**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA(DB) BENCH, AGRA**

**BEFORE: SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**1. ITA No.325/Agr/2025
(Assessment Year: 2019-20)**

ACIT-Central Circle, Aayakar Bhawan, Sanjay Place, Agra-282002	**V**	M/s Ghanaram Infraengineers Pvt. Ltd., 8/18, West Patel Nagar, New Delhi-110008

**2. ITA No.326/Agr/2025
(Assessment Year: 2020-21)**

ACIT-Central Circle, Aayakar Bhawan, Sanjay Place, Agra-282002	**V**	M/s Ghanaram Infraengineers Pvt. Ltd., 8/18, West Patel Nagar, New Delhi-110008

**3. ITA No.327/Agr/2025
(Assessment Year: 2021-22)**

ACIT-Central Circle, Aayakar Bhawan, Sanjay Place, Agra-282002	**V**	M/s Ghanaram Infraengineers Pvt. Ltd., 8/18, West Patel Nagar, New Delhi-110008

**4. ITA No.328/Agr/2025
(Assessment Year: 2022-23)**

ACIT-Central Circle, Aayakar Bhawan, Sanjay Place, Agra-282002	**V**	M/s Ghanaram Infraengineers Pvt. Ltd., 8/18, West Patel Nagar, New Delhi-110008

PAN: AAFCG1580R	
(Appellant)	**(Respondent)**

Assessee by	Shri Kalrav Mehrotra, Adv. & Shri Shubham Bansal, Adv.
Department by	Ms. Sangeeta Yadav, CIT DR

Date of hearing	21.07.2026
Date of pronouncement	16.10.2026

ORDER

PER:BENCH

The facts and issues involved in these appeals are identical, hence, for the sake of convenience and brevity, these appeals are being decided by this common order. Only the facts of ITA No. 325/Agr/2025 are being narrated as under:

2. All these appeals have been directed against the various impugned orders passed by ld CIT(A), wherein all the appeals were dismissed. The details of the first appellate proceedings are set out in the following table:

Sr. No	ITA Nos.	Assessment Year	First Appeal No.	Date of Impugned Order
1.	325/Agr/2025	2019-20	CIT(A)-IV/KNP/11397/2018-19	11.04.2025
2.	326/Agr/2025	2020-21	CIT(A)-IV/KNP/11189/2019-20	11.04.2025
3.	327/Agr/2025	2021-22	CIT(A)-IV/KNP/10184/2020-21	11.04.2025
4.	328/Agr/2025	2022-23	CIT(A)-IV/KNP/10025/2021-22	11.04.2025

ITA No. 325/Agr/2025 (A.Y.2019-20)

3.(i) The brief facts of this case are that the appellant assessee filed its original return of income for A.Y. 2019-20 on 30.10.2019, declaring total income of Rs. 20,30,74,664/- u/s 139(1) of the Act. The search and seizure

action u/s 132(1) of the Act was carried out on residential and business premises of "Ghanaram and Others Group Jhansi" on 03.08.2022. Various assets/ books of account and documents were found and seized during the course of search. Notice u/s 148 of the Act dated 31.03.2023 was issued and served upon the assessee in compliance of clause (i) of Explanation to section 148 of the Act. Assessee filed return of income on 28.04.2023 in response thereof. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee, assessee furnished details/ explanations. After examining assessee's submissions in the background of seized documents, the assessing officer noticed that the assessee has offered for cessation u/s 41(1) of the Act, of Rs. 90,00,00,000/- in A.Y. 2021-22 and Rs. 157,59,76,900/- in A.Y. 2022-23, constituting 96.4% of its total sundry creditors as on 31.03.2021, of Rs. 256,77,16,853/-.

(ii) The assessing officer further noticed that the basic details in respect of the sundry creditors like name of the person/entity, PAN, complete address, contact number, nature of services/goods provided, opening/ closing balance, year-wise copies of ledgers etc. were not provided by the assessee. The ld AO further noticed that the fundamental object of raising said sundry creditors was to reduce the net profit for the relevant assessment year. The details in respect of cessated liabilities were sought time and again, but the same was not provided by the assessee. The ld AO

observed that assessee has surrendered bogus sundry creditors (others) under the garb of "cessation of liability" after invoking provisions of section 41 of the Act in the manner mentioned below:

Sundry creditors outstanding as at 31.03.2021	Rs. 256,77,16,853/-
Total sundry creditors surrendered in A.Y. 2022-23	Rs. 157,59,76,900/-
Sundry Creditors surrendered in A.Y. 2021-22 (in ITR filed u/s 148 of the Act)	Rs. 90,00,00,000/-

The assessing officer observed that the identity of counter party and genuineness of transaction in respect of said "liabilities" were not established by the assessee. The ld AO took note of the pattern of sundry creditors shown in assessee's balance sheet as under:

Sr. No.	**A.Y.**	**Amount of Sundry Creditors Shown**	**Addition in Sundry Creditors during the relevant year**
1.	2014-15	Rs. 88,92,14,652/-	-----
2.	2015-16	Rs. 74,14,46,216/-	Rs. (14,77,68,436/-)
3.	2016-17	Rs. 1,60,74,37,162/-	Rs. 86,59,90,946/-
4.	2017-18	Rs. 2,10,66,84,466/-	Rs. 49,92,47,304/-
5.	2018-19	Rs. 2,31,00,80,913/-	Rs. 20,33,96,447/-
6.	2019-20	Rs. 2,52,07,55,096/-	Rs. 21,06,74,183/-
7.	2020-21	Rs. 2,81,38,98,032/-	Rs. 29,31,42,936/-

(iii). The assessing officer further observed as to how the assessee came to know that the existing liabilities in the form of sundry creditors was no longer needed to be paid and thus concluded that the creditors are

undoubtedly bogus and an amount of Rs. 21,06,74,183/- created as bogus liability during A.Y. 2019-20 was added in the income of the assessee as depicted in the above table.

(iv). The assessing officer noted that the expenses claimed by the assessee are coupled with the creation of bogus liabilities, thus 5% of aggregated expenses amounting to Rs. 10,05,92,049/- were disallowed and added in the total income of the assessee.

(v). That apart, an addition of Rs. 10,08,70,000/- was also added as undisclosed income as net profit @ 35% of claimed sand mining unaccounted receipts, vide assessment order dated 31.03.2024 passed u/s 147 r.w.s 143(3) of the Act.

4. Aggrieved, assessee preferred first appeal against the said assessment order before ld CIT(A), who partly allowed assessee's appeal, deleting the aforesaid two additions of Rs. 21,06,74,183/- as bogus liability and Rs. 10,05,92,049/- as 5% of aggregated expenses, however confirmed the remaining addition of Rs. 10,08,70,000/- as unaccounted receipts of sand mining.

