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition to the extent of Rs 36,76,987/- by estimating 0.75% unaccounted income on alleged investment in bazar/kabad scrap as against 1% estimated by the AO without there being any basis for their estimation.

5. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred in law in confirming addition of Rs 1,88,64,391/- u/s 69C and Rs. 1,70,29,838/- and Rs. 36,76,987/- being 0.75% unrecorded profit on scarp purchased and bazar/kabad scrap on estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

6. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming estimated addition of Rs 1,88,64,391/- u/s 69C and Rs. 1,70,29,838/- and Rs. 36,76,987/- being 0.75% unrecorded profit on scarp purchased and bazar/kabad scrap even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements

relied upon by AO during cross- examination before the Excise department.

ITA No.4066/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition of Rs 11,78,500/- u/s 69C merely on the basis certain documents seized during the course of search at third party by holding content of seized documents, Annexure, A-2 and A-6, as true, which were lack of reliability since these were unsigned / undated without bringing any material on record in support of his contention.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition to the extent of Rs 1,04,46,052/- by estimating 0.75% unrecorded profit on scrap purchase as against 1% estimated by the AO without there being any basis for their estimation.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred in law in confirming addition of Rs. 1,04,46,052/- being 0.75% unrecorded profit on scarp purchased on estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

4. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming estimated addition of Rs. 1,04,46,052/- being 0.75%

unrecorded profit on scarp purchased even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements relied upon by AO during cross- examination before the Excise department."

ITA No.4067/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition to the extent of Rs 31,26,490/- by estimating 0.75% unrecorded profit on scrap purchase as against 1% estimated by the AO without there being any basis for their estimation.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred in law in confirming addition of Rs. 31,26,490/- being 0.75% unrecorded profit on scarp purchased on estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming estimated addition of Rs. 31,26,490/- being 0.75%

unrecorded profit on scarp purchased even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements relied upon by AO during cross- examination before the Excise department.

That the appellant craves leave to add, amend or alter any of the grounds of appeal."

ITA No.4068/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition to the extent of Rs 15,22,408/- by estimating 0.75% unrecorded profit on scrap purchase as against 1% estimated by the AO without there being any basis for their estimation.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred in law in confirming addition of Rs. 15,22,408/- being 0.75% unrecorded profit on scarp purchased on estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in

confirming estimated addition of Rs. 15,22,408/- being 0.75% unrecorded profit on scarp purchased even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements relied upon by AO during cross- examination before the Excise department.

That the appellant craves leave to add, amend or alter any of the grounds of appeal."

ITA No.4069/Del/2017

1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming addition to the extent of Rs 19,87,987/- by estimating 0.75% unrecorded profit on scrap purchase as against 1 % estimated by the AO without there being any basis for their estimation.

2. That on the factsand in the circumstances of the appellant's case, the Ld. CIT(A) has erred in law in confirming addition of Rs. 19,87,987/- being 0.75% unrecorded profit on scarp purchased on estimation basis in search case u/s. 132 of the Act, even without bringing any cogent material on record.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred both on facts and in law in confirming estimated addition of Rs. 19,87,987/- being 0.75% unrecorded profit on scarp purchased even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements relied upon by AO during cross- examination before the Excise department.

That the appellant craves leave to add, amend or alter any of the grounds of appeal."

ITA No.4070/Del/2017

1. That on the facts and in the circumstances of the appellant's case,the Ld.CIT(A) has erred both on facts and in law in confirming addition to the extent of Rs 7,41,523/- by estimating 0.75% unrecorded profit on scrap purchase as against 1 % estimated by the AO without there being any basis for their estimation.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred in law in confirming addition of Rs. 7,41,523/- being 0.75% unrecorded profit on scarp purchased on

estimation basis in search case u/s 132 of the Act, even without bringing any cogent material on record.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred both on facts and in law in confirming estimated addition of Rs. 7,41,523/- being 0.75% unrecorded profit on scarp purchased even though he himself accepted -

(a) that copies of statements, seized documents and enquiry report received from Investigation Wing of Income tax deptt. relied upon by the AO, were never confronted and cross-examination of the deponent were also not provided.

(b) that unregistered dealers of scrap, transporters, truck owners, suppliers have retracted from their earlier statements relied upon by AO during cross- examination before the Excise department.

That the appellant craves leave to add, amend or alter any of the grounds of appeal."

3. For the sake of ready reference and convenience year-wise additions are summarized as under:

Nature of addition	AY 07-08 Appeal No 4039	AY 2008-09 Appeal No 4040 and 4064	AY2009-10 Appeal No 4041 and 4065	AY 2010-11 Appeal No 4042 aad 4066	AY 2011-12 Appeal No 4040 and 4064	AY 2012-13 Appeal No.4068	AY 2013-14 Appeal No 4069	AY 2014-15 Appeal No4070	TOTAL

Share application Money (Department's appeal)	163662120	203662120	23,59,95,000/- (22,82,10,000/-) Protective	41,58,40,000 (22,17,69,200) protective	15,81,65,000				117,73,24,240 (44,99,79,200) Protective
Unexplained Brokerage @0.5% (Department's Appeal)	818311	1018310	11.79.975	20,79,300	7,90,825				5886621
Salary paid in cash u/s.69C (Assessee's Appeal)		311,000	4,19,250	11,78,500					1908,750
Investment in purchase (Assessee's Appeal)		24682226	18864,391						4,35,46,617
Purchase of scrap (Department and Assesse's Appeal		12870018	22706450	13928065	4168654	2029877	2650649	988697	59342410
Unaccounted Investment (Department and Assessee's Appeal)			4902650						4902650
Unexplained Expenditure in purchase of land (Department's appeal)				2399260	446600				2845860
(									
Shifting of profit from steel division (Department's appeal)				763572743	528020878				1291593621
TOTAL	**164480431**	**242543674**	**284067716**	**1198997768**	**691591957**	**2029877**	**2650649**	**988697**	**2587350769**

4. In the first appeal, most of the additions stood deleted and some of them got confirmed, the summary of which are as under:

NATURE OF ADDITION	AY 07-08	AY 2008-09	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15
share application money	deleted 5,36,62,120	deleted 20,36,62,120	deleted 23,59,95,000	deleted 41,58,40,000	deleted 15,81,65,000			
unexplained brokerage @ 0.5%	deleted 818,311	deleted 10,18,310	deleted 11,79,975	deleted 20,79,200	deleted 7,90,825			
salary paid in cash u/s 69c		confirmed 311,000	confirmed 4,19,250	confirmed 11,78,500				
investment in purchase		confirmed 2,46,82,226	confirmed 1,88,64,391					
purchase of scrap		out of 1,28,70,018, confirmed 0.75% Rs. 96,52,514 and deleted 0.25% Rs. 32,17,505	out of 2,27,06,450, confirmed 0.75% Rs. 1,70,29,838 and deleted 0.25% Rs. 56,76,613	out of 1,39,28,065, confirmed 0.75% Rs. 104,46,052 and deleted 0.25% Rs. 34,82,013	out of 41,68,654, confirmed 0.75% Rs. 31,26,490 and deleted 0.25% Rs. 10,42,1641	out of 20,29,877, confirmed 0.75% Rs. 15,22,408 and deleted 0.25% Rs. 507,469	out of 26,50,649, confirmed 0.75% Rs. 19,87,987 and deleted 0.25% Rs. 662,662	out of 988,697, confirmed 0.75% Rs. 741,523 and deleted 0.25% Rs. 247,174
unaccounted investment			out of 49,02,650, confirmed 0.75% Rs. 36,76,987 and deleted 0.25% Rs. 12,25,662					
unexplained expenditure in				deleted 23,99,260	deleted 446,600			

5. Besides this, the Ld. AR for the assessee has also filed application dated 09.12.2020 requesting for admission of additional grounds under Rule 11 in respect of Assessment Year 2007-08 to 2011-12 which reads as under:

> *"A patently obvious and apparent error of law has taken place in the captioned assessments which is a jurisdictional issue and goes into the root of the matter.*
>
> *2. The search under section 132(1) of the income tax act, 1961 ("the act") was conducted on the assessee on 30.10.2012 (referred to as "first search"). The assessment in respect of the proceedings relating to the said search was to get time-barred on 31.03.2015. However, on 27.03.2014, another search was conducted on the assessee under section 132(1) of the act. The learned assessing officer (referred to as "ld. AO") issued notice under section 153A of the Act on 27.06.2014 in respect of the first search, requiring the assessee to file return of income in respect of the 6 preceding assessment years that is AY 2007-08 to 2012-13. Needless to add, the said notice was issued after the second search which as stated above took place on 27.03.2014. Admittedly, the ld. AO allowed the proceedings initiated consequent to the notice under section 153A after the first search to lapse.*
>
> *3. The ld. AO himself mentions that no action was taken in respect of the notices issued under section 153A of the act in respect of the first search. He proceeded to make an assessment in respect of the search conducted on*

27.03.2014 and allowed that the proceedings for the first search to lapse.

4. *Consequently, he assessed the income of the assessee purportedly based on incriminating documents found during the course of the first search as well as the second search in the assessments under section 153A in consequent to the second search. the assessment for AY 2008-09 to 2011-12 was completed on 29.03.2016 and for AY 2007-08 was completed on 31.03.2015 and it may be pointed out that the first search dated 30.10.2012 was to get time-barred on 31.03.2015.*

5. *It is the contention of the assessee that after the search, the issuance of notices for the 6 preceding assessment years under section 153A is a sine-qua-non and the income has to be assessed/ reassessed consequently. In other words, after the search, the assessment for the 6 preceding assessment years under section 153A has necessarily to take place and there is no scope for any abatement. This is what comes out from the bare reading of the provisions of section 153A of the act. This is also been held by the* ***Hon'ble Delhi High Court*** *in the case of* ***cit vs. Kabul Chawla(2015) (380 itr 573)*** *and many other decisions which followed thereafter. hence, the ld. AO had no option whatsoever but to make an assessment for 6 assessment years preceding the date of the first search and his act of holding the assessment years as abated is contrary to law and the action is to be set aside.*

6. *Your honours will appreciate that this is a legal issue which emanates from the facts on record and does not need any form of actual deliberation. Hence it is manifest that this legal ground which is germane to the existence of the very assessment may deserve to be raised. if the assessee succeeds on this ground, then the material if any, found during the course of first search cannot be used for making the assessment consequent to the second search.*
7. *Without prejudice the aforesaid, it is submitted that the learned commissioner of income tax appeals-30 (referred to as "ld. cit(a)") has deleted the additions made based on the material found during the course of first search by holding that the same is not to be incriminating in nature and the additional grounds so raised support the order of the ld. cit(a) and therefore are permissible under rule 27 of the income-tax (appellate tribunal) rules, 1963. it has been heldby the* ***hon'ble delhi high court*** *in the case of* ***sanjay sawhney vs. pcit it appeal no. 834 of 2019 (116 taxmann.com 701)*** *that assessee is entitled to defend order of the ld. cit (a) before the appellate forum on all grounds, including ground which has been held against him by the lower authority though final order is in its favour.*

In view of aforesaid discussion, the following additional ground is sought to be raised:

1. *"The ld. AO has erred in law in omitting to make an assessment in respect of the 6 preceding years consequent to the search conducted on 30.10.2012 in spite of the mandatory provisions enshrined in section 153A of the act."*
2. *"The ld. AO has erred in law in making use of the evidence found during the course of first search dated 30.10.2012 while making assessment in respect of the search conducted on 27.03.2014. This is contrary to the settled legal position wherein, in respect of completed assessments, no addition can be made unless the search reveals incriminating documents leading to determination of escaped income. Hence while making an assessment consequent to the search; the ld. ao could not have used the material found in another independent search."*

6. In the case of the assessee, a search and seizure action under section 132(1) of the Act was conducted on **30.10.2012** on various business premises of M/s Prakash Industries Ltd. However, before the issuance of notices under section153A, another search under Section 132(1) of the Act was carried out on **31.03.2014** at the business premises of the assessee. Thus, there were two searches carried out in the case of the assessee within a span of two years. Interestingly, the ld. Assessing Officer issued notices under section153A in relation to the **1st search (i.e., on 30.10.2012),** on

27.06.2014 which was after the date of second search for the Assessment Years 2007-08 to 2012-13. However, no return of income was filed in response to this notice. Thereafter, the Ld. AO issued notices on 14.08.2014 under section 153A for A.Y. 2008-09 to 2013-14 in consequence to the 2nd search. In response to this notice, return was filed on 17.11.14. However, the Ld. AO passed a single assessment order for each year from A.Y. 2008-09 to 2013-14 under section 153A of the Act by considering the second search. The orders were passed after limitation period of first search but within limitation period of second search.He did not make any assessment consequent to the first search and allowed it to lapse.He however purportedly relied upon material of both the searches and the enquiries conducted during assessment proceedings under section 153A of the Act. While making assessment consequent to the second search, the Ld. AO passed assessment order under section 153A for AY 2007-08 within the limitation period of the first search using only the material of the first search and the enquiries conducted during assessment proceedings. Thus, no assessment order was passed under section 153A/143(3) in relation to first search conducted on 30.10.2012; and the Assessing Officer took cognizance only of the second search and has passed the impugned assessment orders in relation to the second search.

7. In so far as the assessment year 2010-11 is concerned, the status of the assessment as on date of second search, i.e., 31.03.2014 was as under:

AY	***Date of filing original return***	***Date of filing revised return***	***Due date of order under section 143(3)***	***Status as on date of search- 29.03.2014***
2010-11	*14.10.10*	*31.3.12*	*notice under 143(2) issued but last date of assessment under 143(3) was 31.12.12 and no assessment was made under section 143(3)*	*Completed*

The additions made in this year are as under:

NATURE OF ADDITION MADE BY THE LD. AO	***AMOUNT IN RS.***	***ACTION OF LD. CIT(A)***	***APPEAL BY***
share application money/ warrant application money under section 68 of the act	*41,58,40,000 (22,17,69,200 protective)*	*deleted*	*department and additional ground by assessee*
unexplained brokerage @5%	*20,79,200*	*deleted*	*department and additional ground by assessee*
salary paid in cash u/s 69c	*11,78,500*	*confirmed*	*assessee and additional ground by assessee*
purchase of scrap @ 1% of turnover	*1,39,28,065*	*confirmed 0.75% Rs. 104,46,052 and deleted 0.25% Rs. 34,82,013*	*Assesseeand department*
shifting of profit from steel division to power division by charging higher rates of power generated by power division	*76,35,72,743*	*deleted*	*department and additional ground by assessee*
unexplained expenditure in purchase of land	*23,99,260*	*deleted*	*department*
TOTAL	*119,89,97,759*		

Name of Shareholder	*Amount in Rs.*
Amarjoti Vanijya Private Ltd.- Warrant Application Money	*41,58,40,000*
Total Addition	*41,58,40,000*

8. Before us, the ld. AR for the assessee, Mr. Ajay Wadhwa after narrating the relevant facts and the background of the case stated in his written submissions that, a combined assessment cannot be made under section 153A of the Act for the two separate searches. Provisions of section 153A mandate an assessment in respect of each of the 6 years and therefore, assessments under section 153A were to be mandatorily made in respect of the first search also based on the incriminating material seized, if any.

9. The chart representing the material used in respect of each addition made is reproduced below:

Addition	***Description of Material found***	***Found in which search***	***Page no. of assessment order***
Share Capital	***A1-A14****computation, intimation u/s 143(1), bank statement and schedules of balance sheet of share applicants* ***A15-A25****cheque books of share applicants on which authorised signatory has signed on blank cheques*	***Found in first search***	***2-4,30 reproduced at page 2-4***
Salary paid in cash u/s 69C	*A2 and A6 containing details of proposed cash* *Page 15,26 of A2 and page 51,53 of A6 for AY 2010-11 containing details of proposed cash*	*Found in first search from premises of Assessee company's director, Vipul Aggarwal's*	***36***
Shifting of profit from steel division to power division by charging higher rates of power generated by power division	*A-6 (pg 6,8,37) showing power cost per unit dated 14.5.12 and 20.08.12 @3.04 and 2.09 per unit respectively*	***Found in first search***	***Page 39***
Unexplained expenditure-purchase of	*Electronic data seized at Chapa (party BS-I) in a seized pendrive annexure PDI-1/2)-showing table about land purchases in which 2*	***Found in survey on 30.10.12***	***38 of order Page 318-320, 867-868 of PBK***

land	*columns -cost as per paper and actual amount paid are mentioned*		

10. The Assessee contended that section 153A is a special scheme of assessment of income in case of a searched person and reproduced the relevant portion of section 153A which we are also reproducing for the sake of convenience.

Relevant portion of section 153A is reproduced hereunder:

"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, the Assessing Officer shall—

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

(b)assess or reassess the total income of six assessment years immediately preceding the assessment year relevant

to the previous year in which such search is conducted or requisition is made :

provided that the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

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

11. The Ld. AR for the assessee argued that as per the section, as soon as the search is conducted, the Ld. AO is duty bound to proceed in accordance with the provisions of section 153A of the act. Notice under section 153A shall have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place. Thereafter, the Ld. AO has to determine the total income of the assessee in whose case a search or requisition has been initiated in respect of each of the 6 assessment years. The initiation of proceedings under section 153A is mandatory for all the assessment years falling within the sixyears immediately preceding the assessment year relevant to the previous year in which the search or requisition was made.

12. The AR for the assessee also submitted that the Ld. AO had no option but to make separate assessments for both the searches as the material found for each search was to be used by making consequent assessments under section 153A of the Act.

