IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No. 26/Nag./2020
(Assessment Year : 2014-15)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur ……. Respondent
PAN : AAJFR4038G

AND
ITA No.27/Nag./2020
(Assessment Year : 2015-16)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND

ITA No. 47/Nag./2021
(Assessment Year : 2011-12)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND
ITA No. 48/Nag./2021
(Assessment Year : 2012-13)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND
ITA No. 49/Nag./2021
(Assessment Year : 2013-14)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND
ITA No. 140/Nag./2021
(Assessment Year : 2018-19)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND
CO NO. 3/NAG/2023
AIRISING OUT OF ITA No. 47/Nag./2021
(Assessment Year : 2011-12)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur, ……. Respondent
PAN : AAJFR4038G

AND
CO NO. 4/NAG/2023
ARISING OUT OF ITA No. 48/Nag./2021
(Assessment Year : 2012-13)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur,
PAN : AAJFR4038G ……. Respondent

AND
CO NO. 5/NAG/2023
ARISING OUT OF ITA No. 49/Nag./2021
(Assessment Year : 2013-14)

Assistant Commissioner of Income Tax,
Central Circle-1(1). ……. Appellant
Nagpur

v/s

M/s. Radha Madhav Developers,
125, Abyankar Road, Sitabuldi,
Nagpur,
PAN : AAJFR4038G ……. Respondent

Assessee by : Shri Kapil Hirani, Advocate and
Shri Mukesh Agrawal, CA
Revenue by : Shri Kailash C. Kanojiya, CIT DR

Date of Hearing – 25/06/2024	Date of Order – 29 /07/2024

O R D E R

PER K.M.ROY, A.M.

These appeals have been preferred by the revenue and the cross objections by the assessee, details of which are given below:

ITA No.	NAME OF ASSESS	DATE OF CIT'S ORDER UNDER CHALLENGE	A.Y
1] 26/NAG/2020 (By Revenue)	M/s. Radha Madhav Developers	25/11/2019	2011-12
2] 27/NAG/2020 (By Revenue)	M/s. Radha Madhav Developers	25/11/2019	2015-16
3] 47/NAG/2021 (By Revenue) 4] CO No.3/NAG/ 2021 (by Assessee)	M/s. Radha Madhav Developers	23/03/2021	2011-12
5] 48/NAG/2021 (By Revenue) 6] CO No.4/NAG/ 2021 (by Assessee)	M/s. Radha Madhav Developers	23/03/2021	2012-13
7] 49/NAG/2021 (By Revenue) 8] CO No.5/NAG/ 2023 (by Revenue)	M/s. Radha Madhav Developers	23/03/2021	2013-14
9] 140/NAG/2021	M/s. Radha Madhav Developers	06/09/2021	2018-19

2. The department has raised following grounds of appeal:–

[1] ITA No. 26/NAG/2020 (A.Y. 2014-15)

	Tax Effect
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 6,38,21,488/- made by the AO towards difference in cost of investment in the property based on Department Valuer's Report.	Rs. 4,21,21,617/-
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 6,38,21,488/- made by the AO as there had been no rejection of books of account u/s 145 failing to appreciate that by the Finance (No.2) Act, 2014 w.e.f 01.10.2014 the amendment in section 142A enunciates that the AO may make a reference to the valuation Officer whether or not he is satisfied about the correctness or completeness of the account of the assessee	
3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the binding nature of DVO's report in view of Allahabad High	

Court in the case of Indra Swaroop Bhatnagar in ITA No. 97 of 2008 dated 29.09.2011.	
4. On the facts and circumstances of the case and in law, the Ld. CIT(A) not appreciating that reference to TPO was for specific purpose and is irrelevant for determination of valuation of property by DVO.	
5. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that tax audit report cannot perform the duties assigned to the AOs by the Act. if claims made by the assessees are to be decided only on the basis of the Tax Audit Reports, then institution of AO will be redundant as held by Mumbai ITAT, ITA No. 7184/Mum/2010 dated 18.05.2012 in M/s Clairant Chemicals Ltd Vs ACIT, 1(1), Thane.	
6. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that during assessment u/s 153A rws 143(3), it was not open to the AO to make additions with existence of any incriminating documents found and seized during the search u/s 132 overlooking the crucial fact that the original return filed by the assessee was only processed u/s 143(1) and no scrutiny assessment was made earlier.	
7. On the facts and circumstances of the case and in law, the learned CIT(A) in holding that the scope of section 153A is limited assessing only search related income, thereby denying Revenue the opportunity of taxing other escaped income that comes to the notice of the AO.	
8. On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the word "incriminating" is neither used in Section 153A nor defined in statute and therefore, deletion of addition on this account is not in consonance of law.	
9. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the evidences/documents/ material unearthed at the time of search has to be seen as consolidated whole purporting to the period of assessment enunciated u/s 153A of the Act.	
10. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in limiting the scope of section 153A only to undisclosed income when as per the section, the AO has to assess or re-assess the total income of the six assessment years?	
11. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the scope of section 153A is limited to assessing only search related income, thereby denying Revenue the opportunity of	

taxing other escaped income that comes to the notice of the AO?	
12. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that assessing officer while computing income u/s 153A is well within his powers to compute taxable income on the basis of material on record even though such material was not found during the course of search operation in view of section 15881 w.e.f.01/06/2003.	
13. On the facts and the circumstances of the case and in law, the Ld. CITIA) failed to appreciate that the AO while computing income u/s 153A is well within his powers to compute taxable income on the basis of material/information received on record even though such material or information received is not reliable to the material found during the course of search in view of section 158BI w.e.f. 01/06/2003.	
14. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in relying on section 158BB failing to appreciate that the impugned section is not in operation in view of insertion of section 158BI w.e.f. 01/06/2003.	
15. On the facts and circumstances of the case and in law the Ld. CIT(A) erred while deleting the addition holding that a completed assessment can be interfered with by the AO only on the basis of some incriminating documents ignoring the crucial fact that original assessment made u/s 143(1) had not reached finality and was liable for reopening u/s 147 till 31/03/2021.	
16 On the facts and circumstances of the case the Ld. CIT(A) failed to apply the definition of conclusiveness by Hon'ble Bombay High Court in the case of Rajeev Yeshwant Bhale Vs PCIT W.P No.3366 of 2017 with C.A. No.849 of 2017.	
17. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 6,00,00,000/- made by the AO on unproved loan u/s 68 of the I.T. Act. without appreciating the fact that the assessee has failed to establish the financials and operation of the company to prove the enormous rise in share value and thereby the genuineness of the transactions to the satisfaction of the AO, thereby ignoring the Apex Court decision in the case Pavankumar M. Sanghvi Vs Income-tax officer (Special leave to appeal No(s) 10250 of 2018 and NRA Iron & Steel Pvt. Ltd (SLP (Civil) No. 29855 of 2018) dated 5th March, 2019 on same facts.	
18. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition	