5. Revenue has preferred this second appeal against the impugned additions confirmed by the first appellate authority and has raised following grounds:

> "1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-IV, Kanpur has erred in deleting the addition of Rs 21,06,74,183/- made

on account of bogus sundry creditors in the relevant assessment year after recategorizing them by the Assessing Officer, without appreciating the fact that sundry creditors offered by the assessee company as ceased liability u/s 41(1) of the Act in the A.Ys 2021-22 and 2022-23 were found to be non-genuine. Hence, action of the AO to tax them in the relevant assessment year after recategorization was fully justified.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-IV, Kanpur has erred in deleting the addition of Rs 21,06,74,183/- made on account of bogus sundry creditors in the relevant assessment year after recategorizing them by the AO, by not considering the facts that some of sundry creditors were mere opening & closing balances year after year and they were never being squared up and assessee has failed to submit even the most basic details such as Name, PAN, Address & nature of goods/services availed etc. As such, the identity, creditworthiness and genuineness of transactions entered in the books of accounts of the assessee remained to be explained. Hence, treating the sundry creditors as ceased liability, which were bogus, is not in accordance with the intent and spirit of provisions of section 41(1) of the Act.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-IV, Kanpur has erred in deleting the addition of Rs. 10,05,92,049/- made on account of disallowance of 5% of total expenditure claimed by the assessee in the profit and loss account on account of bogus sundry creditors, without appreciating the fact that if the sundry creditors are bogus/fictitious/non-existent, the revenue as well as trading expenses (including purchases associated with that bogus creditors) debited in trading A/c cannot be allowed in toto. The Assessee during the course of assessment proceedings has failed to establish the identity of counterparty and the genuineness of transactions. Therefore, the expenditure claimed by the assessee relatable to bogus creditors is fictitious and AO has rightly disallowed to the extent of 5% expenses claimed by the assessee in the trading and profit and loss account.
……"

6. We have perused the records. Heard ld representatives for the appellant assessee and ld CIT (DR) for the respondent revenue.

7. The main points for determination, on the basis of aforesaid grounds raised under appeal, are as to (i) whether ld CIT(A) has erred in deleting the addition of Rs. 21,06,74,183/- made on account of sundry creditors which were not genuine, (ii) whether ld CIT(A) has erred in deleting the addition of Rs. 10,05,92,049/- made on account of disallowance @ 5% of

total expenditure claimed by the assessee in P&L account related to said bogus sundry creditors?

8. Ld CIT(DR) for the appellant revenue has submitted that the assessing officer has found the total sundry creditors shown as on 31.03.2021, of Rs. 256,77,16,853/-. All the sundry creditors were found to be bogus and the assessee failed to provide even the basic details in respect of such sundry creditors during the assessment proceedings. Ld CIT DR has further submitted that the identity, credit-worthiness and genuineness of the transactions entered in the assessee's books of accounts remained unexplained. Ld CIT(A) has erred in treating such sundry creditors as ceased liability contrary to the provisions of section 41(1) of the Act. Prayed to confirm the addition made by the assessing officer on this count.

9.(i) Ld representatives for the respondent assessee have submitted that the sundry creditors in question were thoroughly examined and accepted as genuine by the department during the original scrutiny assessments u/s 143(3) for A.Y. 2016-17, 2017-18 and 2020-21, hence the assessing officer cannot now classify them as bogus, merely because the assessee was unable to file exhaustive details for every creditor after a significant lapse of time. The balance of these creditors were thoroughly verified and accepted as genuine in A.Y. 2015-16 and were simply carried forward into the

subsequent years including the year under consideration. Ld AR further submits that the assessing officer ignored the fact that the liabilities surrendered do not represent the entire debt originally owned by the assessee. Ld AR further submits that the revenue has historically accepted these exact figures in prior scrutiny assessments including A.Y. 2016-17 and A.Y. 2017-18 and cannot be branded as bogus without corroborating/incriminating material. AO has ignored that the surrender of unverified balances u/s 41(1) of the Act was driven by genuine administrative hardship of the assessee.

(ii). Ld AR has referred CIT, Delhi – II v. Jain Exports (P) Ltd., (2013) 35 taxmann.com 540 (Delhi), wherein it is held that department cannot be allowed to approbate and reprobate, having accepted the books of accounts for a successive period. Ld AR argued that the ITAT in several cases has allowed deduction u/s 80IA against income offered to tax u/s 41(1) and referred Radhamohan Industries v. ITO (2010) 8 taxmann.com 63 (Ahd), and DCIT v. Vodafone Idea Ltd., (2026) 185 taxmann.com 532 (Mum).

10. We shall first deal with respect to the addition of Rs. 21,06,74,183/- which was made by the ld assessing officer on account of bogus sundry creditors. We notice that the ld assessing officer concluded that assessee failed to provide even the basic details in respect of the sundry creditors so

as to ascertain their identity and genuineness. That apart, ld AO observed that the assessee declared the cessation of liability existing in the relevant assessment year without any reasonable explanation as to how the assessee came to know that the existing liabilities in the form of sundry creditors were no longer needed to be paid. Ld CIT(A) has observed that AO's recharacterization of the sundry creditors as non-genuine from the outset is non backed by evidence strong enough to override the appellant's records and past assessment. Ld CIT(A) also made an observation in the impugned order that AO's approach to push the income back to the earlier years was not supported by section 41(1) of the Act, unless it was a case of false liability (sham transaction) created in those years, however ld CIT(A) made such observation only on the ground of non-availability for such a sweeping conclusion of AO. It is thus clear that neither the assessing officer nor the ld CIT(A) conducted proper inquiries so as to ascertain the identity, genuineness and credit-worthiness of the sundry creditors. It is thus an admitted fact that no details in respect of the sundry creditors were ever produced either during the assessment proceedings or during the first appellate proceedings. In the totality of facts and circumstances of the case, we deem it just and proper to restore the issue back to the file of ld assessing officer to adjudicate the issue a fresh after conducting proper

inquiries and after affording adequate opportunity of hearing to the assessee.

11. As regards the deletion of second addition of Rs. 10,05,92,049/-made on account of disallowance @ 5% of total expenditure claimed by the assessee in P&L account related to said bogus sundry creditors is concerned, since we have restored the issue of sundry creditors on the basis of which this disallowance @ 5% of aggregate expenses on the same line has been made, this issue also deserves to be restored to the ld assessing officer for adjudicating a fresh subject to the outcome of the aforesaid main addition in respect of sundry creditors. This appeal is thus liable to be allowed for statistical purposes.

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12. The fact and issue in this appeal are identical except the deletion figure of Rs. 29,31,42,936/- added on account of sundry creditors and deletion of Rs. 9,20,61,006/- added on account of disallowance of 5% of total expenditure claimed by the assessee in its profit and loss account on account of bogus sundry creditors. Our findings given in ITA No. 325/Agr/2026 shall mutatis-mutandis apply in this case. This appeal is thus liable to be allowed for statistical purposes.

13. It is pertinent to mention that the revenue has raised an additional ground as under:-

Additional Grounds:

"Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-IV, Kanpur has erred in allowing the deduction u/s 801A of the Income Tax Act claimed by the assessee, disregarding the fact that deduction u/s 801A of the Income Tax Act can be claimed only against the profit and gains derived from eligible business. Deduction u/s 801A of the Income Tax Act, 1961 is allowable to businesses that are into maintaining, developing and operating infrastructure facilities like roads, bridges, highways or water projects etc., none of which are applicable to the assessee, being a contractor as is evident from GST registration. Any income generated from non-eligible activities will not qualify for any deduction u/s 801A of the Income tax Act, 1961. The Ld. CIT(A) while allowing deduction u/s 801A has also ignored the vital fact that the assessee company had neither claimed deduction u/s 801A in the preceding years nor did it claim deduction in the ITR filed by it u/s 139[1] of the Income tax Act, 1961 on 31.12.2020."