13. To support his contention the AR also relied on the following judgements:

a. *CIT v. Anil Kumar Bhatia [2013] 352 ITR 493 (Delhi)*

"Under the provisions of section 153A, the Assessing Officer is bound to issue notice to theassessee to furnish returns for each assessment year falling within the six assessment yearsimmediately preceding the assessment year relevant to the previous year in which the search orrequisition was made. Another important feature of this section is that the Assessing Officer isempowered to assess or reassess the 'total income' of the aforesaid yeaRs. This is a significantdeparture from the earlier block assessment scheme in which the block assessment roped inonly the undisclosed income and the regular assessment proceedings were preserved, resultingin multiple assessments. Under section 153A, however, the Assessing Officer has the power toassess or reassess the 'total income' of the six assessment years in question in separateassessment ordeRs.This means that there can be only one assessment order in respect of each ofthe six

assessment years, in which both the disclosed and the undisclosed income would bebrought to tax. [Para 19]

…. With all the stops having been pulled out, the Assessing Officer under section 153A has beenentrusted with the duty of bringing to tax the total income of an assesseewhose case is coveredby section 153A, by even making reassessments without any fetters, if need be. [Para 20]"

b. Hon'ble High Court of Delhi in the case of Kabul Chawla 380 ITR 573 has held that:

"Once a search takes place under section 132, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.

…

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

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

c. Hon'ble High Court of Delhi in the case of MadugulaVenu266CTR 373 has held that:

"section 153a is couched in mandatory language which implies that once there is a search, the assessing officer has no option but to call upon the assessee to file the returns of the income for the earlier six assessment yeaRs. it is not merely the undisclosed income that will be brought to tax in such assessments, but the total income of the assessee, including both the income earlier disclosed and income found consequent to the search, would be brought to tax."

d. Canara Housing Development Co. v DCIT [2014]49 taxmann.com 98 (Karnataka High Court)

"….with all the stops having been pulled out, the assessing officer under section 153a has beenentrusted with the duty of bringing to tax the total income of an assessee whose case is coveredby section 153a, by even making reassessments without any fetters, if need be.the condition

precedent for application of section 153a is there should be a search undersection 132. initiation of proceedings under section 153a is not dependent on any undisclosedincome being unearthed during such search.the proviso to the aforesaid section makes it clearthe assessing officer shall assess or reassess the total income in respect of each assessmentyear falling within such six assessment yeaRs. if any assessment proceedings are pending ***within****the period of six assessment years referred to in the aforesaid sub-section on the date ofinitiation of the search under section 132, the said proceeding shall abate. if such proceedingsare already concluded by the assessing officer by initiation of proceedings under section 153a,the legal effect is the assessment gets reopened. The block assessment roped in only theundisclosed income and the regular assessment proceedings were preserved, resulting inmultiple assessments.*

Under section 153A, however, the assessing officer has been given the power to assess orreassess the 'total income' of the six assessment years in question in separate assessment orders. The assessing officer is empowered to reopen those proceedings and reassess the totalincome, taking note of the undisclosed income, if any, unearthed during the search.he has beenentrusted with the duty of bringing to tax the total income of an assessee whose case is coveredby section 153A, by even making reassessments without any fetters. This means that there

can be only one assessment order in respect of each of the sixassessment years, in which both the disclosed and the undisclosed income would bebrought to tax. When once the proceedings are initiated under section 153A, the legaleffect is even in case where the assessment orders is passed it stands reopened. In the eye of law there is no order of assessment. Reopen means to deal with or begin with again.it means the assessing officer shall assess or reassess the total income of six assessment years.

… on the contrary, it is expressly provided under section 153a the assessing officer shallassess or reassess the 'total income' of six assessment years which means the said totalincome includes income which was returned in the earlier return, the income which wasunearthed during search and income which is not the subject-matter of aforesaid twoincome.

e. Hon'ble High Court of Bombay in the case of JSW Steel Ltd.422ITR 71 has held that:

"the assessing officer is mandated to issue notice to such person to furnish return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. such returns of income shall be treated to be returns of income furnished under section 139. Once returns are furnished, income is to be assessed or re-assessed for the

six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.thus, once section 153-a(1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or re-assessment. two aspects are crucial here. one is use of the expression "notwithstanding" in sub-section (1); and secondly that returns of income filed pursuant to notice under section 153-a (1)(a) would be construed to be returns under section 139. the use of non obstante clause in sub-section (1) of section 153-A i.e., use of the expression "notwithstanding" is indicative of the legislative intent that provisions of section 153-A(1) would have overriding effect over the provisions contained in sections 139, 147, 148, 149, 151 and 153."

f. PCIT v Saumya Construction (P.) Ltd. 2016] 387 ITR 529 (Gujarat)

"15. on a plain reading of section 153A of the act, it is evident that the trigger point for exerciseof powers thereunder is a search under section 132 or a requisition under section 132a of theact. once a search or requisition is made, a mandate is cast upon the assessing officer to issuenotice under section 153A of the act to the person, requiring him to furnish the return ofincome in respect of each assessment year falling within six assessment years

immediatelypreceding the assessment year relevant to the previous year in which such search is conductedor requisition is made and assess or reassess the same. since the assessment under section153a of the act is linked with search and requisition under sections 132 and 132A of the act, itis evident that the object of the section is to bring to tax the undisclosed income which is foundduring the course of or pursuant to the search or requisition. however, instead of the earlierregime of block assessment whereby, it was only the undisclosed income of the block periodthat was assessed, section 153A of the act seeks to assessee the total income for the assessmentyear, which is clear from the first proviso thereto which provides that the assessing officer shallassess or reassess the total income in respect of each assessment year falling within such sixassessment years."

g.Jai Steel (India), Jodhpur v ACIT[2013] 259 CTR 281 (Rajasthan)

A plain reading of the provision of section 153A would reveal that if a search or requisition is initiated after 31-5-2003, the assessing officer is under an obligation to issue notice to such person, who has been subjected to search/requisition to furnish the return of income of six years immediately preceding the year of search. The assessing officer is then required to assess or reassess total income of the said six years and, out of the six years,

if any assessment or reassessment is pending on the date of initiation of the search, the same would abate i.e., pending proceedings qua the said assessment year shall not proceed thereafter and the assessment has to be made under section 153(1)(b) read with the first proviso thereunder. [para 15]

Besides this, he also relied upon various judgments of the Tribunal.

14. The second limb of argument was that assessment in pursuance of first search did not abate due to the subsequent search. The Ld. AR for the assessee stated that as soon as a search takes place, section 153A comes into play and a notice for 6 years has to be necessarily issued and assessment/ re-assessment for those years has to be made. This process has to be followed to consummate and put at rest the proceedings consequent to search which have resulted into assessment. There is no scope for not issuing notices and not making assessment once a search has taken place. The Ld. AR for the assessee contended that the Ld. AO cannot take shelter under a subsequent search to hold that the first search related assessments have abated and therefore no notice and consequent assessments have to be made pursuant to the first search. This interpretation will defeat the intent and purpose of the legislature which mandated that after every search, six preceding years assessment be made and the material found in the said search be used for determining undisclosed income, if any. The process of abatement is only to tackle pending assessments consequent to

returns filed under section 139(1) on the date of search, in respect of which notices under section 143(2) have been issued or the time period for issuing the said notice has not expired. It does not apply to pending search related assessments so as to abate them or prevent them from being completed. Hence, once a search has taken place, the Assessing Officer will simply make assessments under section 153A of the Act and not wait for another search to take place so that the assessment relating to the first search do not have to be made. The Ld. AR stated that there is another reason why the search related assessment cannot abate. It is a settled law that search related material can be used for assessment consequent to that search alone. The said material cannot be used in the 2nd, 3rdor 4th search and so that may take place in the future. Hence, even search material has to meet its nemesis in the consequent assessment proceedings relating to that search alone. Therefore, the second proviso of section 153A abates only the pending assessments which shall be merged with the assessment under section 153A of the Act as a result of search.

15. The AR for the assessee further stated that no return was filed consequent to the first search and hence proceedings are not pending.He then elucidated the meaning of the word “Pending” used in proviso to section 153A of the Act. The meaning of the word pending can be inferred from section 245A of the Act.As per explanation (iiia) to section 245A of the Act“a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of a

person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the date on which the assessment is made.

16. The AR then stated that the notices of assessments in pursuance of the first search were issued only after the date of second search. Therefore in the very first place, on the date of second search, no return was filed in pursuanceto the notice under section 153A relating to the first search and therefore no proceedings were pending in respect of the first search on the date of second search. Hence if no proceedings relating to the first search were pending, there can be no abatement of the same.

17. The AR futher stated that the words 'Assess or reassess' used in section have been defined in the case laws and from the language, it is very clear that the word pending is used in context of original assessments and original returns and not in regard of assessments under section 153A. Some of the decisions relied upon for the propositions are briefly referred hereinunder:

a. Kabul Chawla – Delhi HC – 380 ITR 573

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

search) and the word 'reassess' to complete assessment proceedings."

b. DCIT v Rajlaxmi Denim [2019] 71 ITR(T) 173 (Jaipur - Trib.)

The term "assess" in section 153a is used in respect of the assessments which are pending as onthe date of search and got abated whereas the term reassess is used in respect of thoseassessment years where the assessment was already completed and was not pending as on thedate of search,

thus, any proceedings of assessment or reassessment falling within six yearsprior to the search or acquisition stood abated, and total income of the assessee was required tobe determined under section 153a and not under the proceedings under section 143(3) whichalready stood abated by virtue of search. [para 6]

c. ACIT v. Pratibha Industries Ltd. [2013] 23 ITR(T) 766 (Mumbai)

"thus it is a case of valid notice under section 153a, with no undisclosed income to be clubbed with income originally assessed and finalized."

d. Scope (P.) Ltd. V DCIT [2013] 142 ITD 515 (Mumbai)

once the assessing officer has issued notice under section 153a inviting the return ofincome, he is duty bound to proceed with the reassessment proceedings and apart fromthe income already assessed in the original assessment completed under section 143(3),he can assess the total income of the assessee by making the addition on account ofundisclosed income or the income escaped assessment."

e. Canara Housing Development Co. v DCIT [2014]49 taxmann.com 98 (Karnataka High Court)

if any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under section 132, the said proceeding shall abate.

18. The next argument of the AR for the assessee was that the proviso to the section cannot override its main section which provides for the mandatory assessment under section 153A of the Act where search has conducted. Section 153A is a special code of assessments relating to search and seizure which overrides the other assessments related provisions of section 139, 147, 148, 149, 151 and 153 of the Act.He further argued that the proviso to the section 153A cannot abate the proceedings relating to section 153A rendering the section ineffective and otiose when a search takes place. The pending assessments on the date of search have to be seen inthe context what was pending in terms of original assessments i.e under section 143(2) or 147 of the Act.It is a cardinal rule of interpretation, that a proviso to a particular provision of a statute only embraces the field that is covered by the main provision to which it has been enacted as a proviso and to no other. A proviso is subsidiary to the main section and it must be construed in the light of the section itself. The object of the proviso, as it has so often been stated, is to carve out from the main section a class or category to which the main section does not apply. But in carving out from the main section one must always bear in mind

what is the class referred to in the main section and must also remember that the carving out intended by the proviso is from the particular class dealt with by the main section and from no other class.Hence, the proviso cannot render the entire main section inoperative.

19. The AR of the assessee also stated that in construing a proviso of a section, a situation giving rise to anomaly and absurdity must be avoided.The proviso to the section has to be read so as not to restrict the beneficial effect of the meaning of the section.It has to be borne in mind that when the proviso is conflicting with the main section it should be so interpreted that, if possible, effect should be given to both.This is the essence of the rule of "harmonious construction". An interpretation which reduces the provisions of the section as a "dead letter" or “useless lumber" is not harmonious construction. The proviso in the Act under consideration is a limiting provision to the main provision and not a substantive provision in itself.The general rule about the interpretation of a proviso is that proviso is not to be taken absolutely in its strict literal sense but is of necessity limited to the ambition of the section which it qualifies.Hence, the proviso cannot be read to mean that no assessment consequent to first search will be made if it is pending on the date of the second search. This will defeat the very intent and purpose of the section which mandates assessment for 6 preceding assessment years consequent to a search.The proviso to section 153A can only carve out the exception which is not the intention of the main enactment but cannot nullify its main section i.e, the

second proviso cannot override section 153A and abate the mandatory assessments that have to be made under section 153A of the Act. Therefore if section 153A provides for the mandatory assessment where search has been conducted, its proviso cannot invalidate what the main section directs by abating the assessments which are pending under section 153A of the Act. Thus, the proviso should be read in such a way which should not nullify the effect of its main section but should be read only to abate the assessments which were originally pending under any other section of the Act.Thus the proviso to the main section cannot override the section and abate the mandatory assessment proceedings initiated under section 153A of the Act.Section 153A does not abate section 153A assessment. If that interpretation is accepted then what can even follow is that two assessments can get abated for the same assessment year if let's says two searches takes place within a month which is an absurd and illogical fallout of the interpretation made by the Ld. AO.

19. The AR then interpreted the sections and the word "assessment". He stated that there are three types of assessments:

The marginal note of Section 143 is "Assessment"

The marginal note of Section 147 is "Income Escaping Assessment"

The marginal note of Section 153A is "Assessment in case of search or requisition"

The proviso to section 153A talks about "assessment and reassessment" and not "assessment in case of search or requisition".

20. He further contended that the word "shall" is used in section 153A for both, issuance of notice consequent to search and mandatory assessments thereafter.In fact, the word has been used again in the first proviso expressing a strong assertion that assessments are to be mandatorily made for each of the 6 years once a search takes place. The word shall is also used in section 143 which means that assessments under section 143(3) are mandatory after issuance of notice under section 143(2). However, in the section 147 "Income escaping assessment" the word used is "may" which means that the AO may or may not pass an order. Therefore, whenever a search takes place under section 153A, assessment for the six preceding years, has to take place. From a plain reading of the second proviso, it can be seen that the second proviso does not talk of situation where all 6 years are pending on the date of search. It takes into account where some years are pending and some are completed. Therefore, the second proviso does not apply to a situation where the first search can be treated to be pending in toto in respect of all 6 AYs. The Ld. AO's reason perhaps is that on the date of second search, all 6 years were deemed to be pending due to the first search and hence are to abate. The third proviso also gives power to Central Government to make

assessment in terms of completed assessments and not pending assessments. This section also talks of pending and completed assessment in the 6 year period prior to search. It does not even visualize a situation where all 6 years are pending.

21. The AR stated that on the date of second search, no proceedings consequent to first search were pending as no notice under section 153A had been issued and therefore, no return consequent to first search was filed. Hence, on the date of second search, if no proceedings related to first search could be said to be pending, quite obviously they cannot be abated. Therefore, if the second search took place within let say 3 months, only the assessment under section 143 and reassessment under section 147 shall abate.Assessments under section 153A i.e, "Assessment in case of search or requisition" shall not abate by operation of section 153A itself. In the year of search, no notice has to be issued under section 153A consequent to a search. However in the 6 preceding years, notice under 153A has to be mandatorily issued. On the date of the second search, since no notice was issued for any of the years relating to first search and therefore no return was filed, year of search was same as these 6 preceeding years which means 6 years become year of search. Every year is equal to year of search. This interpretation would lead to absurd results and hence deserves to be eschewed.

22. The next limb of the argument was that material found during the first search was not incriminating and does not even pertain to the assessment year in which addition is made andeven otherwise most of the documents relied upon for making assessment pertained to those found during post search. The AR placed a chart in his submissions which is reproduced below:-

Description of Material found	***Found in which search***	***Page no. of assessment order***
A1-A14 *computation, intimation u/s 143(1), bank statement and schedules of balance sheet of share applicants* ***A15-A25****cheque books of share applicants on which authorised signatory has signed on blank cheques*	***Found in first search***	***2-4, 30 reproduced at page 2-4***

23. The Ld. AR for assessee stated that material found during the course of first search cannot be used in making assessments in pursuance to the second search. If the department has not made an assessment in pursuance to the first search, material found during the course of the said first search cannot be used in respect of the assessment years relating to and in consequence of the 'second' search. According him, material found during search does not even pertain to the impugned assessment year and infact in the description given by the Ld. AO himself, at page 2 of the order, only A21 pertains to cheque book of M/s Amar Jyoti

Vanijya Pvt Ltd in respect of which addition has been made and rest all the annexures pertain to cheque books of other companies in respect of which no addition has been made and no share capital has been received from such companies during the impugned year. The cheque book is blank with signatures of authorised signatories and quite obviously does not pertain to any specific assessment year and therefore cannot be used for making the addition in AY 2010-11. The seized material available with the Ld. AO has no nexus with the assessments in which addition has been made and is wholly irrelevant for the purpose of assessing the income of the Assessee for the year in question. Admittedly, there is no incriminating material in the years for which addition has been made.The Ld. AR further stated that the detail shown by the Ld. AO at page 3-4 of the order shows reference to 5 annexures (A2, A4, A6, A8, A12) that are trial balances, ledgers, journals, bank books, cash book, bank statement, notices, assessment order, ITR, computation of income, intimation under section 143(1), audit report, balance sheet, directors report, accounting policies, Annual Return, certificate of incorporation, Form 16A, Form 5 and Form 66 pertaining to share capital, return on allotment of shares, F-32 filed with ROC, papers relating to correction of PAN, dividend payment advice, portfolio statement, copy of resolution, Memorandum and Articles, minutes, statement of holdings, master reports, etc. pertaining to investor companies in respect of which the additions have been

made.The description at page 3-4 of the order also mentions the assessment year to which the document relates. Only the following documents pertain to the AY 2010-11.

24. He then placed a chart in his submissions which is reproduced below:

Annexure	***Page No.***	***Description***	***Whether Incriminating***
A-6	*37*	*Computation of income of M/s AmarjyotiVanijaPvt. Ltd. for AY 2010-11*	*Not manifested*
A-6	*69*	*Statement of Bank account in SBI Kapashera of Amarjyoti Vanijya Pvt Ltd. dated 9-3-2010*	*Not manifested*
A-6	*74-77*	*Intimation u/s 143(1) of the IT Act of Amarjyoti Vanijya Pvt Ltd. for the AY 2010-11*	*Not manifested*
A-8	*11 to 12*	*Copy of schedule of balance sheet as on 31.3.2010 of Amarjyoti Vanijya Pvt Ltd.*	*Not manifested*

25. The Ld. AR relied upon the following case laws wherein it has been held that seized material must have a nexus to the assessment year in which addition is being made:

a. CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi)

"Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence

found, it does not mean that the assessment 'can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this section only on the basis of seized material.'"

b. *Principal Commissioner of Income-tax, Central -2, New Delhi v.MeetaGutgutia [2017] 395 ITR 526 (Delhi)*

...the legal position, as will be discussed shortly, is that there can be no addition made for a particular assessment year without there being an incriminating material qua that assessment year which would justify such an addition...the court is unable to accept the submissions of revenue that there was incriminating material other than what has been discussed in the orders of the assessing officer, commissioner (appeals) and the tribunal for the assessment years in question...[paras 38 & 39]

it was also noted by the assessing officer - and this has not been disputed by the assessee - that a sum of rs. 1.10 crores was offered by the assessee as income in the year of search. although it was repeatedly urged by that the documents seized and furnished by pertained to the assessment years other than the year of search, clearly, no such question was put to. it should have been easy for the investigating officer to ask 'pa' of the particular assessment year to which the document related to. however, that was not done.therefore, only the statement makes a disclosure about the earlier undisclosed income and stating that the offer of such income was being made "to buy peace of mind". therefore, the statement recorded under section 133a can hardly be said to be incriminating material. [para 44]

...in the circumstances, it is not possible to accept the plea of the revenue now made that the so-called additional incriminating material qua each of the assessment years could not be verified and, therefore, not discussed by the assessing officer because the assessee did not produce its books of account. it appears that the revenue did have access to the entire books of account of the assessee which were also shown to have also been maintained in soft form on the computers of the assessee which were already seized by the revenue during search operations. [para 46]

In the remand proceedings, the assessing officer could not dispute the above information. as already noticed, the assessee had brought with herself all the franchisee agreements to substantiate submission made in her affidavit. it is for this reason that in the commissioner (appeals) for assessment year 2004-05, it held: "no evidence to dispute the affirmations in the affidavit have been brought on record by the assessing officer in the remand proceedings'. the estimated additions were therefore held to be unsustainable in law as they were based on a misconception as to the factual position with regard to the number of outlets in existence during the relevant previous year as well as on the suspicion that the assessee must have earned undisclosed income during the year under appeal. it has been categorically found by the commissioner (appeals) on facts that no incriminating material in relation to the assessment years in question i.e., 2001-02 to 2003-04 had been brought on record which could support such presumption. [para 48]"

...as rightly pointed out by assessee that nothing was brought on record by the assessing officer to show that there was failure on part

of the assessee to make a disclosure as regards the franchisee income in any of the earlier years. the incriminating material had to be in relation to any income that was not disclosed in the earlier returns.there was no such incriminating material to show that there was a failure by the assessee to disclose any franchisee income for those earlier years. the disclosure by the assessee on account of 'undisclosed franchisee commission' was relevant only for the year of search and not for the earlier years. [paras 49 & 50]

section 153a is indeed an extremely potent power which enables the revenue to re-open at least six years of assessments earlier to the year of search. it is not to be exercised lightly. it is only if during the course of search under section 132 incriminating material justifying the re-opening of the assessments for six previous years is found that the invocation of section 153a qua each of the assessment years would be justified. [paras 56 & 57]

the court is of the view that the tribunal was justified in holding that the invocation of section 153a by the revenue for the assessment years 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those assessment years. [para 71]"

c. *Principal Commissioner of Income-tax, Delhi-2 v. Best Infrastructure (India) (P.) Ltd. [2017] 397 ITR 82 (Delhi)*

"turning to the facts of the instant case, it requires to be noted that the statements of one of the directors of company, made it plain that the surrender made by him was only for the assessment year in question and not for each of the six assessment years preceding the year of

search. Therefore, it could not be said to be incriminating material qua each of the preceding assessment years. [para 36]

For all the aforementioned reasons, the tribunal was fully justified in concluding that the assumption of jurisdiction under section 153a qua the assessee was not justified in law. [para 39]"

d. *CIT v. Lachman Dass Bhatia [2012] 26 taxmann.com 167 (Delhi)*

"It has also been recorded by the commissioner (appeals), whose decision has been confirmed by the tribunal, that the documents upon which the assessing officer placed reliance relate to a subsequent period and not to the years under consideration. they relate to the period from 1-11-2005 to 18-11-2005. it has thus been concurrently found by the commissioner (appeals) and the tribunal that even if an estimate of the gross profits has to be made, it has to be based on valid material which was absent in the present case and that there was no justification for making an addition for low gross profits on pure guesswork.

in such circumstances, the tribunal was right in deleting the additions made to the gross profit declared by the assessee.. [para 7]"

26. With respect to the signed cheque books found during the course of search, the AR stated as under:

"Signed cheque books, portfolio statement, ITR, computation of income and Audited Financials of promoter companies found at Assessee's premises are not incriminating.

a) *The material seized by the department relating to the AY in question is the computation, intimation u/s 143(1), bank statement and schedules of balance sheet of share applicants. All these statutory documents are public documents and available in public domain and already available with the department. None of the documents seized from the premise of the Assessee is of such nature which is not available with the department. No new information was coming out from the seized documents.*

b) *Signed blank cheque books, computation, intimation u/s 143(1), bank statement and schedules of balance sheet of promoter companies found in the premises of the searched person belonging to shareholder of searched person by no stretch of imagination constitute incriminating material. The directors of the investor companies were the employees of the Assessee and the investors are the promoter group companies of the Assessee. Therefore presence of cheque books at the premises of Assessee where directors were sitting is not illegal and cannot be used against the Assessee.*

c) *The Assessee has already submitted before the Ld. AO that these documents belong to the promoter group companies and were lying with the Assessee for filing statutory returns, paying taxes, fees and statutory dues, for general routine work of ROC, income tax and return filing, etc. The Assessee also filed name, address of registered office, PAN and name of directors*

of promoter group companies and stated that all directors of promoter group companies were under employment with Assessee company Refer page 244, 245, 247-251 of PBK."

27. In support, the Ld. AR for assessee relied upon the following case laws to strengthen his arguments that seized documents must be incriminating and must relate to the impugned ASSESSMENT YEAR.

a. ***M/S Goel International Pvt.vsDcit, ITA No. 1453/Del./2013 M/s. Galaxy Rice Industries Pvt. Ltd V DCIT ITA No. 1452/Del./2013***

"furthermore, three blank documents were found with respect to these companies. these are blank share transfer forms, special power of attorney signed by the authorized signatories and blank receipts against the shares. all these three documents are admittedly non-executed and do not show any transactions. had there been any transaction recorded on blank share transfer forms, receipts regarding any money or transfer in favour of any person, it would have made them suspicious. the entries in those forms are not at all made, but are merely blank.theassessee has given detailed explanation why they were found at the place of assessee. the assessing officer has not examined the signatories of these documents to arrive at the true nature of the transactions.the assessing officer is just making an assumption that these are the documents which would have been used by the assessee for

transferring those shares in the name of the promoters or their group concerns at a price which is far less than the price of shares issued. it is not the case of the assessing officer that either such shares are subsequently transferred at lower price, or such shares stood disposed of by the investor companies. in view of this, the case of the revenue is merely based on assumption and surmises."

10. according to the provisions of section 68 of the act, any sum found credited in the books of

account of the assessee, if the nature and source of such sum is not explained by the assessee to the satisfaction of the assessing officer then such sum can be added by the assessing officer to the income of the assessee. therefore, prima facie, it provides that if the assessee has explained the nature and source of such income or such credit before the assessing officer and the assessing officer does not carry out adequate verification, or even after verification, nothing incriminating feature turns out, then it does not throw the onus back on the assessee.

b. ***M/S. Gee IspatPvt. Ltd., New Delhi vs Acit4256-4259/Del/2014 and M/s Gee IspatPvt. Ltd., V ACIT ITA No. 5424,5425,5475,5476/Del/2014***

during the course of search at the assessee's premises blank singed share transfer forms of some of the descript companies, who were shown as investors in the share capital of the assessee company were found and seized and that the action

u/s 132 of the act revealed that shares held by nondescript companies had been transferred to the directors and their family members at much lower price.

"24. in the present case, since no incriminating material was found, therefore, the addition made by the ao u/s 153a of the act was not justified.

26. a similar view has been taken by the hon'ble jurisdictiona l high court in the case of pr. cit vs meetagutgutia prop. M/s ferns "n" petals (2017) 395 itr 526 (supra) wherein it has been held as under:

"any and every document cannot be and is not an incriminating document. no addition can be made for a particular assessment year without there being an incriminating material qua that assessment year which would justify such an addition."

c. ***Hon'ble High Court of Delhi in the case of RRJ Securities (380 ITR 612) has held that:***

Facts:

search was conducted on 20.10.2008 – certain documents belonging to the assessee company and a computer hard disk containing ***soft copies of working papers, balance sheets and data for income tax filings,*** *were seized during the search - photocopy of a* ***single sheet of 'record slip' of a cheque book*** *pertaining to a bank account no. 124002000001410 with centurion bank of punjab limited, tilak nagar branch, new delhi. the said record slip -* ***which formed***

a part of the cheque book – contained three entries pertaining to cheques issued on 11th august, 2008, 27th august, 2008 and 10th december, 2008 *respectively -*

held:

it is not disputed that the said hard disk also did not contain any incriminating material as the data on the hard disc only supported the return filed by the assessee.

Insofar as the documents referred to as pages 126 to 179 of annexure a-34 is concerned, admittedly, ***the same only consisted of a single page of the record slip of a cheque book and other pages were blank.*** *the record slip only contained three entries reflecting issue of three cheques on 11th august, 2008, 27th august, 2008 and 10th december, 2008 respectively. thus, it is apparent that the said document had no relevance for the assessment years in question i.e.ays 2003-04 to 2008-09. in the circumstances, the issue to be addressed is whether proceedings under section 153c of the act could be initiated on the basis of this document.*

The record slip belongs to the assessee and, therefore, the action of the ao of the searched persons recording that the same belongs to the assessee cannot be faulted. however, the question then arises is whether the ao of the assessee was justified in taking further steps for reassessing the income of the assessee in respect of the assessment years for which the assessments were concluded and in respect of which the seized document had no bearing. in our view, the same would be clearly impermissible as the seized material now available

with the ao, admittedly, had no nexus with those assessments and was wholly irrelevant for the purpose of assessing the income of the assessee for the years in question. merely because a valuable article or document belonging to an assessee is seized from the possession of a person searched under section 132 of the act, does not mean that the concluded assessments of the assessee are necessarily to be re-opened under section 153c of the act. in our view, the concluded assessments cannot be interfered with mechanically and solely for the reason that a document belonging to the assessee, which has no bearing on the assessments of the assessee for the years preceding the search, was seized from the possession of the searched persons.

As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the assessee for the relevant assessment years and could not possibly reflect any undisclosed income. this being the undisputed position, no investigation was necessary.

d. *Hon'ble High Court of Delhi in the case of Index Securities Pvt. Ltd. (86 taxmann.com 84)*

HELD:

as regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the ays whose assessments are sought to be reopened, the decision of the supreme court in sinhgad technical education society (supra) settles the issue and holds this to be an essential requirement. the decisions of this

court in rrj securities and arn infrastructure india ltd. v. asstt. cit [2017] 394 itr 569/81 taxmann.com 260 (delhi) also hold that in order to justify the assumption of jurisdiction under section 153 c of the act the documents seized must be incriminating and must relate to each of the ays whose assessments are sought to be reopened. since the satisfaction note forms the basis for initiating the proceedings under section 153 c of the act, it is futile for mrmanchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.

In the present case, the two seized documents referred to in the satisfaction note in the case of each assessee are the trial balance and balance sheet for a period of five months in 2010. in the first place, they do not relate to the ays for which the assessments were reopened in the case of both assessees. secondly, they cannot be said to be incriminating. even for the ay to which they related, i.e. ay 2011-12, the aofinalised the assessment at the returned income qua each assessee without making any additions on the basis of those documents.consequently even the second essential requirement for assumption of jurisdiction under section 153 c of the act was not met in the case of the two assessees.

e. ***CIT v. Blue Lines [2014] 50 taxmann.com 425 (Karnataka)***

"The reason given by the tribunal is, though there was a seizure and there were materials seized in the search, the said materials did not reflect the name of the assessee. most of the

cheques were stale and some other cheques were blank and some other cheques were in the name of the third parties.

3. in the facts of these cases, we are of the view that the finding recorded by the tribunal on this aspect cannot be found fault with and therefore, we are not going into the legal issue regarding the scope of presumption, which arises under section 147, read with section 143(3) and in fact in other three appeals also, similar finding was recorded by the tribunal."

f. ***M/S. BRAHMAPUTRA FINLEASE (P) LTD. VERSUS DCIT, CENTRAL CIRCLE -17, NEW DELHI [No.- ITA No. 3332/Del/2017 59***.

Search proceeding under section 132 of the Act at the premises of the assessee, a survey under section 133A of the Act was also carried out at the premises of Sh. M.L. Aggarwal, Chartered Accountant located at N-5, Azadpur, Commercial Complex New Delhi and documents including blank signed share transfer form, blank signed money receipts for transfer of shares, blank signed power of attorney, Memorandum and Articles of Association with some ROC papers and copy of bank statements etc. in relation to one of the share applicants, i.e., Edward Supply P. Ltd. were impounded from his premises.

"4.9 Now regarding the second condition, the ld. cit(dr) has mentioned that documents impounded from the premises of sh. m.l. aggarwal, chartered accountant, during the course of

survey proceeding are incriminating material found during the course of search. we do not agree with the contention of the ld. cit (dr) that these materials like blank shares transfer forms etc could be termed as found during the course of search at the premises of the assessee. the survey proceedings carried out at the premises of the chartered accountants, ml aggarwal are separate from the search proceedings carried out at the premises of the assessee. There is no concept of group of assessee in income-tax assessments. Each assessee is treated separately. ...further, the assessing officer in the impugned order has not brought on record what was incriminating in the said material impounded from the premises of sh. m.l. agrawal. in view of our discussion, we reject the above contentions of the ld. cit(dr) that any incriminating material qua the addition was found during the course of the search action under section 132 of the act.

4.11 We find that the item no. (i) contains recording in the name of "shri shyamtrexim&fincom pvt. Ltd". The assessing officer has nowhere brought on record how the said recording on the page relates to the addition in question of share capital. the ld. cit(dr) also could not explain as how the said recording was related to the addition in question made in respect of alleged unexplained share capital. She only stated that said recording on the page reflected accommodation entry obtained by the 'brahmaputra group' and but no documentary evidence regarding the claim that the document was incriminating qua the addition, are filed."

4.20 In view of the above finding, both the conditions as completed assessment and no incriminating material, have been satisfied in the case, thus,no addition could have been made in the instant assessment year in view of the finding of the hon'ble delhi high court in the case ofkabulchawla (supra).

28. Here in this case since no incriminating material was found during the course of search and assessment for Assessment Year 2010-11 was completed and got finally concluded before the date of search, therefore addition cannot be made in case of completed assessments in absence of incriminating material found in that search. Now it is well settled proposition that in the case of completed assessment addition has to be restricted the material found during the course of search in view of the aforesaid judgments cited supra, Like **CIT vs. Kabul Chawla, reported in (2016) 380 ITR 573(Delhi), PCIT vs. Meeta Gutgutia as reported in (2017) 395 ITR 526 (Delhi), PCIT vs. Kurele Paper Mills P. Ltd. (2016) 380 ITR 571 (Delhi)** and finally judgment of Hon'ble Supreme Court in the case of **CIT v. Singhad Technical Education Society (2017) 397 ITR 344 (SC).** Further, Hon'ble Delhi High Court in the case of PCIT vs. SMC Power Generation Ltd. (Delhi HC) in ITA No.406/2019 has observed as under:

*"7. At the outset it is required to be noticed that the Revenue's appeal against the decision of this Court in **Kabul Chawla (supra)** has been dismissed by the Supreme Court on account of the low tax effect. However, learned counsel for the Revenue states that there are other appeals of the Revenue pending in*

the Supreme Court questioning the correctness of the said decision. Nevertheless the fact remains that there is no stay of the operation of the decision of this Court in ***Kabul Chawla (supra)*** *and it continues to hold the field.*

8. Learned counsel for the Revenue submitted that the observations of the ITAT in the impugned order that there was no incriminating material "in respect of the share capital" and therefore the addition was unjustified, was not warranted. According to her this was beyond the judgment of this Court in ***Kabul Chawla (supra).***

9. The fact remains that the Revenue itself is not disputing that in respect of the share capital no incriminating documents were found in the search proceedings. The Court's attention has been drawn to the decision of the ***Supreme Court in CIT v. Singhad Technical Education Society (2017) 397 ITR 344 (SC)*** *where in the context of Section 153C of the Act it was held that the incriminating material which was seized had to pertain to the AY in question. It is further held that documents seized had to establish a co-relation documents wise with the assessment years for which the addition was sought to be made.*

10. The requirement that the incriminating material to have the co-relation to the particular addition sought to be made is a logic that will hold good not only for Section 153 C of the Act but in relation to Section 153A of the Act as well.Consequently, this Court does not find any error having been committed by the ITAT in accepting the plea of the Assessee that there is no

incriminating document which was seized in the course of search relating to the addition sought to be made on account of the share capital. Therefore, the jurisdictional requirement of Section 153 A of the Act was not satisfied."