of Rs. 6,00,00,000/-made on account of unproved loan u/s 68, holding that the assessee has proved the identity and creditworthiness of the lender company and genuineness of the transaction without appreciating the fact that the assessee had not been able to prove credit worthiness of lender companies when the main source of fund was share premium which itself was from questionable sources.	
19. On the facts and circumstances of the case and in law, the Ld. CITIA) has erred in deleting the addition of Rs. 6,00,00,000/-made on account of unproved loan u/s 68, holding that the assessee has proved the identity and creditworthiness of lender companies and genuineness of transaction without appreciating the fact that these lender companies were Kolkata based paper/shell companies which had later on been taken over by the assessee and his family members.	
20 On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the credit entries in form of share premium, loans were received from shell companies who are part of financial manoeuvring to legitimise illicit money and evade taxes and lack of genuineness in actual operations of shell companies.	
21. On the facts and circumstances of the case and in law, the Ld. CITIA) has deleted the addition by superficially assessing the genuineness of transactions by accepting the documents sighted before him on face value ignoring the surrounding circumstances, preponderance of human probabilities and ground realities?	
22. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 6,00,00,000/- holding that the amount is received through banking channel by incorrectly distinguishing the ratio of decision of Hon'ble Supreme Court in the case of P. Mohan Kala and Ors.	
23 On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the true nature of transactions have to be ascertained in the light of surrounding circumstances as held by Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT(214 ITR 801).	
24 On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the transaction through banking channel is not always genuine as held by Hon'ble Supreme Court in P.Mohan kala & others (291 ITR 278).	

25. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the transaction through bank is executed to make the otherwise colourable transaction appear genuine.	
26 On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that even if documentary evidence is produced, the same must pass the test of human probabilities and surrounding circumstances if they do not, then the claim so made fails.	
27 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on technical grounds while failing to appreciate that CIT(A)'s power is coterminous with AO and she could have corrected the impugned error of AO clearly propounded in the decision of Hon'ble Supreme Court in Kanpur Coal Syndicate.	
28. Any other question of law and facts to be raised at the time of appeal.	
29. It humbly prayed to set aside the order of CTA(A) and restore the order of assessing officer.	
Total Tax Effect	Rs,4,21,21,617/-

2. **ITA NO. 27/NAG/2020 (A.Y. 2015-16)**

	Tax Effect
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,88,55,570/- made by the AO towards difference in cost of investment in the property based on Department Valuer's Report. Rest of the grounds from Sr.No.2 to 29 are same as in ITA NO.26/NAG/2021.	Rs. 5,74,41,705/-
Total Tax Effect	Rs,5,74,41,705/-

(3) **ITA NO. 47/NAG/2021 (A.Y. 2011-12)**

	Tax Effect
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 75,59,132/- made by the AO towards difference in cost of investment in the property based on Department Valuer's Report.	Rs. 41,41,644/-
Total Tax Effect	Rs,41,41,644/-

(4) **ITA NO. 48/NAG/2021 (A.Y.2012-13)**

	Tax Effect
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,38,48,953/- made by the AO towards difference in cost of investment in the property based on Department Valuer's Report.	Rs. 47,07,260/-
Total Tax Effect	Rs,47,07,260/-

(5) **ITA NO. 49/NAG/2021 (A.Y. 2013-14)**

	Tax Effect
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 8,20,24,434/- made by the AO towards difference in cost of investment in the property based on Department Valuer's Report.	Rs. 3,65,17,247/-
Total Tax Effect	Rs. 3,65,17,247 /-

(6) **ITA NO. 140/NAG/2021 (A.Y. 2018-19)**

	Tax Effect
1. Addition u/s 68 for Rs.1.65 crores	Rs. 55,00,000/-
Total Tax Effect	Rs. 55,00,000/-

2. The order u/s 263 of the Income Tax Act, 1961, PCIT(C), dated 8/10/2018 for the Assessment Years 2011-12, 2012-13 & 2013-14 is reproduced below:

*"**ORDER U/S 263 OF INCOME TAX ACT, 1961***

Original return of income for A.Y. 2011-12, 2012-13 & 2013-14 was filed on 20.09.2011, 30.07.2012, 11,09.2014 showing total income of Rs 4,64,83,340/-, 'Nil', Rs 27,95,19,170/- respectively. The assessment under Section 143(3) r.w.s. 153C for A.Y. 2011-12 & u/s 143(3) for A.Y. 2012-13 was completed on 30.09.2013 at assessed Income of Rs 4,64,83,340/- 'Nil' income respectively. Thereafter, search was conducted on 02.12.2014 on Bajoria Agrawal group of

which assessee was a partner. In response to notice u/s 153A, the return was filed for A.Y. 2011-12, 2012-13&2013- 14 on 29.07.2016. The order u/s 143(3) r.w.s. 153A was passed on 30.12.2016 on assessed income of Rs. 4,64,83,340/-, 'Nil', 27,95,19, 170/-, for A.Yrs. 2011-12, 2012- 13 & 2013-14 respectively.

The assessee is a firm engaged in a business of development of real estate. An Action u/s 132(1) of the Income Tax Act, 1961 was conducted in the case of Bajoria- Agrawal group on 02/12/2014. During the course of search action, various Incriminating documents were found and seized from assessee's premises. On perusal of the record, it is seen that during the relevant previous years, the assessee was engaged in construction of project "Vrindawan near VCA Cricket Stadium, Wardha Rd., Jamtha, Nagpur. The cost of investment in this project shown by assessee in balance sheet was as under:

F.Y.	*A.Y.*	*Cost of investment in project declared by Assessee (Rs.)*
2010-11	*2011-12*	*4,45,86,000/-*
2011-12	*2012-13*	*7,75,80.000/-*
2012-13	*2013-14*	*45,94,90,000/-*

3. *It is important to mention here that during the course of search and seizure operation, certain documents/loose papers were seized and impounded. On verification of documents (Ann B-12) seized from site office of M/s Radha Madhav Developers, "Vrindavan", outer Ring Road, Near VCA Stadium, Jamtha, Nagpur, it was seen that the total construction cost of the project was mentioned at Rs 271 Cr. The work-in-progress (WIP) as on the date of search was at Rs 153.58 Cr. During the post search proceedings, the statement was recorded on 09.12.2014, wherein Mr. Rajesh Agarwal (partner), reply to (Q No. 29), stated that the average construction cost of the project is Rs 1200/- to Rs. 1500/- per sq.ft. without any supporting evidences. He was given another opportunity to explain the cost of construction vide questionnaire dt 26.02.2015. However, he failed to respond to this questionnaire. It was, therefore, necessary to arrive at the fair valuation of the project and the investment made by the assessee in the project and therefore, during the assessment proceedings, reference was made u/s 142A of the Income Tax Act to the District Valuation Officer (DVO) to find out the total cost of project and the expenditure incurred by the assessee for development for project "Vrindavan". The District Valuation Officer (DVO), Bhopal has submitted his report dated 22.12.2016 which is given in brief as under:-*

F.Y.	*A.Y.*	*Cost of Investment in the Project declared by Assessee (Rs.)*	*Assessed by Valuation Cell (Rs.)*	*Difference in amount (Rs.)*
2010-11	*2011-12*	*4,45,86,000/-*	*5,25,45,132/-*	*79,59,132/-*
2011-12	*2012-13*	*7,75,80,000/-*	*9,14,28,953/-*	*1,38,48,953/-*
2-12-13	*2013-14*	*45,94,90,000/-*	*54,15,14,434/-*	*8,20,24,434/-*

4. The summery of the cases before the ITAT is as under:

S. No	ITA	AY	Appeal by	Asst.Order	Abated/ Unabated	Additions	CIT (A) Order
1	47/NAG/2021	2011-12	Department	143(3) r.w.s. 263 (153A Assessment)	Unabated	1.Sec.69C – Investment based on DVO Report Amount Rs. 75,59,132/-	Common CIT (A) Order 23.3.2021
2	48/NAG/2021	2012-13	Department	143(3) r.w.s. 263 (153A Assessment)	Unabated	1.Sec.69C – Investment based on DVO Report Amount Rs. 1,38,48,953/-	
3	49/NAG/2021	2013-14	Department	143(3) r.w.s. 263 (153A Assessment)	Abated	1.Sec.69C – Investment based on DVO Report Amount Rs. 8,20,24,434/-	
4	26/NAG/2020	2014-15	Department	143(3) r.w.s. 153A Dt. 22.12.2017	Abated	1.Sec.69C – Investment based on DVO Report Amount Rs. 6,38,21,488/- 2. Section 68 – Rs. 6 crores total – Unsecured loans from (i) Anubhav Vinimay – Rs.2,00,00,000/- (ii) Blue View Trade Comm.Pvt Ltd. Rs.3 Crores (iii) Raj Laxmi Decision Pvt.Ltd – Rs.1 crore	
5	27/Nag/2020	2015-16	Department	143(3) r.w.s. 153A Dt. 22.12.2017	Abated	1.Sec.69C – Investment based on DVO Report Amount Rs. 12,88,55,570/- 2. Section 68 – Rs. 4 crores total – Unsecured loans from (i) Umang Trading (P) Ltd– Rs.1,00,00,000/- (ii) Sunderlal Fiscal Services Pvt. Ltd. Rs. 3,00,00,000	Common CIT(A) Order 15.11.2019
6	140/NAG/2021	2018-19	Department	143(3) Dt.23.4.2021	Not applicable Regular Assessment	1. Sec. 68 – Rs.1.65 Crores Unsecured loan from Anubhav Vinimay Ltd.	CIT(A) Order 6.9.2021

DETERMINATION OF STATUS OF ASSESSMENT

RADHA MADHAV DEVELOPERS

Particulars	AY 2011-12	AY 2012-23	AY 2013-14
Return filed u/s 139 on	20-09-2011	30-07-2012	11-09-2014
Last date for issue of notice u/s 143(2)	30-09-2012	30-09-2013	30-09-2015
Whether notice u/s 143(2) issued	NO	NO	Not applicable
Date of Search	02-12-2014	02-12-2014	02-12-2014
Unabated/Abated	Unabated	Unabated	Abated

5. Initially we took up the ground of the department regarding addition u/s 69C based on the report of the Department Valuation Officer. The appellant had challenged the said addition before the CIT(A), who has granted the relief by observation as follows:

> *"The case of the appellant is further strengthened by the fact that the construction of the project was not executed by the appellant itself but was given on back to back sub-contract to its sister concern M/s Sufalam Infra Projects Ltd (SIPL). The AO has failed to examine what is the WIP shown by SIPL in its books of account. There is no mention in the assessment as to whether the sub-contractor SIPL, who has actually executed the project, was examined by the AO on this issue.*
>
> *In the assessment order, the AO has referred to the decision of H'ble Allahabad High Court in the case of CIT vs Dr. Inder Swaroop Bhatnagar ITA no. 97 of 2008 dated 29.09.2011] where the H'ble Court held that, when the AO has obtained the DVO report then the same is binding.' However, that decision was given in the context of addition made under section 50C and DVO's report obtained for determining the fair market value of the property for the purpose of section 50C of the Act. The decision given by the H'ble Allahabad High Court cannot, by any stretch of imagination, be applied in this case.*
>
> *In the assessment order, the AO has emphasised that provisions of section 142A(2) of the Act have been amended by the Finance Act, 2014, and as per the amended provisions, the AO can make a reference to the DVO whether or not he is satisfied with the correctness or completeness of the accounts of the assessee. Even though the amended provisions allow the AO to make a reference to the DVO without rejection of the books of account, this power cannot be used arbitrarily and indiscriminately. Before the AQ makes a reference to the DVO, he must have a reason to believe based on some credible evidence that the actual investment made by the assessee is in excess of what is shown in the books of accounts.*

6. As regards the assessment year 2011-12 and 2012-13 are concerned, it is clear from the chart presented above that this is an unabated assessment, because no assessment proceedings were pending as on the date of search on 2nd December, 2014. In view of above, let us now proceed to examine whether the additions which the AO made the order impugned in these appeals for assessment years 2011-12 and 2012-13 was based on or made with reference to any incriminating material or documents found in the course of search. There is no whisper/mention of any material leave alone any incriminating material seized during search to justify the addition in these unabated assessments other than the invalid valuation report as discussed supra. The valuation report of DVO in the facts discussed cannot be held to be incriminating material, since it is not a fall out of any incriminating material unearthed during search to suggest any investment in building which is over and above the investment shown by the assessee in its audited books.

7. We find that a similar view has been taken in the case of **Assistant Commissioner of Income Tax vs. Narula Educational Trust [IT(SS)A No. 42 to 47/Kol/2020] dated 5th February, 2021.**

> *"5. The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any addition can be made by the AO in absence of any Incriminating material found during the course of search under section 132 or requisition under Section 132 A of the Act, 1961 or not.*
>
> *6. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132A, the assessment has to be done under Section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other*

material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of Kabul Chawla (supra), which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment on the issue is the decision of the Gujarat High Court in the case of Saumya Construction (supra), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of Pr. Commissioner Of Income Tax v. Mehndipur Balaji, 2022 SCC OnLine All 444: (2022) 447 ITR 517 has taken a contrary view.

7.1 In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under:

> ***Summary of the legal position***
>
> *38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
>
> *i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
>
> *ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
>
> *iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
>
> *iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized*

material. Obviously an assessment has to be made under this Section only on the basis of seized material."

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

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

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

7.2 Thereafter in the case of Saumya Construction (supra), the Gujarat High Court, while referring the decision of the Delhi High Court in the case of Kabul Chawla (supra) and after considering the entire scheme of block assessment under Section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

"15.On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess

the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub- section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) v. Asst. CIT (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed

during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act."

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

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 1588A of the Act, 1961. The erstwhile scheme of block assessment under Section 1588A envisaged assessment of 'undisclosed income for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 1588A to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed Income by undertaking extraordinary power of search and seizure, i.e the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 1534 of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AD to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment, year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which

such search is conducted or requisition is made and assess or reassess the same. Section 153A of the Act reads as under:

> *"153A. Assessment in case of search or requisition (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003, the Assessing Officer shall-*
>
> > *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause*
> >
> > *(b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:*
> >
> > *(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:*
> >
> > *Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*
> >
> > *Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate.*
>
> *(2) If any proceeding initiated or any order of assessment or reassessment made under sub- section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:*
>
> *Provided that such revival shall cease to have effect, if such order of annulment is set aside*
> *Explanation. For the removal of doubts, it is hereby declared that,-*

(i) save as otherwise provided in this section, Section 153-8 and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling with the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub- section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the total income for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any Incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the total income taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 1534 and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

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

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

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, In respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment

of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

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

8. Following the judgment of Hon'ble Apex Court in **Principal Commissioner of Income Tax vs. Abhisar Buildwell P. Ltd, (2023) 225 DTR 0105 (SC), (2023) 332 CTR 0385 (SC), (2023) 454 ITR 0212 (SC), (2023) 293 TAXMAN 0141 (SC),** we hold that the additions based on DVO report cannot survive. Accordingly the ground of revenue for these two assessment years is dismissed.

9. As far as assessment years 2013-14, 2014-15 and 2015-16 are concerned, which are abated assessment years, we find that the matter was before the Hon'ble High Court of Bombay, in the case of **Commissioner of Income Tax vs. B.G.Shirke Construction Technology Pvt Ltd, (2018) 172 DTR 0028 : (2018) 257 TAXMAN 0561 (Bombay).** Their Lordships have held as below :

"3. The Respondent Assessee is a company engaged in the business of civil construction. On 18.12.2008 there was search and seizure operation conducted in the Respondent's premises. During the course of search, valuation report of the site engineers of the projects regarding work in progress (WIP) as on 30.11.2008 were found. It was noticed the figures indicated in the valuation report of the site engineers were higher than the work-in-progress recorded in the books of the Respondent as on 30.11.2008. As per the provisional Profit and Loss Account, this difference was Rs.9.30 Crores. Thus, the Respondent had agreed on 16.2.2008 to addition of Rs.10 Crores being made. However, at the end of subject Assessment Year in its return of income the Respondent had not offered the additional income of Rs.10 Crores. Nevertheless, the Assessing Officer proceeded to add Rs.10 Crores being the additional income on account of excess work in progress, which was financed out of unexplained source of income. Thus, attracting Section 69C of the Act. Resultantly, the Assessing Officer by order dated 31.12.2010 passed under Section 143(3) of the Act made an addition of Rs.10 Crores under Section 69C of the Act.

4. Being aggrieved, the Respondent preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 26.3.2012, the CIT (A) deleted the addition of Rs.10 Crores this by inter-alia holding on facts that the Assessing Officer did not controvert statement of the Appellant that he had correctly taken value of work-in- progress. Further, it held the Assessing Officer had not brought on record any evidence to show that the appellant had not recorded sales, purchase, other expenses properly in its books of accounts. Under the circumstances, the CIT(A) Inter-alia record in its order as under:

> *"The primary requirement for application of section 69C is that assessee should incur expenses out of unexplained source of income. The section cannot apply if the source of income for making expenses is explained. This section refers to the source of expenditure and not to the expenditure itself. No evidence of any unexplained expenditure has been brought on record either by search party or by the AO. None of the seized material or document indicates that the appellant has incurred any unexplained expenditure out of books. Section 69C is a deeming provision. Therefore. it has to be interpreted strictly. Onus was on the AO to prove that the appellant had incurred expenses out of books of accounts. The AO has not brought on record any material to show that the appellant incurred expenses out of books of accounts. The only material on the basis of which he made addition u/s.69C was the valuation report certified by the site engineers. These valuation reports indicated existence of WIP of the value shown in the reports on that particular date, i.e., 30.11.2008. Therefore, the appellant was in the possession of the WIP of value which has been certified by the site engineers. As this value was more than the value recorded in the books of accounts, the appellant was in the possession of the excess WIP as on 30.11.2008. As discussed earlier, this excess WIP has already been added to the income of the appellant in view of incorporation of correct value of WIP as on 31.3.2009 and incorporation of correct figures of sales, purchases and other expenses in the period from 1.12.2008 to 31.3.2009. Under the circumstances, addition of the same amount again u/s.69C of the Act is not justified. (emphasis supplied)*

The CIT(A) further recorded the fact that the Respondent had explained reasons for difference in the work- in-progress as found on 30.11.2008 at the time of search on 18.12.2008 i.e. provisional estimate of the work-in- progress and not a result of taking physical inventory by the respondent- assessee or the search party In the above circumstances, the Appeal of the Respondent was allowed.

On further appeal, the tribunal by the impugned order inter-alia records the fact that the Assessing Officer had not disputed the valuation of closing work in progress as on 31.3.2009. This figure has been arrived on actual verification,. There is also no disallowance of any expenditure or suppression of income detected by the Revenue. In the aforesaid facts, the Tribunal held that in absence of any material being brought on record to show that the valuation done as on 31.3.2009 is incorrect, no occasion to apply Section 69C of the Act can arise. The

Tribunal further holds that Section 69C of the Act would not be applicable to the facts of the present case as there is no evidence of any record or reference and the difference was only on account of estimation of the value of Work in Progress by the site engineers in November, 2008 and actually arriving at the value on physical verification which is reflected in the return of income as on 31.3.2009. In the above circumstances, no occasion to apply Section 69C of the Act would arise.

6. Mr. Tejveer Singh the learned counsel appearing for the Appellant-Revenue states that the Respondent- Assessee has itself offered Rs.10 Crores as additional income consequent to the search on 18.12.2008, This by letter dated 16.2.2009 on account of work-in- progress. It is submitted that the source of the above expenditure on account of work-in-progress has not been explained. Therefore, Section 69C of the Act would be applicable.

7. We find that both the CIT (A) as well as the Tribunal have rendered a finding that Work in Progress as indicated in its return of income for the year ending 31.3.2009 correctly reflects the closing Work in Progress determined on physical verification. On facts both the CIT (A) as well as the Tribunal have rendered a finding that the value of Work in Progress as done by its site engineers in November, 2008 was only on provisional basis. No verification was ever done by the search party. The return filed on 31.3.2009 showing its closing Work in Progress has been accepted by the Assessing Officer. In the aforesaid facts, unless it is first established by the Revenue that there is unexplained expenditure, no occasion to apply Section 69C of the Act can arise. The Revenue has not challenged the concurrent findings of the CIT(A) as well as of the Tribunal that the Work in Progress as disclosed during the time of search was on provisional basis and it was taken into consideration while determining the Work in Progress as on 31.3.2009. The proposed question that the Tribunal held that there is a difference in the book value and the physical value of the Work in Progress is factually not correct. We did point out this to the counsel for the Revenue but he insisted to pressing this question. However, during the course of his submission, he was not able to substantiate the above presumption in the question as framed.

8. In the above view, in the facts of this case, question as proposed is academic, unless the Revenue first challenges finding of fact arrived at by the Tribunal. The finding of fact is that, there is no excess work in progress than that declared by the Respondent-Assessee as on 31.3.2009 and the valuation done of the work-in-progress as on 31.11.2008 was only on provisional basis.

9. Moreover, even if assume that the closing stock i.e. work-in- progress is in excess of that recorded/disclosed by the Respondent, the same has to be added to the income only under Section 69A of the Act as held by this Court in Dialust v. DCIT 261 ITR 456. In fact, the impugned order of the Tribunal places reliance upon the above decision of this Court. No submission was made on the part of the Revenue as to why the above decision is not applicable to the present facts.

10. In view of the above, the question as proposed does not give rise to any substantial question of law. Thus, not entertained."

10. Respectfully following the ratio of the judgment of the Hon'ble Jurisdictional High Court, we feel that no interference is called for in the order of CIT (A). However, we have traversed to a different part to hold that the addition is not sustainable.

11. There are certain excruciating and glaring facts to be considered which will shake the very foundation of the addition on account of so called difference in valuation of the construction carried away as per the valuation report.

[i] It is an established fact that the appellant is acting only as the developer and the entire construction was subcontracted on back to back basis with Sufalam Infra Projects Ltd., an associate concern under the same management. Since the payments were made to an associated concern, the transactions were subject to verification by the Transfer Pricing Officer (TPO) as it was a specified domestic construction. No variation in the armed length price was proposed by the TOP after considering the transfer price audit report and other relevant evidence also.

Further, after delivery, there is an unexplained expenditure in the hands of the appellant. This must be to suppress the turnover in the hands of Sufalam Infra Projects Pvt. Ltd. Sufalam Infra Projects Pvt. Ltd., was also subject to search proceeding u/s 132 of the IT Act, 1961 and assessment orders under Section 153A were also passed simultaneously by the same Assessing Officer. It is surprising to note that no addition was made in the hands of Sufalam Infra Projects Pvt.

Ltd., on account of suppression. Thus even if for a moment, we assume that the unexplained expenditure is incurred by the appellant, since the appellant did not take any construction activity by itself, it will consequently made to an additional income in the hands of the contractor i.e. Sufalam Infra Projects Pvt. Ltd. No such incriminating evidence was found in the hands of the said company. It is all the most surprising that the same Assessing Officer did not make any reference to the alleged incriminating document B-12 on the basis of which the entire addition of this assessment proceeding has been drawn. B-12 is only a tender document regarding construction of Vrindavan Township for M/s. Radha Madhav Developers, prepared by the Project Management Consultant "Sanghi Consulting Engineers (I) P.Ltd, [page 159 of Paper Book]. From page 163 of the Paper Book, we find that the tender was issued to Sufalam Infra Project Ltd. Page No. 175 of the Paper Book describes an abstract of costs towards the construction of integrated township at Vrindavan. The aggregate costs is arrived at Rs.271,23,36,000/- only. This tender document is only an estimated cost of construction, which is prepared on 20th November, 2012. By any means it could not be considered to be an actual expenditure incurred on the project.

[ii] The original assessment order was passed u/s 143(3) r.w.s. 153A of the IT Act on 30.12.2016 after taking approval under Section 153D by Joint Commissioner of Income Tax, Central Range-1, Nagpur. The order u/s 263 was passed on 08.10.2018. Subsequent to such revision order, the impugned assessment orders were passed on 26.12.2019. We are unable to judiciously accept the proposition that

while PCIT Central has revived the order u/s 263 in the case of the appellant. She had not ordered similarly in the case of Sufalam Infra Projects Pvt. Ltd. Indirectly she concluded that the order of Sufalam Infra Projects Pvt. Ltd., was neither erroneous nor prejudicial to the case of the revenue. Then, if that be so, the entire assessment of jurisdiction u/s 263 in case of appellant is doubt, because of the close connection and proximity of the business transaction.

[iii] The sale of flats in the project was never doubted or questioned by the department and the sales as per books of account were duly accepted. Therefore, if at all the appellant has made such huge unexplained expenditure, he must have recovered the same by taking on money from the purchasers of the flats so that the entire transaction is outside the regular books of accounts. It is a matter of fact that no such evidences were unearthed by the department in the course of search and seizure proceeding. It cannot be a case of the assessee that by making additional expenditure on construction outside the book, he is not going to recover the same from the purchasers of the flats. It is beyond the concept of preponderance and human probabilities that a businessman has ventured into a commercial venture only to make loos.

[iv] Although such amended provision from 01.10.2014 with reference to Valuation Officer does not require rejection of books of accounts, but there must be some compelling circumstances to refer the valuation particularly when the regular books of accounts are maintained and no discrepancy is found in the same. It cannot be the

case that the AO shall make a reference in each and every proceedings otherwise it shall be a travesty of justice that the entries in the regular books of accounts are considered with the grain of salt without any justifiable reasons.

[v] Upon perusal of page 155 of the paper book, we find that the District Valuation Officer, Bhopal, has adopted a weighted cost of cost index Bhopal as 178.84% upon DPAR 2007 as 100 for working out cost of construction of residential building. The project 'Vrindavan' was 111 acres project, situated near Vidarbha Cricket Association Cricket Stadium on Wardha Road, Jamtha Nagpur. We seriously doubt as to why the rates of Bhopal have been considered, instead of Nagpur, as the cities are in different States with no geographical similarity. However, we further find that in para 9.1 at page 155 of the paper book, the DVO has clearly mentioned, "*having considered the documents furnished by the Assessing Officer and the assessee and having taken into consideration all relevant material gathered, I estimate the cost of investment in property i.e. 'Vrindavan' 111 acre project near VCA Cricket Stadium on Wardha Road, Jamtha Nagpur (M.H.).* Thus, it is crystal clear that the valuation report is nothing but an estimate. The additions perpetuated by the AO under Section 69C is on account of unexplained expenditure. The legislative history of Section 69C is narrated below.

"This section was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1st April, 1976. It has continued unamended since its inception save for the substitution of the word "Assessing" for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1 April 1988.

1998 -- The proviso has been inserted by the Finance (No. 2) Act, 1998, with effect from 1 April, 1999. Board Circular, which explains the amendment as under:

"29. Amendment of section 69C.-29.1 Under the existing provisions, where an expenditure incurred by the taxpayer in respect of which he either offers no explanation regarding expenditure such expenditure or where explanation offered is found unsatisfactory, the expenditure is treated as "income" under section 69C. There is corresponding provision for disallowance of such expenditure.
29.2 This used to enable the taxpayer charged to tax under section 69C to claim the expenditure as deduction under section 37 defeating the very objective of the section.
29.3 The Act has amended section 69C of the Income-tax Act according to which unexplained expenditure deemed as income cannot be allowed as deduction under any head of income.
29.4 This amendment will take effect from 1st day of April, 1999, and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years."

4. Unexplained expenditure. It has been held that it is a normal rule of presumption and evidence that where an assessee has in fact incurred certain expenditure and is not able to account satisfactorily for the same, an inference can be drawn that the expenditure or the unaccounted part thereof must have been made out of the undisclosed income of the previous year. The case of an item of such expenditure is, in principle, no different from that of a cash credit. In both cases, the assessee is in possession of certain funds during the previous year the source of which he is unable or unwilling to explain satisfactorily. It is a matter entirely within the assessee's knowledge as to how the cash credits came to be introduced or the items of wealth came to be acquired or the expenditure was incurred and once it is postulated that such cash credit or investment or expenditure belongs to the assessee then his failure to explain the same or to explain it satisfactorily can constitute a reasonable ground for an inference that the source thereof must be an item taxable under the Act. Otherwise, if a non-taxable source or a capital item was utilised for the purpose in question, the assessee could and would easily have come forward with an explanation to the said effect and proved it to the satisfaction of the Assessing Officer.

(v) Where the assesse, a construction company, supported the cost of construction of business asset with a valuation report from a registered valuer, the Assessing Officer referred the matter to the Departmental valuation officer. The Tribunal held that the retrospective amendment to section 142A does not cover a case of unexplained expenditure under section 69C. Since no reference could have been made, the addition with reference to the Departmental valuation officer's report was held untenable. The answer could have been different, if the addition was

based on enquiry by the Assessing Officer himself and not solely on the basis of the Valuation Officer's report.
[CIT V Aar Pee Apartment P Ltd, (2009) 319 ITR 276 (Del)]

12. The above fact is a clear pointed that by no means the addition could have been made on the basis of the departmental valuation report. No enquiry whatsoever has been conducted by the AO to positively come to a conclusion that such an expenditure was incurred outside the book and the assessee was not in a position to explain the nature and source thereof. In fact, the PCIT (Central) had revised the order on the ground that the valuation report was failed to have been taken into cognizance by the AO, but she had judiciously ordered for denovo assessment. Therefore, the Assessing Officer had all the powers to further conduct enquiry and to positively come to a conclusion that certain unexplained expenditure was there. But in the subsequent proceeding, the Assessing Officer simply added back the difference in the valuation u/s 69 of the IT Act and after cursorily dismissing the objection raised by the assessee against the valuation report. Since the assessment order is continuation of such proceedings and is a fresh order, he even passed the order without taking approval u/s 153D of the IT Act, 1961.

13. Now, the only point that remains to be adjudicated is the addition u/s 68 towards unsecured loans from various companies for A.Y. 2014-15, 2015-16 and 2018-19. We find that the CIT (A) is his combine order for A.Y. 2014-15 and 2015-16 has elaborately dealt with the matter as follows.

"8. Ground no 5-6: Additions U/s 68:

The AO has made additions u/s 68 in respect of unsecured loans taken by the appellant as under:

A.Y. 2014-15

M/s Anubhav Vinimay Pvt. Ltd.	*Rs. 2,00,00,000/-*
M/s Blue View Tradecom Pvt. Ltd.	*Rs. 3,00,00,000/-*

M/s Raj Laxmi Dealcom Pvt. Ltd.	*Rs. 1,00,00,000/-*
Total	*Rs. 6,00,00,000/-*
	A.Y. 2015-16
M/s Umang Trading Pvt. Ltd.	*Rs. 1,00,00,000/-*
M/s Surendra Fiscal Services Pvt. Ltd.	*Rs. 3,00,00,000/-*
Total	*Rs. 4,00,00,000/-*

The above lending companies are hereinafter jointly referred to as "Lenders" for the sake of convenience.

8.1 The appellant has argued that the appellant during the course of assessment proceedings submitted the loan confirmations from the Lenders confirming the grant of loan to the appellant. The loans have been received through banking channels. The Lenders are duly incorporated Private Limited Companies and are duly assessed to tax. The loan confirmations also contained the PAN of the Lenders. The Lenders further confirmed the grant of loans in the independent inquiry conducted by the AO u/s 133(6) and the Lenders duly submitted the copies of the bank statements, copies of Income Tax Returns and audited Balance sheet proving without any doubt the identity, genuineness and creditworthiness of the transactions. The appellant submitted that the AO grossly erred in ignoring the evidence on record and treating the unsecured loans received as unexplained cash credits U/s 68 of the Act which is illegal and the addition so made deserves to be deleted in Interest of justice

8.2 The appellant further submitted that the Lender companies pertaining to AY 2014-15 had the following financials:

	Anubhav Vinimay Pvt. Ltd.	*Blue View Tradecom Pvt. Ltd.*	*Raj Laxmi Decision Pvt. Ltd.*
Share Capital	*90,48,000/-*	*47,22,500/-*	*60,10,000/-*
Reserves & Surplus	*22,76,16,272/-*	*18,57,46,389/-*	*11,34,51,562/-*

The Lender companies pertaining to AY 2015-16 had the following financials:

	Umang Trading Pvt. Ltd.	*Surendra Fiscal Services Pvt. Ltd.*
Share Capital	*18,43,80,000/-*	*7,77,00,000/-*
Reserves & Surplus	*42,45,39,674/-*	*158,33,78,983/-*

8.3 The appellant submitted that it has through confirmation of accounts, bank statements and audited financial statements justified the transaction of granting of loans by the Lenders. The appellant has thus sufficiently proved the identity, genuineness and creditworthiness of the Lenders and has sufficiently discharged its onus cast upon it in light of provisions of section 68 of the Act. The AO has merely on assumptions, presumptions, surmises and conjectures formed the belief that the transaction is not genuine and has proceeded to make the addition which is unsustainable in law. While doing so, the AO has also not brought record any adverse evidences to reject the confirmations submitted by the Lenders in the independent enquiries as well.

8.4 The appellant further pleaded that AO ignoring the financials of the Lenders which are more than sufficient to justify the grant of loan to the appellant, has proceeded to analyse the source of the funds of the Lenders and has come to the incorrect conclusion that the source of funds of the Lenders are not genuine and has made the addition. This action of the AO not sustainable in law as the appellant has duly discharged the onus cast upon it under law. The source of the loans having been already explained by the lender themselves, the appellant would not be required to prove the source of the source- as has been wrongly presumed by the AO. Section 68 mandates the assessee to prove the identity, creditworthiness and genuineness of the Lenders. The Lenders

being private limited companies, the identity stands established. The appellant having filed the audited statement of accounts of the Lenders wherein more than sufficient reserves and surplus are shown has proved without any doubt the creditworthiness of the Lenders. And finally, the transaction of loan duly reflected in the bank statements and also independently confirmed by the Lenders, the genuineness of the transaction also stood established. The appellant thus having duly discharged the onus cast upon it u/s 68 of the Act, no addition was warranted as has been wrongly done by the AO.

8.5 The appellant further argued that the proviso to section 68 creates the obligation on the issuing company to explain the source when the amount credited pertains to share application money, share capital, share premium or any such amount by whatever name called. The proviso does not apply to unsecured loans as in the present case. It appears that the AO grossly erred in applying the proviso to section 68 to the unsecured loans and seeking justification of the source of the Lenders which is beyond the scope of section 68 and is thus untenable. The appellant further placed reliance on various judicial pronouncements in support of its arguments.

8.6 I have gone through the assessment order as well as the arguments of the appellant and am inclined to agree with the appellant. It is undisputed fact that the unsecured loans have been received by the appellant through banking channels. It is further undisputed that the Lenders independently confirmed the transaction of loan in response to the notices issued by the 0 U/s 133(6) of the Act and further submitted confirmations and the copies of the bank statements, copies of Income Tax Returns and audited Balance sheet.

8.7 I find that the appellant has duly satisfied the onus cast upon it under the rigors of the provisions of section 68 of the Act. The appellant has duly proved the identity, genuineness and creditworthiness of the transaction of the receipt of unsecured loans from Lenders. The fact that the Lenders are private limited companies are enough to prove their identities. Further the amount has been transferred by banking channels which prove the genuineness of the transaction which has been further independently confirmed. The financials of the companies highlighted at para 8.2 above suggest that the Lenders financials are more than enough to justify their creditworthiness. Therefore, the AO has erred in simply ignoring the details filed by the appellant during the course of assessment proceedings which is not acceptable.

8.8 The appellant has rightly placed reliance on ***Anil Chhaganlal Jain Vs. ACIT (ITAT Mumbai)****[supra] wherein it has been held that if the assessee has explained the source of the loans received by it, the fact that the lender may have raised bogus share capital to advance the funds to the assessee does not mean that the loan received by the assessee can be treated as unexplained income.*

8.9 The appellant has also very rightly pointed out the application of proviso to section 68 which creates the obligation on the issuing company to explain the source when the amount credited pertains to share application money, share capital, share premium or any such amount by whatever name called. The proviso does not apply to unsecured loans as in the present case. The appellant has argued and placed reliance on ***CIT Vs. Lovely Exports Pvt. Ltd. (2008) 6 DTR 308 (SC)*** *that in case the department was not satisfied about the source of the funds of the Lenders, it was free to proceed against the Lenders rather than making additions in the hands of the Appellant.*

8.10 The appellant has rightly placed reliance on ***CIT Vs. Dwarkadhish Investment Pvt. Ltd. (2011) 37 (I) ITCL 456 (Del HC)*** *wherein it has been as under:*

> *"8. In any matter, the onus of proof is not a static one. Though in section 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue, Just because the creditors/share applicants could not be found at the address*

given, it would not give the revenue the right to invoke section 68. One must not lose sight of the fact that it is the revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the source of source.

*8.11 In the case of **CIT Vs. Vrindavan Farms Pvt. Ltd (Delhi HC)** wherein albeit in relation to share application money, the Hon'ble High Court held as under:*

5. The Court is of the view that the Assessee by produced sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the assessing officer to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in Nova Promoters (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the assessing officer and the assessing officer fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under section 68 of the Act and it will be open to the Revenue to move against the share applicants in accordance with law.

*8.12 The appellant has further rightly placed reliance on **Vishnulal Karwa Vs. ITO (1987) 32 Taxman 276(Jp - Trib)** wherein it has been held that even highly suspicious circumstances by itself would not lead to the conclusion that the amount belonged to the assessee. In the absence of any other evidence to the contrary, disbelieving the evidence as such would not be proper.*

*8.13 In the case of **CIT Vs. Metachem Industries (2000) 245 ITR 160 (MP)** the Hon'ble HC has held as under:*

"Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is responsibility of that individual to account for the investment made by him. If that person owns that entry, then, the burden of the assessee-firm is discharged. It is open for the assessing officer to undertake further investigation with regard to that individual who has deposited this amount.

5. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case the credit entry cannot be treated to be income of the firm for the purposes of income-tax. It is open for the assessing officer to take appropriate action under section 69 of the Act against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the Commissioner (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.

6. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the revenue and in favour of the assessee."

*8.14 In the case of **M/s Sunshine Metals and Alloys Pvt. Ltd. Vs. ITO ITA No. 3212/Mum/2014** the Hon'ble ITAT, albeit w.r.t share application money but in relation to section 68 has held that if (a) the assessee has furnished the Name, Address, PAN no and Share Application Form to prove that the shares were allotted to the applicants and (b) the bank statement show that money was received through banking channels and there were no immediate withdrawals to suggest that the share application amounts have been returned back to these parties in cash, it means the assessee has discharged the primary onus cast upon it to prove the identity, capacity and genuineness of transactions. The AO in the present case has nowhere proven or even alleged that the amount so received from the Lenders have been returned back to the Lenders in cash which makes the addition bad in law and liable to be deleted.*

*8.15 In **Umbrella Projects Pvt. Ltd. Vs. ITO ITA No. 5955/Del/2014** wherein the Hon'ble ITAT has held that if the assessee has discharged the initial onus regarding the identity, creditworthiness and genuineness, the onus shifts to the AO to bring material or evidence to discredit the same. The fact that the shareholders did not respond to s. 133(6) summons is not sufficient to draw an adverse inference. In the present case the Lenders have duly responded to the notices issued U/s 133(6) which makes the present case far stronger on facts.*

*8.16 It is further rightly argued that the addition made u/s 68 is not sustainable as the AO has nowhere controverted the evidences filed by the appellant nor has produced any concrete justification for making the addition. The AO apart from issuing notice u/s 133(6) has not taken any effort to pursue the matter further. The AO did not even issue any notice u/s 131 as he should have done. Reliance placed on **CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC)** wherein the Hon'ble SC has held as under:*

> *"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Sechon for at the instance of the did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable nor perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."*

Simply issue of notice u/s 133(6) thus does not justify as AO making independent enquiries and in absence of the same the addition so made is unsustainable under law.

*8.17 The appellant further brought attention to the appellant order passed in the appeal of **Shri Sanjay Gaurishankar Agrawal** by the undersigned for AY 2014-15 vide Order No. CIT(A) - 3/280/2016-17 dt. 30.3.2019 wherein the similar addition in relation to loan taken from Anubhav Vinimay Pvt. Ltd. was made and which was deleted. The appellant has also taken loan from Anubhav Vinimay Pvt. Ltd) during AY 2014-15 and similar addition has been made. The addition was deleted in the appeal of Shri Sanjay Gauri Shankar Agrawal on the following reasoning:*

> *5.4 I have gone through the assessment order, and the appellant's submission. The AO had made similar addition in this case for A.Y. 2014-15 by relying on the assessment order for A.Y. 2013-14, and made addition at Rs. 3,30,00,000/-. Similar made in case of the appellant for A.Y. 2013-14 was dealt by the Hon'ble CIT(A)-II vide Appeal No.CIT(A)-3/279/2016-17 order dated 29/01/2018. The relevant portion of order of Hon'ble CIT(A) is reproduced hereunder:*
>
> *6. I find that the appellant has made detailed submissions and given supporting evidence. I find substantial force in the submission given by the appellant. The appellant during the course of assessment proceedings had submitted confirmation, copy of return of income of the lending companies along with their P&L account and Balance Sheet. The AO in the assessment order itself has stated that M/s Anubhav Vinimay P. Ltd. had shown income of Rs. 12.93 lakhs during A.Y. 2013-14 and Rs. 12.11 lakhs in A.Y. 2014-15 as income from interest. The AO has also noted that the appellant had shown Long Term Capital Gain on sale of unquoted to the tune of Rs. 1.62crores during A.Y. 2014-15. Further, the AO has also stated that returned income for A.Y. 2010-11 is Rs. 1.56 crores and for A.Y. 2013-14 is Rs. 1.99 lakhs. The AO has also stated the source Rs. 21.47 crores of fund advanced to the appellant is from share premium of shown by M/s Anubhav Vinimay P. Ltd. as reserve and surplus. Further, in case of M/s Bonanza Suppliers P. Ltd., the AO has noted that the appellant had shown returned income for A.Y. 2013-14 of Rs.*

12.20 lakhs. The appellant has stated that M/s Anubhav Vinimay P. Ltd. It is this amount that has been advanced to the appellant as unsecured loan. The appellant also in the submission made by it has stated that M/s Anubhav Vinimay P. Ltd. and M/s Bonanza Suppliers P. Ltd. had share holders fund amounting to Rs. 22,39,09,152/- and Rs. 1,44,78,422/-respectively. I also find that the loan has been given through banking channel and it is reflection in bank account of both the parties (viz., the appellant and the creditor company). The appellant has also submitted that the companies which had given the loan have issued cheques and that the transactions are duly reflected in appellant's bank account. The appellant vehemently contested that the creditor companies had enough fund to advance loan of Rs. 12,50,00,000/- to the appellant. Accordingly, in view of these facts, I am of the considered view that the appellant has discharged the primary onus cast upon it to prove the identity, creditworthiness and genuineness of transaction in its case.

6.1 The AO concluded that the lending companies were paper companies engaged in providing accommodation entries of share capital along with share premium in lieu of cash. However, the AO has not been able to bring out any evidence in support of this ascertain in the assessment order. A search and seizure action was conducted at appellants premise on 02/12/2014. During the course of search, as it appears from the assessment order, no evidence was found to show that the loan taken by the appellant was a sham transaction. The AO has also asserted that the appellant has not been able to prove the credit wordiness of the company, advancing the loan and the genuineness of transaction. However I find that in the assessment order its self, The AO has stated that the source of loan advance is from the share premium (which has been shown as reserves and surplus) raised by the creditor company in earlier years. The assessment order does not speck of any amount of money that was deposited in cash in the bank account of creditor company and the same was transformed to the appellant company as loan. Therefore, in absence of any positive evidence on record showing that the transaction was non genuine and also in the light of the facts stated above, I am not in agreement with the view taken by the AO that the appellant was not able to prove the nature and source of the unsecured loan.

6.2 The AO in the assessment order on page 5 has referred to the case of in CIT v/s R.Mohen Kala (2007) 6 SCC 2, in that case the subject matter was transaction which though apparent were held to be not real one. However, I find that in this case, the creditor company had its own credit balance at its deposal referred to the case of Precision Finance Pvt. Ltd. and the judgment in the case of Sumati Dayal [214 ITR 801]. The facts of this case do not apply as the AO has not been able to bring out that the funds advanced by the creditor company were non genuine funds or that the transaction was sham & bogus transaction. In spite of search proceeding at appellant premise, no positive evidence to this effect has been brought in the assessment order. Accordingly, the case laws relied upon by the AO is distinguishable. I find that the appellant case is more supported by the following judicial pronouncements relied upon by the appellant:-

1. CIT V/s Dwarakadhish Investment Pvt. Ltd. (Delhi High Court) (ITA Nos. 911 of 2010)
2. CIT V/s Kamdhenu Steel and Alloys Ltd. (Delhi High Court) (ITS No.972 of 2009)

6.3 In the Hon'ble Delhi High Court in the case of CIT V/s Dwarakadhish Investment Pvt. Ltd. are held as under:

"In any matter, the onus of proof is not a static one. Thought in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assesses yet once he proves the identity of the creditors/ share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/ share applicants could not be found at the address given, it would not give, it would not give the Revenue

the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the source of source." The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs. 71,75,000/- in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs. 35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Hel, dismissing the appeals, that the deletion of addition was justified."

5.5 The facts and circumstances in the case of appellant are identical to that in the case of appellant for A.Y. 2013-14. No independent reason other than the reasons given in A.Y. 2013-14 are given for making addition at the hands of appellant. I have perused the findings given in the appellate order and agree with the same. Considering the totality of facts and circumstances of case and by following the order of my predecessor CIT(A) in case of appellant for A.Y. 2013-14, I am of considered view that the addition made by the AO is unjustified and unjustified and unwarranted and thus addition made by the AO of Rs. 3,30,00,000/-u/s 68 of the LT. Act is hereby directed to be deleted. Ground nos. 3 and 4 are accordingly allowed.

6. In the result, the appeal is allowed.

8.18 Based on the above facts, discussions and respectfully following the various judicial pronouncements cited supra, I am of the view that the addition made u/s 68 of Rs.. 6,00,00,000/- for AY 2014-15 and Rs. 4,00,00,000/- for AY 2015-16 deserves to be deleted as per law as the appellant has duly discharged the onus placed upon it u/s 68 of the Act."

14. At the time of hearing, the Sr.DR vehemently submitted that the order of CIT (A) is erroneous and is contrary to law and facts and prays that the addition made by the Assessing Officer be restored. On the other hand, the ld. AR submitted that the CIT (A) has meticulously passed the order considering all gamut of the facts and circumstances of the case as well as the judicial precedents and submitted that the same should be left undisturbed. We find that assessee had fully discharged its onus which has been correctly observed by CIT(A). Hence, the entire addition is unwarranted.

15. In AY 2018-19 the addition of Rs.1,65,00,000/- was made towards unsecured loan received from M/s. Anubhav Viniyam Pvt. Ltd. We find that the same company had given loan in AY 2014-15 also. Since we have concurred with the observations of CIT(A) in deleting the addition for AY 2014-15, there are no compelling reasons to differ with such concrete observation in AY 2018-19. Accordingly, the revenue ground is dismissed for all the three years.

16. In the result, all the six appeals preferred by the department are dismissed.

17. At the time of hearing, the Ld. AR does not want to press the cross objections. Accordingly the CO Nos. 3, 4 & 5/Nag/2023 are dismissed being infructuous.

18. As a result, six appeals by department and three cross objections by assessee are dismissed.

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 29/07/2024

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Nagpur; and

(5) Guard file.

True Copy

By Order

Rajesh V. Jalit
Private Secretary (On contract)

Sr. Private Secretary
ITAT, Nagpur