14. Ld DR has submitted that two assessment orders were passed for A.Y. 2020-21. First assessment order was u/s 143(3) dated 30.09.2022, wherein certain additions were made, however, no claim of deduction u/s 80IA was made in the original return dated 31.12.2020. This claim of deduction was made first time after the search proceedings in Form 10CCB on 15.09.2022 stating that the said claim was inadvertently omitted in the original return dated 31.12.2020. The assessing officer rejected the claim by relying on Supreme Court's decision in Goetze (India) Ltd. V. CIT (2006) 157 taxmann 1 (SC), wherein it was held that a fresh claim cannot be entertained otherwise then by filing a revised return of income and not by way of a revised computation. However, ld CIT(A), vide order dated 11.04.2025, passed in first appeal no. CIT(A)-IV/KNP/10184740/2019-20, against the assessment order u/s 143(3) of the Act dated 30.09.2022, allowed assessee's claim of deduction u/s 80IA for 2020-21. The revenue

could not file appeal before ITAT due to tax effect on account of the said appeal was Rs. 96,411/- only. It is further submitted that it was noticed that despite rejecting the claim of deduction u/s 80IA to the tune of Rs. 8,20,83,845/-, relevant addition on account of disallowance was inadvertently omitted from being added to the returned income of the assessee, which resulted in the reduction of tax liability of the assessee. Accordingly, rectification order dated 10.02.2026 was passed and the assessed income for A.Y. 2020-21 was enhanced accordingly. Consequent orders are also said to have been rectified. The ld DR thus prayed that the aforesaid additional ground may be admitted.

15. Ld AR has submitted that the assessee lawfully applied for 80IA deduction before the completion of original assessment proceedings for A.Y. 2020-21, wherein the deduction u/s 80IA stood confirmed for A.Y. 2020-21. The CIT(A)'s order allowing this deduction has been passed u/s 143(3) for the said year. This order has been challenged by the department by way of an additional ground without even filing an ITA. There is no change in the activities of the assessee, the deduction granted in A.Y. 2020-21, being the initial year is liable to be given for future years as well. Ld AR vehemently opposed for the admission of revenue's aforesaid additional ground.

16. According to the records of this appeal, we note that assessee raised its claim u/s 80IA, amounting to Rs. 8,20,83,845/- claimed for the very first time in the income tax return filed in response to the notice u/s 148 of the Act, which was disallowed/summarily rejected by the assessing officer on the basis of detailed discussion made in para 9.1 to 9.13 of the assessment order. It appears that due to revenue's omission to add the disallowance u/s 80IA in consequence of the assessment order dated 31.03.2024, no such ground u/s 80IA was raised by the assessee before the first appellate authority, hence there was no question for adjudicating the same. Assessee has substantially raised its claim of deduction u/s 80IA of the Act in ITA No. 327/Agr/2025 relevant to A.Y. 2021-22 and ITA No. 328/Agr/2025 relevant to A.Y. 2022-23. The additional ground raised by the revenue cannot thus be admitted in this appeal. We shall accordingly discuss the issue of section 80IA while taking up revenue's relevant appeals for discussion as under.

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17. One of the issue in respect of disallowance of 5% of total expenditure claimed by the assessee in its profit and loss account on account of bogus sundry creditors is identical in this appeal except the deletion of figure of Rs. 6,23,40,143/- added on account of sundry creditors. Hence, our

findings on this issue given in ITA No. 325/Agr/2026 shall mutatis-mutandis apply in this case.

18. That apart, two more issues are also involved in this appeal. One is in respect of the eligibility of assessee in respect of disallowance u/s 80IA of the Act, claimed by the assessee. Secondly, the treatment Rs. 90,00,00,000/- as appellant's income for A.Y. 2021-22 on a substantive basis as against the protective basis considered by the assessing officer.

19. Ld CIT (DR) has submitted that the CIT(A) has erred in allowing the deduction u/s 80IA by ignoring the important fact that no claim was made in the original return but only in the return filed in consequence of notice u/s 148 of the Act. Ld DR further submits that such claim of deduction could be claimed only against the profits and gains derived from eligible business as against liability on cessation u/s 41(1) of the Act in the garb of sundry creditors which were non-genuine and fictitious. Ld DR further submits that the impugned order is bad in treating Rs. 90,00,00,000/- as assessee's income for A.Y. 2021-22 on a substantive basis without appreciating the fact owing to search and post search proceedings, the assessing officer has rightly considered it on protective basis with the substantive addition across various assessment years.

20. Ld AR submits that the deduction for A.Y. 2022-23 was claimed in the original return, and the form 10CCB is directory and can be filed during assessment proceeding. Ld AR has further submitted that there is no change in the activities of the assessee, the deduction granted in A.Y. 2020-21, being the initial year is liable to be given for future years. Ld AR submits that assessee's claim of deduction u/s 80IA has rightly been allowed by the ld CIT(A) which was claimed in accordance with law. Ld AR further submits that the protective assessment and the protective addition cannot be made as the assessee voluntarily offered the income to tax in the later years. Ld AR has referred Lalji Haridas v. ITO, 1961 63 ITR 387 SC, wherein it is held that a protective assessment is only permissible where there is genuine dispute or uncertainty regarding the assessibility of income.

21. As regards the submission of ld CIT (DR) in respect of the assessee not having claimed the deduction u/s 80IA in the original return, is not entitled for the same by filing return in response to notice u/s 148 of the Act. The assessing officer has also based his finding in the same line by taking strength from Supreme Court decision in CIT V Sun Engineering P. Ltd., 198 ITR 297 (SC). Ld CIT has dealt with this issue from pg no. 76 – 77 which read as under:-

> "Regarding the applicability of the ratio given by the Hon'ble Supreme Court in the case of Sun Engineering Works (SC) in present proceedings, it is seen that the Sun Engineering Works (SC) works applies when the original assessment was completed and the fact is highlighted in para 42 of the judgement. There was no assessment completed prior to issuance of notice u/s 148 in the present case. Further in Hon'ble Supreme court in case of Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers (P.) Ltd[has held that intimation order u.s 143(1) doesn't constitute an assessment.
>
> The judgement of Hon'ble Karnataka State Co-Operative Apex Bank Ltd. v. Deputy Commissioner of Income-tax, Circle 3(1), Bangalore [2021) (Karnataka) is identical facts wherein it was held that fresh claim can be made if the assessment was not completed u/s 143(3) or 147 before the issuance of notice. And the hon'ble High Court also relied on decision of the Supreme Court in the case of Mewalal Dwarka Prasad in which it was held that once proceeding u/s 148 of the Act was initiated, the original order of assessment got effaced. The Hon'ble Karnataka High Court in this judgment also discussed the decision of Hon'ble Supreme Court in the case of Sun Engineering Works (supra) before giving its decision. Since in the present case the assessment was not completed before issuance of notice so the ratio of Sun Engineering Works (SC) was wrongly applied by the AO in my opinion."

22. In the instant case, ld AR has submitted that there was no completion of assessment as intimation u/s 143(1) was not even issued, whereas in Sun Engineering Works (supra), Hon'ble Supreme Court approved the action of tribunal by observing that the item which the assessee wanted to be taken into account in the proceedings u/s 147 of the Act, were unconnected with the escapement of income, further observing that the attaining of finality of the original assessment was condition precedent in disallowing the claim in such a situation. Ld AR, thus submits that assessee's claim cannot be declined merely on the ground of failing to make the claim of deduction u/s 80IA of the Act in the original return.

23. We note that assessee has mentioned in his written submissions that in the instant case, the assessment proceedings did not attain finality. The

proceedings proposed to be taken up by the assessee are not unconnected with the escapement of income. We, therefore, do not find any error in the finding given by ld CIT(A) on this legal issue.

