

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 1840/MUM/2025  
Assessment Year: 2013-14  
&  
ITA No. 1843/MUM/2025  
Assessment Year: 2014-15  
&  
ITA No. 1842/MUM/2025  
Assessment Year: 2020-21**

Sonu Pankaj Shakti Sagar Sood  
405/406, Casablanca,  
Yamunanagar, Oshiwara, Andheri,  
Mumbai- 400 053

**Vs.**

Assistant Commissioner of  
Income-Tax Central Circle 5(1),  
Mumbai  
Room No. 1928, 19<sup>th</sup> Floor, Air  
India Building, Nariman Point,  
Mumbai- 400 021

**PAN NO. AVYPS 0247 E  
Appellant**

**Respondent**

Assessee by : Mr. Tanzil R. Padvekar, Adv. &  
Mr. Bhavik Chheda, Adv.  
Revenue by : Mr. Swapnil Choudhari, Sr. AR.

Date of Hearing : 12/02/2026  
Date of pronouncement : 05/05/2026



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These three appeals by the assessee are directed against three separate orders, all dated 24.01.2025, passed by the Ld. Commissioner of Income-tax (Appeals)- 53, Mumbai [in short 'the Ld.CIT(A)] for assessment years (AY) 2013-14, 2014-15 and 2020-21 respectively. As common issue and dispute is involved in these appeals, therefore, all these three appeals were heard together and disposed off by way of this consolidated order for sake of convenience and avoid writ petitioner facts.

2. Firstly, we take up the appeal for AY 2013-14. Though, the assessee filed as much as 17 grounds originally while filing form no. 36, but later on 19/06/2025 filed concise 7 grounds, which are reproduced as under:

*1. On the facts and in law, the Ld. Commissioner of Income Tax (Appeals) [in short Ld. CIT(A)] erred in confirming the addition made by the Ld. Assessing Officer [in short Ld. AO] of Rs. 4,55,00,000/- under Section 68 of the Act.*

#### **GROUND ON MERITS**

*2. On the facts and law, the impugned addition of Rs. 4,55,00,000/- is bad in law as the impugned transaction is fully explained by the Appellant and therefore, provisions of Section 68 are not applicable.*

*3. On the facts and in law, Ld. AO and Ld. CIT(A) erred by failing to appreciate that the Appellant had obtained unsecured loan from various parties during the relevant*



*assessment year amounting to Rs. 4,55,00,000/- which was repaid during the relevant assessment year and subsequent year, thus in peculiar facts of the case, the genuineness of the transaction ought not to have been doubted. It is well settled principle in law that when unsecured loans are repaid in the current or subsequent year, provision of Section 68 shall not be applicable.*

*4. Without Prejudice to the above, on the facts and in law the Ld. CIT(A) ought to have appreciated that that majority of loans were repaid during current year and subsequent year through banking channel which is duly reflected in the bank account and books of account of the appellant, the addition made on account of cash credit to extent of repayment of loans was to be deleted.*

*5. On the facts and in law, the impugned addition has been made on the basis of statements of third party which are collected behind back of the Appellant. The impugned statements are made without providing any cogent material to support such statements. The statement made by third party are in absence of any collaborative evidence and cogent material to substantiate such statements.*

*6. On the facts and in law, the impugned addition is made on the basis of coerced and bald statement without any substantive material, therefore, the statements of the third party cannot be held to have any evidentiary value.*

*7. On the facts and in law, when all payments have been made through banking channels and repayments have also been effected through banking channels, mere non-compliance with the notice issued under Section 133(6) of the Act by the lenders cannot, by itself, give rise to doubts regarding the genuineness of the transactions.*

2.1 The relevant facts as emerging from the orders of the lower authorities and the submissions of the parties are that the assessee is an individual and a professional actor by vocation. In addition to his cinematic pursuits, the assessee is also engaged in endorsing various brands and corporations in his capacity as a celebrity. For the assessment year (A.Y.) under consideration, the assessee filed



his return of income on 31.03.2015, declaring a total income of **Rs. 3,01,05,630/-**. This return was initially processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2.2 A survey action under Section 133A of the Act was conducted on the assessee's premises on 07.12.2012. Consequent thereto, the case was selected for scrutiny and assessment was completed under Section 143(3) of the Act at a total income of Rs. 3,65,85,870/-. While the assessee initially contested certain additions regarding unsecured loans, the addition of Rs. 13,50,000/- pertaining to M/s Benchmark Trading Pvt. Ltd. upheld by first appellate authority was ultimately resolved under the Direct Tax Vivad Se Vishwas (VSV) Scheme.

2.3 Subsequently, a search and seizure operation under Section 132 of the Act was carried out on 15.09.2021 at the premises of the assessee and its related entities. Following the search action, and by virtue of Explanation 2(ii) to Section 148, the proceedings were reopened under Section 147. Upon obtaining the requisite approval from the *Principal Chief Commissioner of Income-tax (Central-2), Mumbai*, a notice under Section 148 was issued on 13.02.2023. In response, the assessee filed a return of income on 13.03.2023, declaring a total income of Rs. 3,01,05,613/-



2.4 In the course of the reassessment proceedings, the learned Assessing Officer (Ld. AO) confronted the assessee with the findings unearthed during the search. The Ld. AO specifically relied upon the sworn statement of **Shri Kishanlal Udaylal Jain**, Director of *M/s Om Shilpi Jewels and Gems Pvt. Ltd.*, recorded under Section 131 of the Act. In the said statement, Shri Jain admitted to facilitating bogus unsecured loans *from agents in lieu of the cash during FY 2013-14 and subsequent years* for the assessee and his spouse, Mrs. Sonali Sood, through multiple conduit entities such as *M/s Renuka Exim P Ltd; M/s Chattar Impex p Ltd ; M/s Yuvika Impex P Ltd ; M/s Krishna Raj Dimonds P Ltd and M/s Kamal Gem Jewellers* etc. The statement of Shri Kishanlal Udaylal Jain, director of M/s. Om Shilpi Jewels and Gems Pvt. Ltd was confronted to the assessee during search proceedings. Although the assessee denied personal knowledge of these lenders and directed the Income-tax department to his accounts team, the Ld. AO noted that the accounts personnel namely Shri Radhesh Nair and Shri Pankaj Jalisatgi, expressed their inability to provide details as they were not associated with the assessee during the period the transactions occurred.

2.4.1 Further the ld AO referred to the field inquiries carried out by the investigation wing for verification of the address of the various unsecured loan providers including 'M/s Krishnaraj Diamond P Ltd, Surat', where in it was revealed the parties were not found at their



registered address. This fact of non traceability of 'M/s Krishnaraj Diamond P Ltd, Surat', was brought to the notice of assessee during search proceedings, but he denied of having any knowledge of the lender parties and directed the investigation team to his account team namely Shri Radhesh Nair and Shri Pankaj Jalisatgi, but they expressed their inability to provide details as they were not associated with the assessee during the period the transactions occurred.

2.4.2 Further during the course of assessment proceedings, for verification of unsecured loan, the ld AO carried out enquiry u/s 133(6) of the Act and noted that only few parties complied and that too partly, on the basis of which their creditworthiness was not established.

2.5 The assessee in response submitted ledger account of those parties in his books of account alongwith copy of his Bank statement. The assessee submitted that all documents justifying creditworthiness were already filed during earlier assessment proceeding. The assessee submitted that part of loan amounting to Rs. 13,50,000/- from 'Benchmark Trading P ltd' was already held as unexplained cash credit and added while completing assessment u/s 143(3) of the Act dated 28/03/2016.

2.5.1 Further, the assessee explained that total unsecured loan outstanding at end of FY 2012-13 were of Rs. 2,93,98,417/- and



out of which loans of Rs. 1,25,00,000/0 were obtained during FY 2012-13.

2.5.2 The assessee further submitted that all the unsecured loans in dispute were obtained by way of banking transaction and already reflected in his books of account. The assessee filed copy of the ledger account of those unsecured parties appearing in books of account and also filed copy of the bank statements and submitted that all those loans had already been returned back either in the year under consideration or in the subsequent assessment years. The assessee refuted all the observation of the AO made on the basis of statement of 'sh Kishan U jain' and inquiry by the inspectors of investigation wing.

2.6 In view of the above observations, the ld AO made addition of unexplained cash credit of Rs. 4,55,00,000/- in respect of the 11 unsecured loan parties.