28. The next limb of argument of Ld. AR for assessee was that the Assessing Officer has relied upon the statements of the following persons for making the additions; Ved Prakash Aggarwal (Chairman of M/s Prakash Industries), Pawan Guleria and Sudhir Kumar Bali (directors of group companies), Shiv Shankar Banka and Babu Lal Banka (alleged entry operators), Ashok Aggarwal (mediator), Matbar Singh Rawat (old director of associate companies).

29. In respect of the statements of the above mentioned persons, the arguments of the Ld. AR for assessee are as under:

a) ***Statement of Ved Prakash Aggarwal (Chairman of Assessee) recorded on 31.10.12referred to at page2, 10, 11, 13, 14, 16, 26, 27, 30, 31, 35 of the order and also at page 131-157 , 143, 149 of the paperbook****wherein he stated that cash generated by Assessee was handed over to entry operator who deposited the cash in paper companies and routed to Assessee as investments and also admitted to have received brokerage.*

Ved Prakash Aggarwal retracted his statement immediately before the Additional Director of Income-tax vide letter dated 2.11.2012 and 21.3.2013 attached at ***page 158- 162 and 163-164 of the paperbook*** *stating that the admission was based on coercion and force. The same was also stated before the Ld. AO* ***at page 12, 15, 16 of the order and page 302-303, 305 of PBK and the Ld. CIT at page 530, 531, 548, 612,615,616,618,619,628***

Without prejudice, Mr. VP Aggarwal in his statement has stated that the amounts are taxable in the year in which they were introduced in the group companies and therefore as per Annexure A of his statement, no amount is taxable in impugned AY ***(Refer page 147-148 of paperbook).***

The Ld. AO has relied on his statement however, the Ld. AO states that no evidence is given that the money is not taxable in the impugned AY. The Ld. AO therefore only relies on part of the statement and does not believe other part of it to be true.

b) ***Statement of new directors- Pawan Guleria and Sudhir Kumar Bali referred to at page 11, 19-22, 27, 30 of the order and also at page 178-182 and 183-187 of the paperbook***

Statement of Pawan Guleria (new director of Ankit Nivesh Management, AmarjyotiVanija Pvt Ltd and Lokpriya Trading) on 31.10.12*wherein he has stated*

that he was commercial Manager of the Assessee Company and did not know anything about the Assessee Company and was a director for name sake only.

Statement of Sudhir Kumar Bali (new director of AnkitNivesh Management and Lokpriya Trading) on 30.10.12 *wherein he stated that he was AGM (IT) of Assessee Company and did not know anything about the Assessee Company and was a director for name sake only.*

Statements at best state that the directors were ignorant but there is nothing stated such that conclusion be drawn that share capital has been received through accommodation entry.

c) *Statement of Shiv Shankar Banka and Babu Lal Banka referred to at page 11,18,19, 27, 29,30 of the order and also at page 176-177 and 192-197 of the paperbook*

Statement of Shiv Shankar Banka (Entry Operator) on 31.10.12*wherein he stated that he provided accommodation entry to Assessee's group companies through Mr. Ashok Aggarwal and he controlled the companies – M/s SarvottamCommodeal Pvt. Ltd. and M/s Sanskriti Tie Up Pvt Ltd. and they were paper companies subsequently taken over by Assessee company.*

Statement of Babu Lal Banka on 31.10.12 *wherein he stated that funds provided by Assessee were converted into accommodation entries through paper companies*

The statement of Shiv Shankar Banka was retracted immediately by him before the Additional Director of Income-tax vide letter dated 5.11.2012 attached ***at page 176-177*** *stating that the admission was forcibly taken. The same was also stated before the Ld. AO at* ***page 303 of PBK and also referred to at page 12 of the order and before the Hon'ble CIT(A) at page 532,546,616 of PBK***

d) ***Affidavit of Ashok Aggarwal (mediator) on 24.01.2013 referred to at page 11,15 of the order*** *in which he statedthat he introduced Sh. PL Gupta of Assessee Company with entry operator Shiv Shankar Banka.*

The affidavit of Mr. Ashok Aggarwal was retracted immediately by him before the Additional Director of Income-tax vide letter dated 28.1.2013 and 2.11.2012 attached ***at page 169-171 of the paperbook****. The same was also stated before the Ld. AO* ***at page 303 of PBK and also referred to at page 12 of the order and before the Hon'ble CIT(A) at page 532, 546,616 of PBK***

e) *Statement of Matbar Singh Rawat on 30.10.2012 referred to at page 22,23 of the orderand also at page 198-203 of the paperbook*

His responses are regarding companies none of which are the investor companies in the impugned AY.

The Ld. AO held that retraction is an afterthought

However, the Ld. AO has held that AO held that the retraction is an afterthought and has not considered the retraction and placed reliance on the statement obtained under threat by the department. The statements given under duress or coercion have no admissibility under the law.

The statements were taken at midnight under pressure and coercion. It has been held by various courts that in normal circumstances, it is too much to give any credit to the statement recorded at such odd hours and such statement cannot be considered to be a voluntary statement, if it is subsequently retracted. The statements relied upon by the Ld. AO have been retracted within a span of 2-3 days and the retractions were also filed before the Ld. AO and the Ld. CIT(A) ***Refer page 302, 303, 305 of PBK****. It is trite that when Assessee has retracted from disclosure made in statement and if no undisclosed income was found during search, the department cannot make additions on bare*

suspicion and presumption and solely on the basis of the statement.

CBDT instructions state that confessions are often retracted by filing returns of income and the focus should be on collection of evidence of undisclosed income and no attempt should be made to obtain confession only.

a) *CBDT INSTRUCTION F. NO. 286/2/2003-IT (INV. II), DATED 10-3-2003*

"instances have come to the notice of the board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. in these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. it is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the income-tax department. similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the

undisclosed income. any action on the contrary shall be viewed adversely.

further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment ordeRs."

b) *LETTER F.NO.286/98/2013-IT (INV.II)], DATED 18-12-2014*

"instances/complaints of undue influence/coercion have come to notice of the cbdt that some assessees were coerced to admit undisclosed income during searches/surveys conducted by the department. it is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. such actions defeat the very purpose of search/survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. further, such actions show the department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the instructions/guidelines issued by cbdt from time to time, as referred above, through which the board has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. in view of the above, while reiterating the aforesaid guidelines of the board, i am directed to convey that any instance of undue influence/coercion in the recording of the statement during search/survey/other proceeding under the i.t.act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the board adversely."

29. The Ld. AR stated that statement is something which is consequent to the search and cannot be reckoned as incriminating material found during the course of search and assessments that stood completed on the date of search cannot be made on the basis of statements. In support, the AR relied upon the judgment of Hon'ble Delhi High Court in the case of **PCIT vs. Best Infrastructure (India) Pvt. Ltd. in ITA No.13-22/2017.** It was observed as under:

"38. fifthly, statements recorded under section 132 (4) of the act of the act do not by themselves constitute incriminating material as has been explained by this court in commissioner of income tax v. harjeevaggarwal (supra). lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in smt.dayawantigupta v. cit (supra) where the admission by the assessees themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. in the

said case, there was a factual finding to the effect that the assessees were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by mr. anu aggarwal or mr.harjeetsingh contained any such admission."

30. He pointed out that earlier there was a decision of Hon'ble Delhi High Court in the case of **Dayawanti Gupta vs. CIT reported in 390 ITR 396** whereby the Hon'ble High Court held that assessment under section 153A can be made even if no incriminating material has been found during search and the statements recorded during search can be relied upon. However, the said judgment of the Hon'ble High Court has been stayed by the Hon'ble Supreme Court in Appeal No. 20559/2017 and SLP has also been admitted.

31. Following the principle of Hon'ble Delhi High Court in the case of CIT vs. Best Infrastructure and PCIT vs. Meeta Gutgutia, this Tribunal in various judgments has held that statement recorded during the course of search per se without any incriminating material cannot be the basis for making the addition specifically in the case of unabated assessment, i.e., where assessment stands concluded before the date of search. Besides, other catena of judgments have also been filed which are not been incorporated.

32. The Ld. AR submitted that if at all, additions are made on the basis incriminating documents, then they have to be made on the basis of documents found during the course of second search in respect of assessments made in pursuance of the second search.

33. The chart representing the material used in respect of each addition made is reproduced below:

Addition	***Description of Material found***	***Found in which search***	***Page no. of assessment order***
Share Capital	***A1-A14****computation, intimation u/s 143(1), bank statement and schedules of balance sheet of share applicants* ***A15-A25****cheque books of share applicants on which authorised signatory has signed on blank cheques*	***Found in first search***	***2-4,30 reproduced at page 2-4***
Salary paid in cash u/s 69C	*A2 and A6 containing details of proposed cash Page 15,26 of A2 and page 51,53 of A6 for AY 2010-11 containing details of proposed cash*	*Found in first search from premises of Assessee company's director, Vipul Aggarwal's*	***36***
Shifting of profit from	*A-6 (pg 6,8,37) showing power*	***Found in first***	***Page 39***

steel division to power division by charging higher rates of power generated by power division	*cost per unit dated 14.5.12 and 20.08.12 @3.04 and 2.09 per unit respectively*	***search***	
Unexplained expenditure-purchase of land	*Electronic data seized at Chapa (party BS-I) in a seized pendrive annexure PDI-1/2)-showing table about land purchases in which 2 columns -cost as per paper and actual amount paid are mentioned*	***Found in survey on 30.10.12***	***38 of order Page 318-320, 867-868 of PBK***

34. Ld. AR further submitted that once the Assessing Officer has not passed any assessment order consequent to the first search wherein so called incriminating material or documents were found, then those incriminating documents and material lose their significance because it was mandatory upon the Assessing Officer to pass assessment order in terms of section 153A in conseqence to first search. If he has not done so, then anything found during the course of that search stands concluded and what is to be seen is whether any incriminating document was found or not during the course of second search.Admittedly, here in this case, not an iota of any evidence or incriminating document was found during the course of second search.

35. On merits of the additions, the ld. AR has made an elaborate submission, oral as well by way of a written submission, which we shall discuss after adjudicating the legal issues raised before us.

36. Before us, the ld. CIT-DR first of all objected for admission of additional grounds and also placed on record the following letter of the Assessing Officer, the scan copy of which is as under:

Central Circle-30, Room No.320, 3rd Floor, E-2 ARA Centre,
Jhandewalan Extn., New Delhi

F.No. DCIT(CC-30)/Misc./2020-21/1955 **Dated:08.03.2021**

To,

The Commissioner of Income Tax (DR),
Income Tax Appellate Tribunal, "F" Bench,
7th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi-110003

Madam,

Subject:- Hearing before the Hon'ble ITAT,F-Bench in the case of M/s Prakash Industries Ltd, in ITA Nos. 4065 to 4070/Del/2017 for A.Ys 2007-08 to 2014-15 (PAN:AABCP6765H)-Requisition of Comments-reg.

Kindly refer to the letter F.No.CIT(DR)ITAT/F-bench/2020-21 dated 02.02.2021 on the above mentioned subject.

The requisite comments on additional grounds are as under in tabular form as required by you:

A: First Search: conducted on 30.10.2012 (comments on Sr. No. 1 to 3)

<table>
<tr><td>1.</td><td>Whether 153A was issued in A.Y.2007-08 to 2012-13 pursuant to first search</td><td>Yes, Notice u/s 153A were issued on 27.06.2014 in A.Y.2007-08 to 2012-13 pursuant to first search.</td></tr>
<tr><td>2.</td><td>Which years among these were pending and abated on the date of search. Please give details in a tabular form with due date of return, last date for issue of notice u/s 143(2) and actual date of issue of Notice u/s 143(2)</td><td>A.Y. 2011-12 was pending at the time of first search and abated the same.
<table>
<tr><td>Due date of return</td><td>Last date of issue of notice u/s 143(2)</td><td>Actual date of notice u/s 143(2)</td></tr>
<tr><td>30.09.2011</td><td>30.09.2012</td><td>07.09.2012</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Whether assessment u/s 143(3) was done before the first search.</td><td>Assessment u/s 143(3) for A.Y.2007-08 was completed on 23.12.2009, A.Y. 2008-09 was completed on 11.05.2010, A.Y.2009-10 was completed on 28.03.2011.
As per office record no record are available for A.Y.2010-11 whether assessment u/s 143(3) was completed or not. As per ITD application the case was selected for scrutiny u/s 143(3) for A.Y.2010-11 through CASS. Accordingly notice u/s 143(2) was issued on 29.08.2011 which was T.B. on 31.03.2012.</td></tr>
<tr><td>4.</td><td>Also give reply/comments as asked above on the second search</td><td>Reply/comments are given as per Table "B" below.</td></tr>
</table>

B: Second Search: conducted on 29.03.2014 (Comments on S No. 4)

<table>
<tr><td>1.</td><td>Whether 153A was issued in A.Y.2008-09 to 2013-14 pursuant to second search</td><td>Yes, Notice u/s 153A were issued again on 14.08.2014 in A.Y.2008-09 to 2013-14 pursuant to second search.</td></tr>
<tr><td>2.</td><td>Which years among these were pending and abated on the date of second search. Please give details in a tabular form with due date of return, last date for issue of notice u/s 143(2) and actual date of issue of Notice u/s 143(2)</td><td>A.Y. 2008-09 to 2013-14 were pending at the time of second search. A.Y.2007-08 was completed on 31.03.2015 remaining assessment proceedings A.Y.2008-09 to 2013-14 were abated due to second search conducted on 29.03.2014 which details as requested are as under:
<table>
<tr><td>Due date of return</td><td>Last date of issue of notice u/s 143(2)</td><td>Actual date of notice u/s 143(2)</td></tr>
<tr><td>Within 16 days of notice u/s 153A i.e. on 14.08.2014</td><td>After filing of ITR by the assessee.</td><td>08.12.2014</td></tr>
<tr><td>Due date of return for A.Y. 2014-15</td><td>Last date of issue of notice u/s 143(2)</td><td>Actual date of notice u/s 143(2)</td></tr>
<tr><td>30.11.2014</td><td>30.09.2015</td><td>24.12.2014</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Whether assessment u/s 143(3) was done before the second search.</td><td>Assessment u/s 143(3) for A.Y.2007-08 was completed on 23.12.2009, A.Y. 2008-09 was completed on 11.05.2010, A.Y.2009-10 was completed on 28.03.2011.
As per office record no record are available for A.Y.2010-11 whether assessment u/s 143(3) was completed or not. As per ITD application the case was selected for scrutiny u/s 143(3) for A.Y.2010-11 through CASS. Accordingly notice u/s 143(2) was issued on 29.08.2011 which was T.B. on 31.03.2012.</td></tr>
</table>

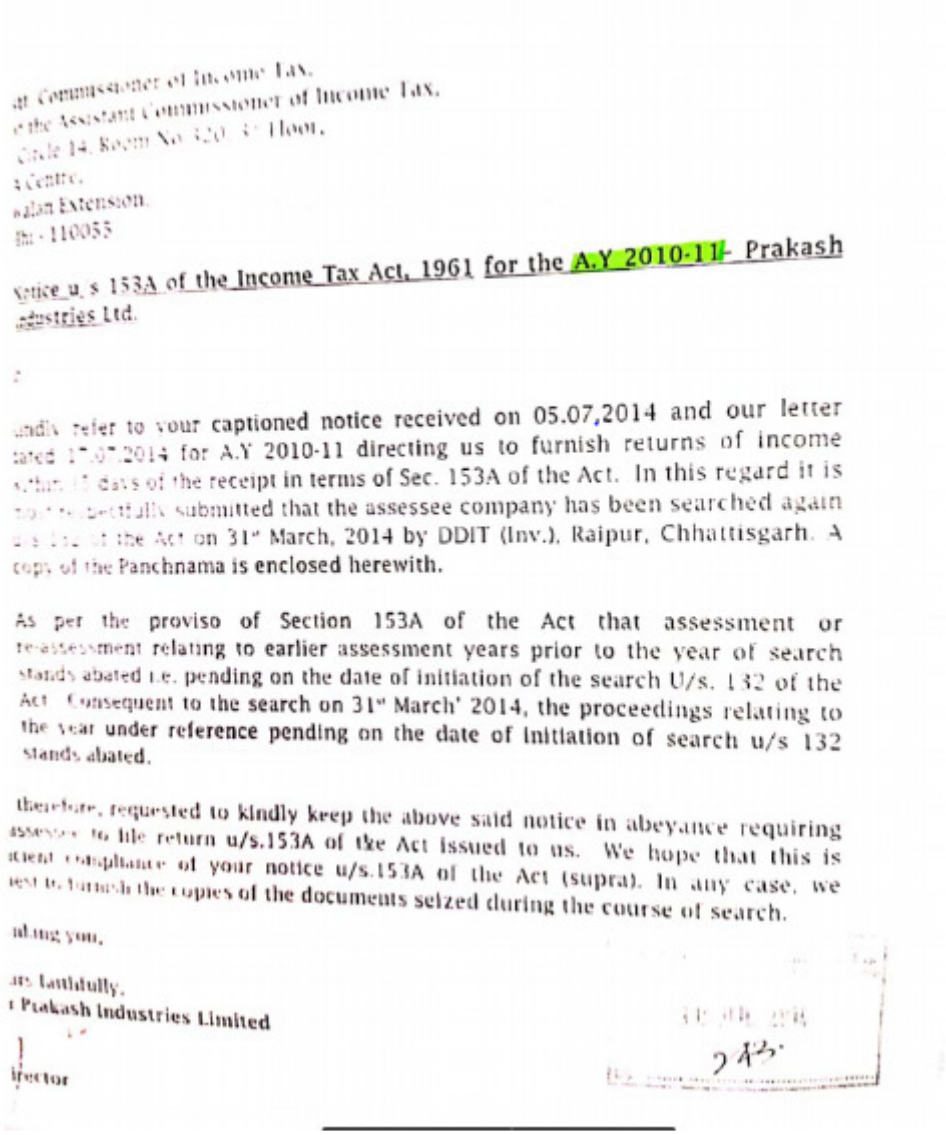
Further, the assessee filed letter dated on 09.12.2020 before ITAT and raised two grounds of appeal.