24. During the assessment proceedings, the assessing officer found that the assessee company was incorporated on 23.04.2013. The business activity was found as “work contract” on the basis of GST details. The assessee submitted during the assessment proceedings that the nature of his business was of “development” of irrigation projects along with development contracts. The ld assessing officer observed that there is no change in the business module of the assessee since its inception which includes general construction services of harbours, highways, waterways, dams, roads, runways, bridges and tunnels. It was further observed by the assessing officer that the assessee company never intended to claim deduction u/s 80IA of the Act, for A.Y. 2014-15 to 2021-22. It was only after the search and seizure action u/s 132 of the Act dated 03.08.2022, assessee surrenders bogus creditors displaying in the balance sheet, under the garb of cessation of liabilities u/s 41 of the Act and just out of the blue, claims deduction u/s 80IA of the Act so as to nullify the surrendered income. The ld AO observed that the assessee has claimed deduction u/s 80IA for the first time in A.Y. 2020-21 in the ITR filed u/s 148 of the Act.

The factual matrix is illustrated in para 9.4 of the assessment order as under:

Sr. No.	**A.Y.**	**Deduction u/s 80IA in original ITR**	**Deduction u/s 80IA in ITR filed during assessment proceedings/ in ITR filed after search has taken place**
1.	2020-21	NIL (ITR filed on 31.12.2020)	Rs. 8,20,83,845/- (ITR filed on 30.09.2023)
2.	2021-22	NIL (ITR filed on 20.01.2022)	Rs. 101,02,13,636/-(ITR filed on 30.09.2023)
3.	2022-23	----	Rs. 131,57,22,733/- (ITR filed on 31.10.2023)

25. The assessing officer observed that the assessee claimed deduction u/s 80IA after the search action had taken place in order to nullify the surrendered income. Ld AO further observed that there could be no pretext of not claiming deduction u/s 80IA of the Act for crores of rupees in original ITRs since its inception but claiming the same in ITR u/s 148 as after-thought with malafide intention to defraud the revenue. Ld AO further observed that the assessee is not a developer hence, not eligible for deduction u/s 80IA. The assessee explained before the assessing officer that the deduction u/s 80IA was inadvertently not claimed by the assessee in original ITRs. The assessing officer was not satisfied with the assessee's submissions and summarily rejected assessee's claim of deduction u/s 80IA.

26. Ld CIT(A) has, however, allowed assessee's claim of deduction u/s 80IA. The relevant para 8.5 of the impugned order passed by the ld CIT(A) read as under:

> "I have carefully examined the AO's reasoning and the appellant's detailed submissions on the Section 80-IA issue. At the outset, it is important to clarify the legal criteria for eligibility under Section 80-1A(4)(i) (the provision applicable to enterprises engaged in infrastructure development). The section, as applicable to the appellant's case, requires:
>
> - The assessee is an enterprise (a company, etc.) carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility. (The infrastructure facilities include road projects, bridges, irrigation projects etc. as defined in clause (i) of the Explanation).
> - The enterprise must have an agreement with the Central or State Government (or a specified local authority/statutory body) for such activity, and, typically, start operating the facility before a specified date (which is not in dispute here as the projects were during the eligible period).
> - If only developing (not maintaining/operating), often the condition is that it transfers the project to the government after development (which is inherent in a developer contract).
> - There is also a condition about the audit report (Section 80-IA(7) which are compliance issues.
>
> The issue is whether cessation of liabilities earlier claimed in the 801A business-when offered as income under section 41(1)-continues to qualify as profit of the eligible business for the purpose of section 801A. The appellant has filed a detailed explanation on this issue which has been examined. Further, I have examined the issue of taxation of income offered u/s 41(1) in ground no. 1. I have held in ground no. 1 that the appellant's income offered u/s 41(1) is against cessation of liabilities of creditors and income is taxable in the assessment year 2022-23, under consideration. The assessee, in its submission, has contended that the cessation of liability relates to expenses that were earlier debited in the profit and loss account of 801A-eligible projects, and such expenses were claimed in earlier years as part of the infrastructure business. The liabilities ceased in the current year and were voluntarily offered as income under section 41(1). The assessee emphasized that the income so offered pertains to the 801A-eligible business alone and hence forms part of eligible business profit. The appellant has submitted form 10CCB certified by auditor and audited profit and loss account of eligible projects to support its claim. The appellant has also cited various case laws on this subject and justified its claim. It is clear that the cessation of liabilities which were originally incurred and claimed as part of the expenses in the eligible 801A infrastructure business, when reversed or written

back, must enhance the profit of the same business and accordingly qualify for deduction.

The main bone of contention is whether the appellant qualifies as "developing" the infrastructure facility or if it is excluded as a mere contractor. On this, the law after 2009 (when Explanation to Section 80-IA was introduced with retrospective effect from 1.4.2000) says that the deduction shall not apply to a person executing a works contract entered into with an enterprise, which is eligible to claim the deduction. In simpler terms, if a company is just a contractor working for some other enterprise which itself is claiming 80-IA, then the contractor can't claim it. But if the company is itself the enterprise that entered into an agreement with the government to develop theinfrastructure, it is not hit by the explanation. This interpretation has been upheld inseveral cases, notably by the Hon'ble Bombay High Court in ABG Heavy Industries(supra) and by various Tribunals (Pune ITAT in Laxmi Civil Engineering etc.), and recently by the Hon'ble Madras High Court as well (in TPL Ltd. v. CIT, 2022). TheBombay High Court in ABG Heavy Industries noted that the assessee, who developed port infrastructure under a contract with a Port Trust, was eligible for 80-IAeven though it did not operate the facility, because one of the enumerated activities (developing) was carried out by it.

In the present case, I find that the appellant did enter into agreements with government authorities for executing infrastructure projects. For instance, the records show it had agreements under schemes like State irrigation departments for construction of Dam which were part of irrigation projects and canals, etc. These agreements are between the appellant and the Government bodies - not through any intermediary. This fulfils the condition of an agreement with the Government for development of an infrastructure facility. The AO has not disputed the existence or authenticity of these agreements, in fact, the Department's own paper book contained copies of letters of award, bank guarantee submissions, and correspondence which clearly indicate that the appellant was the principal contractor responsible for building the infrastructure.

Next, the question is whether the appellant qualifies as "developing" the infrastructure facility. The term "developing" in this context means designing, constructing and completing the facility (in contrast to operating it). It is evident that the appellant undertook all construction activities using its own resources. It assumed the entrepreneurial risk: for example, the appellant had to furnish a bank guarantee of Rs.26.16 crore (10% of project cost) to the government as performance security -this is a strong indicator that it was responsible for the successful development of the project at its own risk and cost. A mere labour contractor or supervised work provider does not typically furnish such guarantees; instead, the party responsible for the project's completion does. The seized correspondence confirms the appellant was that responsible party. The appellant also bore the financial risk of cost overruns, as the contracts were for a fixed price (barring escalation clauses, etc.) and payment was contingent on milestones.

The AO's stance that the appellant should also "operate and maintain" the facility to be eligible is a mis-interpretation of Section 80-1A(4). The clause

explicitly uses the disjunctive "or" between developing, operating and maintaining, and developing, operating and maintaining. This means an enterprise can qualify by doing any one of the three types of activities. It is not necessary to do all. Numerous judicial authorities have affirmed this. For instance, the ITAT Pune in Laxmi Civil Engineering (P) Ltd. v. ACIT (2015) observed that after the amendment by Finance Act 2001, the benefit of 80-IA is available even to an enterprise which only develops the infrastructure facility (without operating it), provided it transfers the facility to the government upon completion. The AO's reliance on an interpretation that all three functions must be performed is misplaced and contrary to the plain language of the provision.