3. On appeal, the Ld. CIT(A) sustained the addition, placing heavy reliance on the statement recorded by Investigation Wing and the results of the filed inquiries carried during search. The Ld. CIT(A) rejected the assessee's contention that the mere repayment of loans through banking channels in the year under consideration or subsequent year, sufficed to discharge the onus cast under Section 68 of the Act. The Ld. CIT(A) relied on the decision of the Coordinate bench of the Tribunal in the case of **JK global, Mumbai**



**31(2) (2) Mumbai, ITA No. 3260 3259 and 3258/Mum/2023 for A.Y. 2010-11, 2011-12 and 2012-13** and upheld the addition made by the ld AO. Aggrieved, the assessee is in appeal before us.

4. Before us the ld. counsel for the assessee filed a paper book containing pages 1-199.

5. Before us ld. counsel for the assessee challenged the order of the Ld. CIT(A) on merits as well as legal grounds. At the outset of the hearing, the learned counsel for the assessee moved an application dated 19/06/2025 seeking the admission of additional legal grounds. In said application, the assessee submitted that during the course of the proceedings before Assessing Officer and before CIT(Appeals) certain legal grounds were not raised by the Authorised Representative. It was contended by the assessee that the grounds are purely jurisdictional and legal in nature, predicated upon the existing facts on record, and do not necessitate the introduction of fresh evidence. The additional grounds raised by the assessee in his application are reproduced as under:

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1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Ld. AO issued the Impugned Notice under Section 148 of the Act dated **without fulfilling the jurisdictional requirements of Section 147 to Section 151 of the Act.***
2. *On the facts and circumstances of the case and in law, the Ld. CITA(A) failed to appreciate that the re-assessment was carried out by the Ld. AO merely on the basis of '**Change of Opinion**'. especially when the Appellant was subjected to scrutiny proceedings for the relevant*



Assessment Year, which culminated into an Assessment Order dated 20/03/2016.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the additions made by Ld. AO despite the fact that **there was no incriminating material** found against the Appellant in the search action carried out under Section 132 of the Act.
4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the additions made by the Ld. AO despite the fact that there was neither any incriminating material found **nor any books of account, other documents or any assets** were requisitioned under Section 132A of the Act during the course of search proceedings.
5. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the correct position of law that the Ld. AO can assume jurisdiction to proceed with the **re-assessment only if undisclosed income is found based on incriminating material** against the Appellant.
6. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Ld. AO in issuing the Impugned Notice under Section 148 in a non faceless manner thereby contravening Section 151A of the Act as well as the E-Assessment of Income Escaping Assessment Scheme, 2022 formulated by the Board.
7. On the facts and circumstances of the case and in law, the Id. CIT(A) erred in upholding the additions which were **merely based on third-party statements, that too without any opportunity of cross-examination** afforded to the Appellant.
8. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Ld. AO has carried out the re-assessment without adhering to the principles of natural justice.

5.1 We have heard rival submissions of the parties on this preliminary issue of admissibility of additional grounds. Since these grounds challenge the very substratum of the reassessment proceedings and go to the root of the matter, we are of the



considered view that they satisfy the criteria for admission. In light of the settled legal position enunciated by the Hon'ble Supreme Court in the case of **CIT vs. NTPC Ltd. [1998] 229 ITR 383 (SC)**, we admit the additional grounds for adjudication.

6. Additional Ground No. 1 being general in nature, we proceed to Ground No. 2, wherein the assessee assails the reassessment on the premise of a "change of opinion." The learned counsel argued that the issue of unsecured loans was extensively scrutinized during the original assessment proceedings under Section 143(3), culminating in the order dated 28.03.2016, much prior to search in the case of assessee. It was contended that since the Assessing Officer (AO) had already deliberated upon the genuineness of these loans, making a solitary addition for M/s Benchmark Trading Pvt. Ltd. while accepting the rest, the current proceedings represent a mere re-appreciation of existing material, which is impermissible in law.

6.1 The ld. counsel for the assessee submitted that the survey u/s 133A of the Act was conducted in the case of the assessee on 07.12.2012. Pursuant to the survey case was selected for scrutiny, wherein certain additions on account of the unsecured loans were made and the ld AO completed the assessment at total income of Rs. 3,65,85,870/- as against returned income of Rs.. 3,01,05,630/- . Aggrieved, the assessee filed appeal before the learned first appellate authority, but the addition was ultimately settled under



the Direct-Tax Vivad-Se-Vishwas scheme. It is contention of the assessee that during the assessment proceeding u/s 143 of the Act, all those unsecured loans were duly examined by the ld AO and except one addition for unexplained cash credit amounting to Rs. 13,50,000/- for unsecured loan from the 'Benchmark Trading P ltd', all other unsecured loans were found to be genuine and no addition was made in respect of those loans.

6.2 He submitted that in the present re-assessment proceeding u/s 147, no incriminating material was found during the course of the search and, hence addition has been made on same set of the facts and circumstances except on statement of Shri Kishanlal Udaylal Jain which was recorded u/s 131 of the Act. Conversely, the learned Departmental Representative (DR) argued that the present reassessment was triggered by a search under Section 132, invoking the deeming provisions of **Explanation 2(ii) to Section 148**.

6.3 We have heard rival submission of the parties and perused the relevant material on record. It is the contention of the assessee that re-opening is merely the 'change of the opinion' based on same set of facts which were available during earlier assessment proceedings.

6.4 But we find that in the instant case re-opening has been done under the deeming provision of Explanation 2(ii) of sec. 148 which provides for re-opening in the cases where search has been



conducted. Further, while it is true that a previous assessment concluded the issue, the subsequent search action brought to light the statement of Shri Kishanlal Udaylal Jain, recorded under Section 131. In the said statement, a specific modus operandi was confessed, implicating the assessee in the procurement of bogus loans in exchange for cash. This constitutes "new tangible material" that was not available to the AO during the original assessment. The discovery of fresh evidence that fundamentally alters the complexion of the facts precludes the application of the "change of opinion" doctrine. Reopening based on new information discovered post-assessment does not constitute a 'change of opinion' but rather a discovery of escapement. Consequently, the additional ground No. 2 of the appeal is dismissed.

7. Additional ground Nos. 3 to 5 are revolve around a singular legal proposition: whether, in a post-amendment regime (w.e.f. 01.04.2021), an addition can be sustained in a search-linked reassessment under Section 148 in the absence of "incriminating material" found during the search. The ld. counsel for the assessee referred to the additional grounds and submitted that entire basis of addition is statement recorded u/s 131 of the Act and reports of the inspectors. He submitted that assessee's premises were subjected to survey u/s 133A of the Act in the year 2012 and thereafter a search was conducted in September, 2021 but nothing was found or seized by the Income-Tax department during the



search which could be said to be incriminating material for the purpose of making addition. The learned counsel further submitted that in the impugned assessment order, the Ld.AO has not recorded any discovery of incriminating material during the search proceeding. The ld. counsel for the assessee submitted that statement recorded of Shri Kishanlal Udaylal Jain u/s 131 of the Act in the case of 'M/s. Om Shilpi Jewels and Gems Pvt. Ltd' cannot be treated as incriminating material in absence of any material seized/discovered during the course of the search and seizure operation. The ld. counsel emphasised that the statement relied upon by the ld AO was recorded u/s 131 of the Act and not u/s 132(4) of the Act and therefore same cannot be regarded as incriminating material for the purpose of sustaining addition. The ld. counsel relied upon the decision of **PCIT vs Anand Kumar Jain (HUF) reported in (2021) 432 ITR 384 (Delhi)**, wherein the Hon'ble High Court of the Delhi has categorically held that statement recorded u/s 132(4) of the Act cannot, on a standalone basis and without reference to any material discovered during the search and seizure action, empower the Assessing Officer to frame the assessment.

7.1 The ld. counsel for the assessee further referred to the decision of Hon'ble Bombay High Court in the case of CIT Vs. continental warehousing corporation (Nhava Sheva) Ltd [2015] 374 ITR 645, decision of Hon'ble Delhi High Court in the case of CIT Vs.



Kabul Chawla 61 taxmann.com 412 (Delhi), and PCIT Vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399(SC). The Hon'ble Supreme Court in the case of Abhisar Buildwell (P.) Ltd. (Supra) concluded that no addition can be made by the AO in search assessment u/s 153A, in absence of incriminating material found during the course of search u/s 132 of the Act.

