आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ IT(SS)A No. 45 and ITA No.204/Ahd/2020

निर्धारण वर्ष/Assessment Year: 2005-06

Rohitji Chanduji Thakore Chandanami Nivas Thakor Vas, Ambali Gam Ahmedabad. PAN : ADTPT 4435 C	Vs	DCIT, Cent.Cir.2(1) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Tushar Hemani, Sr.Adv Parimal Singh B. Parmar, AR Shri Vijay Govani, AR
Revenue by :	Shri Virendra Ojha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 01/07/2021
घोषणा की तारीख /Date of Pronouncement : 17/09/2021

O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT: Present two appeals are filed by the assessee against the orders of the ld.CIT(A)-11, Ahmedabad dated 28.8.2019 and 27.2.2019 for the asstt.Year 2005-06. Both are disposed of by this common order.

2. IT(SS)A.No.45/Ahd/2020 emerges out of the assessment proceedings under section 143(3) read with section 153A of the Income Tax Act, 1961, whereas ITA No.204/Ahd/2020 emerges out of penalty proceedings initiated under section 271(1)(c) of the Act.

3. Registry has pointed out that ITA No.45/Ahd/2020 is time barred by 132 days whereas ITA No.204/Ahd/2020 is time barred by 282 days. The assessee has filed an application for condonation of delay in the form of an affidavit, which was sworn by the assessee. The contents of the affidavit read as under:

> *"a) The impugned order passed by the Ld. CIT(A) was received by me on 30.08.2019. I was to hand over the same to the concerned Tax Practitioner for filing an appeal against the same before Hon'ble However, inadvertently, I forgot to pass on such order to the said Tax Practitioner.*
>
> *b) I say and submit that since I am not well read and I unable to comprehend the contents of the order, for which it took a reasonable time. Thereafter, due to mf advanced age, it took some time for me to gather records and consult practitioners of Chartered Accountancy and law?*
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> *c) However, upon inquiry by the concerned Tax Practitioner eventually, I realized that the impugned order was not forwarded for filing an appeal before Your Honors. As soon as I, came across such facts, I immediately forwarded the impugned order to the concerned Tax Practitioner who, in turn, forwarded the same to the concerned Advocate with due diligence for filing of Appeal before Your Honors. Thereafter, I concerned advocate prepared Form No.36 and forwarded the same for signature. Shortly thereafter, the present appeal came to be filed. In the mean-time, there occurred some delay in filing appeal.*
>
> *2. I say and submit that I have entrusted the matter for filing of appeals against this order to my the-then Chartered Accountant, who was handling the accounts of my business since last many years. I was under the impression that he will handle the same with due care and diligence. However, when I inquired with him regarding the status of my accounts and appeals, I was shocked and surprised to know that the appeal has not been filed yet due to his negligence towards the same. I say and submit that due to such careless attitude shown by him, I was left with no other option but to remove him from the said responsibility of managing accounts and filing of appeal. More so, due to the negligence on the part of my Chartered Accountant, some relevant documents were misplaced.*

Therefore, it took us time to gather all the relevant documents and hand it over to our subsequent Chartered Accountant.

3. I say and submit that under such circumstances there is a delay in filing the Appeal before Your Honors. However, I respectfully submit that there is prime facie good case my favour. Hence, it is respectfully prayed to Your Honors that looking the reasons as stated, I request Your Honour to kindly condone the delay caused in filing Appeal before Your Honour, in the interest of Justice and the appeal may be heard and decided on merits to protect the rights and interest of the deponent."

4. The ld.counsel for the assessee submitted that due to his old age and chronic illness, could not understand and comprehend the contents of the order of the ld.CIT(A). The moment when he was appraised about the impugned order, the assessee approached his Chartered Accountant, however, the said CA did not put effort for further follow up diligently in time, resulting delay in filing the appeal before the Tribunal. Therefore, the reasons for delay in filing appeal before the Tribunal are not deliberate and occurred due to the reasons beyond his control. He prayed that delay in filing appeal be condoned and the appeal be decided on merits.