In this regard, it is stated that the case of the assessee was abated for A.Y.2008-09 to A.Y.2013-14 due to second search conducted on 29.03.2014. It is further informed that the assessee filed letter dated 28.07.2014 received in this office on 30.07.2014 (copy enclosed) requesting the AO to abate the proceedings initiated u/s 153A of the Act, due to second search conducted on 29.03.2014.

Submitted for your kind perusal please.

Yours faithfully

(Raj Kishore)
Dy. Commissioner of Income Tax,
Central Circle -30, New Delhi



...t Commissioner of Income Tax,
...e Assistant Commissioner of Income Tax,
...Circle 14, Room No. 320, 3rd Floor,
...Centre,
...alan Extension,
...i - 110055

...tice u/s 153A of the Income Tax Act, 1961 for the A.Y 2010-11 - Prakash
...dustries Ltd.

...ndly refer to your captioned notice received on 05.07.2014 and our letter ...ated 17.07.2014 for A.Y 2010-11 directing us to furnish returns of income ...thin 15 days of the receipt in terms of Sec. 153A of the Act. In this regard it is ...pectfully submitted that the assessee company has been searched again ...s Act on 31st March, 2014 by DDIT (Inv.), Raipur, Chhattisgarh. A copy of the Panchnama is enclosed herewith.

As per the proviso of Section 153A of the Act that assessment or re-assessment relating to earlier assessment years prior to the year of search stands abated i.e. pending on the date of initiation of the search U/s. 132 of the Act. Consequent to the search on 31st March' 2014, the proceedings relating to the year under reference pending on the date of initiation of search u/s 132 stands abated.

...therefore, requested to kindly keep the above said notice in abeyance requiring ...assessee to file return u/s.153A of the Act issued to us. We hope that this is ...ient compliance of your notice u/s.153A of the Act (supra). In any case, we ...est to furnish the copies of the documents seized during the course of search.

...nking you,

...rs faithfully,
...r Prakash Industries Limited

...irector

37. In so far as the legal issue raised by the ld. AR is concerned, ld. CIT-DR submitted that undisputedly during the course of search conducted on 30th October, 2012 various incriminating documents and material were found. When the second search took place, i.e., on 31.03.2014, the Ld. Assessing Officer proceeded to make the assessment under section 153A for previous six assessment years. At the time of second search, all the assessments relating to the first

search were treated to be as pending assessment for those assessment years, and therefore, the assessment under section 153A relating to the first search, i.e., 30.10.2012 gets abated. Accordingly, all the seized documents and material for such pending assessments can be utilized for the assessments which were being framed in consequence to the second search in terms of language of Section 153A. She further submitted that the Act does not make any distinction of assessments which are passed under section 143(3) or under section147 or under section 153A. The second proviso to section 153A states that assessment or re-assessment relating to any assessment year falling within period of six assessment years which are pending on the date of initiation of search get abated. The assessment under section153A pursuant to first search were pending, therefore, the same shall automatically stand abated. She further pointed out that the assessee in the letter to the Ld. Assessing Officer has also stated the same position that notices issued under section 153A in relation to first search should be dropped and only assessment in consequence of the second search should be made. There cannot be two assessments under section 153A for the same assessment years which are falling within period of six assessment years which here in this case are mostly overlapping at least from assessment years 2008-09 onwards.

DECISION

38. First of all, in so far as admission of additional grounds as raised by the assessee, are concerned, as discussed above, we find that same are purely legal grounds which are arising out of facts and

material on record and apparent from the impugned assessment order, which is evident from the following passages in the assessment order which refers to seized documents found during first search on 30.10.2012, which has been contested by the Ld. Counsel of the assessee that same cannot be used in assessments consequent to second search on 31.03.2014:-

4. Introduction of Share Capital

At the time of search dated 30.10.2012 at corporate office of M/s Prakash Industries Ltd., Sriwan Bijwasan, New Delhi, various incriminating documents were found and seized including Annexure A-15 to A-25, which are cheque books of different companies with signatures of Authorized Signatories on blank cheques. The details of some of these incriminating documents are as follows:-

Sr.No.	Annexure	Pages	Name of the companies
1	A-16	Pages 1 to 140	M/s Tools India Pvt.Ltd M/s Shree Labh Paxmi Capital Services. M/s Sanskriti Tie-up Pvt. Ltd.
2	A-18	Page 1 to 145	M/s Sarvottam Commodities Pvt.Ltd. M/s Welter securities Ltd.
3	A-21	Page 1 to 200	M/s Vanshi Farms Pvt Ltd M/s Amarjyoti Vanijya Pvt. Ltd M/s Deo Steel & mines pvt. Ltd
4	A-22	Page 1 to 112	M/s Ankit Nivesh & management Pvt. Ltd M/s Spring Mercantile Pvt. Ltd M/s Makrana Tradecom Pvt. Ltd M/s Chaibasa Steel Pvt. Ltd.
5	A-25	Page 1 to 180	M/s Hi-tech Mercantile Pvt. Ltd M/s Vanshi Farms Pvt. Ltd

In view of these incriminating documents enquiries were conducted & it was apparently gathered that the assessee company has managed its unaccounted funds in its books of account under the garb of share application money / share capital with high premium. This modus operandi was admitted by Sh. Ved Praksah Aggarwal, Chairman of M/s Prakash Industries Ltd. group of companies. During the search action dated 30.10.2012 at corporate office of the assesse company various incriminating documents were found & seized as Annexures, A-1 to A-14 which are trial balances, Cash books, Journals, ledgers, TDS certificates, board resolutions etc. of different companies controlled by the management of Prakash Industries Ltd through which the unaccounted funds were routed as share application money / share capital with premium. The details of these documents are as under:

A.Y. 2010-11

Party: B-1 Address of the premises - Prakash Industries Ltd., Sriram Bijwasan, New Delhi-110061	
Annexure - A-2 Page No. 1 to 53	
Page No	Documents
47	Trial Balance of Amarjyoti Vanijya Pvt Ltd for 1-4-2012 to 8-10-2012
Annexure - A-4 Page No. 1 to 20	
1 to 11	Ledger Account of Amarjyoti Vanijya Pvt. Ltd. for the period 1-4-2011 to 31-3-2012
12 to 14	Journal register of Amarjyoti Vanijya Pvt. Ltd. for the period 1-4-2011 to 31-3-2012
15 to 17	SBI Kapasehra Bank book of Amarjyoti Vanijya Pvt. Ltd. for 1-4-2011 to 31-3-2012
18	PNB Bijwasan Book of Amarjyoti Vanijya Pvt. Ltd. for 1-4-2011 to 31-3-2012
19	Cash Book of Amarjyoti Vanijya Pvt Ltd. for 1-4-2012 to 31-3-2012
20	Trial Balance of Amarjyoti Vanijya Pvt Ltd
Annexure - A-6 Page No. 1 to 124	
11 to 12	Directors report of Amarjyoti Vanijya Pvt. LTd. dated 31-8-2009 signed by matbar singh and Pawan guleria
13	Notice dated 31-8-2009 signed by Matbar Singh for Amarjyoti Vanijya Pvt Ltd.
14	Journal register of Amarjyoti Vanijya Pvt Ltd. for 1-4-2008 to 31-3-2009
15	Computation of income of Amarjyoti Vanijya Pvt. LTd. for A.Y. 2009-10
16 to 32	Income tax return for the A.Y. 2009-10 of Amarjyoti Vanijya Pvt. Ltd.
33	Demand notice u/s 156 of the I.T. Act to Amarjyoti Vanijya Pvt. LTd. for the A.Y. 2009-10
34 to 35	Assessment order of Amarjyoti Vanijya Pvt. LTd. for A.Y. 2009-10
37	Computation of income of Amarjyoti Vanijya Pvt. LTd. for A.Y. 2010-11
39	Balance sheet abstract and company's general profile of Amarjyoti Vanijya Pvt. Ltd.
49 to 50	Directors report of Amarjyoti Vanijya Pvt. LTd. dated 31-8-2009 signed by sudhir kumar bali
53 & 54	Computation of income of Amarjyoti Vanijya Pvt Ltd. for the A.Y. 2011-12
55 to 68	Income tax return for the A.Y. 2011-12 of Amarjyoti Vanijya Pvt. Ltd.
69	Statement of bank account in SBI, Kapasehra, of Amarjyoti Vanijya Pvt Ltd. dated 9-3-2010
70	Certificate of incorporation of Amarjyoti Vanijya Pvt Ltd 2006-07
71 to 73	Papers related to correction of PAN of Amarjyoti Vanijya Pvt. Ltd.
74 to 77	Intimation u/s 143(1) of the I.T. Act of Amarjyoti Vanijya Pvt Ltd. for the A.Y. 2010-11
78	Dividend Payment advice to Amarjyoti Vanijya Pvt Ltd.
81 to 87	Audit report of Amarjyoti Vanijya Pvt. Ltd. dated 31-8-2009 for the year ended on 31-3-2009
95 to 96	Portfolio statement of Amarjyoti Vanijya Pvt. Ltd. from 1-8-2007 to 30-9-2007
102-104	Bank Statement of account at SBI of Amarjyoti Vanijya Pvt Ltd.
105	Portfolio statement of Amarjyoti Vanijya Pvt. Ltd. for 1-4-2008 to 30-4-2008
106	Bank Statement of account at Axis Bank of Amarjyoti Vanijya Pvt Ltd. for 1-4-2008 to 31-3-2009
111-113	Bank statement of account of Kapasehra of Amarjyoti Vanijya Pvt. Ltd.
114-115	Letter and paper of Carewell Beuty & Fitness Pvt. Ltd. in the books of Amarjyoti Vanijya Pvt Ltd
116-117	Letter and paper of Goel Plastico Pvt. Ltd. in the books of Amarjyoti Vanijya Pvt Ltd
120	Trial balance of Amarjyoti Vanijya Pvt. LTd. for 1-4-2011 to 31-12-2011.
122	Trial balance of Amarjyoti Vanijya Pvt. LTd. for 1-4-2011 to 30-2-2012.
Annexure - A-8 Page No. 1 to 12	
10	Significant accounting policies & notes on accounts of Amarjyoti Vanijya Pvt Ltd
11 to 12	Copy of schedule of balance sheet as on 31.03.2010 of Amarjyoti Vanijya Pvt. Ltd.
Annexure - A-12 Page No. 1 to 95	
6 & 28	Copy of resolution passed by Amarjyoti Vanijya Pvt Ltd
58	Statement of holdings of Amarjyoti Vanijya Pvt Ltd.

PAGE 36 OF ASSESSMENT ORDER

5. During the search u/s 132 of the Act at the residence of Sh. Vipul Agarwal, Director of M/s Prakash Industries Limited at D-82, Gulmohar Park, New Delhi (Party B-3) documents related to total salary and cash salary given to employees of M/s Prakash Industries Limited were found and seized. In these documents the details of the total salary and cash given to the respective employees during the relevant financial year is given. The relevant documents are as following:-

Premises	S.No.	Annexure.	Pages
D-82, Gumohar Park, New Delhi	1	2	25, 26, 52, 53, 56 & 57
	2	6	51 & 53

Year wise summary of cash part of monthly salary paid to different employees as per these documents is as under:

S.No.	Annexure	Page Remark	As on F.Y.	Total of page
1.	2	53	2008-09	2,81,000
2.	2	56	2008-09	30000
3.	2	52	2009-10	43700
4.	2	57	2009-10	374500
5.	2	25, 26	2010-11	11,02,750
6.	6	51	2010-11	50,750
7.	6	53	2010-11	25,000

From the above seized annexure it is gathered that aforesaid amount has been given as salary in cash to employees of M/s Prakash Industries Limited during the respective financial years. These documents found and seized have columns as under:

For example page no 56 of Annexure A-2 as under:

Annexure-A-2				
Page 56 Details of salary, Barbil, As on 31-03-2008				
S.No.	Name of employee	Salary	Cash	Total
1	A.B. Singh	51200	18750	69950
2	K.P. Singh	31500	5000	36500
3	Mahavir	31200	5000	36200
4	S.K. Jha	19400	1250	20650
	Total		30000	

From the above seized documents, it is evident that the amount written in "cash column" has been paid in cash as salary to the respective employees (specific amount is mentioned against name of particular employee) of the company. For the year under consideration the above amount is computed as under:

PAGE 39 OF ASSESSMENT ORDER

M/s Prakash Industries Ltd.
A.Y. 2010-11

7. **Shifting of Profit from Steel Division to Power Division**

During the course of search proceedings on 30/10/2012 at various premises of M/s Prakash Industries Ltd. group the following documents were found & seized from premises: D-82, Gulmohar Park, New Delhi, residence of Sh. Vipul Aggarwal regarding cost of power per unit.

Party	Address	Annexure No.	Page No.	Date	Power cost per unit Rs.
S-3	D-82, Gulmohar Park, New Delhi	A-6	8	Not given	1.95
			8	14.05.2012	3.04
			37	20.06.2012	2.09

As per above documents cost of power per unit in F.Y. 2012-13 is Rs. 2.09 & Rs 3.04 but as per books of account assessee company has charged Rs. 5 per unit from assessee's own Steel division during the year. From above documents it transpired that assessee is charging higher rate from its own Steel Division to reduce taxable profit of Steel division & by clearing exemption u/s 80IA for power division. In this way it is evident that profits of power division have been enhanced to claim higher Deduction u/s 80IA.

39. Thus, being purely legal grounds arising out of facts already on record and also evident from the aforesaid excerpts of the Assessing Officer, which do not require any investigation of facts, therefore, same are being admitted for the purpose of our adjudication.

40. The relevant facts qua the legal issue raised has already been discussed in detail and also the detailed submission made by the parties and the judgments relied upon during the course of hearing. To put it succinctly, in the case of the assessee, the first search took place under section 132(1) on 30.10.2012. Pending the issuance of notice under section 153A and the triggering of the assessment in pursuance of such notices, another search took place on 31.03.2014. As stated above the notices under section153A pertaining to the first seach initiated on 30.10.2012 was issued to the assessee on 27.06.2014 in respect of Assessment Year 2007-08

to 2012-13. However, no assessment orders in respect of the first search were passed for AY 2007-08 to 2012-13. The second set of notices under section 153A were issued on 14.08.2014 which were in pursuance of second search dated 31.03.2014. In pursuance to these notices, the assessee had filed its return of income on 27.11.2014. The main point for our consideration which has been raised by the parties before us is that:-

- ***Firstly***, whether any incriminating material or documents found during the course of first search can be utilized while framing the assessments in pursuance of the second search?;
- ***Secondly***, whether it was mandatory upon the Assessing Officer to pass assessment order in terms of Section 153A in relation to the first search dated 30.10.2012?;
- ***Thirdly***, whether in the facts and circumstances of the case, can it be said that assessments in relation to first search was pending in terms of *second proviso* to section 153A on the date of second search i.e., 31.03.2014?.

41. First of all, the relevant portion of Section 153A as applicable in the assessment years impugned before us is reproduced below:-

> *"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, the Assessing Officer shall—

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

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

provided that the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

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

42. From the plain reading of the said provision and also interpretation of this section by Hon'ble Jurisdictional High Court in the case of CIT vs. Anil Kumar Bhatia, Kabul Chawla and catena of other judgments of Hon'ble High Courts as incorporated above, following sequitter can be deduced:-

- **Firstly**, Section 153A is a Special Scheme of assessment of income in case of a searched person. Section 153A starts with a non obstante clause and it states where a search has been initiated under section 132(1) or books of accounts any other documents or assets which are requisitioned under section132A after 31st May, 2003, the Assessing Officer is statutorily bound to (as the section mentions shall):

  (a) issue notice to the assessee to furnish return of income of each assessment year falling within six assessment years immeditaley preceding assessment year in which search or requisitioned was made;

  (b) the Assessing Officer is mandatorily required to (i.e., shall) assess or reassess the total income of six assessment years immediately preceding assessment year in which search was conducted or requisitioned was made, and has to pass separate assessment orders.

- **Secondly**, in respect of six of the assessment years prior to the year of search, there can be one assessment in which both disclosed and undisclosed income would be assessed and it is mandatory for the Assessing Officer to bring in to tax the total income of assessee whose case is covered under section 153A.

- **Thirdly**, initiation of proceedings under section 153A is not dependent on any undisclosed income being unearthed during such search, because the 1st proviso makes it clear that the Assessing Officer is bound (i.e., shall) assess or re-assess the total income in respect of each assessment year falling within six assessment years.
- **Fourthly**, the 2nd proviso carves out the distinction between pending assessment and assessment which has attained finality on the date of search ans can be recokened as unabated assessment.
- **Lastly**, in so far as the pending assessments are concerned, the jurisdiction to make the original assessment and the re-assessment under section 153A merges into one and only one assessment shall be made. Assessments which are not abated or are not pending are reckoned as completed assessments. Re-assessment can be done on all completed assessments based on incriminating material found during the course of search indicating any undisclosed income. If no incriminating material is found qua the assessment years which are concluded or are unabated, then the original assessed income shall be taken as assessed income under section 153A. The term assessed in Section 153A is used in respect of assessments which are pending on the date of search and got abated whereas the term re-assess is used in respect of those assessment years whose assessment already stood completed and were not pending on the date of search.