7.2 The ld. counsel for the assessee submitted that all the above referred decisions were rendered in the context of section 153A, but pursuant to the change in law w.e.f. 1.04.2021, section 153A has been done away with and the provision governing assessment pursuant to search and seizure operation now contained in sec 148 r.w. Explanation 2(ii) of the Act. The ld. counsel was of the opinion that the language of Explanation-2(ii) read with section 148 of the Act, is *pari-materia* with that of the section 153A and the scheme of assessment is substantially the same. Therefore the principle settled by judicial decisions referred above should apply *mutatis mutandis* to the provisions of sec.148 read with Explanation 2(ii) of the Act. Relying on the above proposition, the ld. counsel for the assessee submitted that the impugned assessment order has been passed without there being any incriminating material found during the course of the search and therefore the assessment order is unsustainable in law and liable to be quashed. Further in support of the contention that provision of sec 148 read with explanation 2(1) is *pari-materia* with erstwhile section 153A, the ld. counsel



relied on the decision of the Lucknow Bench of the Tribunal in the case of Rakesh Kumar Pandey Vs ACIT (2025) 181 taxmann.com 896 (Lucknow- Trip.) The ld. counsel submitted that in said decision the Coordinate Bench has held that if no incrementing material has been found during the course of search than the Assessing officer cannot acquire jurisdiction u/s 148 of the Act and the deeming provision u/s 132 of the Act was not adequate for the Assessing officer to assume jurisdiction u/s 147 of the Act.

7.3 We have meticulously analyzed the statutory framework of the "New Reassessment Regime." The main contention of the learned counsel for the assessee is that the provision of section 148 read with Explanation 2(ii) of the Act are *pari-materia* with erstwhile section 153A of the Act.

7.4 The Finance Act, 2021, abolished the search-specific assessment regime (Sections 153A to 153C) for searches conducted on or after April 1, 2021. In its place, search assessments were integrated into the general reassessment framework of Sections 147 through 151. This shift moved the trigger from "initiation of search" to "possession of information suggesting escapement". The new Section 148 empowers the AO to issue a notice if there is "information which suggests that income chargeable to tax has escaped assessment". To facilitate search cases, Explanation 2 was inserted below Section 148, creating a deeming fiction. The **Explanation 2(i) below Section 148** deems that the AO has



"information" in the case of the assessee if a search is initiated under Section 132. **Proviso to Section 148A** waives the requirement for a preliminary inquiry and the issuance of a show-cause notice (SCN) before issuing a Section 148 notice in search cases. For ready reference, we feel it appropriate to reproduce section 148 and relevant Explanation-2(ii) during relevant period as under:

*“148. Issue of notice where income has escaped assessment. - Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribes 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.*

**Provided** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

**Provided further** that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section:

**Provided also** that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.



*Explanation 1.-.....*

*Explanation 2.—For the purposes of this section, where,—*

*(i)a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or*

*(ii)a survey is conducted under section 133A, other than under sub-section (2A) [\*\*\*] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*

*(iii)the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

*(iv)the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,*

*the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.”*

7.5 On plain reading of above provisions, the search action u/s 132 has been deemed to have information suggesting to tax escaped assessment. The scheme of section 147/ 148 read with Explanation 2 (ii) is distinct from the scheme of section 153A. Under the erstwhile Section 153A, the AO was mandated to assess or reassess the total income for six years solely by virtue of a search. However, the current Section 147/148 framework operates on the existence



of "information which suggests" escapement. **Explanation 2(ii)** creates a legal fiction where a search is *deemed* to be such information. Under the provisions of section 148/147 there is no concept of abatement of assessment. Further, if the assessing officer make an addition on the ground for which the assessment was re-opened, then the assessing officer is at liberty to make addition in respect of the other item or enquiry during the course of re-assessment proceeding, but in the case of 153A proceeding if no incriminating material is found in the case of unabated assessment year, as per the decision of the Hon'ble Supreme Court in the case of *Abhisar Buildwell (P.) Ltd.*(supra), the Assessing Officer is restricted to make addition on the basis of incriminating material found.

7.6 The Hon'ble Supreme Court in *Abhisar Buildwell (P.) Ltd.*(supra), affirming the view taken by the Delhi High Court in *CIT v. Kabul Chawla* (supra) held that the jurisdiction of the AO under Section 153A to disturb completed assessments is strictly confined to making additions based on incriminating material unearthed during the search. The Hon'ble Court reasoned that permitting additions in the absence of such material would render the concept of a search-based assessment arbitrary and would bypass the statutory limitation periods prescribed for regular assessments. The Hon'ble Court held that the foundation of search assessments



under Sections 153A and 153C is the detection of incriminating material.

7.7 The Revenue contends that this deeming fiction introduced under section 148 of the Act effectively replaces the "Incriminating Material" doctrine. If the law deems that the AO has information for the relevant years simply because a search took place, the Revenue argues that the requirement to "pinpoint" specific material before issuing a notice or making an addition is effectively neutralized.

7.8 The question has been raised by the 1d Counsel for the assessee that the principles of *Abhisar Buildwell* (supra) still be invoked while completing an assessment under Section 147 in the new regime.

7.9 In this regard, we may like to refer the decision dated 2/01/2026 of Coordinate Bench of Kolkata in the case of In **M/s BMS Sales Pvt. Ltd. vs. DCIT** in ITA No.1199/KOL/2025 for Assessment Year: 2019-20. The Bench dealt with the validity of a Section 148 notice issued after a 2021 search where no incriminating material was initially found. The assessee argued that for "unabated" years, the notice was invalid in the absence of incriminating material. However, the Tribunal rejected this challenge, making a critical distinction between the old and new regimes. The Tribunal held that under the new framework, the AO is under a mandatory obligation to reopen a certain number of



assessment years following a search, similar to the mandate under the old Section 153A. Because Explanation 2 to Section 148 deems the existence of information, the AO does not need to possess specific incriminating material at the *stage of issuing the notice*. The Tribunal explicitly disagreed with the Chandigarh Bench's decision in Rosha Alloys (P) Ltd. v. DCIT, Central-2025(7) TMI 238 (Chd) dt. 28.5.2025 which had suggested that the AO must still demonstrate a link between the search information and the escapement for each specific year. The relevant finding of the Tribunal (*supra*) is reproduced as under:

*2.6. After hearing the rival contentions and perusing the material on record, we find that the assessee has challenged the issue of notice u/s.148 of the Act and also the proceedings u/s.147/143(3) of the Act on the ground that the AO has failed to provide copy of the reasons recorded in the proceedings u/s.148 of the Act and also the addition made by the AO are not arising out of the search conducted u/s.132 of the Act on the assessee, Rather the additions made were on the basis of material gathered during the course of searches on Kesara Group on 30.11.2018 and Anup Majee Group on 05.11.2020 and consequently the notice u/s.148 of the Act was itself invalid and may be quashed. We have perused the provisions under old scheme vis a vis under new scheme and find that under the new scheme of search, the AO has to issue notice u/s 148 of the Act for the number of assessment years as provided in the Act. In other words there need not be any incriminating materials and whether there is any materials warranting additions that has to be examined by the AO during proceedings u/s 147 of the Act. Therefore we do not find any merit in the contentions of the assessee that the provisions of Section 148 of the Act for search conducted on or after 1.4.2021 cannot be considered in total oblivion of the fact that no incriminating material was found with the assessee during the course of search u/s.132 of the Act and the impugned assessment was unabated and hence no addition can be made. We note that the plea of the assessee does not have force or merit as in this case the requirement of any incriminating material is not there for issuing notice u/s 148* Page | 7 ITA No.1199/KOL/2025 M/s BMS



*Sales Pvt. Ltd.; A.Y. 2019-20 and the assessment can be reopened because the provisions of Section 148 of the Act are analogous to Section 153A of the Act as applicable in the case of search pertaining to search prior to 1.4.2021. In our opinion, the AO is under obligation to reopen such assessment years prior to the date of search even if there is no incriminating material and then frame the assessment accordingly. In other words the existence of incriminating materials has to be examined during the assessment proceedings and not at the stage of issuance of notice. Ld. AR also relied on the decision of the Chandigarh Bench of the Tribunal in the case of Rosha Alloys (P) Ltd., reported in 2025 (7) TMI 238 (Chd) dtd. 28.05.2025, however, with, utmost humility and respectful disagree with the conclusion drawn by the coordinate bench of the Tribunal and, therefore, the ground Nos.1 to 5 raised by the assessee have no merit and accordingly the same are dismissed by upholding the appellate order on this issue.”*

7.10 The decision in the case of *BMS Sales Pvt. Ltd.(supra)* thus holds that at the jurisdictional stage of initiating proceedings, the "Incriminating Material" doctrine has been weakened by the legislative fiction of Explanation 2. The "information" is now a statutory presumption rather than a factual discovery.

7.11 The *Abhisar Buildwell* (supra) ruling emphasized that for completed assessments, additions cannot be made arbitrarily or on "other material" without a nexus to the search. Under Section 147, the AO is still required to base the assessment on "tangible material". If the only material in the AO's possession is search-derived information, and that information is found to be non-incriminating for a particular year, the rationale of *Abhisar Buildwell* (supra) suggests that no addition can be sustained. Further, even no addition is made by the ld AO on the information gathered during the search leading reopening u/s 148 of the Act ,



the ratio of Hon'ble jurisdictional High Court in the case of **Commissioner of Income-Tax-5 v. Jet Airways (I) Ltd. [2010] 331 ITR 236 (Bom)** that if an Assessing Officer (AO) reopens an assessment under Section 147/148 but fails to add the specific income for which the notice was issued, they cannot independently add other, new income, making the reassessment invalid, will also come into play and no other addition could be made in search assessments u/s 147 otherwise then based on information if no addition is made based on such information.

7.12 Regarding the assessee's reliance on **Abhisar Buildwell (supra)**, we observe a fundamental distinction. In the present case, the "information" is not merely the factum of the search, but the specific, sworn testimony of Shri Kishanlal Udaylal Jain and the subsequent field inquiries by the Investigation Wing which revealed the non-existence of the lenders.

7.13 In the case of decision in Rakesh Kumar Pandey (Supra), which has been relied upon by the Id Counsel, the Coordinate Bench observed as under:

**“(F2.1)** A conjoint reading of the prevailing law as contained in section 147 & 148 of the I. T. Act, shows that the Assessing Officer is deemed to have information which suggests that income chargeable to tax has escaped assessment where a search is initiated under section 132 of the Act. However, to satisfy the requirement of section 147 of the Act, a mere suggestion is not adequate to assume jurisdiction under section 147 of the Act. The perusal of section 147 of the I. T. Act shows that the Assessing Officer can assume jurisdiction under section 147 of the Act if any income chargeable to tax has escaped assessment. Therefore, to assume



jurisdiction under section 147 of the Act, the Assessing Officer must have, sound reasons to belief (and not just a suggestion) that income chargeable to tax has escaped assessment in the case of the assessee. The deeming provision under Explanation-2 to Section 148 of the Act is to be read strictly and not liberally; as it is well settled that deeming provisions of law are to be interpreted strictly: Explanation-2 to Section 148 of the Act provides that the Assessing Officer is deemed to have information which suggests that income chargeable to tax has escaped assessment. However, there is no deeming provision of law to the effect that the Assessing Officer is deemed to have sound belief that income has escaped assessment. The requirement u/s 147 of 1. T. Act of forming a sound belief that income has escaped assessment, has placed a much higher burden on the Assessing Officer than merely having suggestion, that income has escaped assessment. Moreover, the search action under section 132 of the Act is merely a provision of law, authorizing investigation of the assessee's affairs. Section 132 of the Act is not a charging provision. A provision of law, authorizing investigation in the case of the assessee, cannot bestow substantive or jurisdictional rights on Revenue to the detriment of the assessee, which were not available before the investigation started. It is well settled that provisions of law are to be interpreted in a manner which does not lead to absurd results. The interpretation give by the learned CIT(A) would imply that merely because search has been conducted under section 132 of the Act, which is a no more than a process of investigation; the Assessing Officer becomes vested with additional substantive and jurisdictional powers to assume jurisdiction u/s 147 of the 1. T. Act even when no incriminating materials have been found at the time of search us 132 of the I. T. Act from the assessee's premises based on which the Assessing Officer can reasonably arrive at sound belief that income has escaped assessment. This interpretation, being absurd is unacceptable. **A reasonable interpretation of law, as provided in Section 147 and 148 of the 1. T. Act, is that the Assessing Officer can assume jurisdiction u/s 147 of the 1. T. Act if he can reasonably come to a sound belief that income has escaped assessment, with the help of incriminating materials found in the course of search under section 132 of the Act. However, if there are no incriminating materials found during search under section 132 of the Act, the deeming 'suggestion' under Explanation-2 to Section 148 of the Act, in itself does not lead to fulfillment of mandatory requirement w/s 147 of the I. T. Act that Assessing Officer must have sound reasons to believe that income has escaped assessment. From perusal of records, it is obvious that no incriminating material was found in the course of search under section 132 of the Act. In the absence of any incriminating material, the deeming provision under section**



**132 of the Act is not adequate for the Assessing Officer to assume jurisdiction under section 147 of the Act.** For the aforesaid reason, we are of the view that the proceedings under section 147 read with section 148 were started, and jurisdiction under section 147 was assumed by the Assessing Officer without meeting the requirement of law. Accordingly, we conclude that the assessment order passed under section 147 of the Act is nonest and is unsustainable in the eye of law. Therefore, for this reason also, the assessment order deserved to be annulled.

(EMPHASIS SUPPLIED)”

7.14 In above decision, the Coordinate Bench has held that irrespective of the deeming provision of Explanation 2(ii) of section 148, a mere "suggestion" of escapement is insufficient and the Assessing officer has to satisfy sound reasons to believe that income escaped assessment.

7.15 In the instant case before us the AO's belief was far from arbitrary. The statement recorded under Section 131, of Shri Kishanlal Udaylal Jain though not under Section 132(4), qualifies as "material" that can trigger a reassessment under the broad definition of "information" provided in the new scheme. The non-traceability of the lenders at their registered addresses provides the requisite factual foundation to transform a "suggestion" into a "reasoned belief." In our opinion, all those information constituted sound reasons to believe that income had escaped assessment and therefore the ratio in the decision of the Rakesh Kumar Pandey (Supra) is no longer applicable over the facts of the instant case. While the **Lucknow Bench** in *Rakesh Kumar Pandey* observed that a mere "suggestion" of escapement is insufficient without a "sound belief," we find that in the instant case, the AO's belief was far from



arbitrary. The statement recorded under Section 131, though not under Section 132(4), qualifies as "material" that can trigger a reassessment under the broad definition of "information" provided in the new scheme. The non-traceability of the lenders at their registered addresses provides the requisite factual foundation to transform a "suggestion" into a "reasoned belief."

7.16 We note that the "incriminating material" rule established in *Abhisar Buildwell* (supra) was specific to the unique architecture of Section 153A. Under the amended Section 147, the AO's jurisdiction is wider; if "information" (including deemed information from a search) suggests escapement of income, the AO is empowered to reassess *any* income that has escaped assessment which comes to his notice during the proceedings. In this case, the third-party confessions and the failed field verifications constitute sufficient "tangible material" to justify the addition, irrespective of whether a specific document was "seized" from the assessee.

7.17 In view of the above, we hold that the jurisdictional requirements of Section 147/148 have been met. The ratio of *Rakesh Kumar Pandey* (supra) is distinguishable as the present case involves specific adverse evidence beyond the mere occurrence of a search.

7.18 In view of aforesaid discussion, the additional grounds Nos. 3-5 of the appeal raised by assessee are dismissed.



8. Additional Ground No. 6 of the appeal relates to challenging the jurisdiction of the Assessing Officer in completing the assessment on the ground that under provision of section 151A of the Act as well as E-assessment scheme, the Assessing Officer was required to conduct the proceedings of issue of notice u/s 148 in a faceless manner rather than notice issued in none faceless manner.

8.1 However, before us learned counsel for the assessee did not press this ground, accordingly, the same is dismissed as infructuous.

9. The additional ground Nos. 7 and 8 of the appeal of the assessee relate to not providing opportunity of cross examination of the third parties relied by the AO. These grounds are related to the validity of making addition rather than validity of reassessment and therefore same shall be dealt along with regular ground challenging merit of addition.

10. Ground Nos. 1 to 8 of the appeal are in the relation of the sole addition of unsecured loan of Rs. 4,55,00,000/-. The additional ground Nos. 7 and 8 of the appeal are also connected with this addition on merit.

10.1 The facts in brief qua the issue-in-dispute are that during the course of the re-assessment proceeding, the Ld. AO observed following amount of unsecured loans given by the assessee.

| Sr. No. | Name of The Entity | PAN | Amount |
|---------|--------------------|-----|--------|
|---------|--------------------|-----|--------|



|    |                               |            |                 |
|----|-------------------------------|------------|-----------------|
| 1  | Amit R. Bajaj                 | AFRPB3442B | 7900000         |
| 2  | Benchmark Trading Pvt. Ltd.   | AADCB3962G | 2700000         |
| 3  | Harinder Singh Kanda          | AFHPK0323G | 500000          |
| 4  | Krishna Raj Diamond Pvt. Ltd. | AAECK0445Q | 9500000         |
| 5  | Manibhadra Diamond Traders    | AAGCM3399H | 1800000         |
| 6  | Neha Beri                     | AIWPM1742M | 6400000         |
| 7  | Nisith Biswas                 | AAPPB8312F | 500000          |
| 8  | Sachin Baslas                 | AKKPB3762G | 2200000         |
| 9  | Shree Balaji Enterprises      | ACYPK3888Q | 10000000        |
| 10 | Yuvika Impex Pvt. Ltd         | AAACY4332L | 3000000         |
| 11 | Yuvraj Entertainment          | AAACY3782G | 1000000         |
|    | <b>Total</b>                  |            | <b>45500000</b> |

10.2 The Id AO made addition of unsecured loan on the basis of evidences gathered from three sources: (i) statements recorded during search; (ii) inquiry carried during search and (iii) inquiry carried during re-assessment.

