GAHC010094622022

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

1. ITA No.10 of 2022

1. The Commissioner of Income Tax, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

2. Income Tax Officer, DCIT/ACIT, Circle-3, Guwahati, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

.....Appellants

-Versus-

M/s Goldstone Cements Limited, Village: Musiang Lamare (Old), Khliehriat, East Jaintia Hills, Meghalaya – 793200, (PAN No.AADCG2870Q).

.....Respondent

2. ITA No.7 of 2022

1. The Commissioner of Income Tax, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar

Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

2. Income Tax Officer, DCIT/ACIT, Circle-3, Guwahati, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

.....Appellants

-***Versus***-

M/s Goldstone Cements Limited, Village: Musiang Lamare (Old), Khliehriat, East Jaintia Hills, Meghalaya – 793200, (PAN No.AADCG2870Q).

.....Respondent

3. ITA NO.9 OF 2022

1. The Commissioner of Income Tax, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

2. Income Tax Officer, DCIT/ACIT, Circle-3, Guwahati, Office of the Principal Commissioner of Income Tax, Guwahati, Aayakar Bhawan, Seventh Floor, G.S. Road, Guwahati – 781005.

.....Appellants

-***Versus***-

M/s Goldstone Cements Limited, Village: Musiang Lamare (Old), Khliehriat, East Jaintia Hills, Meghalaya – 793200, (PAN No.AADCG2870Q).

.....Respondent

– B E F O R E –
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Appellants	**:** Mr. S.C. Keyal, Senior Standing Counsel, CBDT, IT (NER).
For the Respondents	**:** Dr. A. Saraf, Senior Advocate, assisted by Mr. P.K. Bora, Advocate.
Date of Hearing	**:** 13.09.2023.
Date of Judgment & Order	**:** 29.09.2023.

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

Heard Mr. S.C. Keyal, learned senior standing counsel, CBDT, IT (NER) representing the appellants and Dr. A. Saraf, learned senior counsel, assisted by Mr. P.K. Bora, learned counsel for the respondent(s).

2. These 3(three) income tax appeals have been preferred by the revenue under Section 260A of the Income Tax Act, 1961 for challenging the judgment/order dated 10.12.2021 passed by the Income Tax Appellate Tribunal, Gauhati Bench, Virtual Hearing at Kolkata in ITA Nos.126 to 131/GAU/2020 arising from assessment years 2011-12 to 2015-16 and 2017-18. As all the appeals involve identical factual and legal issues, hence, the same have been heard together and shall be decided by this common judgment.

3. The revenue has filed the 3(three) appeals aforestated proposing the following substantial questions of law:-

"ITA No.10/2022

1. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati is justified in holding that the notice under Section 153A was issued by the Assessing Officer without authority of law and without satisfying the essential jurisdictional fact?

2. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the seized document GCL-HD-1 referred by the Assessing Officer for justifying the additions made under Section 68 of the Act did not constitute 'incriminating material'?

Proposed substantial question of law as per the Interlocutory Application filed in ITA No.10/2022 -

Whether under the present facts and circumstances of the case seized documents GCL-HD-1 are incriminating materials relevant for making assessment under Section 153A and 153C of the Income Tax Act?

3. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the assessee had discharged its burden of substantiation of the identity, creditworthiness and genuineness of the transactions involving receipt of share application monies?

4. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati has justified in deleting the addition under Section 68 of share application money of Rs.5,38,35,000/- received from M/s Hari Trafin Private Limited?

ITA No.7/2022

1. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the seized document GCL-HD-1 referred by the Assessing Officer for justifying the additions made under Section 68 of the Act did not constitute 'incriminating material'?

Proposed substantial question of law as per the Interlocutory Application filed in ITA No.7/2022 -

Whether under the present facts and circumstances of the case seized documents GCL-HD-1 are incriminating materials relevant for making assessment under Section 153A and 153C of the Income Tax Act?

2. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the assessee had discharged its burden of substantiation of the identity, creditworthiness and genuineness of the transactions involving receipt of share application monies?

3. Whether, in the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in deleting the addition under Section 68 of share application money of Rs.11,85,00,000/- received from Prefer Infrastructures Private Limited, Capital Steel Trading Private Limited and Consistent Constructions Private Limited?

ITA No.9/2022

1. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the seized document GCL-HD-1 referred by the Assessing Officer for justifying the additions made under Section 68 of the Act did not constitute 'incriminating material'?

Proposed substantial question of law as per the Interlocutory Application filed in ITA No.9/2022 -

Whether under the present facts and circumstances of the case seized documents GCL-HD-1 are incriminating materials relevant for making assessment under Section 153A and 153C of the Income Tax Act?

2. Whether, on the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was justified in holding that the assessee had discharged its burden of substantiation of the identity, creditworthiness and genuineness of the transactions involving receipt of share application monies?

3. Whether, in the facts and circumstances of the case, Hon'ble ITAT, Gauhati Bench, Guwahati was

justified in deleting the addition under Section 68 of share application money of Rs.22,22,99,990/- received from Prefer Infrastructures Private Limited, Capital Steel Trading Private Limited and Consistent Constructions Private Limited and Transparent Tie Up Trafin Private Limited?"

4. Mr. Keyal, learned counsel for the appellants seeking admission of the appeals on the proposed substantial questions of law reproduced (supra) urged that the view taken by the learned Income Tax Appellate Tribunal (ITAT) that the documents seized during the search proceedings being the GCL–HD–1 (Goldstone Cements Limited Hard Drive-1) did not constitute incriminating material and thus reassessment under Sections 153A and 153C of the Income Tax Act was legally impermissible for the unabated/completed assessments for the relevant accounting years, is absolutely unjustified and illegal. The approach of the Appellate Tribunal in discarding such important and credible/ incriminating material while rejecting the appeals of the revenue and accepting the cross-objections filed by the assessee by the impugned judgment/order dated 10.12.2021 pertaining to ITA Nos.126 to 131/GAU/2020 arising from assessment years 2011-12 to 2015-16 and 2017-18 is absolutely illegal and unjustified. He urged that the revenue was correct in eyes of law to reassess the unabated/completed assessments and to make addition in the undisclosed income of the assessee on basis of the highly incriminating material, i.e. GCL–HD–1, for the relevant accounting years and, therefore, the appeals deserve to be admitted on the substantial questions of law as proposed.

5. Per contra, Dr. A. Saraf, learned senior counsel representing the respondent(s) in these appeals, vehemently and fervently urged that whether the seized document i.e. the Hard Drive GCL–HD–1, relied upon by the Assessing Officer for justifying the reassessment under Section 153A and the additions made under Section 68 of the Act constituted incriminating material or not, is purely a question of fact. As per Dr. Saraf, the appeals do not involve any question of law much less a substantial question of law and hence, the same do not merit admission. In support of his contentions, Dr. Saraf placed reliance on the following judgments :

(i) ***Principal Commissioner of Income Tax -Vs- Abhisar Buildwell Private Limited***, reported in ***2023 SCC OnLine SC 481*** and

(ii) ***Karnataka Board of Wakf -Vs- Anjuman-E Ismail Madris-Un-Niswan***, reported in ***(1999) 6 SCC 343***.

6. The proceedings of these appeals would reveal that for a significant period of time, the matters had been deferred awaiting outcome of the controversy pertaining to block assessment under Section 153A of the Income Tax Act pending before the Hon'ble Supreme Court. Now, Hon'ble the Supreme Court has decided the issue in the case of ***Abhisar Buildwell Private Limited*** (supra), wherein it has been held as below:-

> *"22. 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.

23. 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."

7. Thus, it is now settled beyond the pale of doubt that the Assessing Officer should have unearthed "incriminating material" during the search under Section 132 or 132A of the Income Tax Act so as to justify assumption of jurisdiction to assess or re-assess under

Section 153A of the Income Tax Act and make addition to income of the assessee in respect of completed/unabated assessment. The core question involved in these appeals revolves around the aspect as to whether the material unearthed by the Assessing Officer during the course of search, i.e. the document GCL–HD–1, constituted incriminating material or not.

8. While considering the appeals and the cross-objections, the learned Income Tax Appellate Tribunal framed pertinent questions for adjudicating the appeals. The Question No.(A), formulated by the ITAT, reads as below:-

> *"(A) Whether the AO had validly assumed jurisdiction to issue notice u/s 153A of the Act upon the assessee for AY 2011-12 in terms of fourth proviso to Section 153A of the Act read with Explanation 2 of the Act?"*

After discussing the material available on record, considering the submissions advanced on behalf of the revenue and the assessee, the learned Income Tax Appellate Tribunal recorded the following findings on the above question:-

> *"8.22. From our discussion (supra) it is clear that, only if any of specified 'asset/s' as defined in Explanation (2) is unearthed during the course of search and the acquisition of such an 'asset' being unexplained or undisclosed, which is valued Rs. 50 Lakhs or more, that the AO can be said to be in possession of the jurisdictional fact to initiate proceedings u/s 153A for 7th-10th AY (AY 2011-12, in the instant case). Now, to understand the alternate ground of argument of Shri Dudhwewala, let us for the sake of argument, assume that the AO had validly invoked the jurisdiction u/s 153A for AY 2011-12.Then*

in such an event, it has to be borne in mind that, first the AO had to make addition in respect of the purported undisclosed asset valued at Rs.50 lakhs or more; and only thereafter the AO can venture to make any other additions/disallowance which are not in the nature & character of 'Asset' but represents undisclosed/unexplained income/expenditure/credit etc. Perusal of the assessment order impugned before us, shows that that AO did not make any addition/s in respect of escaped/undisclosed asset in the relevant AY 2011-12. We therefore find ourselves in agreement with Shri Dudhwewala that, unless the AO made addition/s of Rs.50 Lakhs or more in relation to escaped/undisclosed asset, he could not assume jurisdiction to make addition/s on other items (viz. liabilities like credit entry etc.) The reason is simple, because in such a scenario, it bellies the claim of the AO in issuing notice u/s 153A of the Act, that he is in possession of the jurisdictional fact i.e. undisclosed asset valued Rs.50 lakhs or more has escaped assessment, which constitutes the key to open the lock and then re-assess the income of the assessee for the 7th to 10th AY. It is therefore incumbent upon the AO to show that the key used for opening the lock for the concluded 7th to 10th AY is the most appropriate key to unlock and thereby reopen the proceedings for bringing to charge any other items of escaped/unexplained income unearthed in the course of search. However in a case where, either the assessee demonstrates that the key used by the AO for reopening the assessment is either incorrect or where the AO himself abandons the jurisdictional fact in the course of assessment proceedings, then as a corollary, it has to be held that the key used by the AO for opening the lock was incorrect and thereby the lock placed earlier on the concluded assessment remained unopened and therefore the AO could not enter upon the arena of reassessing the income of the assessee. So, when the AO fails to make any addition for the 'undisclosed asset', then it tantamount to admission that there was no jurisdictional fact present before the AO in the first place, and the necessary corollary is that he has wrongly assumed jurisdiction u/s. 153A for AY 2011-12 and therefore AO cannot proceed further to make other items of additions/disallowances. In such a scenario, the AO has no other option but to drop the assessment proceedings. He may however proceed again, if there is any new/fresh jurisdictional fact before him, of course, subject to limitation. For this conclusion of ours, we rely on the ratio laid down in the judgments of CIT Vs Jet Airways (supra) & Ranbaxy

Laboratories Ltd. vs. CIT (supra). Though these judgments were rendered in the context of reopening u/s. 147 of the Act, however the ratio decidendi will apply in the present case, because, like Section 147/148 of the Act, the AO gets the authority to assess/reassess the income of a searched person or other person u/s 153A/153C for the extended assessment years (7th to 10th AYs) only if he has in his possession the jurisdictional fact, as discussed. If the AO is found to have assumed jurisdiction erroneously on mistaken belief about the existence of jurisdictional fact or ultimately drops it (after making enquiries in the course of assessment) while framing the reassessment order; then the AO cannot legally proceed further with the assessment/reassessment and/or make any other items of additions/disallowances, because the jurisdictional fact on the strength of which he assumed section 153A jurisdiction is absent or not in existence. In the light of the aforesaid discussion, and in our considered opinion, this alternate plea of Shri Dudhwewala is well founded and deserves to be accepted.

8.23. In view of the above and on perusal of the impugned re-assessment order, we note that the only addition made by the AO in AY 2011-12 was on account of unexplained cash credit represented by share application monies of Rs.5,38,35,000/- u/s 68 of the Act. According to the AO, the source of source of the monies received from shareholder, M/s Hari Trafin Pvt Ltd was not properly explained, and therefore the same was added as unexplained cash credit u/s 68 of the Act. As noted above, the additions on account of unexplained cash credit and that too share capital, which is in the nature of 'liability' could not have been made by AO, unless he first made an addition of undisclosed 'asset' valued at Rs.50 Lakhs or more. So in this case, as there was no addition made by AO on account of undisclosed asset, we can safely infer that there was no jurisdictional fact in the AO's hand or in his possession when he assumed jurisdiction u/s 153A for AY 2011-12 in the first place itself. As, the very usurpation of jurisdiction u/s. 153A of the Act is found to be bad in law for want of jurisdiction, the AO was precluded from making any other addition in the assessment for AY 2011-12. Hence, the AO's action of making addition u/s 68 of the Act in the relevant AY 2011-12 is held to be unsustainable for want of jurisdiction and is therefore is quashed. The assessee thus succeeds on this ground raised in the cross objections and the same is allowed."

9. The Question No.(B), as formulated by the learned Income Tax Appellate Tribunal for consideration, was as below:-

> *"(B) Whether in absence of any incriminating material found in the course of search at the premises of the assessee, the additions/disallowances made in the assessments of the assessee, which were unabated/ non-pending on the date of search, could be held to be sustainable on facts and in law?"*

The discussion and conclusions on the said question were recorded by the learned Income Tax Appellate Tribunal in the following terms:-

> *"9.7 Considering the judicial precedents (supra) on the subject, and the decisions rendered by the coordinate Bench of this Tribunal at Guwahati,* ***the settled law is clear that, in the case of unabated assessments of an assessee, no addition is permissible in the order u/s 153A unless it is based on any tangible & cogent incriminating material found during the course of search.***
>
> *9.8* ***To this extent, even the Ld. DR, in the course of hearing, did not dispute this legal position. According to him however, the addition/s made by the AO in the AYs 2011-12 to 2015-16 was based on seized incriminating document, GCL-HD-1,which was the groupwise share holding pattern of the assessee found from the computerized books of account and hence, he submitted that the above discussed judicial principle was not applicable in the given facts of the present case. According to him, this piece of evidence extracted from the books of accounts was 'incriminating' enough to justify the additions made u/s 68 of the Act. He contended that the Ld. CIT(A) had erred in holding that GCL-HD-1 was not 'incriminating' in nature and therefore urged that the additions made by the AO be restored. Per contra, the Ld. AR supported the order of the Ld. CIT(A).***
>
> *9.9 Heard both the parties.* ***In light of the above settled position of law, which has not been disputed by either of the parties, the limited question for our consideration is, whether the contents of the seized document GCL-HD-1, referred to by the AO, was 'incriminating' in nature or not.*** *Before we proceed to examine the contents of the seized document GCLHD-*

1, it is first relevant to understand as to the meaning of the expression "incriminating material" or evidence. There can be several forms of incriminating material or evidence. In order to constitute an incriminating material or evidence, it is necessary for the AO to establish that the information, document or material, whether tangible or intangible, is of such nature, which incriminates or militates against the person from whom it is found. Some common forms of incriminating material, inter alia, are for instance, where the search action u/s. 132 of the Act reveals information (oral or documentary) that the assets found from the possession of the assessee in form of land, building, jewellery, deposits or other valuable assets etc. do not corroborate with his returned income (which includes earlier AY's return also) and/or there is a material difference in the actual valuation of such assets and the value declared in the books of accounts. Further, incriminating evidence may also constitute of information, tangible or intangible, which suggests or leads to an inference that the assessee is conducting transactions outside the regular books of account which are not disclosed to the Department. Incriminating material may also comprise of document or evidence found in search which demonstrates or proves that what is apparent is not real or what is real is not apparent. In other words, let us assume that an assessee has recorded transactions in his books or other documents maintained in the ordinary course of business, then it is discovered in the search from certain material or evidence which states the contrary.In such an event then, the discovered material or evidence can be held to be incriminating in nature, only when it is found to affect the veracity of the entries made in the books of the assessee and thus lead to the conclusion that the entries made regularly/maintained by the assessee do not represent true and correct state of affairs. Rather the evidence unearthed or found in the course of search would go on to show that the real transaction of the assessee was something different than what was recorded in the regular books and therefore the entries in the books did not represent true and correct state of affairs i.e. the assessee has undisclosed income/expense outside the books or that the assessee is conducting income earning activity outside the books of accounts or all the revenue earning activities are not disclosed to the tax authorities in the books regularly maintained or the returns filed with the authorities from time to time is not true etc. The nature of the evidence or information gathered during the search should be of such nature

that it should not merely raise doubt or suspicion but should be of such nature which would prima facie show that the real and true nature of transaction between the parties is something different from the one recorded in the books or documents maintained in ordinary course of business. In some instances, the information, document or evidence gathered in the course of search, may raise serious doubts or suspicion in relation to transaction reflected in regular books or documents maintained in the ordinary course of business, then also in such an event the AO is not permitted to straightaway treat such material as 'incriminating' in nature unless the AO thereafter brings on record further corroborative material or evidence to transform his suspicion to belief and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs and rather that can be the starting point of inquiry to un-earth further material or evidence to transform his suspicion to belief and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs. ***Until these conditions are satisfied, it cannot be held that every seized material or document found in the course of search as incriminating in nature qua the assessee justifying the additions in unabated assessments. In other words, any and every seized material, which comes in AO's possession cannot be construed as 'incriminating material' straightaway. For instance, scribbling or rough notings found on loose papers cannot be straightaway classified as 'incriminating material' unless the AO establishes nexus or connect of such notings with unearthing of undisclosed income of the assessee. This nexus or connect has to be brought out in explicit terms with corroborative material or evidence which any prudent man properly instructed in law must be able to understand or correlate so as to justify the AO's inference of undisclosed income from such seized incriminating material. This exercise is therefore found to be essentially a question of fact****."*

(Emphasis supplied)

10. The learned Income Tax Appellate Tribunal elaborated upon the contents of the so called incriminating material, i.e. GCL–HD–1 (Goldstone Cement Limited-Hard

Disk-1), at Paragraph 9.13 of the impugned judgment and recorded its conclusions at Paragraph 9.14 while concurring with the findings of the Commissioner of Income Tax (Appeals) [CIT(A)], which had concluded that this document was not an incriminating material and simply contained a shareholding pattern of the assessee which was duly verifiable from the books of accounts and other secretarial records filed by the assessee with ROC prior to the date of search. The findings recorded by the Commissioner of Income Tax (Appeals) at Pages 145 to 147 of the order dated 18.03.2020 were reproduced and thereafter, the learned Income Tax Appellate Tribunal went on to reject the ground No.3 of the revenue's appeal pertaining to the reopening of the assessment for the accounting years 2011-12 to 2015-16:-

> *"9.15 Having examined the contents of GCL-HD-1, we find ourselves in agreement with the above findings of the Ld. CIT(A) that this document was a share-holding pattern document prepared by way of secretarial compliance report, which as the assessee has shown, was filed along with the company's annual return in Form MGT-7 on 28-11-2017 with the Registrar of Companies and was therefore available in the public domain (much prior to the date of search). It is found to contain the details of the name of shareholders, their amount and percentage of shareholdings. In our considered view, this document was a regular business document having no incriminating content whatsoever. Nothing whatsoever has been brought on record by the Revenue to correlate or link as to how the contents of this statement led to unearthing of unexplained cash credit by the AO and therefore the aforesaid factual finding of the Ld. CIT(A) remains uncontroverted. Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) on this aspect and hold that the seized document GCL-HD-1 did not constitute incriminating material or evidence.*

> ***9.16 For the reasons discussed in the preceding paragraphs and the judicial precedents as discussed above, we hold that the seized document GCL-HD-1 referred by the AO for justifying the addition/s made u/s 68 of the Act in the orders impugned before us, did not constitute 'incriminating material' and therefore no addition/s was legally permissible in the assessments framed u/s 153A for the AYs 2011-12 to 2015-16 for which the assessment did not abate, when the search was conducted on 22-12-2017. The assessee thus succeeds on Question (B) as well. Accordingly Ground No. 3 of the Revenue's appeal for AYs 2011-12 to 2015-16 thus stands dismissed."***
>
> (Emphasis supplied)

11. The issue whether a document, which in these cases is the electronic device in the form of a hard drive extracted from the computer of the assessee during search conducted in the year 2017 constitutes incriminating material or not, would unquestionably require evaluation, assessment and appreciation of contents of such document which is an exercise of evaluation of evidentiary worth of the document. Thus, this Court has no doubt in its mind that the conclusions recorded on the nature of contents of the document by the competent forum, be it the Commissioner of Income Tax (Appeals) or the Income Tax Appellate Tribunal as to whether the same was incriminating or not, would definitely be findings of fact and hence, the proposed substantial question of law No.2 in all these appeals, which is the primary ground for assailing the judgment passed by the Income Tax Appellate Tribunal and seeking admission of the appeals, cannot be considered to be a substantial question of law. The question so framed, pertains to examination and re-appreciation of contents of the document GCL-HD-1 for

deciding its creditworthiness and to adjudicate whether the same constitutes incriminating material or otherwise. Such an exercise unquestionably tantamounts to re-appreciation of evidence and cannot constitute a substantial question of law and rather poses a simple issue of facts which too stand concluded against the revenue by 2(two) competent forums, i.e. the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal who after threadbare discussion and appreciation of the contents of GCL–HD–1, the projected incriminating material, have recorded concurrent findings of fact that the same does not constitute incriminating material so as to justify the re-opening of the assessment by virtue of Sections 153A of the Income Tax Act for the unabated/completed assessments.

12. In wake of the discussion made hereinabove and keeping in view the law as laid down by Hon'ble the Supreme Court in the case of ***Abhisar Buildwell Private Limited*** (supra), followed by this Court in a recent judgment dated 14.08.2023 passed in ITA No.5/2022 *(The Commissioner of Income Tax & Anr. -Vs- Fortune Vanijya Private Limited)*, we have no hesitation in holding that the Hard Drive GCL–HD–1 collected by the jurisdictional authority during the search carried out in the premises of the assessee in the year 2017 does not constitute incriminating material so as to justify reopening of assessment of unabated/completed assessments under Sections 153A of the Income Tax Act and addition to the

income of the assessee under Section 68 of the Income Tax Act. The concurrent findings of fact recorded by the Commissioner of Income Tax (Appeals) vide judgment dated 18.03.2020 and the Income Tax Appellate Tribunal in the 3(three) appeals of the revenue and the cross-objections of the assessee vide judgment dated 10.12.2021 cannot be termed to be perverse, illegal or unjustified in any manner. Hence, we are of the unhesitant opinion that the appeals herein, do not involve any substantial question of law warranting admission.

13. Thus, all these appeals fail and are dismissed as being devoid of merit.

JUDGE **CHIEF JUSTICE**

Mukut

Comparing Assistant