5. The ld.DR, on the other hand, contended that there is no material possessed by the assessee to substantiate this assertion of the facts. He has not deposed the name of the chartered accountant, while leveling allegations against the said CA. Therefore, explanation given by the assessee is not plausible so as to get leniency from this Tribunal for condonation of delay in fling appeal before the Tribunal, and thus, appeals filed by the assessee are inadmissible.

6. We have duly considered rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the

Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

7. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N.Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
>
> *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

8. In the light of the above, if we examine the explanation given by the assessee, then it would reveal that the appeals could not be filed by the assessee in time mainly on account of laxity on the part of Chartered Accountant, who has been instructed for further follow up in the matter including filing of the appeal before the Tribunal. Second reason given by the assessee is that of old age and the time taken for collecting various information and documents for filing appeal before the Tribunal. Though, we do not have any material to verify this pleadings, but considering age of the assessee and the facts that the assessee would not gain anything by not filing the appeal in time, more so when he has good cause in hand for defending the case before the Tribunal, we condone the delay and proceed to decided both the appeals on merit.

9. First we take IT(SS)A.No.45/Ahd/2020 (Quantum appeal):

10. In this appeal, the assessee has taken one additional ground of appeal, whereby he has pleaded as under:

> *"The action of the ld.AO in framing the assessment u/s.153A r.w. section 143(3) of the Act is not tenable in the eyes of law since such assessment has been framed beyond the scope of material and evidences found during the course of search action carried out u/s.132 of the Act. Accordingly, such assessment order deserves to be quashed."*

11. Since this is a jurisdictional issue, and going to affect taxability of the assessee, therefore, following decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., 229 ITR 383 (SC), we allow prayer of the assessee and entertain this additional ground of appeal for adjudication, because it does not call for discovery of any new evidence/facts which are required to be brought on record.

12. The grounds of appeal taken by the assessee are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief the grievance of the assessee is that the ld.CIT(A) has erred in confirming the addition of Rs.4,48,378/- which was added by the AO on account of unexplained deposits in the bank account, and addition of Rs.5,13,883/- which was added by the AO on account of unexplained investment in purchase of the property.

13. Brief facts of the case are that search under section 132 of the Income Tax Act was carried out in group cases of Thakore group on 21.9.2010. The residence of the assessee was also covered by the search and in order to give logical end to the proceedings, a notice under section 153A was issued and served upon the assessee on 18.10.2011. In response to the notice, the assessee submitted a letter dated 17.11.2011 stating that PAN mentioned in the notice was incorrect. Further, the assessee requested to provide copies of statement recorded during the course of search. The ld.AO thereafter discussed how the confusion on account of different PAN has arisen, and how the assessee did not file return in response to the notice under section 153A of the Act. The ld.AO thereafter recorded a finding that notice for lodging prosecution

was issued upon the assessee, and thereafter the assessee filed return of income on 1.11.2012. The ld.AO had issued notice under section 143(2) and proceeded to pass assessment order. He passed the assessment order under section 143(3) read with section 153A on 30.3.2013. The ld.AO has observed that the assessee has purchased block no.77 on 17.3.2005 and purchase price of this block was at Rs.5,13,883/-. The assessee has purchased this block along other family members, and was having 1/6th share. The AO has made addition of Rs.5,13,883/- on account of unexplained investment in block no.77. Similarly, the assessee has made addition of Rs.4,48,378/- on account of unexplained deposits in the bank account. The computation of income made by the AO read as under:

Total Income	Rs. 91,630/-
Add: Unexplained investment in block no.77	Rs. 5,13,883/-
Add: Unexplained credit in the banks	Rs.4,48,378/-
Total Income	Rs.10,53,891/-

14. Appeal to the CIT(A) did not bring any relief to the assessee.

15. The ld.counsel for the assessee at the very outset submitted that time limit for issuing the statutory notice under section 143(2) for passing scrutiny assessment under section 143(3) was expired much prior to the date of search relevant to this assessment year. He pointed out that search was conducted on 21.9.2010. This is assessment year 2005-06. Therefore, this is an unabated assessment order as provided in second proviso to section 153A of the Act. The addition can only be made if during the course of search any incriminating material was found. For buttressing his contentions, he relied upon the judgment of Hon'ble Gujarat High Court in the case of PCIT Vs. Saumya

Construction P.Ltd., 387 ITR 292 (Guj). He also emphasized that the AO has not made reference to any seized material for making addition in the hands of the assessee. This is not relevant assessment year where he can look into all this aspects. This is an assessment year which unabated as per the second proviso to section 153A of the Act, and therefore the AO cannot tinker with the assessment of income unless any incriminating material demonstrating escapement of income was found during the course of search. On the other hand, the ld.DR relied on the order of the AO.

16. We have duly considered rival contentions and gone through the record carefully. Before adverting to the facts and alleged seized material considered by the ld.AO for making the addition in the hands of the assessee, we deem it appropriate to bear in mind the position of law propounded in various authoritative judgments recording scope of section 153A of the Act. We are of the view that in this regard, there were large numbers of decisions. First we refer to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla, 380 ITR 573 (Del). Hon'ble Delhi High Court after detailed analysis has summarized the following legal position:

> *37. 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 153 A(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."

17. ITAT, Delhi Bench in the case of DIT Vs. Smt. Shivali Mahajan and others, rendered in ITA No.5585/Del/2015 (copy of the decision placed on record) has considered this aspect in its decision. Thereafter, the Tribunal has specifically held that serial no.(iv) of the above proposition, the Hon'ble Delhi High Court has specifically held that assessment under section 153A of the Act has to be specifically made on the basis of seized material. ITAT Delhi Bench was considering an aspect whether the evidence in the shape of books of accounts, money, bullion, jewellery found during the course of search relates to other person than the searched person, can that be considered while making assessment under section 153A of the Act. Like in the present appeals, simultaneous search was carried out at the premises of the Venus Infrastructure and Ashok Sunderdas Vaswani, and the material found during the search of Venus Infrastructure Developers or Ashok Sunderdas Vaswani could be used while framing the assessment of Rajesh Sunderdas Vaswani and Deepak Budharmal Vaswani under section 153A of the Act. ITAT Delhi Bench has specifically held that material recovered from the premises of other person cannot be used in the hands of the searched person. For that purpose an assessment under section 153C or 147 is to be made. At this stage, in order to fortify ourselves, we would like to make reference to the following paragraphs of the ITAT Delhi Bench's order. It reads as under:

> *"15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books*

of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person."

18. Order of the ITAT Delhi Bench in other cases viz. Asha Rani Lakhotia vs. ACIT and Subhag Khattar Vs. ACIT are on the same line.

19. Hon'ble Delhi High Court in the case of Subhag Khattar in Tax Appeal No.60 of 2017 has considered the following question of law:

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the additions made under Section 153A read with Section 143(3) *of the Income Tax Act, 1961 in the circumstances of the case, were not justified and supportable in law? "*

20. After putting reliance upon its decision in the case of CIT Vs. Kabul Chawla (supra) has replied this question as under:

"6. The Assessee went in appeal before the Commissioner of Income Tax (Appeals) who dismissed it by an order dated 27th November, 2014. A further appeal was filed by the Assessee before the ITAT. The ITAT, inter alia, found substance in the contention of the Assessee that the assessment under Section 153(A) of the Act, in the absence of any incriminating material found during the search on the premises of the Assessee was not sustainable in law. Reliance was placed on the decision of this Court in Commissioner of Income Tax v. Kabul Chawla, [2016] 380 ITR 573.

7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent

on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter."

21. Hon'ble Court has specifically observed for the purpose of section 153A that only seized material is required. However, if there is any other incriminating material belong to the assessee found at the premises of the some other person, then the assessment has to be made under other provisions and not under section 153A of the Act. Hon'ble jurisdictional high Court has also considered the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (supra). Hon'ble Gujarat High Court framed the following question of law in the case of Pr.CIT Vs. Saumya Construction (supra):

"[A] Whether the order of Tribunal is right in law and on facts in deleting the addition made in assessment made u/s 153A of the Act?

[B] Whether the Tribunal is right in law in holding that the addition should be based on the incriminating material found during the course of search under new procedure of assessment u/s 153A which is different from earlier procedure u/s 158BC r.w.s. 158BB of the Act and by reading into the section, the words 'the incriminating material found during the course of search' which are not there in section 153A?

[C] Whether the Tribunal erred in relying on the ITAT order in Sanjay Aggarwal v. DCIT (2014) 47 Taxmann.Com 210 (Del) which has interpreted undisclosed income unearthed during the search to imply incriminating material, as against the finding of the Delhi High Court in Filatex India Ltd. v. CIT-IV (2015) 229 Taxman 555 wherein it is held that during the assessment u/s 153A additions need not be restricted or limited to incriminating material found during the course of search?"

22. Hon'ble Court concurred with the decision of Hon'ble Delhi High Court. We deem it appropriate to take note of relevant part of the decision, which reads as under:

"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) (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.

17. In the facts of the present case, a search came to be conducted on 07.10.2009 and the notice was issued to the assessee under section 153A of the Act for assessment year 2006-07 on 04.08.2010. In response to the notice, the assessee filed return of income on 18.11.2010. In terms of section 153B, the assessment was required to be completed within a period of two years from the end of the financial year in which the search came to be carried out, namely, on or before 31st March, 2012. Here, insofar as the impugned addition is concerned, the notice in respect thereof came to be issued on 19.12.2011 seeking an explanation from the assessee. The assessee gave its response by reply dated 21.12.2011 calling upon the Assessing Officer to provide copies of statements recorded on oath of Shri Rohit P. Modi and Smt. Pareshaben K. Modi during the search as well as the copies of the documents upon which the department placed reliance for the purpose of making the proposed addition as well as the copy of the explanation given by Shri Rohit P. Modi and Smt. Pareshaben K. Modi regarding the on-money received, copies of the assessment orders in case of said persons and also requested the Assessing Officer to permit him to cross-examine the said persons. The Assessing Officer

issued summons to the said persons, however, they were out of station and it was not known as to when they would return. In this backdrop, without affording any opportunity to the assessee to cross-examine the said persons, the Assessing Officer made the addition in question.

18. In this case, it is not the case of the appellant that any incriminating material in respect of the assessment year under consideration was found during the course of search. At the relevant time when the notice came to be issued under section 153A of the Act, the assessee filed its return of income. Much later, at the fag end of the period within which the order under section 153A of the Act was to be made, in other words, when the limit for framing the assessment as provided under section 153 was about to expire, the notice has been issued in the present case seeking to make the proposed addition of Rs.11,05,51,000/- on the basis of the material which was not found during the course of search, but on the basis of a statement of another person. In the opinion of this court, in a case like the present one, where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search under section 132 or making of requisition under section 132A, while computing the total income of the assessee under section 153A of the Act, additions or disallowances can be made only on the basis of the incriminating material found during the search or requisition. In the present case, it is an admitted position that no incriminating material was found during the course of search, however, it is on the basis of some material collected by the Assessing Officer much subsequent to the search, that the impugned additions came to be made.

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India), Jodhpur (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.

20. For the foregoing reasons, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, dismissed."

23. A perusal of the assessment order would indicate that there is no seized material referred by the AO while making additions. Hence, respectfully following proposition of law laid down by the Hon'ble Supreme Court, Hon'ble jurisdictional High Court in the cases cited (supra), which were followed by the ITAT in earlier similar other cases, the impugned additions are not sustainable. Hence, we allow both these grounds of appeal, and delete additions of Rs.4,48,378/- and Rs.5,13,883/-.

24. Now we take ITA No.204/Ahd/2020 (Penalty order)

25. Since additions on which impugned penalty has been levied, stand deleted by order of the Tribunal in the quantum appeal adjudicated hereinabove, impugned penalty levied by the AO and confirmed by the ld.CIT(A) is not sustainable, hence the same stands cancelled.

26. In the result, both appeals of the assessee are allowed.

Pronounced in the Open Court on 17th September, 2021.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Ahmedabad; Dated, 17/09/2021