It is also noted that the AO did not point out any specific condition of Section 80-1A(4) that the appellant failed to meet, apart from the "works contractor" argument. The appellant's projects (roads, bridges, irrigation systems) certainly qualify as "infrastructure facility as defined in clause (i) of the Explanation to 80-IA(4) The commencement of operation/transfer was before the cut-off date (since the projects were completed much earlier than the current year). The appellant is a companywhich is an eligible entity. Thus, substantively, all conditions are met.

Now, on the issue of the claim being an afterthought: While it is true that the appellant claimed this deduction for the first time only after the search, this alone cannot be ground to deny it. The AO's remarks about mala-fide intent are not supported by any provision that if an assessee doesn't claim a deduction in initial years it forfeits the right to claim it later. The Income Tax Act allows an assessee to choose the claiming the 80-IA deduction from the start of the infrastructure project till the period it is completed. It is not mandatory to start the claim from the first profit-making year.Many enterprises defer claiming the tax holiday to a year they deem suitable (often to maximize the benefit). In this case, the appellant chose to claim it starting AY 2020-21 (as per AO's observation) or at least by AY 2022-23. This is within its statutory right. The motive (to reduce taxable income post-search) does not matter as long as the claim is legitimate. The Hon'ble Supreme Court in CIT v. Vatika Township (2014) has noted that tax incentives should be interpreted as per their language and purpose, not by imputing motives. The purpose of Section 80-1A is to promote private participation in infrastructure development by offering a tax holiday. The appellant, having undertaken such development, falls within the intended beneficiary class. It would defeat the object of the incentive if one were to deny it on hyper-technical or extraneous considerations (like the timing of the claim).

Regarding the applicability of the ratio given by the Hon'ble Supreme Court in the case of Sun Engineering Works (SC) in present proceedings, it is seen that the Sun Engineering Works (SC) works applies when the original assessment was completed and the fact is highlighted in para 42 of the judgement. There was no assessment completed prior to issuance of notice u/s 148 in the present case. Further in Hon'ble Supreme court in case of Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers (P.) Ltd[has held that intimation order u.s 143(1) doesn't constitute an assessment.

The judgement of Hon'ble Karnataka State Co-Operative Apex Bank Ltd. v. Deputy Commissioner of Income-tax, Circle 3(1), Bangalore [2021) (Karnataka) is identical facts wherein it was held that fresh claim can be made if the assessment was not completed u/s 143(3) or 147 before the issuance of notice. And the hon'ble High Court also relied on decision of the Supreme Court in the case of Mewalal Dwarka Prasad in which it was held that once proceeding u/s 148 of the Act was initiated, the original order of assessment got effaced. The Hon'ble Karnataka High Court in this judgment also discussed the decision of Hon'ble Supreme Court in the case of Sun Engineering Works (supra) before giving its decision.

Since in the present case the assessment was not completed before issuance of notice so the ratio of Sun Engineering Works (SC) was wrongly applied by the AO in my opinion.

I also note that the AO's order does not mention any failure on the part of the appellant to furnish the required documentation for the claim. The appellant did furnish the Form 10CCB audit report along with their return. The assessee has also provided the detailed working of 801A claim on the income offered before the AO however, the AO has not found any discrepancies in the said computation of relief claimed on account of income offered during the year from the qualifying projects. The Delhi High Court in Contimeters Electricals (supra) held that even if the audit report was not filed with the original return, filing it before the AO during assessment suffices. In the present case, the appellant submits that it had filed the audit report at the time of filing the return (for AY 2021-22) itself. Even if that were not so, it was admittedly available to the AO subsequently, so there is compliance with Section 80-IA(7). Therefore, procedurally the claim is in order.

Considering the facts and legal position, I find that the appellant is eligible for deduction under Section 80-IA(4) on the profits of its infrastructure development business. The AO's disallowance was rooted in an incorrect interpretation of law and an unwarranted suspicion about the timing. Neither ground is sustainable. The evidence clearly shows that the appellant developed infrastructure facilities and thus falls within the ambit of Section 80-IA.

As regards, the claim of deduction u/s 801A against the income determined u/s 41(1), a detailed explanation has been filed by the appellant and the same has been examined. The issue of taxability of Rs 90 crore has also been examined under the ground no. 1 of the appeal and it has been held that the addition of Rs.90 crore determined u/s 41(1) is taxable on substantive basis in the A.Y. 2021-22. The appellant has explained in its reply that the claim of deduction is allowable against the income determined u/s 41(1) and relied upon various case laws in its favour as in the case of CIT v. Reliance Energy Ltd. ((2013) 40 taxmann.com 100 (Bom.)], the Bombay High Page 77 of 93Court have stated that as cessation of liabilities u/s 41(1) pertain directly business activities so the same qualifies for deduction u/s 801A, The details of explanation and facts and issues mentioned in various case laws as submitted by the appellant has been examined and found that the claim of the appellant u/s 801A is fully allowable. In view of the facts of the case, submission of the

appellant and legal position, it is held that the claim of deduction u/s 80IA is allowable to the appellant. The Ground of appeal no. (iii) is therefore allowed."

27. Ld CIT(DR) has submitted that the assessee is not a developer but a contractor and submitted the list of projects handled by the assessee from 2013-14 to 2022-23. The details of contract related to twelve different govt./corporation/authorities have been given in revenue's paper book at pages 39 to 57, pertaining to various projects constructed by the assessee. Further, a chart depicting all the projects handled by the assessee from 2013-14 to 2022-23 has also been submitted to show that the assessee is not eligible for the claim of deduction u/s 80IA of the Act. Ld DR further submits that the benefit of section 80IA cannot be given to an enterprise which starts its development of infrastructure facility on or after first day of April 2017 in view of sunset clause inserted vide Finance Act, 2016, w.e.f. 01.04.2017. The nature of the projects and work assigned to the assessee is shown in the chart as under:

" **Projects Handled by Assessee from 2013-14 to 2022-23**

S. No.	AY	Project/ Contract	Date for Letter of Allotment	Time period of the contract	Nature of work assigned as per Contract	Remarks
1.	2013-14	i) Singhpur Barrage	08.09.2012		Balance work of concrete & earthen barrage, energy dissipation and deck bridge	M/s Ghanaram Engineering and Contractors, Jhansi
2.	2013-14	Construction of Road and Drain (naali) in Gram Kapili	06.11.2012		Construction of Road and Drain (naali) in Gram Kapili	M/s Ghanaram Engineering and Contractors, Jhansi

3.	2014-15	Hamirpur Branch Canal	30.03.2013	01.04.2013 to 31.03.2014	Cement concrete lining of canal	M/s Ghanaram Engineer and Contractors, Jhansi
4.	2015-16	Erach Multipurpose Dam	06.02.2015		EPC of dam, spillway and allied works	M/s Ghanaram Infra Engineers Pvt. Ltd, Jhansi
5.	2015-16	RVNL/KEC Railway Project	12.03.2015		Earthwork, filling, blanketing, fencing	M/s Ghanaram Infra Engineers Pvt. Ltd, Jhansi
6.	2016-17	Bhaurat Dam	11.07.2016	15.07.2016 to 14.07.2019	EPC-based dam construction	M/s Ghanaram Infra Engineers Pvt. Ltd, Jhansi
7.	2016-17	Mirchari Dam	06.08.2016		EPC construction of dam	M/s Ghanaram Infra Engineers Pvt. Ltd, Jhansi
8.	2017-18	Betwa Canal Feeder Channel	31.12.2016		Canal Construction	M/s Ghanaram Infra Engineers Pvt. Ltd, Jhansi
9.	2018-19	Bina-Jhansi 3rd Railway Line	03.10.2017		Earthwork, minor bridges, drainage, toe walls, blanketing	Sunset clause applicable
10.	2019-20	Gwalior-Sheopurkal an Gauge Conversion	16.04.2018		Earthwork, bridges, subways, LHS	Sunset clause applicable
11.	2020-21	Jhansi-Manikpur Doubling	31.01.2019		Earthwork, minor bridges, cable management	Sunset clause applicable
12.	2021-22	Jhansi-Manikpur Doubling(continuing execution)	Contract dated 31.01.2019		Execution of work under existing contract	Sunset clause applicable
13.	2022-23	Gorakhpur RCC Barrel Channel	23.02.2022		RCC Barrel Channel for water supply to Nuclear Power Project	Sunset clause applicable

28. Ld AR has submitted that section 80IA(2) grants the assessee explicit statutory option to select its initial assessment year for the ten year block. There is no legal prohibition against an assessee exercising this statutory

right during an ongoing assessment proceeding, provided that the underlying eligibility criteria is satisfied.

