

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 3263/Chny/2019
निर्धारण वर्ष/**Assessment Year:2011-12**

Smt. Rita Agarwal,
4D, Heritage Apartments, Orms Road,
Kilapauk, Chennai 600 010.
[PAN:AAGPR4368A]
(अपीलार्थी/Appellant) Vs. The Deputy Commissioner of
Income Tax,
Central Circle 3(2),
Chennai.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 3264/Chny/2019
निर्धारण वर्ष/**Assessment Year:2011-12**

Shri Pankaj Agarwal,
4E, Heritage Apartments, Orms Road,
Kilapauk, Chennai 600 010.
[PAN:AFLPA1767N]
(अपीलार्थी/Appellant) Vs. The Deputy Commissioner of
Income Tax,
Central Circle 3(2),
Chennai.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 3265/Chny/2019
निर्धारण वर्ष/**Assessment Year:2011-12**

Smt. Shobha Agarwal,
4E, Heritage Apartments, Orms Road,
Kilapauk, Chennai 600 010.
[PAN:AAXPC8430H]
(अपीलार्थी/Appellant) Vs. The Deputy Commissioner of
Income Tax,
Central Circle 3(2),
Chennai.
(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 3266/Chny/2019
निर्धारण वर्ष/**Assessment Year:2012-13**

Smt. Bimla Devi,
4E, Heritage Apartments, Orms Road,
Kilapauk, Chennai 600 010.
[PAN:AADPD8240L]
(अपीलार्थी/Appellant) Vs. The Deputy Commissioner of
Income Tax,
Central Circle 3(2),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri V. Vivekanandan, CIT
सुनवाई की तारीख/ Date of hearing : 04.04.2022
घोषणा की तारीख /Date of Pronouncement : 01.07.2022

आदेश /O R D E R

PER V. DURGA RAO,, JUDICIAL MEMBER:

The appeals filed by different assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 19, Chennai, all dated 20.09.2019 relevant to the assessment year 2011-12. Since the facts are identical and common issue has been raised except change of figures, all the appeals were heard together and being disposed off by this common order for the sake of brevity. The only common issued raised in all the appeals relate to confirmation of addition made under section 68 of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the consequent to the search and seizure operations under section 132 of the Act, on 18.12.2012 in the residential premises of Shri Pankaj Agarwal, Managing Director of M/s. Suryadev Alloys and Power Pvt. Ltd., documents belonging to the assessee were seized and a notice under section 153A of the Act dated 13.08.2013 was served on the assessee. In response to the

notice, the assessee filed a letter dated 22.07.2014, duly acknowledging the receipt of the said notice and filed a copy of the return of income filed on 31.07.2011 admitting income of ₹.29,64,800/- with a request to treat the same as the return of income filed in response to the said notice. Notices under section 143(2) and 142(1) of the Act were also duly served on the assessee. Thereafter, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 153A of the Act dated 31.03.2015 by making addition of ₹.1,25,00,000/- under section 68 of the Act. On appeal, the Id. CIT(A) confirmed the addition made under section 68 of the Act.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By relying upon the grounds of appeal, the Id. Counsel for the assessee has submitted that the action of the Assessing Officer in bringing to tax the unsecured loans despite establishing the identity of the contributor/creditor as well as the genuineness of the transactions was wholly unjustified and unsustainable in law. It was further submission that the Id. CIT(A) went wrong in rejecting the plea of the assessee for cross-examination of Jagdish Prasad Roy and Prasad Lahoti and concluding that the right of cross examination was not

absolute. It was also challenged the validity of the search assessment in the absence of any incriminating seized material(s) and prayed for deleting the addition made under section 68 of the Act.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the Assessing Officer issued show-cause notice dated 25.03.2015 asking the assessee to furnish the details of unsecured loan received amounting to ₹.1,25,00,000/- from Echolac Vinimay Pvt. Ltd. In response to the show cause notice, vide his letter dated 26.05.2015, the assessee has submitted the following before the Assessing Officer:

“I have gone through the above show cause notice and wish to inform that I have received the said unsecured loan of ₹.1,25,00,000/- from Echolac Vinimay Pvt. Ltd. The said loan was received by me on dates as mentioned below:

<i>Date</i>	<i>Amount</i>	<i>Bank detail</i>
<i>05.05.2010</i>	<i>2600000.00</i>	<i>IOB</i>
<i>05.05.2010</i>	<i>5000000.00</i>	<i>IOB</i>
<i>06.05.2010</i>	<i>1000000.00</i>	<i>IOB</i>
<i>07.05.2010</i>	<i>3900000.00</i>	<i>IOB</i>
<i>Total</i>	<i>12500000.00</i>	

I have already submitted the Bank statements of IOB for the receipt of funds by me in my earlier letters. In order to prove the identities and creditworthiness of Echolac Vinimay Pvt. Ltd., and genuineness of the transactions, I am herewith producing the following documents for your immediate reference and consideration:

- *Company Master Data as available on www.mca.gov.in;*
- *Signatory details as available on www.mca.gov.in;*
- *Certificate of Incorporation;*
- *Memorandum and Articles of Association;*
- *Acknowledgement of return of income;*
- *Audited Financial Statements;*
- *Copies of relevant Bank statements*

From the said documents, it would be evident that M/s. Echolac Vinimay Pvt Ltd is an entity having PAN and regularly filing the returns with ROC and Income Tax. Accordingly, there is no dispute as to the identity of the Company. Further, from the Balance Sheet it would be apparent that the Company had sufficient funds to extend the Loan. The said transactions have only taken place through banking channels clearly evidencing the source. Accordingly, your assessee humbly wishes to state that there is no doubt about the identity of the Company's, their creditworthiness and genuineness of the transactions.

I would further like to state that the loan is given by the company out of its known and valid source like Sale of their Investments in Shares etc., details of the same is enclosed herewith along with this reply. There is no question of doubt about their identities and these companies had sufficient capital & funds to extend the Loan to me and the amounts have been received through proper banking channels.

Your kind authority have made general statement about entry operators and their modus operandi like

- *Operation of many bank accounts in the name of companies, firms and proprietary concern and individuals in the-same bank and branch*
- *Hiring of person for operation in the accounts and filing of ITRs.*
- *Collection of Cash*
- *Employing relatives/others with low remuneration to sign cheques, documents, etc.*
- *Obtaining PAN and filing of returns of income*
- *Operations of multiple bank account in the same name and disclosing only one bank Providing entries of share capital/gifts/loans etc.*
- *Statements have been made by the said person admitting above facts*

However your good office has not provided any evidence to support the points mentioned in above para whereas we have provided all the relevant details/ evidence to state that there was no such transactions as referred by your good office in above para with regard to the loan taken by me from the said company.

In so far as the question of furnishing of returns of source and bank statements is concerned the same is part of this reply.

Sir in your above referred Notice your good office has given copies of Sworn Statements of Beni Prasad Lahoti. I have received the said Loan from M/s.Echolac. Vinimay Private Ltd., wherein he is not a director neither holds any position in the company. I am not aware in what capacity he is associated with this Company.

Sir in Your above Notice your good office has also given a copy of letter submitted by Jaiprakash Roy. I am not aware under which circumstances and conditions the letter was submitted by him.

Therefore kindly provide me the opportunity to cross examine the person whose statements were relied upon by your good office in this show cause notice & proposed additions based on such statement. I am not aware why he has made such statements & also under what circumstances. Given an opportunity to us to verify the same will be helpful for us to substantiate my point.

Your good office has proposed in the show cause notice to make additions based only on the sworn statements even without providing any corroborative evidence to substantiate & support such statements. Moreover it is not made clear anywhere that in what circumstances these statements were made and what was his motive behind such statements. Further your good office; has completely ignored all the details/information/ evidences produced by us on time to time basis during the assessment proceedings to negate the proposed additions.

Sir we have produced all the relevant information & evidences about the moneys received by me and the same are received through proper banking channels.

Sir I have been subjected to a search under the Income Tax Act & At this juncture it would not be out of place to mention that there was no incriminating evidence/ documents with regards to the transactions mentioned in your show cause notice, were found during the search.

Based on the above, I have provided the identity of the Loan Creditor and also the credit worthiness and genuineness of the transaction, request your honour not to be prejudiced based on general statements & it is humbly submitted that no addition is warranted in my hands."

5.1 On perusal of the statement of account of M/s. Echolac Vinimay Pvt. Ltd., the Assessing Officer has observed that the said company had minimum balance on various dates before using the cheque to any loan debtor, namely the assessee. It received amount equal to cheques to be used, i.e., ₹.1,25,00,000/- and it was deposited into the bank only for the purpose of issuing cheques to the extent of loan to be given, even though these are through Bank entries. Moreover, the time lag between such deposits and issue of cheques is generally a day or two, which proves that the lender did not have the sufficient wherewithal for giving loans. These types of transactions are typically followed by the Jamakharchi/ Shell/Paper Companies.

5.2 After examining the Balance Sheet of M/s. Echolac Vinimay Pvt Ltd., the Assessing Officer has observed that though the total assets of the company during the assessment year was ₹.100.33 crores, the net profit declared by it was only ₹.18,487/-, which shows the low profit viability of such Jama Kharathi/Shell/Paper Companies and is clearly evident that these are only created for providing accommodation entries and not for pursuing any business. The assessee was provided with a copy of statement of Shri Beni Prasad Lahoti, accommodation

entry operator, from whom statement was recorded by the Investigation Wing, Kolkata, which has proved beyond doubt that:

a. he has few of his employees namely,

1. Shri Navnit kumar Singhanian,
2. Shri Jaiprakash roy,
3. Shri Uma Prasad Lahoti,
4. Shri Hari Prasad Lathi,
5. Shri Kamaljit Singh,
6. Shri Jogender Pradhan,

who are name lenders and act as dummy directors of companies floated by him. The statements are also recorded from the above persons.

b. Shri Beni Prasad Lahoti also seemed to have control over 87 companies. Similarly Shri Jaiprakash Roy seemed to be director of 21 companies. In the statement the assessee also provided statement recorded from Beni Prasad Lahoti, who had categorically mentioned that he was operating M/s. Echolac Vinimay Pvt. Ltd. and one of his employees Shri Jaiprakash Roy was director in M/s. Echolac Vinimay Pvt. Ltd. and was acting as a dummy director.

5.3 The Assessing Officer opined that the assessee's contention that Shri Beni Prasad Lahoti is unconnected does not hold good because the assessee's money has been routed through many layers and channels provided by this entry operator and has been found to be credited in the books of accounts of assessee, as unsecured loans. Mentioning that Shri Jaiprakash Roy's statement is out of context (as per the version of the assessee) is not true and has been clearly

illustrated. Further statement recorded from Shri Navnit Singhania also explains the nature of these transactions. The assessee's reply that only the Directors are responsible and the accommodation entry operator's are not known to them at all do not have any relevance due to lack of realism, as based on the facts of the case, the roles of the dummy directors and the accommodation entry operators are interspersed and cannot be looked in isolation.

5.4 After analyzing the submissions made by the assessee, bank account statements and other relevant evidences, the Assessing Officer has noted that the above sum of ₹.1,10,00,000/- represents sum credited in the books of the assessee as explained in previous paragraphs and is assessee's unaccounted money routed through channels provided by the accommodation entry operator by way of various Jama Kharachi/Shell/Paper Companies utilizing regular banking modes. The assessee's contention that these are genuine transactions received from the lender whose identity is genuine and that it is creditworthy does not hold good as this company's operations have already been investigated by the Investigation Directorate, Kolkata and have been proven well beyond doubt and in the words of

the connected persons, is only controlled and managed by the above-referred individual (accommodation entry operator) with a set of employees (name lenders) acting as dummy directors, who sign on the dotted lines for a meager remuneration and are in no way connected to the control and management of the affairs of the company. Hence, to sum up, the following are the facts which emerge from the aforesaid:

- a. During relevant assessment year the assessee received ₹.1,25,00,000 as loan from various Jama Kharchi/ Shell /paper Companies.
- b. On basis of information received from Investigation wing that assessee was involved in taking accommodation entries, the assessee was asked to produce the lenders. Even after sufficient time was accorded, the assessee failed to do so.
- c. The assessee has failed to prove the identity, creditworthiness and genuineness of the transactions. As these criteria are to be proven collectively, failure of even one of the criterion, renders the transaction as not genuine. The onus to prove the three factum is on the assessee as the facts are within the personal knowledge of the assessee.
- d. Mere production of incorporation details, PAN Numbers or income tax returns may not be sufficient when surrounding and attending facts predicate a cover up. The production of incorporation details, PAN numbers or income tax details may mostly indicate towards completion of paper work or documentation but genuineness; creditworthiness and identity of investment and the investors are deeper and obtrusive than mere completion of paper work or documentation.

- e. The fact that assessee failed to produce the Directors of Jama Kharchi/Shell/paper Companies who had advanced loan even after ample time was given shows that these were people who were completely unrelated to the assessee and as such, all the entries were merely accommodation entries.

5.5 Thus, the Assessing Officer has concluded that ₹.1,25,00,000/- is the unexplained credit recorded in the books of assessee, and is deemed to be not explained satisfactorily and brought to tax under section 68 of the Act.

6. Before the Id. CIT(A), the assessee has challenged the jurisdiction of the Assessing Officer in completing the assessment under section 143(3) r.w.s. 153A of the Act in the absence of any incriminating material seized besides challenging the addition made under section 68 of the Act. After considering the submissions of the assessee with regard to the jurisdiction in concluding the assessment under section 143(3) r.w.s. 153A of the Act, the Id. CIT(A) has observed and held as under:

6.26. In view of the foregoing discussions, the following position emerges:

(i) The Hon'ble Supreme Court has not yet laid down the law on the subject as to whether it is justified in holding that in cases where the income has already been assessed, the assessment u/s 153A of the Act will be made only on the basis of incriminating material found during the course of search proceedings u/s 132 of the Act.

(ii) SLPs have been preferred by the Revenue before the Hon'ble Supreme Court in the case of Continental Warehousing and the same was also

admitted{(2015]235 Taxman 568(SC)} Similarly SLPS filed by the PCIT, Central III, Delhi in the case of Meeta Gutgutia for AYs 2000-01 to 2003-04 that involve the question of law on the bone of contention with reference to scope of S.153A of the Act in cases of absence of incriminating materials recovered during search proceedings are still pending.

(iii) The jurisdictional High Court i.e., Hon'ble High Court of Madras has not yet delivered any judgment on the subject matter as to whether assessment u/s 143A in respect of completed assessments should be made only on the basis of incriminating material or not.

(iv) The Hon'ble ITAT Chennai in most cases have ruled in favor of assessee and has decided in favor of the Revenue too as mentioned supra.

(v) As discussed earlier, the ratios in the cases of St. Francis Clay Décor Tiles(supra) and E.N. Gopakumar (supra) have not been brought to the kind notice of the Hon'ble High Court of Delhi in the case of Meeta Gutgutia (supra) and hence the Hon'ble High Court of Delhi had no occasion to consider these judgments.

(vi) At the same time, the Hon'ble Kerala High Court in the cases of E.N. Gopakumar and St. Francis Clay Decor Tiles have referred to the judgments in the cases of CIT Vs Continental Warehousing Corporation (Navaseva) Ltd; Principal CIT v Kurela Paper Mills (P) Ltd (2016) 380 ITR 571 (Delhi); CIT Vs Kabul Chawla (2016) 380 ITR 573 CIT Vs Lancy Construction (2016) 383 ITR 163.

(v) The provisions of section 153A are clear and do not mandate requirement incriminating documents for purpose of finalizing assessment or reassessment under section 153A. The well-established principles of interpretation of taxing statutes discussed too supra support this reasoning.

6.27. Thus, in view of the foregoing discussions in paras 6.1 to 6.26 supra, I am of the view that the AO has rightly assumed jurisdiction and assessed income u/s 153A as per law. The appellant's ground against the jurisdiction assumed by the AO u/s 153A is thus dismissed."

6.1 So far as merits of the case is concerned, the Id. CIT(A) has observed and held as under:

6.29. The issue involved is that the appellant is in receipt of unsecured loans from an entity in the name of M/s Echolac Vinimay Pvt. limited. It is a Kolkata based company and during the enquiries and investigation carried out regarding the affairs of this company it was found that the Directors of

the Company namely Jai Prakash Roy is a name lender and is a part of an accommodation entry scam - whereby the bank accounts of the companies are being used to launder the undisclosed income or moneys of the beneficiaries through an arranged network of banking channels. The investigation wing of the Income tax department had carried out the necessary investigation and the appellant has been found to be one of the beneficiaries of the unsecured loans arranged from the accommodation entry operators. It is observed that the appellant has been confronted with the statement recorded of the operators of the racket wherein they have clearly admitted that the entire operation is a sham and is used only for the purpose of giving accommodation entries against the receipt of some commission. They have dummy directors of the various companies who sign the cheques to the beneficiaries as per their requirement.

6.30. The appellant is still insisting on the genuineness of the transaction, The appellant had credited certain amounts in his books and the department has challenged the same based on investigations carried out and has confronted the same to the appellant but appellant has not been able to rebut the charge of non genuineness made by the department against him. Mr. Jai Prakash Roy who is Director of the Echolac Vinimay private limited stated that he is a mere dummy director and is on the payroll of the entry operators by the name Beni Prasad Lahoti and Hari Prasad Rathi. He is the one who has signed the financials of the company also. Therefore his statement and the admittance that he is a dummy director is of immense significance. He denies giving any loan to the appellant by implication as he stated the affairs were managed by someone else who in turn has admitted that the bank accounts in the name of the company were used to provide accommodation entry to the beneficiaries and admits that he is merely a dummy director signing at the instance of the entry providers then the onus shifts to the appellant as the said company from which it is getting a loan denies giving it and instead states that it is an accommodation entry against the charging of commission.

6.31. The appellant has claimed that M/s Echolac Vinimay is a part of same management and Mukesh Agarwal and Pankaj Agarwal are the Directors. But Jay Prakash Roy is also Director in the same company. In that case why the appellant is not able to ascertain from Jay Prakash Roy as to why he has said before the investigation wing in Kolkata that he is a dummy Director. The appellant could not produce the Director of his own company to deny if anything he had stated under compulsion or coercion before the investigation wing in Kolkata.

6.32. The appellant has produced the financials of the above company to substantiate its claim of loan. It is observed that these financials are signed by the Jai Prakash Roy who has also given the statement that he is only a dummy Director and given accommodation entry in a manner that it appears

to be a genuine transaction. The following comparison of the signature appearing in the statement given by him before the investigation wing of the Department and the signatures appearing on the financials of the company for A.Y 11-12 proves it is the same Jai Prakash Roy.

6.33. Section 68 of the Act mandates that where any sum is found credited in the books of an assessee "and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing officer satisfactory" the amount credited may be charged to income tax as the income of the assessee.

Thus, the assessee has to be afforded an opportunity to offer an explanation in respect of any cash credit shown in its books regarding which the Assessing Officer may harbour any doubts. Upon the assessee furnishing the explanation, it is incumbent on the Assessing Officer to undertake an exercise to ascertain the veracity thereof.

It is precisely such exercise that was required of the Assessing Officer in this case. The assessing officer found the explanation of the Appellant not satisfactory in the present case because of the following reasons:

1) The Director of the company from which amount is stated to be taken states that he is a dummy directors and is involved in action in concert with accommodation entry providers.

2) The accommodation entry provider, namely Beni Prasad Lahoti, has specifically taken the name of the company M/s. Echolac Vinimay as a company used for providing accommodation entry by using Jagdish Prasad Roy as Dummy Director.

3) The modus operandi of accommodation entry is explained by the Entry providers as routing the cash received from beneficiaries through various bank accounts and then issuing cheques to them, mostly on the same day, meaning thereby that there would be credit entry in the bank account of Echolac Vinimay before the cheque is issued to the beneficiary.

The same trend can be seen in the bank account from whom cheques are issued the appellant from DCB, Braubourne Road, Kolkata.

6.34. In the above statement the beneficiaries seen are either the appellant or his other family members. It can be clearly seen that before the issue of cheque to the beneficiary similar amount is credited and then subsequently cheques are issued. Also the address of the company mentioned in the bank is different from the address mentioned in details filed before ROC.

4) *Though the appellant claims that Echolac Vinimay is a group company but the financials of the company do not state about any related party transaction. There are no related party loans or investments mentioned. The takeover is also a suspicious transaction as all the beneficiaries appear to be family member of the appellant or his relatives.*

5) *If the management is same then why he appellant could not produce a rebuttal from Jagdish Prasad Roy who claimed to be only a dummy Director on the payroll of Accommodation entry providers, Nor he could produce this person despite opportunity being provided by the assessing officer. In the circumstances of the Director stating himself to be a dummy director and part of accommodation entry scam the identity, creditworthiness and genuineness of the transaction become a suspect and onus is upon appellant to reaffirm the same. This onus the appellant has not been able to discharge.*

6) *Accommodation entries are used to introduce funds into books without payment of taxes.*

7) *The appellant has raised the issue of cross examination of Jagdish Prasad Roy and Beni Prasad Lahoti. However let us examine the issue at hand. First, it was appellant the bounden duty of the appellant to explain the credit in his books. The appellant explained it to be from loans from Echolac Vinimay but then the Department confronted the appellant by stating that the company is an accommodation entry provider and the Director also states that he is a mere dummy director. The onus thus now was on the appellant as he claims that it is a same management. It was always in the knowledge of the appellant that the assertion of the claim made by him would require verification as the department would not accept any unsubstantiated claim based on mere documents that could well be arranged. The appellant has requested cross examination but in fact the case does not deserve any cross examination. The third party was always the appellant witness, an onus that was not performed by the appellant and in the absence of same the department has carried out the necessary verification and found that to be false. In the case of the honourable Supreme Court cited by the appellant the investigation was carried out at the back of the assessee and the assessee was not asked to give confirmations and independent enquiries were done and statements recorded whereas in the present case the assessee was making unsubstantiated claim. Therefore necessary verification had to be carried out and that turned out to be false as it was stated that the credit entry was an accommodation entry. That means the explanation of the credit given by the appellant was not correct. The right of cross examination is not absolute. In the case of Soman Sun Citi Vs JT. CIT (ITAT Mumbai), Appeal Number I.T.A. No.2960/Mum/2016 (Date of Judgement/Order 23/10/2018) it has been held that*

"Had assessee discharged its primary onus, but still the authorities proceed to prejudice assessee based solely on the incriminating statements/affidavits of third parties recorded at the back of the assessee, the right of the assessee to cross examine these third parties will become absolute. It is not a case that the authorities below have merely/solely relied on the statement/affidavit of third parties namely hawala dealers recorded at the back of the assessee to cause prejudice to the assessee rather primary onus that lay on the assessee was not discharged by the assessee. Thus we uphold/sustain the orders of learned CIT(A) in which we do not find any infirmity, which we confirm/sustain. The assessee fails in this ground. We order accordingly."

Thus the claim for cross examination in the case of the appellant is not tenable.

6.35. In view of the above circumstance of the present case the onus that was upon the appellant to explain the amount credited in his books has not been discharged and the assessing officer was left with no other option other than adding back the amounts as unexplained. Accordingly, the action of the assessing officer is upheld.

6.36. In brief the appeal of the appellant is dismissed."

7. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessment order passed by the Assessing Officer and consequent addition made in pursuant to the search operation under section 132 of the Act dated 18.12.2012 cannot be sustained, because, there is no reference to incriminating material found as a result of search, but, addition on share capital received from certain companies were treated as unexplained credit under section 68 of the Act. The Id. Counsel for the assessee, further referring to the assessment order submitted that

the Assessing Officer has made addition on the basis of bank statement, which was filed by the assessee during the course of assessment proceedings, but such bank statement was already with the Assessing Officer and thus, the same cannot be considered as incriminating material. In this regard, the Id. Counsel relied on various judicial pronouncements including the decision of the Hon'ble Bombay High Court in the case of CIT v. M/s. Continental Warehousing Corporation (Nhava Sheva) Ltd. reported in 374 ITR 645.

8. On the other hand, the Id. DR supported the order of the Id. CIT(A) and submitted that there is no merit in the arguments of the Id. Counsel for the assessee that no addition can be made in the absence of incriminating material found during the course of search. It was further submitted that once the search took place, the Assessing Officer is bound to assess or reassess the total income with respect to each assessment year falling within the six assessment years in which search took place on the basis of regular books of account and other materials found during the course of search. In this regard, he relied upon the decision of the Hon'ble Kerala High Court in the case of E.N. Gopakumar v. CIT [2016] 390 ITR 131 (Ker.).

9. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The facts born out from the record are that in this case, search operation under section 132 of the Act was conducted on 18.12.2012. It is an admitted fact on record that the assessment for the impugned assessment year in question in all these appeals is unabated/concluded as on the date of search, because, the time limit for issue of notice under section 143(2) expires on 30.09.2012 i.e., before the date of search on 18.12.2012. Thus, from the above facts, it is very clear that the assessment for the assessment year under consideration is unabated/concluded as on the date of search. Further, it is well settled principles of law by the decision of various High Courts, including the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra), wherein, it has been held that no addition can be made in the assessment framed under section 143(3) r.w.s. 153A of the Act unless, the addition is supported by incriminating material found during the course of search, if such assessment is unabated/concluded as on the date of search. In the case of CIT v. Kabul Chawala reported in 380 ITR 573, the Hon'ble Delhi High Court has held that although section 153A does not say that

addition 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 seized material. The Hon'ble Gujarat High Court in the case of M/s. Saumya Constructions P. Ltd. reported in 387 ITR 529 has reiterated similar legal position and held that no addition can be made in the absence of incriminating material in unabated/concluded assessment. In yet another case, in the case of PCIT v. Meeta Gutgutia reported in 395 ITR 526, the Hon'ble Delhi High Court has held that there should be incriminating material qua each of the assessment years in which additions were sought to be made pursuant to the search and seizure operations and such observations were affirmed by the Hon'ble Supreme Court by way of dismissing the SLP filed by the Department in the case reported in 257 Taxman 441.

10. The sum and substance of ratio laid down by various Courts, including the Hon'ble Supreme Court in the case of Meeta Gutgutia (supra) is that in the absence of incriminating material found as a result

of search, no addition can be made in the assessment completed under section 143(3) r.w.s. 153A/153C of the Act, if such assessments are unabated on the date of search. Although, the Id. DR has vehemently supported his arguments in the light of decision of the Hon'ble Kerala High Court in the case of E.N. Gopakumar (supra) and in the decision of Hon'ble Karnataka High Court in the case of Canara Housing Development Co. v. CIT [2014] 49 taxmann.com 98 (Kar) and argued that there is no requirement of incriminating material to make addition in search assessment, because, the provisions of section 143A/153C of the Act does not require any incriminating material to make assessment consequent to search proceedings, we find that although, the Hon'ble Kerala High Court and the Hon'ble Karnataka High Court have taken a contrary view, but, the Hon'ble Supreme Court has affirmed the decision of the Hon'ble Delhi High court in the case of PCIT v. Meeta Gutgutia (supra) and thus, we prefer to follow the decision of the Hon'ble Delhi High Court, which decided the issue in favour of the assessee.

11. In this case, there is no dispute with regard to the fact that the search was conducted on 18.12.2012 and as on date of search

assessment for the assessment year 2011-12 is unabated and thus in the absence of any incriminating material, no addition can be made including the addition of share capital under section 68 of the Act. In this case, if we go through the addition made under section 68 of the Act, we find that there is no reference to any incriminating material and thus, we are of the considered opinion that the addition made under section 68 of the Act cannot be sustained and thus, we direct the Assessing Officer to delete the addition made in respect of share capital under section 68 of the Act in the case of Shri Pankaj Agarwal, Smt. Shobha Agarwal and Smt. Rita Agarwal.

12. Now, coming back to the appeal filed by Smt. Bimla Devi. In this appeal, the assessment year involved in question is assessment year 2012-13 and thus, the assessment is abated as on the date of search, because, time limit of issuing notice under section 143(2) of the Act expires by 30.09. 2013. Therefore, this appeal cannot be decided on the basis of abatement/unabatement of assessment. Therefore, we proceed to decide the appeal on the basis of addition made towards share capital. The Assessing Officer made addition towards share capital received amounting to ₹.20,00,000/- from a company on the

ground that M/s. Kaner Investments Ltd. is engaged in the business of providing accommodation entry to various beneficiaries and the assessee is one of the beneficiary in entry provided. Therefore, on the basis of information received from DGIT (Inv.), the Assessing Officer opined that the assessee has failed to satisfy the conditions required under section 68 of the Act. It was the explanation of the assessee before the Assessing Officer that share capital received from M/s. Kaner Investments Ltd. is supported by necessary evidences including confirmation from the parties. Further, the assessee had filed all the details including name of the creditor and their identity and the transaction was done through proper banking channel and moreover, the creditors have established creditworthiness and therefore, no addition can be made under section 68 of the Act.

13. After having heard both sides and considering the materials on record, we find that the sole basis for the Assessing Officer to make the addition under section 68 of the Act is that investigation carried out by the Income Tax Department on certain entry providers and statement recorded from them. Except this, no other evidence was available with the Assessing Officer to prove that share capital

received from M/s. Kaner Investments Ltd. is accommodation entry taken to convert unaccounted income of the assessee. On the other hand, the assessee has filed all the evidences including name and address of the creditors, confirmation from the parties, financial statements, etc. to prove the identity of the creditor and also filed necessary bank statement to prove the genuineness of the transaction. Further, the investing company has sufficient source to explain the investment made to the assessee company. From the above what is clear is that the assessee has discharged the onus cast upon her as per the provisions of section 68 of the Act by filing necessary evidences. Therefore, once it is proved that the assessee has discharged her onus, then the onus shift to the Assessing Officer to prove otherwise. In this case, except statement of third party, the Assessing Officer does not have any other evidence to justify the accommodation entry was provided to the assessee. It is well established principles of law by the decisions of various Courts including the decision of the Hon'ble Supreme Court in the case of CIT v. Lovely Exports (P) Ltd. 216 CTR 195 (SC), wherein, it has been clearly held that once the name and address of the creditor is furnished to the Assessing Officer, then the Department can proceed to reopen

the assessments of the creditor, but the sum received from the creditor cannot be regarded as unexplained credit. In this case, the Assessing Officer has made the addition only on the basis of the information received from the Investigation Wing ignoring all the evidences filed by the assessee and thus, the Assessing Officer has erred in making the addition under section 68 of the Act. Accordingly, we direct the Assessing Officer to delete the addition made under section 68 of the Act.

14. In the result, all the appeals filed by the assessees are allowed.

Order pronounced on the 01st July, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 01.07.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.