IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 118 OF 2020

Pr. Commissioner of Income Tax -
Central -4, Mumbai .. Appellant

Versus

Arunkumar Ramniklal Mehta .. Respondent

WITH
INCOME TAX APPEAL NO. 132 OF 2020

Pr. Commissioner of Income Tax -
Central -4, Mumbai .. Appellant

Versus

Arunkumar Ramniklal Mehta .. Respondent

***Mr. Suresh Kumar**, for the Appellant.*

***Mr. P. J. Pardiwalla, Sr. Advocate**, a/w Mr. Nitesh Joshi, for the Respondent.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 1, 2026

P. C.

1. The present appeals filed by the Appellant-Revenue challenge the Tribunal's order dated 24.05.2019 for the Assessment Year 2006-07. Two Appeals have been filed by them against the same order, as one of them raises

issues arising out of an Appeal filed by the Revenue before the Tribunal, whereas the other one is concerned with issues arising from the Appeal filed by the Assessee.

2. The substantial questions of law as framed for our consideration in the Appeal being Income Tax Appeal (for short "**ITXA**") No. 118 of 2020 are as under:-

> *A. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in allowing the appeal filed by the assessee by relying on the decision of the Hon'ble Bombay High Court ignoring the fact that said issue was pending before the Hon'ble Supreme Court of India in various other Appeals?*
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> *B. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in narrowing down the scope of assessment u/s. 153A in respect of completed assessments by holding that only undisclosed income and undisclosed assets detected during the search could be brought to tax?*
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> *C. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct 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 like income relating to foreign assets that comes to the notice of the assessing Officer?*
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> *D. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that no addition u/s. 69A of the IT Act could be made ignoring the crucial facts of the case?*

3. Similarly, the substantial question of law framed in Appeal being ITXA No. 132 of 2020 is as under:-

> *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in allowing the appeal the addition of Rs. 1,79,000 as confirmed by the Ld. CIT(A) and dismissing the appeal filed by the revenue for relief granted by the Ld. CIT(A) to the extent of Rs. 200,12,56,838 being the addition made u/s. 69A of the I.T. Act 1961 which was based on a credible and specific piece of information received from another sovereign government?*

4. At the outset, the Respondent pointed out that the questions framed in ITXA No. 118 of 2020 arise in ITXA No. 132 of 2020 and the questions as framed in ITXA No. 132 of 2020 arise in ITXA No. 118 of 2020. Further, reference to the amount of Rs.1,79,000 framed in ITXA No. 132 of 2020 does not arise in the said appeal as explained hereafter. Since common issues are involved in both the Appeals they are being taken up together for hearing.

5. The Respondent-Assessee was a promoter and director in various entities forming part of the Rosy Blue Group. His sources of income comprised of salary, house property and other sources. He filed his original Return Of Income for Assessment Year 2006-07 on 31.07.2006 declaring a total income of Rs.18,16,910. The said Return Of Income was processed by an

intimation issued under Section 143(1) of the Income-tax Act (for short "**IT Act**"). The last date for issuing a notice under Section 143(2) of the IT Act for selecting the said Return Of Income for scrutiny was 30.09.2007. Since his Return Of Income was not selected for scrutiny, the intimation as issued under Section 143(1) of the IT Act had become final.

6. It appears that information in the form of a Base Note was received by the Government of India from the French Government *inter alia*, suggesting that the Assessee was a beneficiary of a private discretionary Trust being the Oak Trust, which held certain shares in a company being White Cedar Investments Ltd. (formed and registered in British Virgin Islands). Further, he was also referred to as a beneficiary in respect of another company being Ruby Enterprises Inc. (again formed and registered in British Virgin Islands). Both the said companies [White Cedar Investments Ltd. and Ruby Enterprises Inc.] had bank accounts with the HSBC Bank in Geneva. The peak balance lying in the said bank account of White Cedar Investments Ltd. for the year under consideration stood at USD 44,861,171, while such peak balance lying in the bank account of Ruby Enterprises Inc. stood at USD 4,020.02.

7. Pursuant to receipt of the above information, on 25th and 26th August 2011, a search action was carried out on the entities in the Rosy Blue Group, including the Assessee.

8. The present Appeals are concerned with Assessment Year 2006-07, and it is an admitted position that no assessment proceedings were pending in his case for this year at the time of search. Hence, the assessment proceedings did not abate in terms of the second proviso to Section 153A of the IT Act. Also, no incriminating material was found during the course of the search as relatable to this year. During the course of search, Mr. Russell Mehta (being the Assessee's son) clarified that his uncle Mr. Dilip Mehta (being the Assessee's brother, and then a resident of Belgium) was acting as a legal representative of the Estate of Late Mr. Ramniklal R Mehta (being the Assessee's father), and who would be aware of the said foreign bank accounts. Based thereon, the Investigation Wing of the Income-tax Department which had carried out the search action, sought information from Mr. Dilip Mehta, who responded by his letter dated 06.01.2012. His statement on oath was also recorded by them under Section 131 of the Act on 10.01.2012. In his statement, he explained that the Late Mr. Ramniklal Mehta owned certain natural pearls and some rubies which had been given by him to his close friend being Mr. Abdul Sultan Meherali, who before his demise handed over

the same to his son-in-law Mr. Mohammedali Hassanali. It was his intention that the said assets should be applied for the benefit of the family. As per the directions of Mr. Dilip Mehta, the said assets were sold by Mr. Hassanali around December 2003 realising approximately USD 27,95,000 which were remitted by him in the account of the Estate of Late Mr. Ramniklal Mehta. This position has also been confirmed by Mr. Hassanali by a letter which is also reproduced in the assessment order. Mr. Dilip Mehta had invested the said amount in an investment company by name of White Cedar Investments Limited on behalf of the Estate through the Oak Trust. White Cedar Investments Ltd. was an independent investment company with several subscribers. The said investment made by Mr. Dilip Mehta comprised of 5.73% interest in the said company. These facts also stood confirmed by Mr. Karl French, a director of White Cedar Investments Ltd., by a letter, the relevant part of which is again reproduced in the Assessment Order. He also confirmed that the present Assessee, including the other beneficiaries, had neither visited nor opened or operated the account of White Cedar Investments Ltd. This fact also stood confirmed by HSBC Bank, Geneva by its letter dated 22.12.2011. Though Mr. Dilip Mehta believed that the said amount would not be chargeable to tax in India, with a view to buy peace, he offered to tax USD 25,70,545 (being 5.73% of USD 4,48,61,171) equivalent to INR 11,46,72,012 based on the exchange rate of INR 44.61 to 1 USD

prevailing as on 31.03.2006 in the statement recorded under section 131 of the Act. This was based on a specific understanding that the offer was made to avoid litigation and regularise the Estate's position and that no penalty shall be levied. For the purposes of payment of taxes arising thereon, he also had to liquidate the said investment in White Cedar Investments Limited.

9. In view of the search action, a notice dated 14.02.2013 came to be issued under Section 153A of the IT Act directing the Assessee to file his Returns Of Income for the Assessment Years 2006-07 to 2011-12. Pursuant thereto, on 06.03.2013, the Assessee filed his Returns of Income for the said years, including the year under consideration. Similar notices were also issued to other members of the Mehta family, and in the Return of Income as filed by the Estate of Late Mr. Ramniklal Mehta, the aforesaid amount of Rs.11,46,72,012 was offered for tax.

10. In the Assessment Order dated 30.05.2014 passed under Section 153A in the case of the said Estate, the entire rupee equivalent of the peak balance lying in the HSBC bank account of White Cedar Investments Limited (being Rs.2,00,12,56,838) was added by their Assessing Officer as unexplained money under Section 69A of the IT Act. Though not relevant for the issue under consideration, but for completeness of facts, the said

Assessment Order passed in the case of the Estate has been found by the Tribunal to be unjustified for various technical reasons.

11. Be that as it may, the Returns of Income filed by the Assessee were selected for scrutiny. In the course of the assessment proceedings, the Assessee reiterated and confirmed that he did not have any bank account outside India. The assets and investments as held by him are only those as reflected in his Return of Income. Reliance was placed on the letter dated 06.01.2012 and the statement recorded on 10.01.2012 of Mr. Dilip Mehta. Reference was also invited to the letter dated 27.12.2011 from Mr. Hassanali, the letter dated 22.12.2011 from the HSBC Bank Geneva, and the letter dated 27.12.2011 from Mr. Karl French. Emphasis was laid on the fact that before making an addition in respect of unexplained money, it is incumbent on the Revenue to show that ownership of the same belonged to the Assessee. In the present case, this burden of proof was not discharged. Further, though the Estate had offered for tax an amount of Rs.11,46,72,012 in its Return of Income filed pursuant to notice issued under section 153A of the Act, in the Assessment Order passed in its case, the rupee equivalent of the entire peak amount being Rs.200,12,56,838 already stands assessed to tax. Further, separate affidavits dated 09.03.2015 [from Mr. Dilip Mehta] and 10.03.2015 [from Mr. Karl French] were also filed confirming the position explained by

them in their earlier letters/statements recorded under Section 131 of the IT Act. A letter dated 05.03.2015 from Solicitors Charles Russel Speechlys was also filed confirming the aforesaid position. Rejecting the aforesaid submissions, the Assessing Officer has made exhaustive reference to the Base Note. The burden of proving/disproving the Assessee's interest in the said bank accounts held by White Cedar Investments Ltd. and Ruby Enterprises Inc. in HSBC Bank, Geneva has been placed on the Assessee, and it is alleged that the Assessee has not discharged the said burden. Consequent thereto, an amount of USD 4,020.02 equivalent to INR 1,79,333 belonging to Ruby Enterprises Inc. and USD 4,48,61,171 equivalent to INR 2,00,12,56,838 was assessed to tax in the Assessee's hands as unexplained money under Section 69A of the IT Act. In respect of the amount lying in the bank account of White Cedar Investments Ltd., a substantive addition of Rs. 28,58,93,834 was made to the extent of 1/7th of the total amount of Rs. 2,00,12,56,838 (as there were seven beneficiaries as per the Base Note). The balance amount of Rs. 1,71,53,63,004 representing 6/7th of the aggregate amount, was added on a protective basis.

12. Aggrieved by the said Assessment Order, the Assessee filed an Appeal before the Commissioner of Income-tax (Appeals)-47, Mumbai [for short "**the CIT(A)**"], which Appeal was partly allowed by him by his

Appellate Order dated 31.03.2017. The submissions made by the Assessee before him with respect to the scope of an Assessment under Section 153A being restricted to such additions based on incriminating material found in the course of search and justification in respect of Assessment of the amount of Rs.1,79,333 lying in the bank account of Ruby Enterprises Inc. were dismissed by him. However, he deleted the addition of Rs.2,00,12,56,838 being Rupee equivalent of the USD funds lying in the bank account of White Cedar Investments Ltd.

13. Aggrieved by the aforesaid Appellate Order, both the Assessee as well as the Revenue filed Appeals before the Tribunal. The Assessee *inter alia* urged that the additions made by the Assessing Officer were beyond the scope of Section 153A as they were solely based on the Base Note which was already available with him before conducting the search. The Base Note was not a document found in the course of the search. Admittedly, the assessment proceeding for the year under consideration was not pending at the time of search. Hence, the assessment did not abate as per the second proviso to Section 153A of the IT Act. In such circumstances, no addition could be made in the Assessment Order passed under Section 153A of the IT Act, unless incriminating material in support of such addition was found in the course of search. Further, the USD equivalent of INR 1,79,333 was found to be lying in

the bank account of Ruby Enterprises Inc. with HSBC Bank, Geneva, ownership of which could not be attributed to the Assessee. Hence, addition of the said amount in his hands was not justified. In the Appeal filed by the Revenue before the Tribunal, it was urged that the USD equivalent of INR 2,00,12,56,838 lying in the bank account of White Cedar Investments Ltd. should be assessed as unexplained money in the hands of the Assessee.

14. The Tribunal, by its impugned order dated 24.05.2019, has allowed the appeal filed by the Assessee as well as dismissed the Appeal filed by the Revenue. With respect to the preliminary issue being the scope of assessment under Section 153A, the Tribunal has given a finding of fact that no incriminating material in respect of the bank accounts maintained by White Cedar Investments Ltd. and Ruby Enterprises Inc. with HSBC Bank, Geneva was found during the course of the search. Mr. Dilip Mehta has also confirmed in his letter as well as in the statement recorded under Section 131 that the Assessee herein had neither visited nor opened or operated any bank account with the HSBC Bank, Geneva in the name of White Cedar Investments Ltd. The source of funds to the extent of USD 27,95,000 deposited in the account of White Cedar Investments Ltd. was also explained by him. Hence, the additions made by the AO in respect of funds lying in the bank accounts belonging to White Cedar Investments Ltd. and Ruby

Enterprises Inc. were not supported by any incriminating material found in the course of search. Based thereon, and applying the legal proposition supported by judgements of this Court in the case of ***Continental Warehousing Corporation (Nhava Sheva) Ltd. v. CIT (2015) 374 ITR 645, Murali Agro Products Ltd. v. CIT (2014) 49 taxmann.com 72 and CIT v. Gurinder Singh Bawa (2016) 386 ITR 438 (Bom)***, the Tribunal upheld the Assessee's contention that the additions as made by the AO based on the Base Note were not justified in the assessment made under Section 153A. In this regard, in paragraph 18 of the appellate order, the Tribunal observed as under: -

> *"18. In the above legal background, if you examine the facts of the present case, we found that the assessment for the impugned assessment year is unabated as on the date of search, which is because the assessment for the impugned year has been completed u/s 143 (1)of the Act, and the time limit for issue of notice u/s 143(2) was expired much before the date of search i.e. 25/08/2011. It is also an admitted fact that tile addition made by the AO is not supported by any incriminating material found as a result of search. In fact, the AO made additions on the basis of 'Base Note' received by the government of India under exchange of information between French Government and Indian Government under the provisions of DTAA, and said Base Note was received prior to search. The sole reason for conducting search in the case of the assessee is information received from French Government in form of Base Note with regard to undisclosed bank account in HSBC Bank Geneva. Therefore, we are of the considered view that the additions made by the AO is merely based on Base Note which is not found as a result of search or requisition and consequently the additions made by the AO in assessment order passed u/s 153A of the Act, consequent to search, in absence of any incriminating material found as a result of search is bad in law and liable to be deleted. This legal proposition is supported by the decision of the jurisdictional High*

Court of Bombay in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd vs CIT (supra), where the court held that no additions can be made in respect of assessments which have become final if no incriminating material is found during the course of search. This legal proposition is further supported by the decision of division bench of the Hon'ble Bombay High Court in the case of Murali Agro Products Ltd vs CIT (2014) 49 taxman.com 72, wherein it was held that no additions can be made in respect of unabated assessment which have become final, if no incriminating material is found during the course of search. This legal proposition is further reiterated by various High Courts, including the jurisdictional High Court in the case of CIT vs Gurinder Singh Bawa 386 ITR 483(Bom), where it was held that once an assessment has attained finality for a particular year i.e. it is not pending, then the same cannot be subject to tax in proceedings u/s 153A of the Act."

15. Separately, on the merits of the case also, it held that the Assessee has been expressing his unawareness about the contents of the Base Note right from the beginning. Mr. Dilip Mehta had given an explanation with respect to the investments made in White Cedar Investments Ltd. to the extent of USD 27,95,000 including the source of such investment. For invoking the provisions of section 69A of the Act, the Assessee must be found to be the owner of the money, bullion, jewellery or other valuable article. There was nothing on record to indicate that the Assessee, in the present case, was the owner of the bank account operated and maintained in the name of White Cedar Investments Ltd. and Ruby Enterprises Inc. HSBC Bank, Geneva also confirmed by its letter that the Assessee herein had neither visited nor opened and operated any bank account and that no payments were received or made by him in relation to the said account.

Further, the statement recorded under Section 131 and the affidavit given by Mr. Dilip Mehta, letters from Mr. Hassanali, Mr. Karl French and Solicitor Charles Russel Speechlys also supported the case of the Assessee. Since the Revenue could not prove with necessary material that the said bank accounts belonged to the Assessee herein, the provisions of Section 69A of the IT Act could not be invoked, was the finding of the Tribunal. It has also observed that the sole basis for addition is the Base Note received from the French Government, but which is an unauthenticated document not received from the bank directly. Though the information exchanged between two sovereign countries cannot be ignored, but the contents of the Base Note are incomplete. Based thereon, the Tribunal deleted both the aforesaid additions made by the AO. Aggrieved by the Appellate Order passed by the Tribunal, the Revenue has filed the present Appeals.

16. In this factual backdrop, the learned Counsel Mr. Suresh Kumar, appearing for the Revenue, relied upon the Assessment Order and argued that the additions made are justified. He, however, was unable to point out any material to contravene the factual findings given by the Tribunal to the effect that on the day of search i.e. on 25/26.08.2011, no assessment proceedings were pending in the case of the Assessee for the Assessment Year 2006-07, and that, the additions in respect of funds lying in the HSBC Bank

accounts of White Cedar Investments Ltd. and Ruby Enterprises Inc. were solely based on the contents of Base Note received from the French Government without any incriminating material being found in the course of search. He also could not dispute the fact that the Base Note was available with the revenue even prior to the search.

17. On the other hand, and based on the undisputed facts narrated above, the Counsel for the Respondent placed reliance on the judgment of this Court in the case of ***PCIT v. Milan Kavin Parikh (2025) 181 taxmann.com 239*** wherein the judgment of the Hon'ble Supreme Court in ***Principal CIT vs. Abhisar Buildwell Pvt Ltd 454 ITR 212*** was followed. He also submitted that the additions as made by the Assessing Officer were also not justified in the facts of the present case.

18. It was submitted that questions A to C as formulated in ITXA No. 118 of 2020 does not give rise to any substantial question of law, as the same is covered by the decision of the Hon'ble Supreme Court in *Abhisar Buildwell Pvt. Ltd. (supra)*. As regards question D, it was pointed out that having regard to the plain reading of the section, it is apparent that the burden is on the Revenue to establish that the Assessee, in whose hands an addition is proposed under Section 69A, is to be found as the owner of the

asset. As in the present case, the Tribunal has found as a matter of fact that the Assessee was not the owner of the bank account, the balance wherein is sought to be assessed in his hands, and therefore, the addition cannot be sustained. In this view of the matter, even question D does not give rise to any substantial question of law was the submission. In fact, the Base Note, which is the only evidence relied upon be the Revenue itself, makes it clear that the bank accounts belonged to White Cedar Investments Ltd. and Ruby Enterprises Inc., was the argument of the Respondent.

19. We have heard the rival submissions of both the parties as well as gone through the assessment and the Appellate Orders passed in the present case. It is an admitted position that the Government of India had received a Base Note from the French Government disclosing that the Respondent Assessee was a beneficiary of the Oak Trust, being a private discretionary trust which held investments in a company being White Cedar Investments Ltd. The said company and Ruby Enterprises Inc. had bank accounts with HSBC Bank in Geneva. Pursuant thereto, a search and seizure action was carried out at the premises of entities belonging to the Rosy Blue Group, including the Assessee herein. On the date of search, i.e. on 25/26.08.2011, no assessment proceedings were pending in the case of the Assessee for the Assessment Year 2006-07. The intimation issued under

Section 143(1) of the IT Act for the year under consideration became final in the absence of any notice for scrutinising the assessment being issued under Section 143(2) of the IT Act. Hence, the assessment did not abate. In such circumstances, in the Assessment Order passed under Section 153A of the IT Act, only such additions could be made which were based on incriminating material found in the course of the search. That the Base Note, which formed the sole basis for the additions as made by the Assessing Officer in respect of balances lying in the bank account of White Cedar Investments Ltd. and Ruby Enterprises Inc. held with HSBC Bank, Geneva, which was already available with the Revenue before the search, does not qualify as incriminating material found in the course of search. In the case of *PCIT v. Milan Kavin Parikh (supra)*, this Court was concerned with a similar factual scenario where search action was carried out based on receipt of information contained in the Base Note. This fact becomes clear from the narration of facts in paragraphs 3, 4 and 5 as well as the findings of the Tribunal as referred to in paragraph 7 of the judgment. Dismissing the Revenue's appeal, the Court has observed in paragraphs 9 to 11 as under:-

> *"9. At the outset, we may observe that it appears to be an undisputed position that no incriminating material in the search proceedings was found against the assessee. Also there was sufficient evidence to indicate that the assessee did not have any connection with the bank accounts which according to the AO was the incriminating material, although the bank account concerned the group companies of the assessee's company in which he was a director. We also find that HSBC Bank (Suisse) SA*

Geneva also confirmed the position by issuing a letter granted in favour of the assessee, that the assessee had no connection whatsoever with the said bank accounts being considered by the Department to have a concern with the assessee. Thus, unless a clear and unimpeachable nexus was brought about on acceptable materials to justify the contentions and that too establishing a basis to link the assessee to the accounts which were held by the said entities with HSBC Bank (Suisse) SA Geneva, in our opinion, it was certainly not acceptable for the AO to nonetheless derive a nexus or any relation of the assessee in regard to the said bank accounts. This was an approach in the absence of any incriminating materials/evidence, much less any incriminating evidence and material gathered in the course of search action. In any event, as seen from the facts of the present case, the base note on which the revenue sought to place reliance was in fact a document available post-search and admittedly was not a document recovered under the search action. Further the assessment proceedings in the present case had also stood completed, hence, the base note being a document available post-search could not be considered to be any incriminating document to assess or reassess the assessee's income.

10. The position in law in such context is well settled considering the decision of the Supreme Court in Principal CIT vs. Abhisar Buildwell (P) Ltd. (2023) 454 ITR 212 wherein the Supreme Court in such context considering the views taken by different High Courts, namely the Gujarat High Court, Delhi High Court, this Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court, and the Kerala High Court as set out in para 7 of the said decision and examining the provisions of s. 153(A) of the IT Act as also, in the context of the search action taken under s. 132 has held that when no incriminating material was unearthed during the search, the AO cannot assess or reassess income taking into consideration other materials in respect of completed assessment/unabated assessments. It was held that in respect of completed/unabated assessments, no addition can be made by the AO in the absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Income-tax Act. The Supreme Court held that however, the completed/unabated assessment can be re-opened by the AO only in exercise of powers under s. 147/148 of the Income Act. Such is not the case in the present proceedings. The relevant observations as made by the Court are required to be noted which read thus :

"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 AO 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, the second proviso to s. 153A and sub-s. (2) of s. 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

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 1961 Act. 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 dismissed. No costs."

11. Mr. Jasani, learned counsel for the respondent/assessee has also placed reliance on the decision of the Division Bench of this Court of which one of us (G.S. Kulkarni, J.) was a member in Principal CIT vs. Welspun India Ltd. (2024) 167 taxmann.com 333 (Bom) wherein following the decision of the Supreme Court in Principal CIT vs. Abhisar Buildwell (P) Ltd. (supra) in similar circumstances, the Court dismissed the appeal filed by the Revenue observing that when no incriminating material was found to be an admitted position, no question of law had arisen for consideration of the Court, in view of the aforesaid settled position in law."

20. Reference in paragraph 9 of the said judgment to the fact that the Base Note was a document available post search appears to be an error, if one looks at the facts as referred to in paragraphs 3, 4, 5 and 7 of the judgment. In any event, for enabling the Revenue to make an adjustment to

the total income in the Assessment Order passed under Section 153A of the Act, in the case of an assessment that has not abated, there has to be incriminating material found during the course of search leading to the said adjustment. The fact that the material leading to the adjustment was in the possession of the Revenue before the search action or after the search action is immaterial. As referred to hereinabove, this Court in the case of *Milan Kavin Parikh (supra)* has relied upon the judgment of the Hon'ble Apex Court in the case of ***PCIT v. Abhisar Buildwell (P.) Ltd. (2023) 149 taxmann.com 399***, which has settled the law on this subject.

21. Further, a bare perusal of Section 69A of the IT Act also shows that, for invoking the said provision, the Revenue has to first find an Assessee to be the owner of any money, bullion, jewellery or other valuable article, and such asset has not been recorded in his books of account. Once this condition is fulfilled, the Assessee is under an obligation to explain the source from which such asset has been acquired. Only in such cases where the Assessee is unable to offer any explanation or the explanation as offered by him is found to be not satisfactory, the money or the value of the assets may be deemed to be the income of the Assessee for such Financial Year. In the present case, the Revenue has not discharged the burden of showing that the Respondent Assessee is the owner of the money lying in the said bank accounts. On the

face of it, the bank accounts with HSBC Bank, Geneva are of White Cedar Investments Ltd. and Ruby Enterprises Inc. It stands confirmed by the said Bank that the Assessee herein neither visited nor opened or operated the said bank accounts held by the aforesaid two entities. Further, Mr. Dilip Mehta has repeatedly explained the investments made by the Estate of Late Mr. Ramniklal Mehta through the said White Cedar Investments Ltd. to the extent of USD 27,95,000, and that the said company was an investment vehicle in which the Estate only held 5.73% interest. He has also explained the source of funds from which the said investments were made. The said facts are also confirmed by a letter dated 27.12.2011 from Mr. Karl French, being the Director of White Cedar Investments Ltd., and a letter dated 22.12.2011 from the HSBC Bank, Geneva. In such circumstances, the Tribunal was fully justified in holding that the first condition for invoking Section 69A of the IT Act viz., the Assessee should be found to be the owner of the money in the said bank accounts, has not been satisfied. Hence, the Tribunal was also justified in deleting the additions, and we concur with the findings given by them.

22. In light of the aforesaid discussion, we hold that questions (A) to (C) as referred to in ITXA No. 118 of 2020 are dismissed as not raising any substantial question of law, as the issue raised therein has been settled by the

judgment of the Hon'ble Apex Court as well as various judgments of this Court. Further, question (D) in ITXA No. 118 of 2020 and the question as raised in ITXA No. 132 of 2020 are also based on findings of facts given by the Tribunal which have not been controverted by the Revenue. Hence, the same do not give rise to any substantial question of law.

23. In light of the above, both the aforesaid Appeals filed by the Revenue are dismissed with no order as to costs.

24. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**