10.3 The Id AO **firstly**, referred to the statement of Shri Kishanlal Udaylal Jain recorded u/s 131 of the Act by the Investigation wing, which was carried out parallel to the search proceeding, wherein in answers to questions Nos. 16 to 23, he stated regarding unsecured loan transactions of the assessee. This statement forms bedrock of the Revenue's allegation that the credits appearing in the assessee's books lack genuine character and creditworthiness. Therefore, it is imperative to extract said questions and answers of his statement for ready reference as under:

*“Q.16 Please furnish details of sales made to Shri Sonu Sood and Smt Sonali Sood by you. Please also furnish the mode of payment.*

*Ans. Sir we have not sold much of new jewellery to them. We may have done small amount of repairing work for them. The amount would not be more than 1.1 to 1.5L total. This amount would have been received by us in cash. In the last 1-2 years we have not received any repairing orders from them.*



*Q.17 Please give details of any other transaction done with Shri Sonu Sood.*

*Ans. Sir we have in the past given loan to Shri Sonu Sood in FY 13-14 from Omshilpi Jewels and Gems Pvt Ltd. Other than this we have no other transaction in the books of Omshilpi Jewels and Gems Pvt Ltd. I am submitting ledger of Sonu Sood in our books from FY 2013-14 till date as Page 1 to 8 of Annexure 1 to this statement. I am also submitting copy of our bank book which reflects the payments to/from Sonu Sood, at page 1 to 29 of Annexure 2 to this statement.*

*Other than this, I also arranged for unsecured loan entries for Sonu Sood from Renuka Exim Pvt Ltd, Chattar Impex Pvt Ltd, Yuvika Impex Pvt Ltd, Krishna Raj Diamond Pvt Ltd, Kamal Gem Jewellers. This was done starting in FY 2013-14 and in subsequent years also. I have also arranged for unsecured loans for Smt Sonali Sood from Renuka Exim Pvt Ltd.*

*Q.18 Please explain the sources from which loan has been paid to Sonu Sood by Omshilpi Jewels and Gems Pvt Ltd.*

*Ans. Sir Sonu Sood had paid us cash of Rs 45 lakhs against which we have provided RTGS entries to him in FY 2013-14. These entries are same as ledger submitted at Annexure 1 to this statement.*

*Q.19 Please explain in detail how the loans from the entities Renuka Exim Pvt Ltd, Chattar Impex Pvt Ltd, Yuvika Impex Pvt Ltd, Krishna Raj Diamond Pvt Ltd, Kamal Gem Jewellers were arranged by you, as mentioned by you at Q No 17. Please give the complete details of middlemen involved, if any, and commission earned by you, if any.*

*Ans. Sir there are agents in the market who arrange unsecured loans in lieu of cash. The loans availed from these parties Renuka Exim Pvt Ltd, Chattar Impex Pvt Ltd, Yuvika Impex Pvt Ltd, Krishna Raj Diamond Pvt Ltd, Kamal Gem Jewellers have been given in return for cash paid by Sonu Sood/Sonali Sood, as applicable. I had arranged these loans for Sonu Sood/Sonali Sood through some agents but I do not remember their names right now. For this, I earned a commission of around Rs 50,000 in cash. I arranged these entries in PY 2013-14 and in subsequent years.*

*Q.20 Please refer to your response to the question above where you have stated that you have arranged unsecured loans in lieu of cash for Sonu*



*Sood and Sonali Sood. Please substantiate your response with documentary evidences, If any.*

*Ans. Sir I am submitting copy of email exchanged on 26.12.2019 between Shri Janak Talsaria and Shri Radhesh Nair, who is the CA of Sonu Sood and Sonali Sood. This email (annexed as page 1 to 4 of Annexure 3 to this statement) contains ledgers of Chattar Impex Pvt Ltd, Krishna Raj Diamond Pvt Ltd, Kamal Gem Jewellers in the books of Sonu Sood. These emails were being exchanged in order to follow up for my commission accrued on account of facilitating these loans.*

*Q.21 Please state whether you know anyone named Smt Monika Jain and Shri Nayan Shree Jain. If so, please state the nature of your relationship with these people.*

*Ans. Sir I do not know these people. I have never heard their names.*

*Q. 22 I am showing you list of unsecured loans availed by Shri Sonu Sood, as declared by him in his Tax Audit Report for AY 2014-15. The Tax Audit Report is annexed as Annexure 4 to this statement. In this list, Shri Sonu Sood has stated to have received unsecured loans of Rs 9 lakhs each from Smt Monika Jain and Shri Nayan Shree Jain. The address of both these persons has been given as Shop No. 6/7, Dhavalgiri Apartment, Swami Samarth Nagar, Andheri (W), Mumbai-400053, which is same as the registered office of Om Shilpi Jewels and Gems Private Limited. Further, no PAN has been mentioned against these persons. Please comment.*

*Ans. Sir I had arranged for loans for Sonu Sood from Renuka Exim Pvt Ltd, Chattar Impex Pvt Ltd, Yuvika Impex Pvt Ltd, Krishna Raj Diamond Pvt Ltd, Kamal Gem Jewellers and maybe that is why he has put this address against Monika Jain and Nayan Shree Jain. I do not know any persons of these names. They have no connection with me or this address. I do not even know whether they really exist or not.*

*Q.23 Please confirm whether you are willing to depose the facts submitted by you above as and when called at a later date. Also confirm that you would be willing to depose these facts in the face of cross examination with Shri Sonu Sood and Smt Sonali Sood, if needed.*

*Ans. Yes sir I confirm the same."*

10.4 The deponent sh Kishanlal Udaylal Jain thus (i) stated of giving loan by way of RTGS in FY 2013-14 i.e. AY 2014-15 through



his company *Omshilpi Jewels and Gems Pvt Ltd* in lieu of cash from the assessee ( Q-17 & 18); (ii) admitted of arranging loans for assessee through brokers /agents via RTGS transfers in lieu of cash (Q -17 & 19); (iii) also pointed towards electronic trails (emails with the assessee's representative) to substantiate his claim of acting as a middleman for a commission (Q-20).

10.5 The **second** pillar of the Revenue's case rests upon the field inquiries conducted by the Investigation Wing to verify the existence of the purported lending entities. For ready reference, result of field inquiries carried out in case of lender parties is summarised as under:

A. M/s. Krishnaraj Diamond Pvt. Ltd. (Surat)

*Field enquiries conducted at the stated registered office, viz. 307, New DTC, 3rd Floor, Hathfalia, Haripura, Surat-395003, Gujarat, revealed that the location comprised two separate buildings, namely "New DTC" and "New DTC-A". Verification was carried out at both premises; however, no office of M/s. Krishnaraj Diamond Pvt. Ltd. was found to be in existence. Instead, at the "New DTC" building, an office of an entity styled "Vishwa Insurance" was noticed, while the premises in "New DTC-A" were found locked. Upon further enquiry, it transpired that the said premises earlier housed an entity known as "Gelson Enterprises", which had since shifted to another address. When confronted with the aforesaid adverse material (vide Question No. 112), the assessee merely expressed ignorance and sought to shift the onus of explanation upon its accounts personnel, namely Shri Radhesh Nair and Shri Pankaj Jalisatgi. However, as duly recorded by the Ld. Assessing Officer, both the said*



*individuals subsequently disclaimed any knowledge of the impugned transactions, stating that their association with the assessee commenced subsequent thereto.*

**B. M/s. Benchmark Trading Pvt. Ltd. (Mumbai)**

*For the purpose of verification, an Inspector was deputed on 16.09.2021 to the stated address of M/s. Benchmark Trading Pvt. Ltd., being 13/A, Mezzanine Floor, Gordhandas Building, Opera House, Mumbai-400007, for service of summons under section 131 of the Act. The Inspector reported that upon reaching the premises, an unidentified individual opened the door and categorically denied the existence of any such entity or company at the said address. The said person further refused to disclose his identity and immediately closed the door. Consequently, the summons issued under section 131 could not be served upon the said entity.*

**C. M/s. Manibhadra Diamond Traders Pvt. Ltd.**

*In the course of enquiries conducted under section 131 of the Act, the entity M/s. Manibhadra Diamond Traders Pvt. Ltd. was found to be non-existent at its recorded address, viz. 302-A, Shubh Building, 60 Feet Road, Bhayander (West), Mumbai-401101. The Inspector reported that the said premises were, in fact, occupied by a residential tenant, Smt. Ratanmala Kishore Jain, who has been residing therein since the year 1992-93. This factual position was further corroborated by the Society Secretary, Shri Lalit Jain, who categorically affirmed that no such business entity had ever operated from the said premises for nearly three decades.*

**D. M/s. Yuvika Impex Pvt. Ltd. (Surat)**



*Enquiries conducted at the stated Surat address revealed the premises to be a modest ancestral residence. The occupant, Smt. Bhavika Tejas Jariwala, stated on oath that her family had been residing therein for over a century and that the premises had never been let out or used for any commercial activity. She further deposed that the family possessed limited financial means, thereby rendering the existence of any such commercial entity at the said address wholly implausible.*

10.6 **Thirdly**, in the course of the assessment proceedings, the learned Assessing Officer issued notices under section 133(6) of the Act to all eleven parties from whom the assessee had purportedly obtained unsecured loans.

10.6.1 Upon examination, the Assessing Officer recorded that the following parties—(i) M/s Benchmark Trading Pvt. Ltd., (ii) Shri Harinder Kanda, (iii) Krishna Raj Diamond Pvt. Ltd., (iv) M/s Manibhadra Diamond Traders, (v) Shri Nishit Biswas, (vi) Shri Sachin Baslas, (vii) M/s Shree Balaji Enterprises, (viii) M/s Yuvika Impex Pvt. Ltd., and (ix) M/s Yuvraj Entertainment—failed to furnish any response to the notices issued under section 133(6). On this basis, the Assessing Officer drew an adverse inference and concluded that the said parties lacked the requisite creditworthiness.

10.6.2 In respect of the remaining parties who responded to the notices, namely Shri Amit Bajaj and Ms. Nehaberi, the Assessing Officer observed that they had not furnished essential financial



documents such as capital accounts, profit and loss statements, and bank statements for verification. Consequently, he held that both the creditworthiness of the creditors and the genuineness of the transactions remained unsubstantiated.

10.6.3 Further, insofar as M/s Shree Balaji Enterprises is concerned, although a reply to the notice under section 133(6) was filed, the Assessing Officer noted from its balance sheet that it reflected a capital of ₹13,88,666/- and sundry debtors amounting to ₹3,03,25,509/-, which was not found satisfactory to explain the source of such loan of Rs. 1.00 crores given to the assessee. Additionally, the entity failed to furnish complete bank statements for verification. In those circumstances, the Assessing Officer rejected the claim of creditworthiness and the genuineness of the transaction in relation to M/s Shree Balaji Enterprises.

10.7 In response, the assessee furnished copies of the ledger accounts of all the concerned parties along with corresponding bank statements, contending that the loans so received had been duly repaid either during the relevant previous year or in the immediately succeeding assessment year. The assessee further candidly acknowledged that the impugned loans were facilitated through Shri Kishanlal Udaylal Jain, a person known to him, who had arranged such funds from his acquaintances on the understanding that the assessee would, subject to availability, attend certain private functions of those persons. However, the



assessee categorically denied having paid any cash consideration or premium in lieu of procuring the said loans.

10.7.1 It was further submitted that the assessee had no direct knowledge of the individual entities from whom Shri Kishanlal Udaylal Jain had arranged the loans, but maintained a *bona fide* belief that such persons possessed adequate financial capacity and were regular assessee under the Act. The assessee also pointed out that the loans were obtained during the financial year 2012-13, and, therefore, upon verification after a lapse of seven to eight years, there existed a reasonable possibility that the said parties might have shifted from the addresses recorded in the ledger accounts.

10.8 However, the submissions of the assessee were not accepted and the ld AO sustained the addition treating the unsecured loans of Rs. 4,55,00,000/- as unexplained cash credit .

10.9 The Ld. CIT(A) rejected the contention of the assessee that repayment of the loan was sufficient to discharge the onus u/s 68 of the Act. The Ld. CIT(A) in support thereof, relied on the decision of the Coordinate Bench of the Tribunal in the case of JK Global, Mumbai Vs ITO (supra).

10.10 Before us, the learned counsel for the assessee assailed the findings of the authorities below and advanced a threefold submission. **Firstly**, it was contended that all the impugned loans



were received through banking channels and stood duly repaid either during the relevant previous year or in the immediately succeeding assessment year, in any event much prior to the search action conducted in the case of the assessee. Placing reliance on the judgment of the Hon'ble Gujarat High Court in *PCIT v. Merrygold Gems (P.) Ltd.* [2024] 164 taxmann.com 764, it was submitted that once the loans are accepted as repaid and duly reflected in the banking records, no adverse inference is warranted in the year of receipt. The Ld. counsel for the assessee further relied on the decision of Hon'ble Gujarat High Court in the case of *PCIT v. Ambe Tradecrop (P.) Ltd.* (2022) 145 taxmann.com 27 (Gujarat); decision of the Hon'ble Bombay High Court in the case of *CCIT (OSD)/PCIT v. Bhupendra Champaklal Delal* (2024) 1260 taxmann.com 560 (Bombay) and decision of Co-ordinate Bench of Mumbai Tribunal in the case of *Dy. CIT v. Hetal Nitin Shah* (2024) 159 taxmann.com 1618 (Mumbai-Trib.). The Hon'ble Bombay High Court in the case of *Bhupendra Champaklal Delal* (supra) held that assessee received loan from a creditor and repaid same, since all transactions were routed through bank accounts, mere fact that creditor had not charged interest on outstanding loan would not justify holding loan transactions to be bogus. The relevant finding of the Hon'ble High Court is reproduced as under:

*“8. The third issue relates to an exception taken by AO to the manner in which a loan amount shown to be repaid is received back allegedly by Assessee himself through a series of structured transactions. Assessee filed a list of sundry creditors along with his return of*



*income which showed an amount of Rs. 1,26,12,036/- as payable to one M/s. Champaklal Devidas as on 31st December 1987. One Shri. J. P. Gandhi, a close associate of Assessee was the proprietor of M/s. Champaklal Devidas. In AY 1990-91 and 1991-92 Assessee has shown share and security transactions with said Champaklal Devidas, which were shown to result in a loss to Assessee and corresponding profit to Champaklal Devidas. All transactions were recorded by book entries only. Assessee contended that he had no separate document except the general entries in his book and J.P.Gandhi claimed to have lost his books in a fire. Assessee's books indicated a huge amount as closing balance in the account of Champaklal Devidas. Assessee repaid an amount of Rs. 15.4 Crores to Champaklal Devidas. The AO has held that Champaklal Devidas in turn lent the entire sum to some Dhanraj Mills Pvt Ltd. which also transferred the amount to another company called Kennilworth Investment Ltd and other group companies of Assessee himself. The AO concluded this to be an arrangement on paper only and a device used by Assessee to show loss in transactions with Champaklal Devidas only on the ground that Assessee has not paid interest on the loan stated to be availed from Champaklal Devidas. The AO refused to exclude the opening balance of Rs. 54,13,442/- for lack of production of evidence by Assessee. The ITAT has examined this issue and noticed the observation of CIT (A) that the accounts relating to AY 1987-88 were very much available with the AO and hence his observation that there was no evidence was incorrect. Furthermore, the repayment made by Assessee in subsequent years were considered while holding the transaction to be bogus. Most importantly, the ITAT noticed that the assessment of J. P. Gandhi was also done by the same AO and the profits declared by him were all accepted. All the transactions were routed through bank accounts. The mere fact that Champaklal Devidas has not charged interest on the outstanding loan does not justify holding the transactions to be bogus. The ITAT has relied on the well settled proposition of law that tax authorities are not entitled to sit in an arm chair of a businessman to regulate business affairs. Hence, the third issue also based on facts and the view of the AO on the basis of general observations, surmises and conjectures de hors any substantial material as rejected by the ITAT is correct."*

10.11 Further, ld counsel submitted that Hon'ble Gujarat High Court in the case of Ambe Tradecorp (P.) Ltd. (supra) noted that when loan is repaid by the assessee in subsequent years, the onus



u/s 68 of the Act is considered as discharged. The relevant finding of the Hon'ble High Court(supra) is reproduced as under:

*“3.4 When the revenue preferred appeal before the Appellate Tribunal, the Tribunal confirmed the findings recorded by the Appellate Authority. The Tribunal referred to the decision of CIT v. Durga Prasad More [1971] 82 ITR 540 (SC) and also in Sumati Dayal v. CIT [1995] 80 Taxman 89/214 ITR 801 (SC), to further record on the basis of the facts that the assessee had furnished the details such as copy of ledger account, bank statements, income tax returns, balance sheet etc. It was also recorded that notice under section 133(6) of the Act was issued to the said parties which were duly responded by them. The identity of the parties could not be, therefore disputed, recorded the tribunal. The aspect was also noticed that the assessee was not beneficiary of the loan received by it and the loan was repaid by the assessee in the subsequent year. It led to unacceptable conclusion that the impugned transaction was a business transaction between the assessee and the loan parties and that they could not be doubted for their genuineness.*

*3.5 While the revenue has tried to put up a case that the transactions were in the nature of accommodation entries, this case has only presumptive and assumptive value not supported by any factual data. On the contrary, on the basis of the material before the authorities, the transactions were found to be genuine.*

*4. Learned advocate for the appellant attempted to emphasize that for the purpose of application of section 68 of the Act, three ingredients were necessary. Firstly identity of the parties to the transaction of loan, second is the creditworthiness of such parties and thirdly the genuineness of the transaction. It was submitted in vain that neither of the ingredients were satisfied.*

*5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.”*

10.12 **Secondly**, the learned counsel submitted that during the course of search proceedings no evidence or any document suggesting unsecured loan received by the assessee as bogus or



non genuine was recovered and the entire addition rests solely on the statement of Shri Kishanlal Udaylal Jain. He submitted that without any prompt, the investigation wing recorded statement of Shri Kishanlal Udaylal Jain though he was not appearing in the list of the unsecured loan parties. The ld. counsel submitted that his statement were recorded invoking section 131 of the Act and not part of section 132(4) of the Act. It was argued that although the said person alleged receipt of cash in lieu of arranging loans, he neither furnished the names and addresses of any alleged intermediaries nor was any such enquiry conducted by the Investigation Wing. Further, despite a reference to certain email correspondence between him and the assessee's Chartered Accountant, no such material was ever brought on record by the Assessing Officer to substantiate the alleged involvement of the assessee in any cash transaction. It was also pointed out that although Shri Jain claimed to have earned commission income of ₹50,000/- for arranging the loans, no evidence was produced to demonstrate that such income had been offered to tax by him in regular course. In the circumstances, it was contended that the said statement, being uncorroborated by any independent material, could not form the sole basis for making the addition. The ld. counsel for the assessee was of the view that statement of Shri Kishanlal Udaylal Jain was recorded under coercion or pressure or some wrong doing might have been detected in his business and



therefore he might had been forced to give statement against the assessee.

10.13 The ld. counsel before us also referred to the additional ground challenging addition made without any cross examination and submitted the ld AO highly relied on the said statement of Shri Kishanlal Udaylal Jain but the assessee was only shown the copy of his statement of during search proceeding but a copy of said statement was neither provided nor opportunity of cross examination was provided to the assessee. The ld. counsel urged that making addition relied solely on the statement of Shri Kishanlal Udaylal Jain but failure of the Assessing Officer to afford an opportunity of cross-examination of the said witness constitutes a clear violation of the principles of natural justice, thereby vitiating the impugned addition. The ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of **M/s. Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II [2015] 62 taxmann.com 3 (SC)**, wherein the Hon'ble Supreme Court ruled that denying an assessee the right to cross-examine witnesses whose statements are used to demand tax is a serious violation of natural justice, making the resulting order null and void. The ld Counsel accordingly submitted that impugned reassessment cannot be sustained in view of the violation of the principle of natural justice.



10.14 **Thirdly**, advertng to the observation of the Assessing Officer that certain loan creditors were not traceable at their recorded addresses during the course of search, the learned counsel for the assessee submitted that the impugned loans pertain to Financial Year 2012-13, whereas the enquiries were conducted after a considerable lapse of seven to eight years. In such circumstances, it was contended that the possibility of the concerned parties having shifted from their erstwhile addresses cannot be ruled out. It was further urged that the loans had been arranged through Shri Kishanlal Udaylal Jain and, therefore, the assessee did not have direct knowledge of the current whereabouts of such parties. The learned counsel further emphasized that the Assessing Officer has not recorded any finding to the effect that notices issued under section 133(6) of the Act were returned unserved. According to the assessee, this circumstance prima facie indicates that the said parties were in existence at the relevant point of time. Despite this, no further steps were undertaken by the Assessing Officer, such as issuance of summons under section 131 or deputation of an Inspector for field verification, and the addition has been made primarily on the basis of information received from the Investigation Wing, without conducting any independent enquiry.

10.14.1 It was also submitted that a sum of ₹13,50,000/- received from Benchmark Trading Pvt. Ltd. had already been



treated as unexplained cash credit and added in the assessment completed under section 143(3) of the Act dated 28.03.2016. The assessee further placed on record copies of replies furnished by Shri Nitish Biswas, Shri Sachin Biswas and Yuvraj Entertainment in response to notices issued under section 133(6) of the Act.

10.14.2 Elaborating further, the learned counsel submitted that the total unsecured loans outstanding as on the close of Financial Year 2012-13 aggregated to ₹2,93,98,417/-, out of which loans amounting to ₹1,25,00,000/- were raised during the said year. It was contended that the loans were received and subsequently repaid through banking channels and, therefore, the concerned parties are no longer in contact with the assessee.

10.14.3 **Lastly**, it was submitted that all primary evidences available with the assessee, including ledger accounts and bank statements evidencing receipt as well as repayment of the loans through regular banking channels, were duly furnished both during the original assessment proceedings under section 143(3) as well as in the present reassessment proceedings. In the absence of any cogent material brought on record by the Assessing Officer to dislodge these evidences, the impugned addition, it was contended, is unsustainable in law.

10.15 On the other hand, the learned Departmental Representative (DR) relied on the order of the lower authorities and



submitted that in view of the evidence of the statement of Shri Kishanlal Udaylal Jain, the loans are in the nature of the unexplained cash credit.

11. We have carefully considered the rival submissions and perused the material available on record. The issue for adjudication pertains to the addition made under section 68 of the Act on account of unsecured loans treated as unexplained cash credits.

11.1 At the outset, it is noteworthy that, pursuant to the search conducted by the Investigation Wing at the premises of the assessee and its related concerns, no incriminating material whatsoever was found to indicate that the assessee had introduced unaccounted cash for the purpose of obtaining the impugned loans. No reference of any material adverse to claim of unsecured loan of assessee during survey carried u/s 133A in 07/12/2012 has been made by the AO in impugned order.

11.2 The Assessing Officer has drawn adverse inference on the ground that certain loan creditors were not found at their recorded addresses during the course of post-search verification. In our considered view, the explanation offered by the assessee merits acceptance. The loans in question pertain to financial year 2012–13, whereas the search was conducted in financial year 2020–21. Given the substantial lapse of time, the possibility of such parties having shifted their place of business or residence cannot be ruled



out, particularly when it is an admitted position that the loans stood repaid through banking channels either during the relevant year or in the subsequent year, and the assessee may not have continued contact with such parties thereafter.

11.3 Further, the assessee has relied upon the argument that repayment of loan in the year under consideration or in subsequent year, is sufficient enough to discharge burden u/s 68 of the Act and relied upon various precedents in support thereof. But we are of opinion that repayment of loan may be one of aspect for considering genuineness of transaction but in the instant case the statement of Shri Kishanlal Udaylal Jain of obtaining loan in lieu of cash is raising doubt on the genuineness of loan and therefore those decisions relied upon by the assessee are distinguishable in the facts of the assessee.

11.4 The entire edifice of the addition rests substantially on the statement of Shri Kishanlal Udaylal Jain recorded under section 131 of the Act on the second day of the search proceedings, despite the fact that he does not figure as a creditor in respect of the loans for the year under consideration. The record is conspicuously silent as to the circumstances in which his statement came to be recorded. Relevant part of his statement has already been reproduced in preceding paragraphs.



11.5 Further, the said statement remains wholly uncorroborated by any independent material. It is evident that in the statement recorded u/s 131 Shri Kishanlal Udaylal Jain stated that he had provided accommodation entries of the unsecured loan against cash provided by the assessee but he has not brought on record any documentary evidence in support thereof. There are obvious contradictions in his statement. In answer to question no. 18 he stated that loan was also given by his company in FY 2013-14 in lieu of cash, but same has not been listed by the ld AO as unsecured loan or unexplained cash credit. Further, though reference was made therein to alleged email correspondence between Shri Jain and the assessee's Chartered Accountant, no such material has been brought on record by the Assessing Officer to substantiate the allegation or to establish any involvement of the assessee in the alleged accommodation entry mechanism. In answer to question no 20 of statement of sh Jain, there is reference of some ledger account as part of said email correspondence, but merely copy of ledger accounts cannot be a material establishing transfer of cash against loan by way of RTGS. Further, in answer to question 18 and 19, sh Jain stated of arranging loans through some brokers or agents but the investigation did not obtain a list of such agents or brokers from him. Further the Shri Kishanlal Udaylal Jain has stated that he received commission income of Rs. 50,000/- in cash but there is nothing on record to show that such commission



income was appearing in his return of income filed in the regular course.

11.6 The ld. counsel for the assessee before the Ld. CIT(A) submitted that probably the statement of Shri Kishanlal Udaylal Jain was recorded under threat or coercion and the statement does not appears at his will. Before us ld. counsel submitted that probably the investigation wing might have found something wrong in the business activity and therefore pressurized him to give statement against the assessee.

11.7 Once an adverse statement was sought to be relied upon against the assessee, it was incumbent upon the Assessing Officer to afford an effective opportunity of cross-examination to the assessee. The denial of such opportunity constitutes a clear infraction of the principles of natural justice, rendering the reliance placed on such statement legally untenable. We are of the opinion that in view of such allegation, the Ld. CIT(A) at least should have directed the Assessing Officer for providing cross examination of Shri Kishanlal Udaylal Jain but no such cross objection has been provided which is a serious violation of the principle of the natural justice.

11.8 The Hon'ble Supreme Court in *Andaman Timber Industries v. CCE* (supra) has authoritatively held that denial of the opportunity to cross-examine a witness, whose statement constitutes the very



foundation of the demand, is a serious infraction of the principles of natural justice, rendering the resultant order a nullity in the eyes of law. Their Lordships have further clarified that where such statement forms the sole or primary basis of the addition, failure to afford cross-examination is not a mere procedural irregularity capable of being cured, but a fundamental defect in the evidentiary process itself, vitiating the entire proceedings. In such circumstances, the proper course is not to remand the matter, but to set aside the addition in toto. It necessarily follows that where the veracity of a witness is liable to be tested through cross-examination, and upon such testing the testimony stands discredited, in the absence of any independent corroborative material, the Revenue's case cannot be sustained. A remand, in such a situation, would serve no useful purpose where the sole piece of evidence itself is procedurally infirm. However, in the present case, it has been contended that certain e-mail correspondence exchanged between Shri Jain and the Chartered Accountant of the assessee exists, which may constitute corroborative material to the statement relied upon by the Assessing Officer. Significantly, such material has not been brought on record by the Assessing Officer, thereby leaving an evidentiary vacuum as to whether the impugned addition rests solely upon the statement of Shri Jain or is supported by independent corroboration. In our considered view, if such e-mail correspondence indeed exists and is sought to be relied upon as



corroborative evidence, the same must be duly brought on record and confronted to the assessee. Further, in that eventuality, Shri Jain, whose statement is proposed to be relied upon, must be made available for cross-examination by the assessee. Absence of such opportunity would render reliance on his statement legally untenable in light of the settled position of law.

11.10 It is also an admitted position that the loans were arranged through Shri Kishanlal Udaylal Jain. In such circumstances, it was incumbent upon the Investigation Wing as well as the Assessing Officer to carry the enquiry to its logical conclusion by ascertaining the identities of the alleged intermediaries or brokers through whom the loans were purportedly arranged. No such enquiry has been conducted. The approach of making selective enquiries, aimed only at supporting the case of the Revenue while eschewing further investigation which may have a bearing adverse to the Revenue, cannot be countenanced.

11.11 Further, we note that before the Id AO the assessee explained that total unsecured loan outstanding at end of FY 2012-13 were of Rs. 2,93,98,417/- and out of which loans of Rs. 1,25,00,000/0 were obtained during FY 2012-13. Undisputedly, addition u/s 68 in year under consideration can be made for unsecured loan received during the year under consideration and not for opening balances. The assessee also filed details of unsecured loan received during the year before the AO, which he



has reproduced on page 13 of impugned order but did not consider this aspect while making addition for unsecured loan. Further, we note that loan from Benchmark Trading p Ltd was already added in earlier assessment proceeding and settled by the assessee under Vivid-se-vishwas scheme has also not considered for excluding from the addition of unsecured loan.

11.13 In view of the aforesaid facts and circumstances, mainly, (i) the email correspondence not brought on record and no cross examination of Sh Jain (ii) no enquiry regarding agents by the Revenue (iii) no setoff of addition already made and settled under Vivad-se-Viswash scheme and (iv) not limiting the addition to the unsecured loans received during the year, we deem it appropriate, in the interest of justice, to restore the entire issue relating to the impugned addition to the file of the Assessing Officer. The Assessing Officer is directed to afford the assessee a meaningful opportunity of cross-examination of Shri Kishanlal Udaylal Jain and thereafter adjudicate the issue afresh in accordance with law, after carrying out such further enquiries as may be warranted.

11.14 Accordingly, the grounds of the appeal on the merit are allowed for statistical purposes, whereas the additional ground no. 7 and 8 are dismissed.

12. The identical issue-in-dispute is involved in A.Y. 214-15 and, therefore, the addition of the unsecured loan made in A.Y. 2014-15



is also restored to the file of the assessing officer with the direction as contained in AY 2013-14.

13. We now take up the appeal of the assessee for Assessment Year 2020-21. In the year under consideration, the Assessing Officer has made an addition under section 68 of the Act in respect of unsecured loans aggregating to ₹50,00,000/- received from M/s Vincent Commercial Company Ltd.

14. The Assessing Officer observed that, during the course of search proceedings, the said entity was examined under section 131 of the Act and the statement of Shri Shantilal D. Jain, Director of the company, was recorded on oath. In the said statement, he allegedly admitted that the loan of ₹50,00,000/- advanced to the assessee was not a genuine transaction but merely an accommodation entry. This statement was confronted to the assessee during the course of search proceedings; however, the assessee denied any knowledge of the alleged accommodation entry and stated that one Shri Pankaj Jalisatg would be in a position to furnish the relevant details. When examined, Shri Pankaj Jalisatg also expressed ignorance regarding the alleged nature of the transaction and stated that the loan had been arranged through professional intermediaries within the Chartered Accountant fraternity, without any formal written agreement.



14.1 During the course of assessment proceedings, notice under section 133(6) of the Act was issued to M/s Vincent Commercial Company Ltd.; however, no response was received. The Assessing Officer further noted that the assessee had received an additional sum of ₹4,00,000/- from Shri Ehsaan Sood, the son of the assessee, who had not filed any return of income up to Assessment Year 2021-22, having only recently attained the age of majority. On this basis, the Assessing Officer doubted his creditworthiness. Consequently, a show cause notice was issued to the assessee.

14.2 In response, the assessee submitted that the impugned loans had already been examined during the course of the original assessment proceedings. It was further contended that notice under section 133(6) had been duly served upon the creditor, and any non-compliance on the part of the said party could not be attributed to the assessee, who had no control over third parties. The assessee also relied upon the fact that the transactions were routed through banking channels. However, the Assessing Officer was not persuaded by the explanation so offered and proceeded to make an addition of ₹56,00,000/- under section 68 of the Act as unexplained cash credits. The learned CIT(A), placing reliance on the decision of the Tribunal in *J.K. Global, Mumbai* (supra), upheld the addition and rejected the assessee's contention regarding repayment of loans through banking channels.



14.3 Upon consideration of the material on record, we find that the facts and circumstances in the present year are *pari materia* with those arising in the assessee's own case for Assessment Year 2013–14, wherein identical issues relating to unsecured loans and the evidentiary value of statements recorded during search proceedings has been adjudicated. Therefore, respectfully following our findings and conclusions rendered therein, the issue under consideration is decided *mutatis mutandis* in terms of the directions and reasoning recorded for Assessment Year 2013–14.

15. In the result, the appeals of the assessee are allowed partly for statistical purposes.

**Order pronounced in the open Court on 05/05/2026.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 05/05/2026  
Disha Raut, Stenographer

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

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BY ORDER,

//True Copy//

(Assistant Registrar)  
**ITAT, Mumbai**