43. Thus, the law as interpreted by the Hon'ble High Courts as discussed above is that, there is no option for the Assessing Officer not to pass any assessment order for six assessment years prior to the year of search, if the search has been carried out under section 132 or requisition under section 132A. There cannot be any waiver of such condition of not to pass any order; or in another words, Assessing Officer cannot acquiesce his statutory duty for passing the assessment order in terms of Section 153A. Even if the search does not yield any incriminating material or any undisclosed income, then also Assessing Officer has to assess the total income of six assessment years in terms of 1st and 2nd proviso to Section 153A.

44. Here in this case, in the letter dated 10.03.2021 filed by the ld. DR which has also been incorporated above, the Assessing Officer himself admitted that notice under section 153A was issued on 27.06.2014 in terms of 1st search conducted on 30.10.2012, however no assessment was completed for all assessment years prior to the date of second search. The only assessment orders which have been passed for six assessment years was in relation to second search conducted on 31.03.2014 and in pursuance of notice under section 153A issued on 14.08.2014 for the Assessment Years 2008-09 to 2013-14. The Assessing Officer has failed to carry out the statutory requirement for framing/completing assessment or reassessment of total income for six assessment years in respect of the first search dated 31.10.2012. In such a situation, all the assessments which were required to be completed in terms of Section 153A *qua* the first search stands obliterated and return of income and the assessed

income right from the Assessment Years 2007-08 to 2012-13 have attained finality.

45. The second core issue involved before us is, whether any incriminating material or document found during the course of first search can be utilized by framing the assessment in pursuance of second search. Admittedly, here in this case while framing the assessment, Ld. AO has referred to the documents seized during the course of first search i.e., 30.10.2012 and nothing incriminating whatsoever was found during the course of second search carried on 31.03.2014. This is clear and admitted position not only from the impugned orders but also from the material placed on record, as discussed in the foregoing paragraphs. Once, the Ld. Assessing Officer has not fulfilled his statutory duty for framing the assessment under section 153A as was mandatorily required based on incriminating seized material, then entire seized material and document and any inference drawn on basis of such seized material for computing the total income of six assessment years prior to the year of search gets perished and is *fait-accompli*, because of the conscious decision of the Ld. Assessing Officer not to frame the assessment order under section 153A as provided in the statute. The the seized or incriminating documents found could have only used for the purpose of assessment and reassessment u/s 153A for the stipulated 6 assessment years; and if not then its fate end there.

46. If another search has taken place in the subsequent period, then any material or document found in that search relating to any of the assessment years forms the basis for assessment / re-

assessment falling within the period of six years as contemplated under section 153A. The statute envisages that if there are multiple searches spreading into different years, then Ld. Assessing Officer is duty bound to pass the orders for the six years in respect of every search. As soon as search takes place the provision of Section 153A gets triggered and all the legal formalities of issuance of notice for six years have to be necessarily complied with and assessment/re-assessment for those assessment years has to be made. In our opinion, any document or material found in any search has to be used in the assessment or re-assessments falling within the period of six years relating to that search only and procedure of Section 153A has to be followed.

47. Another moot question before us, which has been strongly convassed by the ld. CIT-DR as well discernible from the action of the Assessing Officer is that, assessment under section 153A in relation to the first search, whether can be said to be pending or not in terms of second proviso to Section 153A on the date of second search, i.e., 31.03.2014? The revenue's main plank of argument is that, on the date of second search, assessments covered under section 153A in pursuance of the first search were pending and therefore, gets abated and Assessing Officer has right to assess and re-assess all the assessment years falling within the period of six years of the first search and also assessment years falling within period of second search. Such an interpretation in our opinion is not tenable as it would defeat the purpose of the legislature and the language of the statute, which mandates that after every search, six preceding years assessment has to be made and the material found

in such search could be used for determining the undisclosed income, if any. The process of abatement is only to adjudicate the pending assessment consequent to the return filed under section 139 on the date of search or in respect of which notices under section 143(2) have been issued or the time for issuing such notices have not expired. It would be very difficult to fathom that assessment under section 153A which was required to be completed within the time frame provided under the statute shall be treated as abated assessment on the ground that it was pending assessment. The Assessing Officer had no option but to make the assessment under section 153A in respect of the first search and will not wait for another search to take place in subsequent period of time so that the assessment relating to the first search does not has to be made. This is more so if we interpret the judgment and the principle laid down by the Hon'ble Jurisdictional High Court in the case of Kabul Chawla, Meeta Gutgutia (supra) and other cases cited above. From these judgments it can be culled out that search related material can be used for assessment consequent to that search alone. The said material cannot be used in the 2nd, 3rd or 4th search and so on that may take place in the future. Even search material has to meet its nemesis in the consequent assessment proceedings relating to that search alone and not kept in lock and key to be used subsequently in second search. Otherwise it will create immeasurable hardship to the assessee and certainly legislature did not intend to keep on extending the period of limitation of assessment and fate of determing the undisclosed income for perpetuity. If there is another search then same procedure and limitation has to be followed.

48. If we take the facts and circumstances of the instant case, then;

- Firstly, Assessing Officer should have framed the assessment under section 153A in pursuance of the first search conducted on 30.10.2012 for six assessment years prior to the year of search within the time allowed in the statute.
- Secondly, he was required to assess and re-assessee the total income of all six assessment years falling under section 153A either on the basis of incriminating documents found during the course of search or assess the income on the basis of return of income.
- Even if the first search related assessments were not made and the second search took place as is the case here, then Assessing Officer should have framed separate assessment orders for six years in respect of the both searches within the time provided in the statute. In case the assessment years are overlapping then qua that assessment year the assessed income u/s 153A of that year as determined in that search, becomes the assessed income u/s 153A of the second search and if any incriminating material is unearthed in the second search then same can be used to further determine the income of the assessee.

49. There could be another angle here in this case, while interpreting the word *'pending assessment'* as used in second proviso to Section 153A. Firstly, no notice under section 153A was issued in pursuance of first search before the date of second search, i.e., 31.03.2014; and admittedly no return of income was filed in

pursuance of such notices under section 153A relating to first search. Thus, technically no assessment was pending. The six assessment years as envisaged in Section 153A read with 1st and 2nd proviso have to be taken separately and it has to be seen, whether any of the assessments were pending on the date of search for the purpose of abatement. The limitation of a pending assessment has to be seen from the date of search which will vary from the period of search. If in a given case only two assessment years are pending and four assessment years were concluded assessment or had attained finality, then again if there is a subsequent search two years after the first search, then the definition of pending and concluded assessment will change. Otherwise there could be a situation where Assessing Officer can open six assessment years of the earlier search and another 3-4 years between the period of first search and second search. Like here in this case, if the same interpretation is to be taken then there would be nore that six assessment years prior to the year of search, i.e., starting from Assessment Year 2006-07 to Assessment Year 2013-14. Thus, in our opinion and on the facts and circumstances of the case, it cannot be held that assessment under section 153A relating to the first search can be reckoned to be pending in terms of 2nd proviso to Section 153A on the date of second search i.e., 31.03.2014.

50. Coming to the issue, whether the addition in the impugned assessment years specifically for those assessment years which were not pending on date of second search, can be said to be based on any incriminating material or seized document in the light of

principle laid down by the Hon'ble Jurisdictional High Court and other High Court cited supra. As culled out from the assessment orders as well as arguments of the ld. AR, it is an undisputed fact that the additions which have been made, for instance, relating to the share capital, salary paid in cash, shifting of profit, unexplained expenditure on purchase of land, etc. were all based on documents found during the course of first search and there is no material whatsoever which was unearthed or found during the course of search conducted on 31.03.2014 which is the base of present assessments. Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla as well as in the case of PCIT vs. Meeta Gutgutia (supra) have clearly held that there can be no addition for a particular assessment year without there being any incriminating material qua that assessment year which could justify such an addition. The incriminating material has to be in relation to any income that was not disclosed in the earlier return and if there is no incriminating material then no addition can be made qua those assessment years whose assessment were completed earlier. There is no case of the Department before us that the share capital or the other additions made were based on material found during the second search. This has been clearly held by the Hon'ble Delhi High Court in the case of **PCIT vs. SMC Power Generation Ltd. (Delhi HC) in ITA No.406/2019,** following the principle of Hon'ble Supreme Court in the case of **CIT v. Singhad Technical Education Society (supra).** Here in this case, all the proceedings relating to the following assessment years were completed and, therefore, cannot be reopened in the absence of any incriminating documents found

during the course of that search. The chart of completed and pending assessments on date of second search in terms of second proviso to section 153A is reproduced as under:

CHART OF COMPLETED AND PENDING YEARS BASED ON THE SEARCH DATED 29.3.2014 SHOWING ADDITIONS AND MATERIAL RELIED UPON FOR MAKING THE ADDITIONS

AY	Date of filing original return	Date of filing revised return	Date of order under section 143(3)	Status as on date of second search- 29.03.2014	Addition based on
2007-08	30.10.07	09.03.09	23.12.09	Completed	Share capital & Brokerage -Material found in 1st search
2008-09	30.09.08	26.02.2010	11.05.2010	Completed	Share capital & Brokerage- Material found in 1st search Salary paid in cash - Material found in 1st search Investment in purchase, Purchase of scrap - Found in search by Excise Department
2009-10	30.09.09	8.02.2011	28.03.2011	Completed	Share capital & Brokerage- Material found in 1st search Salary paid in cash - Material found in 1st search Investment in purchase, Purchase of scrap, Unaccounted investment- Found in search by Excise Department
2010-11	14.10.10	31.3.12	No assessment order was passed	Completed	Share capital & Brokerage- Material found in 1st search Salary paid in cash - Material found in 1st search Shifting of profit - Material found in 1st search Unexplained expenditure in purchase of land - Found in survey on 30.10.12 Purchase of scrap - Found in search by Excise Department
2011-12	30.09.2011	30.03.2013	No assessment order was passed	Completed	Share capital & Brokerage- Material found in 1st search Shifting of profit - Material found in 1st search Unexplained expenditure in purchase of land - Found in survey on 30.10.12 Purchase of scrap - Found in search by Excise Department
2012-13	29.09.2012	29.03.2014		Pending	Purchase of scrap - Found in search by Excise Department
2013-14	30.11.2013			Pending	Purchase of scrap - Found in search by Excise Department

51. We now proceed to examine each addition in order to see whether the same has been made on the basis of incriminating material found during the course of first search or not, which are raised vide, Ground Nos. 1,2 of ITA No. 4039/D/2017 for AY 2007-08, ITA No. 4040/D/2017 AY 2008-09, ITA No. 4041/D/2017 for AY 2009-10, ITA No. 4042/D/2017 for AY 2010-11, ITA No. 4043/D/2017 for AY 2011-12 of the department's appeal are relating to the addition in respect of share capital/share application money.

52. We find that material found during the course of first search has been used to make additions in the assessment consequent to

second search. The first and the main addition relates to unexplained credit in respect of share application money received in the A.Y. 2007-08 to 2011-12 amounting to Rs. 16,36,62,120/-, Rs. 20,36,62,120/-, Rs. 23,59,95,000/-, Rs. 41,58,40,000/- and Rs. 15,81,65,000/- respectively and unexplained expenditure in respect of brokerage @ 0.5% on such unexplained share capital amounting to Rs. 8,18,311/-, Rs. 10,18,310/-, Rs. 11,79,975/-, Rs. 20,79,200/-, Rs. 7,90,825/- for the AY 2007-08 to 2011-12 respectively. This addition has been made on the basis of blank cheque books of the investor companiesfound in the premises of the assessee during the course of first search. This has been so admitted by the Assessing Officer in the assessment order on Page no. 2 and page no. 30 and the relevant para of the same is reproduced below:-

> *"At the time of search dated 30.10.2012 at corporate office of M/s Prakash Industries Ltd, SriwanBijwasan, New Delhi, various incriminating documents were found and seized including annexure A-15 to A-25 which are cheque books of different companies with signatures of Authorized Signatories on the blank cheques. The details of some of these incriminating documents are as follows:"*

Sr.No.	Annexure	Pages	Name of the companies
1	A-16	Pages 1 to 140	M/s Tools India Pvt.Ltd M/s Shree Labh Paxmi Capital Services. M/s Sanskriti Tie-up Pvt. Ltd.
2	A-18	Page 1 to 145	M/s Sarvottam Commodities Pvt.Ltd. M/s Welter securities Ltd.
3	A-21	Page 1 to 200	M/s Vanshi Farms Pvt Ltd M/s Amarjyoti Vanijya Pvt. Ltd M/s Deo Steel & mines pvt. Ltd
4	A-22	Page 1 to 112	M/s Ankit Nivesh & management Pvt. Ltd M/s Spring Mercantile Pvt. Ltd M/s Makrana Tradecom Pvt. Ltd M/s Chaibasa Steel Pvt. Ltd.
5	A-25	Page 1 to 180	M/s Hi-tech Mercantile Pvt. Ltd M/s Vanshi Farms Pvt. Ltd

Page no. 30 of the assessment order

"C. Further the cheque book of this jamakharchi company was seized from the office premises of Prakash Group indicating that this company is controlled by Prakash Group."

53. The Assessing Officer has further stated that consequent to the first search, soft copy of the working papers, Balance Sheet, trial balances, journal, ledgers, TDS certificates, board resolutions, income tax filing records, slips of cheque books etc. of different companies controlled by the management of M/s Prakash Industries were found and they constitute incriminating material and therefore, addition to share application money has been made.

54. We have perused the submissions of the assessee, submissions of the revenue as well as the facts of the case and find that the material in respect of investor companies were admittedly found during the course of first search and therefore, it cannot be used against the assessee for making the addition in the assessment

proceedings consequent to the second search and therefore, the very basis of addition on account of share application money does not survive. Hence, the addition of Rs. Rs. 16,36,62,120/- for the AY 2007-08, Rs. 20,36,62,120/- for the AY 2008-09, Rs. 23,59,95,000/- for the AY 2009-10, Rs. 41,58,40,000/- for the AY 2010-11 and Rs. 15,81,65,000/- for the AY 2011-12 on account of share application money stands deleted and consequential addition of brokerage @.5% on such amount of share capital also stands deleted.

55. Without prejudice, we have examined the nature of the material found and we find that the same cannot be said to be incriminating. The Hon'ble High Court of Delhi in the cases of **RRJ Securities (380 ITR 612),** and **Index Securities Pvt. Ltd. (86 taxmann.com 84)** and in many other decisions have held that blank signed transfer forms and blank cheque books do not constitute incriminating material and they do not lead to any inference of escapement of income and therefore, cannot under any stretch of imagination be said to be incriminating documents. Therefore the addition in respect of share capital cannot be made for the completed assessment years i.e. AY 2007-08 to 2011-12 in absence of any incriminating material found in search.

56. On merits, in respect of share capital, the ld. AR repeatedly stated that as far as possible, all the documentary evidences including register of minutes of meeting of shareholders were produced for verification and the copies of the same were also filed. All the documents establishing the genuineness of the transaction including the bank statements, board resolutions, Certificate of

Chartered accountants etc. are attached at page no.156-159, 173-174, 183,187-189, 193, 206-228, 243, 252, 258, 259, 260-268, 292,850-866 of the assessee's paper book.The assessee has also claimed to have filed evidences relating to the source of the share application money. A list containing all the evidences filed by the assessee alongwith the relevant page numbers of the paper book is reproduced herein-under:-

Details filed in respect of Amarjoti Vanija Pvt. Ltd.	***Page No.s of paperbook***
Company Master details as per records of Registrar of Companies showing Registration No., date of incorporation, email, CIN and latest particulars	*156*
Copy of PAN card	*157*
Acknowledgement of Income Tax Returns for AY 2010-11	*158*
Audited Financial Statements for AY 2010-11	*174-182*
Bank Statements showing payment to Assessee	*159-173*
Bank Statement of Assessee Company showing the inflow of share application money	*193-243*
Communications between Assessee and Amarjyoti Vanija Pvt. Ltd. regarding 100,00,000 share warrants @ 81 per warrant taken by Amarjoti Vanija Pvt. Ltd.	*187-188*
Approval from BSE for issue of equity shares arising on conversion of 1 crore warrants under guidelines of SEBI	*183*
Certified by CA in accordance with SEBI guidelines regarding pricing of 100,00,000 warrants at Rs. 81/- per warrant convertible into shares	*267-268*
Resolution at meeting of board of directors, Notice of EOGM, resolution at EOGM regarding 100,00,000 warrants to M/s Amarjoti Vanija Pvt. Ltd. at 81/- per share warrant	*260-266*
Warrant certificate regarding 100,00,000 warrants at 81/- per share warrant issued to M/s Amarjoti Vanija Pvt. Ltd.	*206 of PBK of AY 2009-10*
Certificates of Company Secretary confirming the receipt of share/warrant application money from M/s Amarjoti Vanija Pvt. Ltd. and compliance of allotment of shares as per SEBI Guidelines on conversion on warrants	*207-209 of PBK of AY 2009-10*

Certificate of Chartered Accountant certifying that the warrants were allotted to M/s Amarjoti Vanija Pvt. Ltd. which is not a promoter, company has complied with all the provisions of SEBI Guidelines, company has received share/warrant application money and lock in period of shares of one year from the date of allotment.	*210-215 of PBK of AY 2009-10*
Detail of allotment of 1 crore equity shares of face value of Rs. 10/- at premium of Rs. 71/- per share on conversion of warrants along with copy of share Certificates.	*218-220 of PBK of AY 2009-10*
Letter of NSDL for conversion of said warrants into equity shares	*221-223 of PBK of AY 2009-10*
Letter of BSE and NSE for listing of 1 crore equity shares on conversion of warrants	*224-227 of PBK of AY 2009-10*
Letter of Central Depository Services (India) Limited for De-Materialization of said shares.	*228 of PBK of AY 2009-10*
Ledger account of M/s. Amarjoti Vanijya Private Limited in books of Assessee for AY 2009-10 and 2010-11	*189-192*
Detailed chart showing the names, addresses and PAN of the persons to whom equity shares/warrants were issued, number of shares/ warrants issued, amount received against shares/ warrants during the financial year, etc	*252, 258, 259, 292*
Source of making investment – detail of investment sold by Amarjoti Vanijya Pvt Ltd. in AY 2010-11	*850-866*

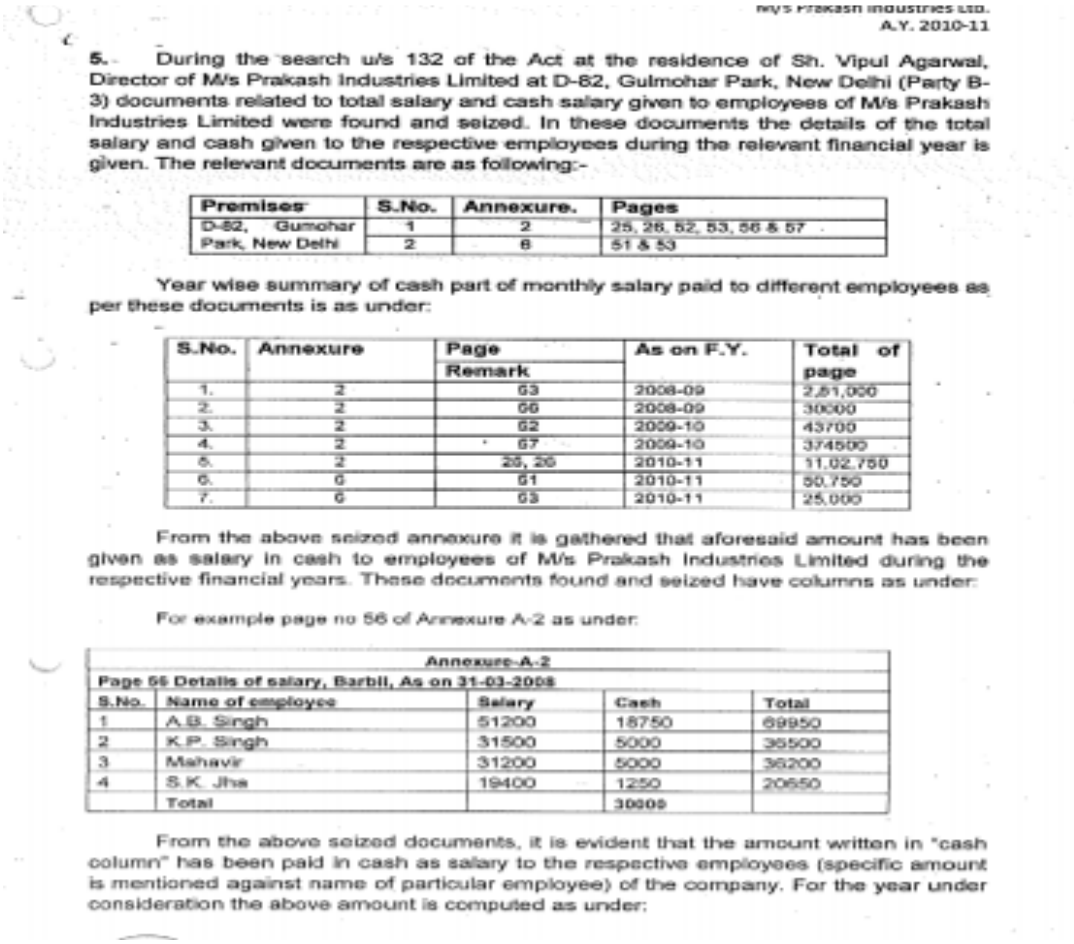
57. All these evidences have neither been rebutted nor has any inquiry led to any inference that these are mere paper work and have been found to be bogus. Based on these evidences Ld. CIT (A) has deleted the additions in all the yearas on this score. Under these circumstances, we have no hesitation in holding that both in law and on facts, the above addition is not correct and deserves to be deleted and consequently the appellant gets relief of Rs. 16,36,62,120/- for the AY 2007-08, Rs. 20,36,62,120/- for the AY 2008-09, Rs. 23,59,95,000/- for the AY 2009-10, Rs. 41,58,40,000/- for the AY 2010-11 and Rs. 15,81,65,000/- for the AY 2011-12 on account of addition of Share capital andRs. 8,18,311/-, Rs. 10,18,310/-, Rs.

11,79,975/-, Rs. 20,79,200/-, Rs. 7,90,825/- for the AY 2007-08 to 2011-12 respectively on account of unexplained expenditure being brokerage.

58. In the result, the appeals of the Revenue ITA No. 4039 to 4043/D/2017 stand dismissed.

59. Ground No. 1 of appellant's appeal no. 4064 to 4066/D/2017 for the AY 2008-09 to 2010-11 pertaining to the addition of cash salary under section 69C of the Act

60. The second addition made by the Assessing Officer is under section 69C of the Act in respect of salary paid in cash of Rs. 3,11,000/- in AY 2008-09, Rs. 4,19,250/- in AY 2009-10 and 11,78,500/- in AY 2010-11. The Ld. AR for the assessee clearly stated that evidence which led to the addition i.e, A2 and A6 containing details of proposed cash Page 15, 6 of A2 and page 51,53 of A6 for AY 2010-11 containing details of proposed cash was also found during the course of first search and therefore, cannot be put to use for making assessment consequent to the second search and even otherwise, according to the appellant, the document is dumb as it clearly states that the salary was only proposed and never paid. The screenshot of the said documents is reproduced as under.



M/s Prakash Industries Ltd.
A.Y. 2010-11

5. During the search u/s 132 of the Act at the residence of Sh. Vipul Agarwal, Director of M/s Prakash Industries Limited at D-82, Gulmohar Park, New Delhi (Party B-3) documents related to total salary and cash salary given to employees of M/s Prakash Industries Limited were found and seized. In these documents the details of the total salary and cash given to the respective employees during the relevant financial year is given. The relevant documents are as following:-

Premises	S.No.	Annexure.	Pages
D-82, Gulmohar Park, New Delhi	1	2	25, 26, 52, 53, 56 & 57
	2	6	51 & 53

Year wise summary of cash part of monthly salary paid to different employees as per these documents is as under:

S.No.	Annexure	Page Remark	As on F.Y.	Total of page
1.	2	63	2008-09	2,81,000
2.	2	66	2008-09	30000
3.	2	62	2009-10	43700
4.	2	67	2009-10	374500
5.	2	25, 26	2010-11	11,02,750
6.	6	51	2010-11	50,750
7.	6	53	2010-11	25,000

From the above seized annexure it is gathered that aforesaid amount has been given as salary in cash to employees of M/s Prakash Industries Limited during the respective financial years. These documents found and seized have columns as under:

For example page no 56 of Annexure A-2 as under:

Annexure-A-2				
Page 56 Details of salary, Barbil, As on 31-03-2008				
S.No.	Name of employee	Salary	Cash	Total
1	A.B. Singh	51200	18750	69950
2	K.P. Singh	31500	5000	36500
3	Mahavir	31200	5000	36200
4	S.K. Jha	19400	1250	20650
	Total		30000	

From the above seized documents, it is evident that the amount written in "cash column" has been paid in cash as salary to the respective employees (specific amount is mentioned against name of particular employee) of the company. For the year under consideration the above amount is computed as under:

61. Apart from the fact that these documents were not seized durin second search and our finding given in respect of other additions will apply mutatis mutandis, it has been argued that these were purely in the nature of dump documents and assessee has rebutted these documents before the authorities below. In support, the judgement of Hon'ble Supreme Court in the case of CIT v. Ved Prakash Chaudhary [2010] 3 taxmann.com 785, Hon'ble Delhi High Court in the case of CIT v. S.M. Agarwal [2007] 293 ITR 43 (Delhi), CIT v. Vivek Aggarwal [2015] 56 taxmann.com 7 (Delhi), CIT vs. Anil Bhatia [2010] 322 ITR 191 (Delhi HC), CIT vs. Anil Bhalla [2010] 322 ITR 191 (Delhi), Girish Chaudhary [2008] 296 ITR 619 (Delhi), Hon'ble Bombay High Court in the case of Mohd. Yusuf & ANR. Vs. D& ANR. AIR 1968 Bom 112 etc, were relied upon. Loking to the

nature of documents, we have no hesitation in holding that based on these documents this expenditure cannot be added as income from undisclosed sources and therefore, no addition can be made.

62. Ground No. 2, 3, 4, 5 of ITA No. 4064/D/2017 for AY 2008-09, ground no. 2, 3, 4, 5, 6 of ITA No. 4065/D/2017 for AY 2009-10, ground no. 2, 3, 4 of ITA No. 4066/D/2017 for the AY 2010-11 and ground no. 1, 2, 3 of ITA No. 4067 to 4070 for the AY 2011-12 to 2014-15 of appellant's appeal and ground no. 3 of ITA No. 4040/D/2017 of AY 2008-09, ground no. 7 and 8 of ITA No. 4041/D/2017 of AY 2009-10, ground no. 5 of ITA No. 4042 and 4043/D/2017 of AY 2010-11 and 2011-12 of department's appeal are relating to the purchase of investment and purchase of scrap. Further, there is an addition of Rs. 2,46,82,226/- in AY 2008-09, Rs. 1,88,64,391/- in A.Y. 2009-10 pertaining to investment on purchase and Rs. 1,28,70,018/- in AY 2008-09, Rs. 2,27,06,450/- in AY 2009-10, Rs. 1,39,28,065/- in AY 2010-11, Rs. 41,68,654/- in AY 2011-12, Rs. 20,29,877/- in AY 2012-13, Rs. 26,50,649/- in AY 2013-14 and Rs. 9,88,697/- in AY 2014-15 pertaining to purchase of scrap and an addition of Rs. 49,02,650/- on account of bogus purchase. These additions have been made on the basis of gate registers, documents from scrap dealers, bilties from transporters, etc. found in search conducted by the Excise Department. There is no reference to any other material found during the search by Income-tax department on the assessee. The only reference and basis of addition were proceedings initiated under the Central Excise Act. The Ld. AR for assessee brought to our notice the order of the Principal

Commissioner, Central Excise dated 19.06.2018 and order of Hon'ble Customs, Excise and Service Appellate Tribunal dated 27.03.2019 which was received after the order of Ld. CIT (Appeal). Hence, the assessee got no opportunity to file this order which clearly shows that all the additions made by the Assessing Authority of Excise were deleted by the Principal Commissioner, Central Excise and Customs, Excise and Service Appellate Tribunal.

63. Since the entire additions made by the Assessing Office were based on the additions made by the Adjudicating Officer of Excise and the said additions were finally deleted by the Principal Commissioner, Central Excise and Customs, Excise and Service Appellate Tribunal, there is no question of the same addition to be sustained. Hence this addition has also been deleted.

64. The assessee had also sought cross examination of the various persons referred to in Excise order which has not been provided, the addition is also against the principles of natural justice. On this count also, the addition deserves to be deleted.

65. Thus, we have no hesitation to delete this addition, the appellant gets relief of Rs. 2,46,82,226/- in AY 2008-09, Rs. 1,88,64,391/- in A.Y. 2009-10 in respect of addition relating to investment on purchase and Rs. 1,28,70,018/- in AY 2008-09, Rs. 2,27,06,450/- in AY 2009-10, Rs. 1,39,28,065/- in AY 2010-11, Rs. 41,68,654/- in AY 2011-12, Rs. 20,29,877/- in AY 2012-13, Rs.

26,50,649/- in AY 2013-14 and Rs. 9,88,697/- in AY 2014-15 in respect of addition relating to purchase of scrap and Rs. 49,02,650 in AY 2009-10 in respect of unaccounted investment.

66. Ground No. 3 of ITA No. 4042 and 4043/D/2017 forAY 2010-11 and 2011-12 of department's appeal relating to the payment of land at Chhattisgarh. Addition to income of Rs. 23,99,260/- in AY 2010-11 and Rs. 4,46,600/- in AY 2011-12 has been made on account of payment of land at Chhattisgarh. This addition is also made on the basis of evidence found during the course of survey on 30.10.2012 and therefore, this evidence cannot be used against the assessee for making addition in respect of the these completed assessment years.

67. Even otherwise, there is nothing to show that the payment was made outside the books of account. The Ld. AR for the assessee also stated that the transaction pertaining to difference of Rs. 5,56,000 is in respect of purchase of land and has been duly recorded in books and the transaction pertaining to difference of Rs. 732,150 pertains to M/s Prakash Thermal Power Ltd which is a group concern of the assessee company and the amount is duly accounted by it. The Ld. AR for the assessee also stated that theLd. AO has incorrectly totalled the addition to Rs. 23,99,260 instead of Rs. 12,88,150. Therefore, the addition stands deleted and the assessee gets relief of Rs. 23,99,260 in AY 2010-11 and Rs. 4,46,600/- in AY 2011-12.

68. Ground No. 4 of ITA No. 4042 and 4043/D/2017for AY 2010-11 and 2011-12 of department's appeal are relating to the addition on account of shifting of profits. The next addition pertains to shifting of profits from the steel unit to the power unit. This addition is also based on material found in the first search. According to the Assessing Officer, the appellant has charged Rs. 5 as rates for acquiring power from its power unit thereby increasing the profit of the power unit which is exempt under section 80-IA of the Act and decreasing the profit of the steel unit. The evidence found during the course of first search showed cost of power manufactured by the power unit. Clearly, there is nothing incriminating about it. It only shows the cost of the manufacture of per unit of power and that also does not pertain to impugned assessment years. The cost of production is a matter of fact and cannot be said leading to any inference of any incriminating material.

69. The assessee has shown with facts and figures that the entire profit of the power unit and manufacturing unit finds place as book profit in its Profit and Loss Account on which it had paid MAT. Hence there is no shifting of profit. On the contrary, tax has been paid on the entire profits of both the units. The ld. AR for the assessee further claimed that if the profit of the steel unit is to be increased it would be entitled to deduction under section 80IA of the Act as the said unit is also eligible to the same being backward area. On merits also, the assessee has established that the purchase of power is at arm's length and has given the rates of power of various authorities including the India Energy Exchange.

70. The detail written submissions of the assessee on this issue are already reproduced below:-

I. *A combined assessment cannot be made under section 153A of the Act for the two separate searches. Provisions of section 153A mandate an assessment in respect of each of the 6 years and therefore, assessments under section 153A were to be mandatorily made in respect of the first search also based on the incriminating material seized, if any*

II. *Assessments in pursuance of the first search do not abate due to the subsequent search*

III. *Material found during the first search was not incriminating and does not even pertain to the assessment year in which addition is made*

Description of Material found	***Found in which search***	***Page no. of assessment order***
A-6 (pg 6,8,37) showing power cost per unit dated 14.5.12 and 20.08.12 @3.04 and 2.09 per unit respectively	***Found in first search***	***Page 39***

1. ***Material found during first search cannot be used in making assessments in pursuance to the second search***

A single assessment order has been passed under section 153A of the Act by considering the second search. The order is passed after the limitation period of first search but within limitation period of second search. Therefore no assessment has been made consequent to the first search. However material of the first search has been used for making the addition. If the department has not made an assessment in pursuance to the first search, material found during the course of the said first search cannot be used in respect of the assessment years relating to and in consequence of the 'second' search.

2. ***Seized material does not pertain to the impugned AY***

a. *The screenshot of the document* ***at page 39 of assessment order*** *showing the date and cost of power per unit shows the cost of Rs. 3.04 per unit on 14.05.2012 and the cost of 2.09 per unit on Rs. 20.08.12. Quite obviously, the seized document pertains to the AY 2013-14 and therefore cannot be used for making the addition in AY 2010-11. It would be clearly impermissible as the seized material available with the AO has no nexus with the assessments in which addition has been made and is wholly irrelevant for the purpose of assessing the income of the Assessee for the*

years in question. Admittedly, there is no seized material in the years for which addition has been made.

b. *Infact, the Ld. AO has himself stated at page 39 that "as per the above documents cost of power per unit in "FY 2012-13" is Rs. 2.09 and Rs. 3.04 but as per books of accounts assessee company has charged Rs. 5 per unit from assessee's own steel division during the year. From the above documents it is transpired that Assessee is charging higher rate from its own steel division to reduce taxable profit of steel division and by clearing exemption under 80IA for power division."*

c. *Therefore, in the absence of any co-relation between the document seized and the assessment years under appeal and specific incriminating information or document relatable to assessee for the assessment year in question, impugned assessment u/s. 153A is bad in law. Therefore, the requirement that the document should relate to the assessment year sought to be reopened is not fulfilled.*

IV. *No incriminating material found during the course of search and therefore assessments in pursuance to the search cannot be made since AY 2010-11 was completed assessment on date of search*

V. *Tax has been paid on book profits and any change in sale price will not impact the book profits*

1. *The Assessee has paid tax of Rs. 42.81 crores on book profits of Rs. 251.89 crores refer page 141-142 and 507-508 of PBK.*

2. *Even if the allegation of the Ld. AO is believed to be true, even then there will be no change in the tax liability of the Assessee.*

3. *The book profits will remain unchanged as the profit of power division will reduce but profit of steel division will increase by the same amount. The tax liability as per normal provisions would still be less than tax as per MAT.*

4. *The Assessee submitted the same before the Ld. AO and even filed the computation before and after considering the addition made by the Ld. AO. However the Ld. AO failed to consider the same.*

5. *The Ld. CIT (A) has considered this reply and deleted the addition stating that Assessee has paid tax under Mat and no demand is created by AO after reducing deduction under 80IA of act hence no tax benefit is achieved by the Assessee.*

VI. ***Explanation given by Assessee***

AY	***Gross power production in units by power division***	***Captive consumption by power division***	***Net power available sold by power to steel***	***avg rate pu at which power sold by power to steel division***	***Average rate IEX***	***Peak rate IEX***	***power sold by power division to CSEB / others through State electricity board***	***quantity of power purchased by steel from CSEB***	***avg rate pu at which power purchased by steel division from CSEB***
AY 10-11	*689,338,905*	*92,797,699*	*596,541,206*	*5*	*5.07*	*10.98*	*0*	*70,408,032*	*3.72*

1. *The addition was made on the difference in price charged by power division from steel division as per the books of accounts and the average rate at which power was purchased by steel division from Chattisgarh State Electricity Board (CSEB).*

2. *Price charged for power was in consonance with rate charged by CSEB and rates that prevailed in India energy exchange ("IEX") which is a statutory body that determines and publishes the contemporary rates of power in the country on basis of demand and supply.*

3. *The Ld. AO failed to consider the reasons and explanation given by the Assessee for charging higher price from steel division. If steel division would have purchased power from CSEB or the market, it would have paid a higher price.*

Average rate of power purchased by steel division from CSEB was 3.72 per unit for AY 2010-11. The Assessee also explained that the steel division required continuous uninterrupted supply of power from its own power division and was ready to pay nominal higher price in comparison to CSEB as non availability of power would have resulted in frequent shutdowns and huge production loss. Therefore, it could not depend on CSEB as there was frequent tripping in supply of power from the grid.

4. *The Assessee furnished the following to establish genuineness:*

- *Details of cost of generation of power* ***Refer page 511***
- *Details of sales made by the power division of the Assessee Company to other divisions of the Company and to open market –****refer page 512***
- *Copy of order passed by Chattisgarh State Electricity Regulatory Commission fixing rate for purchase of power by State of Chattisgarh* ***Refer page 390-410***
- *Letter of intent for sale of power by Assessee to outside parties-* ***Refer page 411-417***
- *Average rate of power as per India Energy Exchange*
- *Copy of rates as per IEX -* ***Refer page 418-425***
- *Average rate of power purchased by Steel division from CSEB*
- *Month wise details of power purchased from CSEB along with bills -****Refer page 426-506***

5. *The Ld. AO absolutely ignored the reply filed by the Assessee and made the addition.*

a. *A.T. Kearney India (P.) Ltd. v. ACIT [2014] 35 ITR(T) 100 (Delhi - Trib.)*

"Now as regards (ii) above, the major thrust of arguments has been on it. This ingredient provides course of business between the assessee and such other closely connected person should be so arranged that it produces more than the ordinary profits to the assessee carrying on eligible business. A bare reading of the relevant part of the provision indicates that in order to invoke this provision, it is of utmost importance on the part of the Assessing Officer to first demonstrate that the transactions between the assessee and the other related person were 'arranged' with a view to produce more profit to the assessee carrying on eligible business.[Para 8.3]

Sub-section (10) is a deeming provision and it must be strictly construed, the Assessing Officer must show at the first instance that the course of business between these closely connected persons was arranged so as to produce more than ordinary profits in the hands of a person carrying on the eligible business. Such a position has to be necessarily proved. There can be no inference as to the fulfilment of such a condition. Thus, it is vivid that unless such 'arrangement' or manipulation is shown to exist, there

can be no question of discarding the declared actual profit and substituting it with a reasonable profit. It is manifest that there are two components of this. First is the 'arrangement' between the related parties and second, such arrangement should lead to higher profit. High profit must necessarily be the consequence of such an arrangement. To put it simply, if such an 'arrangement' is a cause, the higher profit is its 'effect'. It is well known that higher or lower profit of a business can be as a result of the cumulative effect of several factors.

To cite an example, if one person succeeds in cutting down its costs without affecting the quality of output, he will naturally earn more profit than others in the same line of business. Similarly, economies of scale also affect the profit. In the like manner, the extent of administrative, marketing and selling expenses also has a bearing on the overall profit of a business. Other factors for the increase in the profits may be economical purchases or costly sales. If a businessman manages to make economical purchases from the market, he will naturally earn more profit. On the other hand, if the purchases are not actually economical, but because of the close connection with the seller, the arrangement is such so as to show low purchase price in the accounts of the person carrying on eligible business, the apparent profit will still be high. Though in both such cases, the profit of the eligible business has shot up, but in the first instance, it is higher due to efficiencies and in the second, it

is higher due to 'arrangement'. Similarly, if a businessman manages to make sales in the market at a higher price because of its effective selling techniques, he will earn more profit. On the other hand, if the sales are not at high price because of the effective marketing strategy, but because of the close connection with the buyer, the arrangement is such so as to show higher sale price in the accounts of the person carrying on eligible business, the profit will still be high. Though in both the cases the profit of the eligible business will be higher, but in the first instance it will be higher due to better marketing strategy and in the second, it will be higher due to 'arrangement'. What is relevant for invoking sub-section (10) is the prevalence of the second situation above where the higher profit has resulted due to 'arrangement' between the assessee and its closely connected person and not the first, where the higher profit resulted due to the assessee's effectively managing the business.

Thus, it is evident that though in both the situations, the profit is higher, but recourse to sub-section (10) can be taken only in the case of 'arrangement' between the assessee and the closely connected person. In other words, the mere higher profit of the person carrying on the eligible business is no criteria to press into service this provision, unless the 'arrangement' is proved in the first instance. ***The 'arrangement' needs to be specifically proved by the Assessing Officer by showing that the assessee intentionally made purchases at a relatively lower rate***

from the closely connected person vis-à-vis that available in the market for the same products or the assessee made sales to the closely connected person at a relatively higher rate vis-à-vis the prevailing market price of the similar products etc. or that the assessee having eligible income booked relatively less expenses or showed relatively more income on other counts in transactions with closely connected person. *It is only when the existence of' 'arrangement' is proved in this manner that the provisions of sub-section (10) can be employed to reduce the extraordinary profits resulting from such lower payments or excess recoveries to/from the related person. To put it simply, the higher profit shown by the eligible assessee is the end point of the exercise to be undertaken by the Assessing Officer in this regard, starting with expressly showing as to how the transactions were specifically arranged to produce more than ordinary profits to the assessee carrying on the eligible business.* ***The mere higher profit earned by such eligible assessee can be no reason to conclude that the assessee transacted in such an 'arranged' manner with its related persons so as to produce more profits to it.Therefore, the higher profit should be the 'effect' of such an 'arrangement' and cannot be a substitute of such 'arrangement' itself, which is a 'cause', for invoking sub-section (10) of section 80-IA.[Para 8.5]***

It can be seen from the facts of the instant case that the Assessing Officer has simply treated high profit earned by the assessee as a reason to summon sub-section (10), without even remotely demonstrating the existence of any 'arrangement' between the assessee and its AEs aimed at producing extraordinary profits in the hands of the assessee. *The conclusion drawn by the authorities below in such circumstances cannot be ex consequenti sustained.[Para 8.6]*

b. *Additional Commissioner of Income-tax, Range-9, Pune v. Kala Genset (P.) Ltd. [2015] 57 taxmann.com 328 (Pune - Trib.)*

"6.8 The Assessing Officer has invoked sub-section (10) of Section 80IA. In this regard, the stand of the assessee is that sub-section (10) is not applicable since it is applicable to the transactions between the assessee and third person. In this case before us, the transactions are between the two units of the assessee and if at all, any provision is to be applied i.e. sub-section (8) of section 80IA. As per the said section, if any goods are transferred to an eligible business from other business and the consideration of the goods transferred does not correspond to the market value then the Assessing Officer has the power to re-compute the price and disallow the deduction. For applying the provisions of sub-section (8), the Assessing Officer can make disallowance on concrete basis and not on presumptions and surmises. ***The Assessing***

Officer has not been able to point out that the market value of the canopies sold by Chakan unit to Silvassa unit was much higher. *The assessee has clarified that the canopies sold to Kirloskar were not comparable to the canopies sold to Silvassa Unit. Secondly, he has considered an indirect benefit of Rs. 10,000/- for the canopies in respect of which no comparable price has been cited. Thus, this addition is not justified and method adopted by the Assessing Officer is not correct and the addition in question is on presumptions and surmises. The lower authorities have not properly appreciated the facts. They have not properly considered the various contentions raised on behalf of assessee for higher net profit margin in Silvassa unit. The assessee has given detailed charts given basis of allocation of common expenses to both the units. In respect of common expenses, the assessee has allocated most of the expenses on turnover basis.*

6. Nothing contrary has been brought to our knowledge on behalf of revenue. Facts being similar, so following the same reasoning, we hold that there is no concrete evidence that the assessee has shifted the profit of Chakan Unit to Silvassa Unit at such a magniture and hence, the addition sustained by CIT(A) could not be sustained, as such, at the same time, the objection of revenue authorities on this point cannot be rejected as in toto.Taking into all the facts and circumstances in to consideration, the deduction of claim u/s.80IB(5)(i) is

restricted to 15% as against done by the CIT(A). As a result, this issue is partly allowed."

VII. ***Addition made on assumptions and surmises***

1. *The Ld. AO has compared the revenue, profit and GP ratio of power division with steel division (GP of power was much higher) and stated that there has been consistent increase in profits of power whereas profits of steel have been reducing*

2. *He has made the addition on assumptions and surmises by referring to difference in turnover, expenses and gross profit rate of power and steel division.*

a. *Delhi High Court in case of Principal Commissioner of Income-tax v. Cincom Systems India (P.) Ltd. [2019] 103 taxmann.com 161 (Delhi)*

"The findings of the Tribunal are unchallengeable. The Assessing Officer was unable to point out any defects, deficiencies or wrong entry in the books of account for the exempt and non-exempt unit. The Act does not prohibit an assessee from having non-STPI unit and STPI unit. This is not the case and the allegation made by the revenue. It is also not the case and allegation of the revenue that the business or orders undertaken by the non-STPI unit were transferred to the STPI unit. The two lines of business were separate. The finding that the two lines of business were separate has

*not been questioned. Expenditure declared and disclosed as incurred for non-exempt unit could not be treated and transposed as expenditure incurred on exempt unit, on assumptions and surmises by referring to difference in turnover, expenses and net profit rate of exempt and non-exempt units.This cannot justify the Assessing Officer's direction to shift 90 per cent of the expenditure from the non-exempt unit and treat it as expenditure of the exempt unit, thereby reducing the profit in the STPI unit.**Inference and deduction solely based and predicated on net profit rate is nothing but a surmise and conjecture.**Under section 144 of the Act, book results cannot be rejected only on the ground of decrease or difference in gross profit rate compared to other years or another assessee.**Neither can the book results be rejected for the reason that gross or net profit rates in the two lines of business are different.**The difference can be the starting point of investigation and verification but not the essence to reject the book results and make best judgment assessment. [Para 7]"*

b. CIT v. Schmetz India (P.) Ltd. [2012] 26 taxmann.com 336 (Bom.)

"8. So far as questions (a) & (b) are concerned, we find that the Tribunal has considered the entire evidence and on facts come to the conclusion that the profits earned by Kandla division of the respondent-assessee is not abnormally high due to any arrangement between the respondent-assessee

and its German Principal. ***The Tribunal correctly held that extraordinary profits cannot lead to the conclusion that this is an arrangement between the parties.*** *This would penalize efficient functioning. Further, the authorities have also recorded a finding that the industrial sewing machine needles imported and traded by the Mumbai division are different from those manufactured & exported by the Kandla division. Consequently, this also negatives any arrangement between the parties to show extraordinary profits in respect of its Kandla division so as to claim deduction under Section 10A of the Act. These are findings one of fact. The appellant-revenue have not been able to show that the findings are perverse or arbitrary. In the circumstances, questions (a) and (b) as formulated by the appellant/revenue do not raise substantial questions of law in the present facts and are therefore dismissed."*

c. ***Aquila Software Services Hyderabad (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-10 (2), Hyderabad[2015] 42 ITR(T) 630 (Hyderabad - Trib.)***

On plain reading of the aforesaid provision, it is clear that as per the said provision three conditions have to be fulfilled. Firstly, there must be close connection between assessee carrying on the eligible business and the other person. Secondly, the business between assessee and such other closely connected person should be so arranged that business transacted between them produces more than the

ordinary profits to assessee carrying on eligible business. If AO is satisfied with the aforesaid two conditions, then, as per the third condition, he may take the amount of profits as may be reasonably deemed to have been derived from transactions of such business in computing profits of such eligible business for the purpose of deduction under the said section. Considering the facts of the present case in the light of the aforesaid statutory provisions, it is to be seen that the first condition is fulfilled as assessee and its AE are related parties. However, as far as the second condition i.e. existence of arrangement between assessee and its related party by which these transactions so arranged has to produce more than the ordinary profits in the hands of assessee, whether has been fulfilled or not needs to be examined. ***On perusal of the assessment order, it is very much evident that only relying upon TP document of assessee wherein it is stated that average profit margin of comparable company is 15% as against 50% of assessee, AO has concluded that profit earned by assessee is not at arm's length. AO has not given a conclusive finding as to whether earning of such excess profit is as a result of business arrangement between the parties***

Even, ld. CIT(A) has also not given any factual finding on the issue to conclusively prove that assessee and its related party has arranged their business affairs in such a manner that it will result in more than reasonable profit to assessee.

Merely relying upon the fact that in the TP documentation the average margin of comparable companies are 15% where as the assessee has shown profit at 50%, the departmental authorities have reduced the deduction claimed u/s 10A by restricting the profit from the eligible business of assessee to 20% of the turnover. In our view, the Department having not fulfilled the conditions of section 80IA(10), disallowance in the present case is not justified*. At the cost of repetition, it needs to be stated that only relying upon TP documentation, AO has inferred that the profit earned by assessee at 50% is more than the arm's length profit. However, without bringing material on record that the profit earned by assessee at 50% is not the profit ordinarily earned in similar line of business, it cannot be said that it is not at arm's length. Moreover, excess profit may be due to various reasons. Therefore, without analysing those factors, it cannot be said that only because average profit earned by comparables is 15%, the profit earned by assessee at 50% is not reasonable. The Chennai Bench of the Tribunal in case of Tweezmen India (P.) Ltd. v. Addl. CIT [2010] 133 TTJ 308 while considering similar issue held that the provisions of section 80IA(10) do not give arbitrary power to AO to fix the profits of assessee. AO has to specify as to why he feels that profits of assessee are being shown at higher figure. AO has to further show as to how he has computed ordinary profits which he deems to be profit which assessee might be*

reasonably expected to generate. The Bench held that AO would be expected to use a comparable case to determine the possible ordinary profit which assessee could be expected to generate from his business. In the absence of any other substantial evidence with him, when using a comparable, assessee's own past and future performance would obviously be the best comparable. Comparing assessee's modus operandi of conducting its business with another when the same are not of equal terms would be a travesty of justice in so far as the financial charges. The use of plant & machinery, depreciation thereon, the location which would affect the cost of transportation as also the cost of labour, cost of power and fuel would have to be seen. …

Examining the facts of the present case in the light of the decisions referred to hereinabove, it is noticed that in the present case also AO has simply relied on the TP study report of assessee to conclude that the profit earned by assessee cannot be considered to be reasonable profit earned from eligible business and on that basis has disallowed part of the deduction u/s 10A. Therefore, since AO has not conclusively proved the fact that there is an arrangement between assessee and its AE by which the transactions were so arranged as to produce more than the ordinary profits in the hands of assessee, disallowance of part deduction claimed by applying the provisions of section 80IA(10), in our view is not justified. Since ld. CIT(A) upheld the disallowance without examining the aforesaid aspect,

order of ld. CIT(A) deserves to be set aside. The conditions of section 80IA(1) having not been fully complied by AO, disallowance of deduction claimed u/s 80IA(10), in our view is not justified. Accordingly, we delete the addition made by AO in this regard."

71. First of all, it is seen that, tax has been paid on book profits and any change in sale price will not impact the book profits. The Assessee has paid tax of Rs. 42.81 crores on book profits of Rs. 251.89 crores. Even if the allegation of the Ld. AO is believed to be true, even then there will be no change in the tax liability of the Assessee. The book profits will remain unchanged as the profit of power division will reduce but profit of steel division will increase by the same amount. The tax liability as per normal provisions would still be less than tax as per MAT. The Assessee submitted the same before the Ld. AO and even filed the computation before and after considering the addition made by the Ld. AO. However the Ld. AO failed to consider the same. The Ld. CIT (A) has considered this reply and deleted the addition stating that Assessee has paid tax under Mat and no demand is created by AO after reducing deduction under 80IA of act hence no tax benefit is achieved by the Assessee. The facts and submission given above clearly proves that there is no instance to show any shifting of profit and therefore, we delete this addition. The Assessee gets relief of Rs. 76,35,72,743 and Rs. 52,80,20,878 in the AY 2010-11 and AY 2011-12 on this issue.

In the result all the appeals of the revenue are dismissed and assessee's appeal is allowed.

Order pronounced in the Open Court on 18th June, 2021

Sd/-	Sd/-
[B.R.R. KUMAR]	**[AMIT SHUKLA]**
[ACCOUNTANT MEMBER]	**JUDICIAL MEMBER**

DATED: 18/06/2021

PKK: