



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

WRIT PETITION No. 4554 of 2006

LUNKAD MEDIA AND ENTERTAINMENT LTD. AND OTHERS

Versus

UNION OF INDIA AND

WITH

INCOME TAX APPEAL No. 28 of 2012

PARKSON SECURITIES LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3(1) AND
OTHERS*

INCOME TAX APPEAL No. 29 of 2012

LUNKAD SECURITIES LTD.

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX-3(1) AND
OTHERS*

INCOME TAX APPEAL No. 30 of 2012

WEST END MANAGEMENT AND TECHNOLOGIES PVT. LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX-3(1) AND
OTHERS*

INCOME TAX APPEAL No. 31 of 2012

RAJVIR MARKETING AND INVESTMENT LIMITED

Versus



W.P. No.4554 of 2006 & Others

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3(1) AND
OTHERS*

INCOME TAX APPEAL No. 32 of 2012

LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3(1) AND
OTHERS*

INCOME TAX APPEAL No. 74 of 2012

LUNKAD SECURITIES LTD. AND OTHERS

Versus

THE ASSISTANT COMMISSIONER INCOME TAX AND ANR.

INCOME TAX APPEAL No. 75 of 2012

LUNKAD SECURITIES LTD.

Versus

*THE ASSISTANT COMMISSIONER INCOME TAX AND ANR. AND
OTHERS*

INCOME TAX APPEAL No. 76 of 2012

LUNKAD SECURITIES LTD.

Versus

*THE ASSISTANT COMMISSIONER INCOME TAX AND ANR. AND
OTHERS*

INCOME TAX APPEAL No. 77 of 2012

LUNKAD SECURITIES LTD.

Versus

*THE ASSISTANT COMMISSIONER INCOME TAX AND ANR. AND
OTHERS*

INCOME TAX APPEAL No. 78 of 2012

WEST END MANAGEMENT TECHNOLOGIES PVT.LIMITED



Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

INCOME TAX APPEAL No. 79 of 2012

PARKSON SECURITIES LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND
OTHERS*

INCOME TAX APPEAL No. 80 of 2012

PARKSON SECURITIES LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND*

INCOME TAX APPEAL No. 81 of 2012

RAJVIR MARKETING AND INVESTMENT LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

INCOME TAX APPEAL No. 82 of 2012

RAJVIR MARKETING AND INVESTMENT LIMITED

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

INCOME TAX APPEAL No. 83 of 2012

RAJVIR MARKETING AND INVESTMENT LIMITED

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.

INCOME TAX APPEAL No. 84 of 2012



LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.

INCOME TAX APPEAL No. 85 of 2012

LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.

INCOME TAX APPEAL No. 86 of 2012

LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

INCOME TAX APPEAL No. 87 of 2012

LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

INCOME TAX APPEAL No. 88 of 2012

LUNKAD MEDIA AND ENTERTAINMENT LTD.

Versus

*THE ASSISTANT COMMISSIONER OF INCOME TAX 3 (1) AND ANR.
AND OTHERS*

Appearance:

Shri Satish Chandra Bagadiya, learned Senior Counsel assisted by Shri Paritosh Seth, learned counsel for the petitioners / appellants.

Shri Harsh Prashar along with Ms. Yashika Bondwal, learned counsel for the respondents.

Reserved on : 09th July, 2025

Delivered on : 28th July, 2025

**O R D E R*****Per : Justice Vivek Rusia***

The present writ petition under Article 226 of the Constitution of India and the connected Income Tax Appeals under Section 260A of the Income Tax Act, 1961 (in short 'the Act') arise out of a common action of survey undertaken on 2nd and 3rd May, 2006 by the officers of the Income Tax Department, Indore at the business-cum-residential premises of Lunkad Media and a group of companies.

02. Aggrieved by the nature and manner of the proceedings including the entry into the residential premises, seizure of records in excess of the authority conferred by Section 133A of the Act and the denial of books of account post-survey M/s Lunkad Media had preferred the present petition before this Court seeking appropriate reliefs such as quashment of the survey proceedings, the impounding of documents and the assessment orders passed without providing access to the seized records. The petitioners / appellants have subsequently also challenged the legality of the entire action and the orders passed by the Income Tax Appellate Tribunal (ITAT) in the connected income tax appeals.

03. Since the factual matrix and legal questions involved are substantially common across the writ petition and the income tax appeals, they have been heard analogously and are being decided by this common order.

FACTS OF THE CASE

04. The petitioner and the appellants are a group of companies incorporated and run by Shri Vijay Lunkad and sons, carrying on business activities from a common business premises situated at 13,



Race Course Road, Indore, Madhya Pradesh. These companies are duly incorporated under the provisions of the Companies Act, 1956 and are regularly assessed for income tax under the Act.

05. The registered office of each company is situated within a distinct and separately earmarked commercial portion of the property at 13, Race Course Road, Indore. The residential premises of the Lunkad family, including those of Mr. Sanjeev Lunkad (Director in the group companies), are located at 13/4, Race Course Road, separated from the business premises by a 30 foot wide private approach road, which makes them structurally independent and distinct, yet still near to each other.

06. The cause of action arose on 2nd & 3rd May, 2006 when a team of officers from the Income Tax Department, Indore acting pursuant to an authorization issued by the Additional Commissioner of Income Tax, Range-3 Indore, under Section 133A of the Act, entered the premises of the group companies for the purpose of conducting a survey. The said authorization was issued in respect of Lunkad Media & Entertainment Ltd. and empowered five Income Tax Officers and three Inspectors to conduct the survey. When the survey was being conducted, Mr. Sanjeev Lunkad, Director of the petitioner company, was away on a religious pilgrimage, but his father, Shri Vijay Lunkad, who was not a director, shareholder or employee of any of the companies, was present at the residence.

07. The Survey Team of the Income Tax Department arrived at the premises at around 11:00 am and commenced the survey operations. Accordingly to petitioners / appellants, during the operation, the officers not only examined but also impounded books



of account, files, and loose papers from the business premises and also entered the adjoining residential bungalow despite clear demarcation between business and residential premises and despite protests by Shri Vijay Lunkad, the officers proceeded to search the residential quarters, including private areas. The survey continued throughout the day and extended well into the early hours of the following morning on 03.05.2006.

08. A consolidated impounding order under Section 133A (3) (ia) of the Act was passed around 1:20 am on 03.05.2006 by the Income Tax Officer, Indore. A common annexure was prepared listing the documents, files and computer storage devices seized during the operation. The impounded materials include records not only of Lunkad Media & Entertainment Ltd., but also of the other group entities operating from the same premises. A statement of Shri Vijay Lunkad was recorded despite his express protest regarding his lack of connection with the companies. Subsequent to the impounding, an order dated 15.05.2006 was passed granting approval for the retention of the documents. Thereafter, vide letter dated 31.05.2006, the Director of Lunkad Media & Entertainment Ltd. was directed to appear before the officer concerned between 12.06.2006 and 16.06.2006 to copy data from a hard disk that had been impounded during the survey.

09. The petitioners / appellants contended that the survey was actually in the nature of a search, carried out without compliance with the mandatory safeguards applicable to search operations under Sections 132 or 132A of the Act and that the scope of survey done by the officers far exceeded the limits prescribed under Section 133A of



the Act. The petitioners / appellants contended that the residential premises were unlawfully entered and searched, the statements were forcibly recorded from Shri Vijay Lunkad under coercion, which is outside the statutory bounds of Section 133A, which does not provide for seizure of documents or recording of statements under coercion. The petitioners / appellants also challenged the order of retention of documents passed on 15.05.2006.

10. Despite several representations and legal notices issued by the companies seeking the return of their books of accounts and records, the same were not made available. The Assessing Officer initiated and completed assessment proceedings under Section 143(3) of the Act for each of the companies for the relevant assessment years and passed assessment orders against all entities. It is the contention of the petitioners / appellants that the assessment was initiated and completed without restoration of the original books of account impounded during the survey, and thus, the companies were constrained to participate in the assessments without access to their primary financial records.

11. Aggrieved by the nature and manner of the proceedings, including the entry into the residential premises, seizure of records in excess of the authority conferred by Section 133A of the Act and the denial of books of account post-survey, M/s. Lunkad Media & Entertainment Ltd. preferred Writ Petition No. 4554 of 2006 before this Court seeking appropriate reliefs.

12. In parallel, assessment proceedings were initiated against each of the companies for varying periods from Assessment Years – 2000 – 01 to 2007 – 08. The Assessing Officer completed the



assessments under Section 143(3) of the Act in each case and passed the orders. It is further submitted that the same was done without supplying the original books of account to the respective assesseees despite demand. The assesseees contended that the books were essential for preparing accurate explanations in respect of the transactions, without which no proper assessment can be done.

13. The petitioners / appellants preferred appeals before the Commissioner of Income Tax (Appeals), Indore, challenging the assessments on the ground that the assesseees had been denied the opportunity to effectively rebut the proposed additions in absence of their own seized records. The learned Commissioner of Appeals partially dismissed the appeals, holding that the assessments were validly completed based on materials available on record and that sufficient opportunity had been given to the appellants to represent their case.

14. Aggrieved by the order of the Commissioner, the appellants preferred Income Tax Appeal before the Income Tax Appellate Tribunal (ITAT), which were registered and heard as ITA Nos.119/2011 to 138/2011 for various assessment years. The Income Tax Departments also filed Income Tax Appeals. During the course of hearing, applications were moved by the appellants, specifically praying for issuance of directions to the Assessing Officer for supplying certified copies of the relevant seized records.

15. The learned Tribunal by its interim direction ordered the department to provide photocopies of the documents, pursuant to which a bundle of papers was handed over to the appellants on or around 25.01.2012. However, upon examination of the material so



furnished, the appellants discovered that a large number of documents therein did not pertain to them and instead related to other group companies and that the documents were neither authenticated nor certified by any responsible officer, with many pages being incomplete, undated and un-indexed.

16. The appellants brought these deficiencies to the notice of the learned Tribunal and contended that the absence of any identification marking rendered the documents unusable for the purposes of legal submission or evidentiary reliance and prayed for remand of the proceedings to the Assessing Officer to enable a fair and effective hearing after furnishing of relevant records.

17. However, learned Tribunal vide common order dated 31.01.2012 dismissed all the appeals and affirmed the orders passed by the Assessing Officer and Commissioner with the observation that the Department had complied with its direction to supply documents and no further indulgence was required to be given to the assesseees as adequate opportunity had already been given and that the present matter did not warrant remand to the Assessing Officer.

18. The petitioner / appellants are thus challenging the initial action under Section 133A of the Act, the legality of the impounding and survey proceedings, the denial of access to their own records, the resultant assessment orders, order of commissioner and order passed by the ITAT primarily on grounds of jurisdictional error, procedural illegality and denial of natural justice. When the Income Tax Appeals came for hearing before this Court on 17.12.2013, the appeal was admitted on the following substantial questions of law:-

1. Whether the loose papers containing certain calculations can be called books of accounts, in view of



Central Bureau of Investigation Vs. V. C. Shukla & others reported in (1998) 3 SCC 410?

2. *Whether the loose scrap of unsigned calculations on a paper that is not even a letter pad of the Appellant, nor does it bear any rubber stamp, can be attributed to the Appellant Company?*

3. *Whether on the facts and in law, could the ITAT proceed to confirm the order of the Commissioner Appeals when the Appellant could not produce any documents before the Assessing Officer or the CIT because books of accounts were under seizure of the Department, and thus the orders of the Assessing Officers and CIT were bad in law and an opportunity of hearing should have been accorded to the Appellant by remanding the case?*

4. *Whether the survey operation carried out on 2/3.5.2006 was actually a "search", in view of the letter dated 21.12.2011 of the ACIT 3 (1) Indore?*

5. *Whether the order of assessments, as confirmed by ITAT, is bad in law and illegal as they were passed without following the procedure under Section 153-A, 153-B, 153-C and 153-D?*

SUBMISSIONS OF APPELLANTS / ASSESSEES

19. Shri S.C. Bagadiya, learned Senior Counsel for the petitioners / appellants, submitted that the proceedings initiated under Section 133A of the Act were in effect an unauthorized search conducted without following due process, rendering the entire action without jurisdiction. Learned Senior Counsel submitted that the documents and digital records were impounded in excess of the powers conferred under a survey and were retained without justification and despite repeated requests were not properly provided, meaning thereby, depriving the petitioners of a fair opportunity to explain its accounts during assessment and appeal. Learned Senior Counsel further submitted that the learned Tribunal failed to consider this denial of natural justice and proceeded mechanically without ensuring an effective remedy.

20. Learned Senior Counsel submitted that Section 133A (3) (ia)



of the Act provides that impounding of any document should be done after recording reasons by the concerned officer. Learned Senior Counsel submitted that this safeguard is provided by the legislation to safeguard the citizens from illegal action, and thus, the reasons recorded must be specific and detailed. Learned Senior Counsel further submitted that in the present case, the mere use of the word 'incriminating' as a reason by the officer was not sufficient, as nothing was brought on record to explain or give detail as to what incriminating material was found at the place.

21. Learned Senior Counsel submitted that the petitioner / appellants used to maintain their books of accounts and file their income tax returns duly according to these books. No company can be run without maintaining books of account. Learned Senior Counsel submitted that these Books of Accounts were seized by the authorities during the survey conducted by them, but nothing was mentioned in the *Panchanama* and no questions relating to the books of accounts were asked nor were mentioned in the statement of Shri Vijay Lunkad and statement of the Chartered Accountant of petitioner / appellants were recorded by the officers.

22. Learned Senior Counsel submitted that the order dated 15.05.2006 of the Chief Commissioner of Income Tax, Indore, granting approval for retaining materials impounded during survey and the notices issued by the Income Tax Authorities regarding photocopies of the material reflect that the books of accounts were indeed seized during survey. Learned Senior Counsel further submitted that without the books of accounts, they had no proper opportunity to explain themselves, and thus, the orders passed



subsequently are liable to be quashed.

23. Learned Senior Counsel further submitted that the Assessing Officer had wrongly added the share capital amount under unexplained credit as provided in Section 68 of the Act. Learned Senior Counsel submitted that Section 68 of the Act applies to unexplained cash credits in the books of assessee, however, in the present case, as the books of accounts were not found, this section could not have been applied. Learned Senior Counsel submitted that the loose papers or scrap papers relied on by the learned Tribunal cannot be called books of accounts. In support of the aforesaid contentions, reliance has been placed upon a judgment delivered by the Apex Court in the case of Central Bureau of Investigation *v/s V.C. Shukla & Others* reported in (1998) 3 SCC 410.

SUBMISSIONS OF RESPONDENTS

24. Shri Harsh Parashar, learned counsel for Income Tax Department submitted that the survey under Section 133A of the Income Tax Act was duly authorized and lawfully conducted at 13, Race Course Road, Indore, which served as the common premises for multiple interconnected companies. Learned counsel submitted that incriminating documents revealing unaccounted cash transactions, bogus payments were lawfully impounded after recording reasons and obtaining necessary approvals, and that the continuation of the survey and consequential actions under Sections 131 and 281B of the Act were within the scope of statutory powers and the writ petition is devoid of merit and liable to be dismissed.

25. Learned counsel submitted that the findings recorded by the learned ITAT are based on an appreciation of material facts / evidence



placed on record and since all questions of law framed are relating to disputes of facts which have already been decided by the tribunal, there is no interference by this Court in the present Income Tax Appeals. Learned counsel submitted that the reliance placed by learned Senior Counsel on *V.C. Shukla (supra)* is misplaced as the said decision itself clarifies in paragraph – 41 that even entries in books of account require corroboration to fix liability and liability may still be established where independent evidence exists.

26. Learned counsel submitted that the law regarding assessments on the basis of loose paper is well settled, however, in the present case, the additions made by the Assessing Officer and affirmed by the ITAT were not based merely on loose or unsigned sheets, but were supported by multiple layers of corroborative material indicating a structured *modus operandi* for routing unaccounted income including unexplained cash deposits and bank transactions.

27. Learned counsel submitted that the ITAT had also recorded that the assessees were granted adequate opportunity to respond and copies of the impounded documents were duly furnished to them pursuant to the directions of this Court. However, no documentary rebuttal or explanation was provided at any stage by the assessees to disprove the material relied upon by the Department.

28. Learned counsel further submitted that the objections regarding the nature of the documents being unsigned or not on letterhead carry no weight in view of the detailed factual findings of the ITAT. Learned counsel placed reliance on the decision of the Delhi High Court in the case of *Om Sai Infra Promoters Pvt. Ltd. v/s DCIT reported in [2025] 175 taxmann.com 155 (Delhi)*.



29. Shri Parashar, learned counsel submits that so far as the plea of petitioners / appellants that they were unable to defend themselves due to non-supply of documents is concerned, this contention is factually incorrect as the petitioners had filed interlocutory applications before this Court seeking directions for supply of documents and vide orders dated 11.11.2006 and 30.10.2007 this Court directed that certified copies be provided upon application and payment of charges. Learned counsel submitted that the documents were duly furnished, which is a fact also recorded by the ITAT in its order and that no application alleging non-compliance or contempt was ever filed by the petitioners. Hence, the claim that the documents were not available to them is without any factual foundation and has no merit in it.

30. Learned counsel on the question of whether the survey conducted on 2nd May 2006 was actually a 'search' submitted that this argument is based only on one internal letter dated 21.12.2011, where the word 'search' was used loosely. The actual authorization for the operation was under Section 133A of the Act, which permits only a survey and not a search. Learned counsel submitted that the survey was conducted after following due procedures and conducted without any undue pressure or coercion which was also confirmed by the independent witness (Shri Moolchand Garg, C.A.) present at the place during the survey. Hence, the challenge on this ground is not maintainable as all these facts have already been dealt with by all the authorities and confirmed by ITAT.

31. Learned counsel with regard to the applicability of Sections 153A to 153D of the apply to the survey proceedings under Section



133A. Learned counsel submitted that the action undertaken by the officers in the present case was a survey under Section 133A, which was followed by the assessments made under the regular provisions and thus, are valid in law. Learned counsel placed reliance on the judgment of the Madras High Court in *M. Vivek v/s DCIT reported in [2020] 121 taxmann.com 366 (Madras)*.

32. In support of his submissions, learned counsel placed reliance on several judgments of the Hon'ble Apex Court delivered in the cases of *Sudarshan Silks and Sarees v/s CIT reported in (2008) 12 SCC 458*, *Smt. Kusum Lata Singhal v/s Commissioner of Income Tax reported in [1990] 51 Taxman 300 (SC)*, *Vijay Kumar Talwar v/s Commissioner of Income Tax reported in [2011] 330 ITR 1 (SC)*, *Pooran Mal v/s Director of Inspection reported in [1974] 93 ITR 505 (SC)* and also on the decisions of other High Courts in *BMN Steels Emporium v/s Deputy Commissioner of Income Tax reported in [2023] 155 taxmann.com 623 (Madras)*, *Deputy Commissioner of Income Tax v/s Marudhar Hotels (P) Ltd. reported in [1999] 107 Taxman 452 (Rajasthan)*, *CIT v/s Kamal & Co. reported in [2008] 168 Taxman 246 (Raj.)* and *CIT v/s Ashok Kumar Jain reported in [2004] 140 Taxman 625 (MP)*.

33. Lastly, learned counsel submitted that no substantial question of law arises for consideration and that the findings of the learned ITAT, being well reasoned and consistent with law and supported by documentary material, are not perverse or arbitrary, having been rendered after giving sufficient opportunity to the petitioners. Thus, the present petition and connected appeals deserve to be dismissed.

APPRECIATION & CONCLUSION



34. So far as W.P. No.4554 of 2006 is concerned, the petitioners had filed this petition seeking quashment of order dated 02.05.2006 passed by the Income Tax Officer 3(2) Indore under Section 133A(3) (ia) of the Act, order dated 23.05.2006, order dated 23.05.2006 passed under Section 281B of the Act and order dated 15.05.2006 passed under Section 133(A)(3)(ia)(b) of the Act and finally, direction to the respondents to return all the documents, paper, hard disk impounded by the order and the document taken without receipt of the petitioners. By way of reply, it is specifically stated by the respondents that during the survey proceedings, no hard copies of books of account like cash book, ledger and journal were found, therefore, none could be impounded. Vide order dated 30.10.2007, this Court held that the petitioners / Company is entitled to obtain certified copies of the books of account and other documents impounded by the respondents on payment of charge prescribed under the law, hence, the respondents were directed to supply, in case the petitioners apply for grant of certified copies of the relevant book of account and other documents.

35. During the pendency of this petition, the assessment proceedings were completed by the Assessing Officer. During the pendency of this petition, an interlocutory application was filed on 07.03.2007 seeking direction to hand over the assessment orders to the petitioners. The said order was complied with by the respondent. Thereafter, the appeals were filed before the learned CIT, which were partly allowed, and the petitioners, thereafter, filed Income Tax Appeals before the learned ITAT, and all were dismissed by a common order. The petitioners have preferred the aforesaid income tax appeals, which have



been admitted on common questions of law. Since all the impugned orders have culminated in assessment orders and have been upheld by the ITAT, therefore, this writ petition has rendered infructuous as all the appeals are liable to be decided on the question of law framed by this Court while admitting the appeal.

36. Hence, Writ Petition No.4554 of 2006 stands dismissed having been rendered infructuous.

37. According to the respondents, a survey was conducted under Section 133 of the Act in the business premises of Lunkad Group of Companies on 02.05.2006, as they were indulging in the practice of giving accommodation entries of share application money and unsecured loans. The *modus operandi* was that Mukesh, Sanjeev and Ritesh Lunkad floated several companies by associating their family members and staff members as directors. These companies started the business of providing entries of unsecured loans, share application money, and investment in real estate to needy people. The huge amount in cash so received were deposited in various bank accounts, token in the name of these companies and after routing through one or more bank account through cheque of withdrawal, these sums were finally cleared in the bank accounts of beneficiaries. For this exercise, the Lunkad & Companies used to get commission ranging from 2% to 3% in cash from the beneficiaries. These facts have not been disputed by the appellants.

38. The Lunkad & Companies have incorporated as many as 18 companies in different names with common directors and common address. These companies had 18 bank accounts in different banks. Loose papers containing the details of payment in cash were impounded during the survey. The Assessing Officer has prepared a



chart in Para 3.8 to explain how the cash deposits were routed from one account to another in different banks by way of cash or cheques. Before computing the total income, notices were issued to the assessees to explain the introduction of share applications money from its associated concern in previous years. The notice under Section 148 of the IT Act dated 25.03.2009 was served upon the assessees, and the assessees were required to furnish the return on income within thirty days. Despite several opportunities, the said compliance was not done by the appellants. Since the appellant / assessees did not furnish the details, the Assessing Officer had no choice but to hold that 50% of the expenses were not incurred wholly and exclusively for business purposes and disallowed 50% of these expenses.

39. The assessment was recomputed as income under Section 144 r/w Section 147 of the Act and assessed to Rs.60,26,940/- along with interest for the Assessment Year – 2001 – 02. Likewise, the assessment orders were passed for subsequent Assessment Years – 2002 – 03, 2004 – 05, 2005 – 06 and 2007 – 08 against Rajvir Marketing and Investment Ltd., West and Management Technologies Ltd. Indore, Lunkad Securities, M/s Lunkad Media End Management & Technologies Private Ltd., M/s Partsons Security Ltd. The CIT partly allowed the appeal filed by the aforesaid companies after observing that during the appellate proceedings, no details had been furnished and the fact that assessees had not filed even the return of income tax for the Assessment Year – 2007 – 08 in the case of all these four companies. The CIT found it appropriate to divide the quantum of addition equally among all four companies.



40. Being aggrieved by the order of CIT, the revenue as well as the assessee preferred ITAs before the ITAT. Vide order dated 31.01.2012, all the appeals filed by the revenue as well as assessee were dismissed. The learned ITAT has observed that the assessee could not explain either before the Assessing Officer or before the CIT, and even before the Tribunal, to controvert the date-wise receipts and deposits of cash in the several bank accounts on which the Assessing Officer has made the addition in the assessment order. The ITAT has observed that no further addition was made on the basis of any entry in the books of account, if any impounded by the department.

41. The appellants / assessee could not produce any documents to substantiate the deposit of cash in the bank account amounting to Rs.5,87,00,200/- despite several opportunities given by the Assessing Officer, therefore, the sources of deposit remain unverified and unexplained by the appellants in respect of the Assessment Year – 2007 – 08. So far as the Assessment Years – 2001 – 02 to 2005 – 06 are concerned, the Assessing Officer passed an order under Section 144 of the Act and added the entire share application money in the assessee's hands and the appellants could not explain the source of share application money i.e. name, address and other particular of the share applicants before the CIT as well as ITAT. Therefore, the concurrent findings of facts recorded by the Assessment Officer, CIT, as well as ITAT, are not liable to be interfered with in these income tax appeals unless the questions of law framed are answered in favour of the appellants.

ANSWERS TO THE QUESTION OF LAW

42. So far as question Nos 1 & 2 are concerned, Shri Bagadiya,



learned Senior Counsel, has placed heavy reliance upon a judgment delivered by the Apex Court in the case of *V.C. Shukla (supra)*. As per the facts of the case, the CBI New Delhi searched the premises of J.K. Jain at G-36 Saket, New Delhi. In the course of the search, CBI recovered two diaries, two small notebooks and two files containing details of receipts of various amounts from different sources and details of payment to various persons recorded in an abbreviated form. Preliminary investigation revealed the transfer of huge amounts of money through hawala channels to 115 persons, including politicians, from 1998 to 1991. The CBI registered an FIR under Sections 7 & 12 of the Prevention of Corruption Act and Section 56 r/w section 81 of the Foreign Exchange Regulation Act, 1973 against the Jains, some private servants and upon completion of investigation, filed 34 charge-sheets in the Court of Special Judge. In the charge-sheet, Shri L.K. Advani and Shri V.C. Shukla, the then Member of Parliament, were added as co-accused. Thereafter, the charges were framed and the petitions under Section 482 of the Code of Criminal Procedure, 1973, were filed before the Delhi High Court seeking quashment of the FIR and charges. The writ petitions were allowed by common order, and the proceedings of two cases, i.e. CC No.15/1996 & CC No.17/1996, were quashed, in which Shri L.K. Advani and Shri V.C. Shukla were added as accused.

43. In the said case, the issue came up for consideration before the Apex Court whether loose sheets or scraps of papers can be treated as entries in the books of account regularly kept in the course of business. The Apex Court in paragraphs – 46 & 47 held that statements in the books of account of persons are admissions and can



be used against Jains, but cannot be used against any person like Shri L.K. Advani or Shri V.C. Shukla. But in the present case, all these materials collected from the premises of Lunkad Media & Entertainment were duly examined and verified from the bank accounts' statement by the Assessing Officer against the appellants. The appellants, being assesseees, were given ample opportunity to produce the concrete material to rebut the same, but even no income tax return was filed to explain those money receipts. Therefore, in the hawala case, the evidentiary values of these materials were examined under the provisions of the P.C. Act and the Indian Evidence Act. But in the present case, the search was conducted by the Income Tax Authorities in the companys' affairs and the Income Tax Authority examined all the material, which was confirmed by the Commissioner of Income Tax as well as the ITAT. Therefore, loose scrap papers containing certain entries of money were found in corroboration with the bank statements, and the same were duly appreciated by the Assessing Officer, CIT as well as ITAT, and all the correspondence money found in the bank account has rightly been treated as books of account. Hence, the facts and the law involved in the case of *V.C Shukla (supra)* are different from the case at hand. Hence, question Nos. 1 & 2 are answered against the petitioners/appellants.

44. So far as question No.3 is concerned, it is purely a question of fact, not a question of law. The appellants could not produce any document before the Assessing Officer or CIT despite the opportunity available to them. In the writ petition, the interim order was passed for the supply of certified copies of the documents seized during the



search. The respondents came up with the reply that in compliance with the said order, all the documents were supplied. Thereafter, the petitioners never filed any application alleging non-compliance with the order. Therefore, all the materials which were seized from the premises of the appellants were provided to them. Question No.3 is also answered against the appellants.

45. So far as question Nos.4 & 5 are concerned, Shri Bagadiya, learned Senior Counsel appearing for the appellants submitted that the contents of letter dated 21.12.2011 confirms that there was a search operation conducted on the companies of the appellants on 2nd & 3rd May, 2006, therefore, provisions of Section 153A to 153D of the Act would apply and without following the procedure prescribed therein, the order of assessment confirmed by the ITAT is bad in law.

46. We have carefully examined the contents of this letter. This is a reply given by Assistant Commissioner of Income Tax – 3(1) to the Principal Officer of one of the appellants / companies, given for the supply of copies of all the books. In the letter dated 21.12.2011, the Principal Officer, M/s Praksons Securities Ltd. mentioned that vide letter dated 21.12.2011, a request was made for supply of the copies of all the books of account seized during the **search operation** conducted on 2nd & 3rd March, 2006. The Assistant Commissioner has simply replied that in this connection, you are requested to please receive the photocopies of all the seized documents and books of account on 22.12.2011. Therefore, the Assistant Commissioner has never admitted in its letter that on 2nd & 3rd March, 2006, there was a search operation. The appellants tried to put the word **search** in the mouth of the Assistant Commissioner by mentioning the word search



operation in their letter.

47. Admittedly, the provisions of Sections 153A to 153D of the Act apply in case of search under Section 132 of the Act and not in case of survey. Hence, questions No.4 & 5 are also answered against the appellants.

48. As a result, all the Income Tax Appeals stand dismissed.

Let a copy of this order be kept in all the connected Income Tax Appeals.

(VIVEK RUSIA)
J U D G E

(BINOD KUMAR DWIVEDI)
J U D G E

Ravi