29. It is not disputed that the assessee is engaged in the business of construction of dams for which the contracts are allotted by the State Govt. for irrigation project. The chart submitted by the ld CIT(DR) is sufficient to observe that assessee's revenue are received from execution and development work for Govt. departments, assessee is accordingly engaged in the development of infrastructural work. The relevant section 80IA(4) read as under:

> "80-IA.
> (1). …..
> (2). …..
> (3). …..
> (4). This section applies to-
> (i) any enterprise carrying on the business [of (1) developing or (ii) operating and maintaining or (iii) developing, operating and main-taining] any infrastructure facility which fulfils all the following conditions, namely :-
>
> (a) it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corpora-tion or any other body established or constituted under any Central or State Act;]
>
> (b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;]
>
> (c) it has started or starts operating and maintaining the infrastruc-ture facility on or after the 1st day of April, 1995: …."

30. Ld AR has referred an order on the issue of section 80IA, passed by the Hyderabad bench of this tribunal in M/s GVPR Engineers Ltd V ACIT, (2012) 51 SOT 0207 (Hyd), which held as under:

> "28. The next question is to be answered is whether the assessee is a developer or mere works contractor. The Revenue relied on the amendments brought in by the Finance Act 2007 and 2009 to mention that the activity undertaken by the assessee is akin to works contract and he is not eligible for deduction under section 801A(4) of the Act. Whether the assessee is a developer or works contractor is purely depends on the nature of the work undertaken by the assessee. Each of the work undertaken has to be analyzed and a conclusion has to be drawn about the nature of the work undertaken by the assessee. The agreement entered into with the Government or the Government body may be a mere works contract or for development of infrastructure. It is to be seen from the agreements entered into by the assessee with the Government. We find that the Government handed over the possession of the premises of projects to the assessee for the development of infrastructure facility. It is the assessee's responsibility to do all acts till the possession of property is handed over to the Government. The first phase is to take over the existing premises of the projects and thereafter developing the same into infrastructure facility. Secondly, the assessee shall facilitate the people to use the available existing facility even while the process of development is in progress. Any loss to the public caused in the process would be the responsibility of the assessee. The assessee has to develop the infrastructure facility. In the process, all the works are to be executed by the assessee. It may be laying of a drainage system; may be construction of a project; provision of way for the cattle and bullock carts in the village; provision for traffic without any hindrance, the assessee's duty is to develop infrastructure whether it involves construction of a particular item as agreed to in the agreement or not. The agreement is not for a specific work, it is for development of facility as a whole. The assessee is not entrusted with any specific work to be done by the assessee. The material required is to be brought in by the assessee by sticking to the quality and quantity irrespective of the cost of such material. The Government does not provide any material to the assessee. It provides the works in packages and not as a works contract. The assessee utilizes its funds, its expertise, its employees and takes the responsibility of developing the infrastructure facility. The losses suffered either by the Govt. or the people in the process of such development would be that of the assessee. The assessee hands over the developed infrastructure facility to the Government on completion of the development. Thereafter, the assessee has to undertake maintenance of the said infrastructure for a period of 12 to 24 months. During this period, if any damages are occurred it shall be the responsibility of the assessee. Further, during this period, the entire infrastructure shall have to be maintained by the assessee alone without hindrance to the regular traffic. Therefore, it is clear that from an un-developed area, infrastructure is developed and handed over to the Government and as explained by the CBDT vide its Circular dated 18-05-2010, such activity is eligible for deduction under section 801A(4) of the Act. This

> cannot be considered as a mere works contract but has to be considered as a development of infrastructure facility. Therefore, the assessee is a developer and not a works contractor as presumed by the Revenue. The circular issued by the Board, relied on by learned counsel for the assessee, clearly indicate that the assessee is eligible for deduction under section 801A(4) of the Act. The department is not correct in holding that the assessee is a mere contractor of the work and not a developer.
>
> (emphasis supplied by us)"

31. The chart in respect of projects handled by the assessee from 2013-14 to 2022-23 depicted hereinabove, shows that project of Bina-Jhansi 3rd Railway Line shown at Sr. No. 9 commenced from 03.10.2017 and the project of Gwalior-Sheopurkal an Gauge Conversion shown at Sr. No. 10 commenced from 16.04.2018 likewise projects shown at Sr. No. 11, 12 & 13 commenced after 01.04.2017, hence are not entitled for the claim of deduction u/s 80IA of the Act, being infrastructural facilities commencing after above stated sun set clause.

32. It is not disputed that the assessee company is engaged in construction of infrastructural work and contracts are allotted to it by the State Govt. for irrigation projects etc. The ingredients of section 80IA (4)(b) of the Act referred hereinabove are attracted in assessee's case subject to the provisos provided thereunder. The period of 10 years has to be considered for the eligibility of claim only in respect of particular infrastructural facility in view of second proviso to section 80IA(4) of the Act. Further, we also note that the assessee has to utilize its funds, its expertise, its employees and takes the responsibility of developing the infrastructure facility and satisfies the other conditions as observed by the

Hyderabad tribunal in para no. 28 of the order in the case of M/s GVPR Engineers Ltd(supra) as reproduced above.

33. It is still to be determined as to whether the claim of assessee is arising out of its business income. Since the claim of assessee u/s 80IA is with respect to the cessation of sundry creditors liabilities of previous years from 2014-15 to 2020-21 as claimed deduction in previous years ending on 31.03.2021, in respect of which, we have already set aside the issue to the ld assessing officer for determining the genuineness of such sundry creditors. We also make note of the fact that assessee has claimed deduction u/s 80IA on the basis of cessation of liability as business income which is subject matter of verification as noted hereinabove. In such a fact situation, this issue is set aside to the assessing officer for determination accordingly in terms of our observations made hereinabove.

34. As regards treating Rs. 90,00,00,000/- as appellant's income for A.Y. 2021-22 on substantive basis as against the AO's treatment to it on protective basis with the substantial addition across various assessment years. Ld CIT(A) has directed the AO to treat Rs. 90,00,00,000/- as assessee's income for A.Y. 2021-22. The relevant part of the impugned order read as under:

> "I have carefully considered the rival contentions on this issue. The factual backdrop is that during the search, the appellant admitted to Rs 90 crore as income on account of longstanding sundry creditors and duly included it in its returned income for the year under appeal (along with 157 Crore in the

succeeding year). It is undisputed that these liabilities originated from transactions of purchase or expenses in connection with the appellant's contract work in earlier years the revenue from those projects was reported in those years, and the liabilities continued in the balance sheet thereafter. The question is whether the AO was correct in refusing to tax this sum in AY 2021-22 and instead taxing it in earlier years on the premise that the liabilities were bogus from inception.

At the outset, the legal position deserves emphasis and analysis. Section 41(1) of the Act provides that if an assessee has obtained a deduction for a trading liability in an earlier year and "subsequently" during any tax year the assessee obtains any benefit by way of remission or cessation of that liability, then the value of such benefit is chargeable to income-tax as business income of that "previous year" in which the remission or cessation occurs. The statute thus fixes the year of taxability as the year in which the liability is forgiven or ceases in fact or in law. The Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd. [(1999) 236 ITR 518 (SC)] has underscored that the sine qua non for invoking Section 41(1) is the obtaining by the assessee of some benefit by way of remission or cessation of a liability. Crucially, the Court held that "the mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that Section 41(1) applies". In other words, a liability does not cease simply because it remains unpaid for long or because the assessee or revenue has a suspicion there has to be an actual cessation, either by operation of law (e.g. limitation, though even time-barred debt does not automatically cease if acknowledged in books) or by the creditor's act of remission, or by the debtor (assessee) unequivocally declaring he will not honor the debt. In the present case, the unequivocal declaration by the assessee (debtor) took place during the search in FY 2021-22 (AY 2022-23) when it stated that these balances are no longer payable and wrote them off in the accounts. That act, in my view, constitutes the "cessation" in the eyes of law, occurring in the previous year relevant to AY 2021-22. Until that point, the liabilities were shown in the balance sheet and thereby acknowledged, which, as the Hon'ble Supreme Court noted in Sugauli Sugar Works, means the debt was not extinct.

In my considered view, the AO's approach to push the income back to earlier years is not supported by Section 41(1) unless it was a case of false liability (sham transaction) created in those years. The AO has indeed taken the view that the creditors were sham. However, on examining the record, I find insufficient evidence for such a sweeping conclusion:

No material evidence of bogus purchases/expenses: The AO's conclusion that the creditors "never existed is largely based on the appellant's inability to produce confirmations during the assessment and the offer made under Section 41(1). Apart from that, there was no seized document or third-party statement unearthed in the search to show that these were fictitious entries. In fact, the AO's own show-cause notice asked the appellant to explain why the liabilities remained for long and to furnish details of the creditors. The appellant did furnish whatever details were available (names, etc.) but admittedly could not get full confirmations given many years had passed.

Importantly, the trading results for earlier years had been accepted in regular assessments with these very creditors on record and detailed finding about the expenses claimed was also given in AY 2016-17 and AY 2017-18 after complete verification of the details of expenses and creditors filed during proceeding u/s 143(3) and the AO has categorically stated that books of accounts were produced with bills and vouchers which were checked and no adverse inference was drawn with respect to the expenses claimed.

Further in AY 2020-21 and AY 2015-16, the assessment was completed after the search and the assessing officer has accepted the trading results of the appellant and no adverse finding in respect of genuinety of expenses or creditors was given.

There is a legal presumption under Section 292C that books of account seized from the assessee's possession are true and correct unless proven otherwise. Here, the books (seized in search) reflected these creditors as liabilities; the AO did not bring any evidence to rebut the genuineness of the underlying expenses. In short, the AO has not demonstrated that specific purchases or expenses corresponding to these creditors were non-genuine. Suspicion or the mere age of the creditors cannot take the place of proof. As the Bombay High Court observed in Pr. CIT v. Chawla Inter-Build Constr. Co. Pvt. Ltd. [2019] 412 ITR 152 (Bom.), during scrutiny of older transactions an assessee often can only produce documentation (bills, payment details, TDS etc.) and may not trace the creditors in person; if the AO ignores all documents and makes an addition simply because the creditor is not produced, that is not justified. In this case, the appellant's inability to produce some creditors at a later date does not automatically mean the expenses were bogus, especially when those expenses were accepted in prior assessments and correlate with recognized project income. Further High Court of Allahabad in case of Commissioner Of Income Tax vs Pancham Dass Jainhas held that once the AO had accepted the purchases, sales as also the trading result disclosed by the respondent-assessee the addition by treating the credtiors as unexplained/bogus cannot be made.

It is noted that the appellant has itself offered the entire Rs 90 crore in this year's return. There is no dispute that the amount is income; the only dispute is timing. The ITAT, in the case of Galaxy International Overseas (supra), dealing with a nearly identical issue, deleted an addition under Section 41(1) made by an AO for an earlier year when the assessee had already offered that very sum in a later year's return before the assessment for the earlier year was finalized. The Tribunal held that to avoid double taxation, the addition in the earlier year must be deleted and the income taxed in the year offered. By analogy, here the appellant's offer in AY 2021-22 should be given effect to, rather than undermined by protective or secondary treatment.

I also agree with the appellant's reliance on Lalji Haridas (SC) that a protective device is unnecessary where the assessee has itself included the income in a particular year and there is no ambiguity about the rightful year. The department's interests are safeguarded by taxing it in that year substantively. If the AO's concern was that earlier years' incomes were understated, that is addressed by the Section 41(1) inclusion now (since Section 41(1) acts as a

balancing provision to bring to tax any excess deduction enjoyed earlier, in the year the liability ceases.

In view of the above, I find merit in the appellant's claim. The liabilities in question have been taxed (offered) in the correct year as per law AY 2021-22 when the appellant derived a benefit by way of remission of those liabilities. The AO's re-characterization of them as non-genuine from the outset is not backed by evidence strong enough to override the appellant's records and past assessments. From a revenue perspective too, taxing it in AY 2021-22 does not let the amount escape taxation; it simply aligns with the statutory scheme of Section 41(1) of IT Act.

Accordingly, Ground No. 1 is allowed. I hold that the addition of Rs 90 crore is taxable in AY 2021-22 as offered by the appellant. The AO is directed to treat the Rs 90 crore as the appellant's income for AY 2021-22 on a substantive basis. Consequentially, the protective assessment stance of the AO is unwarranted. It is noted that since the AO did not include this amount in the assessed income for this year, this finding chiefly affects the status of the additions made in earlier years."

35. Ld CIT(A) has given benefit to assessee by treating the sundry creditors as genuine, whereas the issue related to the genuineness of sundry creditors has already been set aside by us, this issue is also set aside to the ld AO for determining the issue a fresh subject to the outcome of his finding in respect of liabilities of sundry creditors. This issue is accordingly set aside to the assessing officer as stated hereinabove.

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36. The identical issue in respect of 5% of the total expenditure claimed by the assessee in profit and loss account on account of bogus sundry creditors and issue related to assessee's claim u/s 80IA has been decided ITA No. 325/Agr/2025. Our finding in respect of these issues shall mutatis-mutandis apply in this appeal also.

37. The remaining sole issue is with respect to Rs. 157.59 crore having been treated as appellant's income for A.Y. 2022-23 on substantive basis as against its treatment on protective basis by the ld AO. Ld CIT(A) has treated as substantive addition in A.Y. 2022-23, the relevant part of the impugned order is reproduced as under:

> "I have carefully considered the rival contentions on this issue. The factual backdrop is that during the search, the appellant admitted to Rs.157.59 crore as income on account of longstanding sundry creditors and duly included it in its returned income for the year under appeal (along with Rs.90 crore in the preceding year). It is undisputed that these liabilities originated from transactions of purchase or expenses in connection with the appellant's contract work in earlier years the revenue from those projects was reported in those years, and the liabilities continued in the balance sheet thereafter. The question is whether the AO was correct in refusing to tax this sum in AY 2022-23 and instead taxing it in earlier years on the premise that the liabilities were bogus from inception.
>
> At the outset, the legal position deserves emphasis and analysis. Section 41(1) of the Act provides that if an assessee has obtained a deduction for a trading liability in an earlier year and "subsequently" during any tax year the assessee obtains any benefit by way of remission or cessation of that liability, then the value of such benefit is chargeable to income-tax as business income of that "previous year" in which the remission or cessation occurs. The statute thus fixes the year of taxability as the year in which the liability is forgiven or ceases in fact or in law. The Supreme Court in CIT v. Sugauli Sugar Works (P) Ltd. [(1999) 236 ITR 518 (SC)] has underscored that the sine qua non for invoking Section 41(1) is the obtaining by the assessee of some benefit by way of remission or cessation of a liability. Crucially, the Court held that "the mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that Section 41(1) applies". In other words, a liability does not cease simply because it remains unpaid for long or because the assessee or revenue has a suspicion there has to be an actual cessation, either by operation of law (e.g. limitation, though even time-barred debt does not automatically cease if acknowledged in books) or by the creditor's act of remission, or by the debtor (assessee) unequivocally declaring he will not honor the debt. In the present case, the unequivocal declaration by the assessee (debtor) took place during the search in FY 2021-22 (AY 2022-23) when it stated that these balances are no longer payable and wrote them off in the accounts. That act, in my view, constitutes the "cessation" in the eyes of law, occurring in the previous year relevant to AY 2022-23. Until that point, the liabilities were shown in the balance sheet and thereby acknowledged, which, as the Hon'ble Supreme Court noted in Sugauli Sugar Works, means the debt was not extinct.

In my considered view, the AO's approach to push the income back to earlier years is not supported by Section 41(1) unless it was a case of false liability (sham transaction) created in those years. The AO has indeed taken the view that the creditors were sham. However, on examining the record, I find insufficient evidence for such a sweeping conclusion:

No material evidence of boqus purchases/expenses: The AO's conclusion that the creditors "never existed" is largely based on the appellant's inability to produce confirmations during the assessment and the offer made under Section 41(1). Apart from that, there was no seized document or third-party statement unearthed in the search to show that these were fictitious entries. In fact, the AO's own show-cause notice asked the appellant to explain why the liabilities remained for long and to furnish details of the creditors. The appellant did furnish whatever details were available (names, etc.) but admittedly could not get full confirmations/ details given many years had passed.

Importantly, the trading results for earlier years had been accepted in regular assessments with these very creditors on record and detailed finding about the expenses claimed was also given in AY 2016-17 and AY 2017-18 after complete verification of the details of expenses and creditors filed during proceeding u/s 143(3) and the AO has categorically stated that books of accounts were produced with bills and vouchers which were checked and no adverse inference was drawn with respect to the expenses claimed.

Further in AY 2020-21 and AY 2015-16, the assessment was completed after the search and the assessing officer has accepted the trading results of the appellant and no adverse finding in respect of genuinety of expenses or creditors was given.

There is a legal presumption under Section 292C that books of account seized from the assessee's possession are true and correct unless proven otherwise. Here, the books (seized in search) reflected these creditors as liabilities; the AO did not bring any evidence to rebut the genuineness of the underlying expenses. In short, the AO has not demonstrated that specific purchases or expenses corresponding to these creditors were non-genuine. Suspicion or the mere age of the creditors cannot take the place of proof. As the Bombay High Court observed in Pr. CIT v. Chawla Inter-Build Constr. Co. Pvt. Ltd. [2019] 412 ITR 152 (Born.), during scrutiny of older transactions an assessee often can only produce documentation (bills, payment details, TDS etc.) and may not trace the creditors in person; if the AO ignores all documents and makes an addition simply because the creditor is not produced, that is not justified. In this case, the appellant's inability to produce some creditors at a later date does not automatically mean the expenses were bogus, especially when those expenses were accepted in prior assessments and correlate with recognized project income.

It is noted that the appellant has itself offered the entire Rs.157.59 crore in this year's return (and paid the applicable MAT on it since book profit includes this amount). There is no dispute that the amount is income; the only dispute is timing. The AO's action creates a scenario where the same income would effectively be taxed twice once in earlier years (by reopening or revising those

assessments) and potentially again under MAT or otherwise in the current year's books. The Income Tax law does not permit double taxation of the same income in the hands of the same assessee without a clear mandate. The ITAT, in the case of Galaxy International Overseas (supra), dealing with a nearly identical issue, deleted an addition under Section 41(1) made by an AO for an earlier year when the assessee had already offered that very sum in a later year's return before the assessment for the earlier year was finalized. The Tribunal held that to avoid double taxation, the addition in the earlier year must be deleted and the income taxed in the year offered. By analogy, here the appellant's offer in AY 2022-23 should be given effect to, rather than undermined by protective or secondary treatment.

I also agree with the appellant's reliance on Lalji Haridas (SC) that a protective device is unnecessary where the assessee has itself included the income in a particular year and there is no ambiguity about the rightful year. The department's interests are safeguarded by taxing it in that year substantively. If the AO's concern was that earlier years' incomes were understated, that is addressed by the Section 41(1) inclusion now (since Section 41(1) acts as a balancing provision to bring to tax any excess deduction enjoyed earlier, in the year the liability ceases.

The Hon'ble jurisdictional High Court of Allahabad in case of Commissioner Of Income Tax vs Pancham Dass Jain has held that these two amounts represented purchases made by the respondent-assessee on credit and the purchases and sales having been accepted by the Department, the question of addition of the aforesaid two amounts in form of creditors is not allowed.

The assessing officer has accepted the expenses to be genuine in AY 2016-17 and AY 2017-18 with detailed findings about the expenses.

Further the assessment for AY 2015-16 u/s 148 of the Act and AY 2020-21 u/s 143(3) of the Act was completed and the trading results of the appellant were accepted by the assessing officer so by applying the principle of consistency the creditors cannot be held as bogus and the income offered u/s 41(1) of the act should not have been rejected by the assessing officer.

In view of the above, I find merit in the appellant's claim. The liabilities in question have been offered for taxation in the correct year as per law in AY 2022-23 when the appellant derived a benefit by way of remission of those liabilities. The AO's re-characterization of them as non-genuine from the outset is not backed by evidence strong enough to override the appellant's records and past assessments. From a revenue perspective too, taxing it in AY 2022-23 does not let the amount escape taxation; it simply aligns with the statutory scheme of Section 41(1).

Accordingly, Ground No. 1 is allowed. I hold that the addition of Rs 157.59 crore is taxable in AY 2022-23 as offered by the appellant. The AO is directed to treat the Rs.157.59 crore as the appellant's income for AY 2022-23 on a substantive basis. Consequentially, the protective assessment stance of the AO is unwarranted. It is noted that since the AO did not include this amount in the

assessed income for this year, this finding chiefly affects the status of the additions made in earlier years."

38. Ld CIT(A) has given benefit to assessee by treating the sundry creditors as genuine, whereas the issue related to the genuineness of sundry creditors has already been set aside by us, this issue is also set aside to the ld AO for determining the issue a fresh subject to the outcome of his finding in respect of liabilities of sundry creditors. This issue is accordingly set aside to the assessing officer as stated hereinabove.

39. In the result, all the four appeals viz. ITA No 325,326,327& 328/Agr/2025 are allowed for statistical purposes.

Order pronounced in Open Court on- 16.10.2026

Sd/-	***Sd/-***
(BRAJESH KUMAR SINGH)	**(SUNIL KUMAR SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 16.10.2026

*Aamir, PS

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra