IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA Nos.928 to 931/Bang/2017 & 174 to 176/Bang/2018
Assessment years : 2008-09 to 2014-15

M/s. Rajesh Exports Ltd., No.4, Batavia Chambers, Kumara Park Road, Kumara Park (East), Bengaluru-560001. **PAN : AAACR 8642 N**	Vs.	The ACIT, Central Circle – 1 (2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Rajesh Mehta, Director
Revenue by	:	Shri S. M. Keshkamat, CIT(DR)& Dr. P. V. Pradeep Kumar, Addl. CIT (DR)
Date of hearing	:	09.10.2018
Date of Pronouncement	:	27.11.2018

O R D E R

PER A. K. GARODIA, A. M.:

Theseseven appeals are filed by the assessee and these are directed against separate orders of CIT (A) – 11, Bangalore dated 28.02.2017 for A. Ys. up to 2011 – 12 and dated 20.11.2017 for A. Ys. 2012 – 13 to 2014 – 15. These appeals were heard together and are being disposed of through this consolidated order.

2. In all these appeals, various technical issues as well as various issues on merit are raised by the assessee. Technical issues raised in all years except A.Y. 2014 – 15 are three. First technical issue raised by the assessee is this that the search conducted in the present case on 17.12.2013 is not a valid search. Second technical issue raised by the assessee is this that the Notice issued by the AO u/s 153A is bad in law. Third technical issue raised by the assessee is this that the additions made in these assessment orders passed u/s 153A are not arising from the seized material and therefore, these additions are outside the scope of section 153A of the I. T. Act. There is no technical issue raised in A. Y. 2014 – 15.

3. First, we reproduce the grounds raised by the assessee in each year. These are as under:-

a) A. Y. 2008 – 09, ITA 931/Bang/2017:-

"*1. The order of the learned Commissioner of Income Tax in so far it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. The Appellant denies itself liable to be assessed on a total income arrived at by making the additions as confirmed by the CIT (A) as against the returned income of NIL under the facts and circumstances of the case.

3. Granting of correct amount of deduction under Section 1OAA of the Act.
a) The authorities below erred in not granting correct deduction under section 10 AA of the Act.

b) The CIT (A) ought to have specifically adjudicated the relevant ground in respect of granting of the correct amount of deduction under Section 10 AA of the Act.

c) Without Prejudice to grounds regarding the other additions sustained, the authorities below ought to have granted deduction under section 10 AA if eligible in respect of the additions made and sustained on the facts and circumstance of the case.

d) The learned CIT(A) erred in not directing for reworking, of the eligible amount of deduction under Section 10AA of the Act in respect of the additions deleted by him on the facts and circumstance of the case.

4. On validity of Search:
a) The appellant denies itself liable to be assessed under section 153A r.w.s. 143 [3] of the Act as there was no valid search on the appellant on the facts and circumstance of the case.

b) The learned authorities below have not demonstrated that the search initiated in the case of the appellant is valid and legal and consequently the order of assessment is ex facie bad in law as the mandatory conditions for initiating a search as contemplated under the provisions of section 132(1) (a), (b) 8s (c) of the Act did not exist and hence the order is required to be annulled on the facts and circumstance of the case.

c) The learned authorities below failed to appreciate that a valid search is a sine qua non for making a valid assessment under section

153A of the Act and hence the assumption of jurisdiction under Section 153 A of the Act
is bad in law and consequently the entire assessment requires to be cancelled.

5. Notice issued u/s 153A was bad in law:
a) The authorities below failed to appreciate that the notice issued u/s 153A of the Act is bad in law on the ground that the notice does not indicate as to whether it is proposed to assess or reassess and is thus vague, consequently the assessment order passed on an invalid notice is bad in law on the facts and circumstances of the case.

b) The learned authorities below have not dealt in the respective order on the objection filed by the appellant in respect of assumption of jurisdiction u/s 153A and have also not provided the satisfaction note and reasons recorded for issue of notice u/s 153A of the Act and consequently an adverse inference may be drawn that the material does not exist and assessment order passed is bad in law on the facts and circumstances of the case.

6. Scope of assessment pursuant to notice issued under Section 153 A of the Act.
The learned authorities below failed to appreciate that the scope of assessment in the proceedings under section 153A r.w.s 143(3) of the Act is restricted to the seized material if any and the present assessment order passed is contrary to the scheme of the Act and consequently the assessment order is liable to be annulled/ cancelled on the facts and circumstances of the case.

7. The assessing officer ought not to have made any changes to the return of income and the CIT(A) ought not to have sustained any part of the change made by the assessing officer on the facts and circumstance of the case.

8. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234A, 234B and 234C of the Income Tax Act under the facts and circumstances of the case.

9. Without prejudice the levy of interest under section 234 A, 234B and 234C are bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

10. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

11. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

b) A. Y. 2009 – 10, ITA 928/Bang/2017:-

"*1. The order of the learned Commissioner of Income Tax in so far it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. The Appellant denies itself liable to be assessed on a total income arrived at by making the additions as confirmed by the CIT (A) as against the returned income of Rs. 4,67,237/- under the facts and circumstances of the case.

3. On addition of interest on Inter corporate Deposits (ICDs):
a) The learned CIT (A) is not justified in confirming the order of the Assessing officer of an amount of Rs.14,72,595/- as accrued interest on ICDs on the facts and circumstances of the case.

b) The learned authorities below failed to appreciate that the non receivable interest on ICDs were shown as income in the books of accounts of the appellant and subsequently claimed as bad debt in the books of the appellant.

c) The learned authorities below failed to appreciate that the accounting procedure of the appellant and the entries passed by the appellant in its books of accounts satisfy the conditions for claiming bad debts on the facts and circumstances of the case.

d) The learned authorities below erred in observing that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or earlier previous year and such observations are contrary to the plain language of the Income Tax Act which only contemplates writing off in the accounts and hence the addition requires to be deleted on the facts and circumstance of the case.

e) Without prejudice, the said amount of Rs.14,72,595/- is not taxable as it is not real income of the appellant and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

4. On validity of Search:
a) The appellant denies itself liable to be assessed under section 153A r.w.s. 143 [3] of the Act as there was no valid search on the appellant on the facts and circumstance of the case.

b) The learned authorities below have not demonstrated that the search initiated in the case of the appellant is valid and legal and consequently the order of assessment is exifacie bad in law as the mandatory conditions for initiating a search as contemplated under the provisions of section 132(1)(a), (b) & (c) of the Act did not exist and hence the order is required to be annulled on the facts and circumstance of the case.

c) The learned authorities below failed to appreciate that a valid search is a sine qua non for making a valid assessment under section 153A of the Act and hence the assumption of jurisdiction under Section 153 A of the Act is bad in law and consequently the entire assessment requires to be cancelled.

5. Notice issued u/s 153A was bad in law:
a) The authorities below failed to appreciate that the notice issued u/s 153A of the Act is bad in law on the ground that the notice does not indicate as to whether it is proposed to assess or reassess and is thus vague, consequently the assessment order passed on an invalid notice is bad in law on the facts and circumstances of the case.

b) The learned authorities below have not dealt in the respective order on the objection filed by the appellant in respect of assumption of jurisdiction u/ s 153A and have also not provided the satisfaction note and reasons recorded for issue of notice u/ s 153A of the Act and consequently an adverse inference may be drawn that the material does not exist and assessment order passed is bad in law on the facts and circumstances of the case.

6. Scope of assessment pursuant to notice issued under Section 153 A of the Act.
The learned authorities below failed to appreciate that the scope of assessment in the proceedings under section 153A r.w.s 143(3) of the Act is restricted to the seized material if any and the present assessment order passed is contrary to the scheme of the Act and consequently the assessment order is liable to be annulled/ cancelled on the facts and circumstances of the case.

7. The assessing officer ought not to have made any changes to the return of income and the CIT(A) ought not to have sustained any part of the change made by the assessing officer on the facts and circumstance of the case.

8. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234A, 234B and 234C of the Income Tax Act under the facts and circumstances of the case.

9. Without prejudice the levy of interest under section 234 A, 234B and 234C are bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

10. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

11. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

c) A. Y. 2010 – 11, ITA 929/Bang/2017:-

"*1. The order of the learned Commissioner of Income Tax in so far it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. The Appellant denies itself liable to be assessed on a total income arrived at by making the additions as confirmed by the CIT (A) as against the returned income of Rs. NIL under the facts and circumstances of the case.

3. On addition of interest on Inter corporate Deposits (ICDs):
a) The learned CIT (A) is not justified in confirming the order of the Assessing officer of an amount of Rs.28,79,68,656/- as accrued interest on ICDs on the facts and circumstances of the case.

b) The learned authorities below failed to appreciate that the non receivable interest on ICDs were shown as income in the books of accounts of the appellant and subsequently claimed as bad debt in the books of the appellant.

c) The learned authorities below failed to appreciate that the accounting procedure of the appellant and the entries passed by the appellant in its books of accounts satisfy the conditions for claiming bad debts on the facts and circumstances of the case.

d) The learned authorities below erred in observing that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or earlier previous year and such observations are contrary to the plain language of the Income Tax Act which only contemplates writing off in the accounts and hence the addition requires to be deleted on the facts and circumstance of the case.

e) Without prejudice, the said amount of Rs.28,79,68,656/-is not taxable as it is not real income of the appellant and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

4. Granting of correct amount of deduction under Section 1OAA of the Act.
a) The authorities below erred in not granting correct deduction under section 10 AA of the Act.

b) The CIT (A) ought to have specifically adjudicated the relevant ground in respect of granting of the correct amount of deduction under Section 10 AA of the Act.

c) Without Prejudice to grounds regarding the other additions sustained, the authorities below ought to have granted deduction under section 10 AA if eligible in respect of the additions made and sustained on the facts and circumstance of the case.

d) The learned CIT(A) erred in not directing for reworking, of the eligible amount of deduction under Section 10AA of the Act in respect of the additions deleted by him on the facts and circumstance of the case.

5. On validity of Search:
a) The appellant denies itself liable to be assessed under section 153A r.w.s. 143 [3] of the Act as there was no valid search on the appellant on the facts and circumstance of the case.

b) The learned authorities below have not demonstrated that the search initiated in the case of the appellant is valid and legal and consequently the order of assessment is exifacie bad in law as the mandatory conditions for initiating a search as contemplated under the provisions of section 132(1)(a), (b) 86 (c) of the Act did not exist and hence the order is required to be annulled on the facts and circumstance of the case.

c) The learned authorities below failed to appreciate that a valid search is a sine qua non for making a valid assessment under section 153A of the Act and hence the assumption of jurisdiction under Section 153 A of the Act is bad in law and consequently the entire assessment requires to be cancelled.

6. Notice issued u/s 153A was bad in law:
a) The authorities below failed to appreciate that the notice issued u/s 153A of the Act is bad in law on the ground that the notice does not indicate as to whether it is proposed to assess or reassess and is thus vague, consequently the assessment order passed on an invalid notice

is bad in law on the facts and circumstances of the case.

b) The learned authorities below have not dealt in the respective order on the objection filed by the appellant in respect of assumption of jurisdiction u/s 153A and have also not provided the satisfaction note and reasons recorded for issue of notice u/s 153A of the Act and consequently an adverse inference may be drawn that the material does not exist and assessment order passed is bad in law on the facts and circumstances of the case.

7. Scope of assessment pursuant to notice issued under Section 153 A of the Act.
The learned authorities below failed to appreciate that the scope of assessment in the proceedings under section 153A r.w.s 143(3) of the Act is restricted to the seized material if any and the present assessment order passed is contrary to the scheme of the Act and consequently the assessment order is liable to be annulled/ cancelled on the facts and circumstances of the case.

8. The assessing officer ought not to have made any changes to the return of income and the CIT(A) ought not to have sustained any part of the change made by the assessing officer on the facts and circumstance of the case.

9. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234A and 234 B of the Income Tax Act under the facts and circumstances of the case.

10. Without prejudice the levy of interest under section 234 A and 234B are bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

11. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

12. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

d) A. Y. 2011 – 12, ITA 930/Bang/2017:-

"*1. The order of the learned Commissioner of Income Tax in so far it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. The Appellant denies itself liable to be assessed on a total income arrived at by making the additions as confirmed by the CIT (A) as against the returned income of Rs. NIL under the facts and circumstances of the case.

3. On addition of interest on Inter corporate Deposits (ICDs):
a) The learned CIT (A) is not justified in confirming the order of the Assessing officer of an amount of Rs.29,73,46,928/ - as accrued interest on ICDs on the facts and circumstances of the case.

b) The learned authorities below failed to appreciate that the non receivable interest on ICDs were shown as income in the books of accounts of the appellant and subsequently claimed as bad debt in the books of the appellant.

c) The learned authorities below failed to appreciate that the accounting procedure of the appellant and the entries passed by the appellant in its books of accounts satisfy the conditions for claiming bad debts on the facts and circumstances of the case.

d) The learned authorities below erred in observing that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or earlier previous year and such observations are contrary to the plain language of the Income Tax Act which only contemplates writing off in the accounts and hence the addition requires to be deleted on the facts and circumstance of the case.

e) Without prejudice, the said amount of Rs.29,73,46,928/ - is not taxable as it is not real income of the appellant and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

4. On Addition of Rs.19,39,23,044/-:
a) The learned authorities below failed to appreciate that it is normal in the gold business to incur loss of gold while dealing with various activities like Manufacturing, Inventory Management, Marketing, Import and Export.

b) The learned authorities below erred in not accepting the explanation of the assessee without any reason.

c) The learned authorities below failed to appreciate that the assessee had provided all the details as asked for by the assessing officer, as there were no further details asked by the assessing officer, the assessee had not provided further details, the assessing officer has erred in stating that the assessee had not offered any explanation.

d) The authorities below have failed to appreciate that it is obvious and natural that whenever there is any loss of gold the stock will consequently get reduced and as a result the profit is bound to reduce to that extent, the assessing officer has erred in not accepting the explanation for making the addition.

e) The authorities below have failed to appreciate that a loss of 0.047% as a total of manufacturing loss, Inventory Loss, Marketing Loss, Import Loss, Export Loss is a reasonable loss in the business of gold and gold products.

5. Granting of correct amount of deduction under Section 1OAA of the Act.
a) The authorities below erred in not granting correct deduction under section 10 AA of the Act.

b) The CIT(A) ought to have specifically adjudicated the relevant ground in respect of granting of the correct amount of deduction under Section 10 AA of the Act.

c) Without Prejudice to grounds regarding the other additions sustained, the authorities below ought to have granted deduction under section 10 AA if eligible in respect of the additions made and sustained on the facts and circumstance of the case.

d) The learned CIT(A) erred in not directing for reworking, of the eligible amount of deduction under Section 10AA of the Act in respect of the additions deleted by him on the facts and circumstance of the case.

6. On validity of Search:
a) The appellant denies itself liable to be assessed under section 153A r.w.s. 143 [3] of the Act as there was no valid search on the appellant on the facts and circumstance of the case.

b) The learned authorities below have not demonstrated that the search initiated in the case of the appellant is valid and legal and consequently the order of assessment is exifacie bad in law as the mandatory conditions for initiating a search as contemplated under the provisions of section 132(1)(a), (b) 86 (c) of the Act did not exist and hence the order is required to be annulled on the facts and circumstance of the case.

c) The learned authorities below failed to appreciate that a valid search is a sine qua non for making a valid assessment under section 153A of the Act and hence the assumption of jurisdiction under Section 153 A of the Act is bad in law and consequently the entire

assessment requires to be cancelled.

7. Notice issued u/s 153A was bad in law:
a) The authorities below failed to appreciate that the notice issued u/ s 153A of the Act is bad in law on the ground that the notice does not indicate as to whether it is proposed to assess or reassess and is thus vague, consequently the assessment order passed on an invalid notice is bad in law on the facts and circumstances of the case.

b) The learned authorities below have not dealt in the respective order on the objection filed by the appellant in respect of assumption of jurisdiction u/s 153A and have also not provided the satisfaction note and reasons recorded for issue of notice u/s 153A of the Act and consequently an adverse inference may be drawn that the material does not exist and assessment order passed is bad in law on the facts and circumstances of the case.

8. Scope of assessment pursuant to notice issued under Section 153 A of the Act.
The learned authorities below failed to appreciate that the scope of assessment in the proceedings under section 153A r.w.s 143(3) of the Act is restricted to the seized material if any and the present assessment order passed is contrary to the scheme of the Act and consequently the assessment order is liable to be annulled/ cancelled on the facts and circumstances of the case.

9. The assessing officer ought not to have made any changes to the return of income and the CIT(A) ought not to have sustained any part of the change made by the assessing officer on the facts and circumstance of the case.

10. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234A and 234 B of the Income Tax Act under the facts and circumstances of the case.

11. Without prejudice the levy of interest under section 234 A and 234B are bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

12. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

13. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

e) A. Y. 2012 – 13, ITA 174/Bang/2018:-

"*1) The learned CIT (A) erred in upholding the assessment under Section 153A of the Act without appreciating that there were no incriminating materials found in the course of search to justify the impugned addition in block assessment proceedings.*

2) The learned CIT (A) erred in upholding the book profit as determined by the AO for the purpose of Section 115JB of the Act.

3) The learned CIT (A) ought to have appreciated that the deduction under Section 10AA/ 10B of the Act cannot be included while computing the book profit and accordingly the computation of book profit as made by the AO is unsustainable.

4) The learned CIT (A) ought to have appreciated that the Writ Appeal filed by the Appellant challenging the validity of amendment is pending and consequently the impugned addition as made for the relevant year is unsustainable and accordingly liable to be deleted.

5) For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

f) A. Y. 2013 – 14, ITA 175/Bang/2018:-

"*1) The learned CIT (A) erred in upholding the assessment under Section 153A of the Act without appreciating that there were no incriminating materials found in the course of search to justify the impugned addition in block assessment proceedings.*

2) The learned CIT (A) ought to have followed the jurisdictional High Court judgments and refrained from upholding the impugned addition.

3) The learned CIT (A) ought to have appreciated that the later judgment of the Karnataka High Court would prevail over the earlier judgment and consequently he ought to have followed the later judgment in preference to the earlier judgment to justify the upholding of validity of the assessment.

4) The learned CIT (A) erred in upholding the book profit as determined by the AO for the purpose of Section 115JB of the Act.

5) The learned CIT (A) ought to have appreciated that the deduction under Section 10AA/ 10B of the Act cannot be included while computing the book profit for the purpose of Section 115JB of the Act and accordingly the computation of book profit as made by the AO is

unsustainable.

6) The learned CIT (A) ought to have appreciated that the Writ Appeal filed by the Appellant challenging the validity of amendment is pending and consequently the impugned addition as made for the relevant year is unsustainable and accordingly liable to be deleted.

7) The learned CIT (A) is not justified in confirming the order of the AO of an amount of Rs.43,72,04,622/- as accrued interest on ICD's on the facts and circumstances of the case.

8) The learned authorities below failed to appreciate that the non-receivable interest on ICD's were shown as income in the books of accounts of the Appellant and subsequently claimed as bad debt in the books of the Appellant.

9) The learned authorities below failed to appreciate that the accounting procedure of the Appellant and the entries passed by the Appellant in its books of accounts satisfy the conditions for claiming bad debts on the facts and circumstances of the case.

10) The learned authorities below erred in observing that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or earlier previous year and such observations are contrary to the plain language of the Income Tax Act which only contemplates writing off in the accounts and hence the addition requires to be deleted on the facts and circumstances of the case.

11) Without prejudice, the said amount of Rs.43,72,04.622/- is not taxable as it is not the real income of the Appellant and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

12) For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

g) A. Y. 2014 – 15, ITA 176/Bang/2018:-

"*1) The learned CIT (A) erred in upholding the assessment under Section 153A of the Act without appreciating that there were no incriminating materials found in the course of search to justify the impugned addition in block assessment proceedings.*

2) The learned CIT (A) ought to have followed the jurisdictional High Court judgments and refrained from upholding the impugned addition.

3) The learned CIT (A) ought to have appreciated that the later judgment of the Karnataka High Court would prevail over the earlier judgment and consequently he ought to have followed the later judgment in preference to the earlier judgment to justify the upholding of validity of the assessment.

4) The learned CIT (A) erred in upholding the book profit as determined by the AO for the purpose of Section 115JB of the Act.

5) The learned CIT (A) ought to have appreciated that the deduction under Section 10AA/ 10B of the Act cannot be included while computing the book profit for the purpose of Section 115JB of the Act and accordingly the computation of book profit as made by the AO is unsustainable.

6) The learned CIT (A) ought to have appreciated that the Writ Appeal filed by the Appellant challenging the validity of amendment is pending and consequently the impugned addition as made for the relevant year is unsustainable and accordingly liable to be deleted.

7) The learned CIT (A) is not justified in confirming the order of the AO of an amount of Rs.45,02.26.725/- as accrued interest on ICD's on the facts and circumstances of the case.

8) The learned authorities below failed to appreciate that the non-receivable interest on ICD's were shown as income in the books of accounts of the Appellant and subsequently claimed as bad debt in the books of the Appellant.

9) The learned authorities below failed to appreciate that the accounting procedure of the Appellant and the entries passed by the Appellant in its books of accounts satisfy the conditions for claiming bad debts on the facts and circumstances of the case.

10) The learned authorities below erred in observing that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or earlier previous year and such observations are contrary to the plain language of the Income Tax Act which only contemplates writing off in the accounts and hence the addition requires to be deleted on the facts and circumstances of the case.

11) Without prejudice, the said amount of Rs.45,02,26,725/- is not taxable as it is not the real income of the Appellant and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

12) For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

4. Now, we take note of all the technical issues and the issues on merit in these seven years. Both sides have filed written submissions on both aspects i.e. technical aspects as well as on merit. We reproduce these submissions. The submissions of the assessee are as under as per the written submissions filed by the assessee on 04.10.2018:-

"*We would like to humbly submit that there are totally 7 Appeals for which we are filing this consolidated written statement. There are several common issues in all these 7 Appeals. We are herewith furnishing a table of the issues along with the Assessment Year during which the issue exists.*

S.No	*Issue*	*Assessment Years*
1.	*Validity of Search*	*2008-09,2009-10,2010-11, 2011-12,2012-13,2013-14*
2.	*Notice issued u/s 153A was bad in law*	*2008-09,2009-10,2010-11, 2011-12,2012-13,2013-14*
3.	*Scope of Assessment pursuant to search proceedings*	*2008-09,2009-10,2010-11, 2011-12,2012-13,2013-14*
4.	*Calculation of exemption u/s 10AA*	*2008-09,2010-11,2011-12, 2012-13*
5.	*Addition of Interest not received on inter corporate deposits*	*2009-10,2010-11,2011-12, 2013-14,2014-15*
6.	*Loss of Gold*	*2011-12*
7.	*Book Profit as determined u/s 115 JB*	*2012-13,2013-14,2014-15*
8.	*Levy of interest u/s 234A, 234B and 234C*	*Consequent to the relief*

We are herewith submitting our written statement for each of the issues as follows,

1. Validity of Search: This issue exists in 6 appeals for the respective Assessment Years 2008-09, 200910, 2010-11, 2011-12,2012-13 and 2013-14.

The Appellant humbly submits that there was no valid reason for the search which was conducted by the department pursuant to which the Assessment for seven years was done under section 153A r.w.s 143 (3) of the Act. The mandatory condition for initiating a search as contemplated under the provisions of section 132(1)(a), (b) & (c) of the Act did not exist. As per the provisions of section 132, it is required that there has to be a valid reason for the search to be conducted. The Department has not furnished any valid reason for conducting the search which infers that there has been no valid

reason for conducting the search.

The Appellant had made a detailed submission to the Commissioner of Income Tax (A), which has been brought out in the Appeal order but in spite of valid submission the learned Commissioner (A) has dismissed the contentions of the Appellant.

We have made detailed submissions in the statement of facts and the grounds of appeal filed along with the Form of Appeal, we have also cited various judgments of the Honourable Courts in the statement of facts and the grounds of appeal. We humbly request your Honour to consider these submissions.

In view of the above submissions the orders passed by the learned Assessing officer and confirmed on this issue by the Commissioner of Income Tax (A) are without jurisdiction and consequently the impugned assessment order requires to be cancelled in the interest of justice and equity.

2. Notice issued u/s 153A was bad in law: *This issue exists in 6 appeals for the respective Assessment Years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14.*

The Appellant humbly submits that the Notice issued under section 153A was vague and incorrect as the notice had not specified weather the notice was for assessing or re-assessing the income of the Appellant. The notice was sent in the form of a standard form without striking off the not applicable portion which establishes that the notice had been issued without proper application of mind. A vague notice and a notice issued without application of proper mind is not a notice in the eye of law. The notice had also not recorded satisfaction and the mandatory requirements for assuming jurisdiction had not been complied with hence the notice issued u/s 153A was bad at law. The assessments conducted under section 153A r.w.s 143(3) of the Act could not have been conducted after issuing a notice which was bad at law hence the assessments should be annulled and considered null and void.

The Appellant had made a detailed submissions to the Commissioner of Income Tax (A) in this regard, which have been brought out in the Appeal order but in spite of valid submissions the learned Commissioner (A) has dismissed the contentions of the Appellant.

We have made detailed submissions in the statement of facts and the grounds of appeal filed along with the Form of Appeal, we have also cited various judgments of the Honourable Courts in the statement of facts and the grounds of appeal. We humbly request your Honour to consider these submissions.

In view of the above submissions the notice issued u/s 153(A) by the learned assessing officer and confirmed by the Commissioner of Income Tax (A) is without jurisdiction and consequently the notice

issued u/s 153A is required to be considered as bad at law and null and void.

3.Scope of Assessment pursuant to search proceedings: ***This*** *issue exists in 6 appeals for the respective Assessment Years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14.*

The Appellant humbly submits that the additions made in the assessment order were not arising from the seized material. The learned assessing officer has failed to demonstrate that the additions made were arising from the seized material. It is a settled law that the existence of seized material is of paramount importance and an absolute necessity for making an assessment under section 153A.

The learned Commissioner(A) has not appreciated the binding decision of the jurisdictional high court in relation to the search assessment and has dismissed the valid submissions of the Appellant.

We have made detailed submissions in the statement of facts and the grounds of appeal filed along with the Form of Appeal, we have also cited various judgments of the Honourable Courts in the statement of facts and the grounds of appeal. We humbly request your Honour to consider these submissions.

In view of the above submissions there was no scope for the assessment proceedings in view of the non existence of the seized material for the additions made in the assessment order. Hence the assessment proceedings and the assessments made are required to be considered bad at law and null and void.

4.Calculation of exemption u/s 10AA: *This issue exists in 4 appeals for the respective Assessment Years 2008-09, 2010-11, 2011-12, 2012-13.*

The Appellant claimed exemption under section 10AA of the Act in respect of it's entitlements under the exemption provisions. The learned assessing officer had reworked the income of the Appellant based on the various additions proposed and disallowed the exemption under section 10AA. In the light of the various reliefs granted by the learned Commissioner(A) the learned Commissioner(A) ought to have directed the learned assessing officer to rework the eligible deduction under section 10AA in accordance with the provisions of law.

The Appellant humbly submits to this Hounourable Tribunal to direct the learned assessing officer to grant the correct exemption under section 10AA as per the provisions of law.

5.Addition of Interest not received on inter corporate deposits:This *issue exists in 5 appeals for the respective Assessment Years 2009-10, 2010-11, 2011-12, 2013-14, 2014-15.*

The Appellant Company provides inter corporate deposits on

interest to various corporate. The interest received on such deposits is credited to the interest account and is included in the taxable income. In case of accrued interest which was not received by the Appellant, the Appellant credited the interest account and debited the party's account. In cases where the Appellant could not recover the interest in spite of it's best efforts, the Appellant debited the interest account and had written off the receivables of the party by crediting the party's account. This action of the Appellant was clearly as per the law.

The learned assessing officer added back the written off interest to the income of the Appellant by contending that the Appellant was following dual system of accounting wherein the Appellant was following the Cash Accounting system with regard to the accrued interest to be received on the inter corporate deposits and was following mercantile accounting system in all other accounting. The learned assessing officer contended that the Act did not permit dual accounting system and hence the accrued interest on the inter corporate deposits was added back to the income of the Appellant.

The Appellant submitted that it had not followed dual accounting system and all it's accounting including the accounting of interest on the inter corporate deposits was under the mercantile accounting system. The Appellant submitted that writing off of the non recoverable interest did not amount to adopting cash accounting system. The Appellant submitted detailed explanation along with all the relevant documents and ledger copies of the relevant accounts to the learned assessing officer. The learned assessing officer has acknowledged all the submissions of the Appellant in the assessment order but without furnishing any valid reasons has proceeded to add the written off interest to the income of the Appellant.

The Appellant submitted detailed explanation to the learned Commissioner(A) along with all the relevant documents and account extracts. The learned Commissioner(A) appreciated and acknowledged the submission of the Appellant in the appeal order but dismissed the ground of the Appellant without citing any valid reasons.

The Appellant submitted that the Appellant extended inter corporate deposits to various companies. Some of the companies to whom the appellant had extended the inter corporate deposits defaulted and refused to pay interest in spite of strong follow up and legal action by the Appellant. In spite of the best efforts the Appellant was not able to recover the interest. Hence the Appellant decided to write off interest receivable from such parties in its books of accounts.

The Appellant accounted for the interest as a credit in the interest account and debited the parties account for these amounts. After deciding to write of the amounts which were not possible to recover

the Appellant debited the interest account and credited the parties account as bad debts.

The Appellant submitted during the assessment proceedings that the accounting ultimately resulted in the net effect of interest received or receivable being charged to the profit and loss account and non receipt being claimed as a bad debt. Two way entries were not mandatory as per the Scheme of the Act.

During the assessment and appellate proceedings the appellant filed the ledger copies of the relevant portion in the books of the Appellant before the learned Assessing Officer. It can be seen from the ledgers that the appellant accounted for the interest by the crediting the same and then had written off the non receivable interest as bad debts, which is perfectly correct as per the Act. It is only from these ledger accounts that the assessing officer obtained the amounts which she has disallowed.

The Appellant further submitted during the assessment proceedings that the manner of writing the books of accounts cannot decide the allowability under the Act. The method adopted by the appellant is one of the methods to write off bad debts and hence the transaction which is being proposed is revenue neutral and the assessing officer should not have added the aforesaid amount as income. The assessing Officer has taken one part of the transactions of the credit to interest account but ignored the other which is debited to interest account by way of bad debts resulting in income which is contrary to law.

The Appellant had written off the interest which the Appellant did not receive as bad debts in the book of the Appellant and whatever the interest which was received and which was receivable which was not a bad debt was accounted in the profit and loss account. The Appellant further submitted that the method of writing off in the books is not important and similarly the method of preparing the profit and loss account is not important as long as there is no difference in the net result.

The learned Assessing officer and the CIT (A) without appreciating the submission of the Appellant observed that the procedure to claim bad debt is by disclosure in the profit and loss account by way of writing off a debt as an expenditure corresponding to an amount which has been already offered as an income in the same or an earlier previous year. They further observed that the appellant has failed to disclose the same in the profit and loss account, therefore it cannot be said that the appellant had offered the income in the said previous year or any earlier previous year. Therefore the appellants claim of bad debt is disallowed and the accrued interest is added to the income of the appellant.

The learned Assessing officer and the CIT (A) failed to appreciate the detailed submission made by the Appellant and the appellants

explanation and the documents produced by the Appellant in regard to the bad debts claimed by the Appellant.

A plain reading of the provisions of section 36(1)(viii) clearly indicates that "the debt or part thereof which is written off as irrecoverable in the accounts of the assessee". That is precisely what the Appellant has done. There is nothing in the section to indicate that it has to be written off in the profit and loss account. The necessary ledger copies have also been given which fortified the Appellants contentions.

The Assessing Officer has wrongly surmised in the assessment order that the assessee has admitted in the post search proceedings that it was accounting the income only on crystallization thereof. Further the Assessing Officer has wrongly noted that the assessee at that time was not writing off the accrued interest as bad debts. The fact of the situation is that the assessee has always followed the mercantile system of accounting and has always credited in its books of accounts the interest received and also the interest receivable. Only after exhausting all its efforts for recovering the due interest, if the assessee had come to a conclusion that the interest was not recoverable only then the assessee had written off such receivable from the parties as bad debts. The asssessee has always held that it is following the mercantile system of accounting.

The learned Assessing officer is not correct in facts and in law in making addition in this regard and the confirmation of the same by the CIT (A) is contrary to law, facts and traversity of justice.

It is also relevant to point out that the income tax is on real income and consequently the money which has not been received and which is not going to be received and which has been written off as bad debts cannot be taxed at all. The addition is bad in law and also on facts of the case.

The CIT (A) has confirmed the above addition on three grounds namely (a) that the appellant is following the cash system of accounting (b) the procedure contemplated under section 36(2) has not been followed (c) the appellant had not informed the position at the time of search before the DDIT.

The finding of CIT (A) are perverse both in law and on facts as he after having exhaustively reproduced most of the detailed submissions of the Appellant in his order has cryptically given his decision without even adjudicating the same and addressing the issues raised in detail. He has reproduced the submissions of the appellant but has not given a finding as to how the order of the assessment officer is tenable in law and on the facts of the case.

The CIT (A) apparently has gone by the statement of the auditor that Appellant is following cash system of accounting. Further the CIT (A) states that we have not filed a letter from the auditor during the assessment or appellate proceedings. The Appellant appeared on several occasions and the CIT (A) had

never sought for such a letter from the auditor.

The CIT (A) has also stated that the said position was not stated during search proceedings which aspect has been adequately rebutted in the written submissions which are reproduced in the appellate order but CIT (A) has failed to take note of the same.

Further CIT (A) adds that the assessing officer has stated that the procedure laid down under section 36(2) have not been complied with. This finding of the Assessing officer is incorrect and the CIT(A) ought to have examined the details filed and arrived at a conclusion as to the correctness of the finding of the officer. The CIT (A) has not done the same and thus the order suffers from violation of the principles of natural justice.

The CIT (A) failed to appreciate that the appellant has written off the amount in its accounts and merely because the same has not been reflected in the profit and loss statement, cannot surmise that the make the write off was in accordance with procedure nor can it be held that it is fatal to the allowance of the same

The appellant had credited the interest account and also debited the same in respect of the amounts that it felt are not receivable. The same has been noticed by the authorities below but have failed to adjudicate as to how the same will not be in accordance with the procedure contemplated under the act. At the cost of repetition it is stated that it is only from such accounts of the assessee that the assessing officer arrived at the amount that he has added in the determination of income which proves that the amounts were in the accounts.

The procedure contemplated is, that it has to be written off in the accounts which has been done. The CIT (A) is not able to explain as to how the assessing officer got the numbers for making the addition if they are all not part of accounts. The addition made by the assessing officer in this regard is taken from the accounts of the appellant only. Thus to say that the appellant is following cash system of accounting or not followed the procedure contemplated under section 36(2) of the Act are perverse both in law and on facts of the case.

It is also settled position of law that consent cannot confer jurisdiction. The CIT (A) after having noticed the various judgments has not even whispered about the same in his findings.

The Appellant Company advanced inter corporate deposits on interest. The interest received and the interest accrued were credited to the interest account and offered to tax. The accrued interest was credited to the interest account and was debited to the parties account. Whenever the accrued interest turned bad and was not recoverable in spite of all efforts, such interest was written off by crediting the parties account and debiting the interest account. Due to these entries the written off amount did not form a part of the annual profit and loss account as the same was written off by crediting the parties account and debiting the interest account, which effectively

reduced the interest received and nullified the parties account as the interest was not recoverable. Even if the write off was effected in the annual profit and loss account the net result would have been the same as in both the cases the actual interest received and receivable only would have been offered to tax.

The learned assessing officer concluded that this method of writing the books was a cash accounting system and not mercantile accounting system. The learned AO further concluded that the Act did not permit an assessee to adopt two types of accounting systems and added back the written off interest. The learned AO was totally wrong in his conclusion because the Appellant had not adopted dual accounting system and all the accounts of the Appellant including the accounting of the accrued interest on ICD's were as per the mercantile accounting system. The learned AO added back the written off interest, which was never a part of the income of the Appellant.

The Appellant submitted detailed reply to the learned AO along with all the relevant documents including the copies of the ledger of the interest account and the parties account which clearly established that the Appellant had correctly offered all the interest received and accrued to tax and had written off the interest which was not possible to be received. The learned AO instead of considering the submissions of the Appellant, reproduced the submissions in the assessment order and without any logic or reason proceeded to add back the non recoverable interest to the income of the Appellant. When there was no income at all how can the same be added to the income of the Appellant?. The Appellant contested the illogical addition and made detailed submissions to the learned Commissioner(A) along with all the relevant documents. The learned Commissioner(A) also reproduced the submissions of the Appellant in the order but without any logic upheld the addition made by the AO.

The addition of the non recoverable interest to the income of the Appellant is totally incorrect and against the provisions of the Act and also against the principals of natural justice because how can an income be added to the income of the Appellant when such an income has never been received, when the income or the money itself has not been received how can tax be paid on the same ?.

We have made detailed submissions in the statement of facts and the grounds of appeal filed along with the Form of Appeal and also in the paper books submitted by us. We have also cited various judgments of the Honourable Courts in the statement of facts and the grounds of appeal. We humbly request your Honour to consider these submissions.

In view of the above submissions it is clear that the learned AO has erred in adding back the interest which has never been received and which has been written off by the Appellant in it's books of accounts as per the provisions of the Act hence the accrued interest of the inter corporate deposits added back to the income of the Appellant is

required to be deleted in the interest of justice and equity.

6.Loss of Gold: *This issue exists in the appeal for the Assessment Year 2011-12.*

The Appellant is in the business of gold and gold jewellery and other products of gold. At the closing of the year, the Appellant reconciles all the inventory of gold and gold products in it's various locations by physically weighing the same. The reconciled and physically weighed inventory would be the closing stock of the Appellant which usually matches with the closing stock arrived from the books of the Appellant.

During the A.Y 2011-12, the Appellant at the close of the year reconciled all it's inventory at various locations and found that there was shortage of 99.055 Kilos of gold between the book inventory and the physical inventory. In spite of repeated and best efforts put in by the expert team of the Appellant Company they were not able to find out the actual cause of the shortage, the fact remained that there was a shortage of 99.055 kilos of gold. Due to this the closing inventory was required to be valued at the actual physical stock available as it would not be proper to show inflated inventory especially in the light of the fact that the Appellant is a public company. Hence it was required that the closing inventory in the books was required to be reduced by Rs. 19,39,23,044.

The inventory of 99.055 Kilos which was untraceable was about 0.047% (4.7 Paise in One Hundred Rupees) of the total gold transacted during the year. The loss could have been due to various reasons like loss in manufacturing, excess delivery made to clients, short delivery received from clients, regular pilferage or due to any other reason but the fact remained that there was a shortage. How can the Appellant value the inventory higher while there was shortage in inventory. Accounting prudence and good corporate governance requires to value the actual available inventory and not an inflated number and it was required that such shortage be publicly reported. The Appellant considered the actual available inventory and disclosed in the annual report and other public platform about the shortage of inventory. Due to the shortage in the inventory the profit reduced by Rs. 19,39,23,044.

The learned authorities below failed to appreciate that it is normal in the gold business to incur loss of gold while dealing with various activities like Manufacturing, inventory Management, marketing, Import and export.

The learned authorities below erred in not accepting the explanation of the assessee without any reason.

The learned authorities below failed to appreciate that the assessee had provided all the details as asked for by the assessing officer, as there were no further details asked by the assessing officer, the assessee had not provided further details,

the assessing officer has erred in stating that the assessee had not offered any explanation.

The authorities below have failed to appreciate that it is obvious and natural that whenever there is any loss of gold the stock will consequently get reduced and as a result the profit is bound to reduce to that extent, the assessing officer has erred in not accepting the explanation for making the addition.

The authorities below have failed to appreciate that a loss of 0.047% as a total of manufacturing loss, Inventory Loss, Marketing Loss, Import Loss, Export Loss is a reasonable loss in the business of gold and gold products.

The learned assessing officer in spite of detailed explanation added back Rs. 19,39,23,044 to the income of the Appellant without offering any explanation or logic.

We have made detailed submissions in the statement of facts and the grounds of appeal filed along with the Form of Appeal and also in the paper books submitted by us. We humbly request your Honour to consider these submissions.

In view of the above submissions it is clear that the learned AO has erred in adding back the amount of Rs. 19,39,23,044 to the income of the Appellant and the same is required to be deleted in the interest of justice and equity.

7.Book Profit as determined as 115 JB: *This issue exists in 3 appeals for the respective Assessment Years 2012-13, 2013-14, 2014-15.*

The learned AO did not allow the deduction under sec 10AA and 10B while calculating the book profit for the purpose of deciding the applicable MAT. This was due to the amendment to section 115 JB made in the finance bill. The Appellant has challenged the Amendment and the matter is pending in Writ Appeal before the Honorable Division Bench of the High Court of Karnataka.

The Appellant calculated the book profit after considering the deduction available under Sec 10AA and 10B and informed the learned AO that the matter was pending before the Honorable Division Bench of the Karnataka High Court. The learned AO should have considered the request of the Appellant and refrained from calculating the book profit without considering the deduction available to the Appellant under Sec 10 AA and 10B. The learned AO did not accept the submission of the Appellant and proceeded with calculation of the book profit without allowing the eligible deduction under section 10AA and 10B.

The Appellant preferred an appeal before the learned Commissioner(A) and made the submissions but the learned Commissioner(A) also did not consider the submissions of the Appellant and sustained the addition as made by the learned AO. The learned Commissioner(A) ought to have appreciated that the Writ

Appeal filed by the Appellant challenging the validity of the amendment is pending and consequently the impugned addition as made for the relevant year was unsustainable and was liable to be deleted.

8.Levy of interest as 234A, 2348 and 234C:

The Appellant humbly submits that the interest u/s 234(A), 234(B) and 234(C) should be recalculated based on the reliefs accorded to the Appellant by the learned Commissioner(A) and this Honourable Tribunal. The Appellant also humbly submits that the learned AO has erred in calculating the interest u/s 234(A), 234(B) and 234(C).

The Appellant humbly submits that the learned AO be directed to correctly calculate the applicable interest under 234(A), 234(B) and 234(C) and while calculating the interest the AO should also consider the reliefs accorded to the Appellant by the learned Commissioner(A) and also by this Honourable Tribunal.

The Appellant humbly submits and requests the Honourable Tribunal to consider this consolidated written statement, statement of facts, grounds of appeal and the paper book filed by the Appellant and accord relief to the Appellant in the interest of justice and equity."

5. The written submissions of the learned DR of the revenue are on pages 1 to 8 of the paper book filed by the learned DR of the revenue. The same are reproduced herein below for ready reference:-

"*Written Submission is as under:-*

1. As regards Validity of Search :-

1.1 The Ld. CIT(A) dismissed this ground of the assessee stating that the Validity of Search cannot be questioned before the CIT(A). In this connection, it is submitted that the Hon'ble Supreme Court in the case of N.K.Jewellers Vs. CIT, New Delhi (2017) 85 taxmann.com 361(SC) held that in view of the amendment made in section 132A by Finance Act, 2017, the reason to believe or reason to suspect as the case may be, shall not be disclosed to any person or any Authority or Appellate Tribunal as recorded by income Tax Authority u/s.132 or section 132A. We, therefore, cannot go into that question at all.

1.2 The Hon'ble Jurisdictional High Court in the case of Prathibha Jewellery House Vs. CIT (2017) 88 taxmann.com 94 (Karnataka) dismissed the writ petitions and held that even the law has been amended by insertion of the aforesaid Explanation by Parliament in Section 132 of the Act by the Finance Act, 2017 with retrospective effect from 1.4.1962. The Court held that the Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer. The relevant portion of order is reproduced below:

"10. Having heard the counsels for the parties, this court is satisfied that the present writ petitions deserve to be dismissed for the following reasons:

(i).....

(ii)That even the law has been amended by insertion of the aforesaid Explanation by Parliament in Section 132 of the Act by the Finance Act, 2017 with retrospective effect from 1.4.1962. That Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer.

(iii) That this Amendment came after both, ITAT passed the order in the present case on 21.11.2014 as also the learned CIT(A) passed the impugned order on 11.2.2015. Nonetheless, retrospective effect of the said Amendment, will have its effect on the present case as well so long that the said Amendment holds the field. Therefore, the Appellate Authorities of the Department cannot be expected to go into the said question. It is only for the Constitutional Courts to examine the vires and validity of such Amendment and for that, a separate writ petition is already said to be pending. However, no such challenge to the Amendment has been made in the present case."

1.3 In view of the above legal position laid down by the Hon'ble Supreme Court and the jurisdictional High Court, it is respectfully submitted that the assessee's ground on questioning the validity of search may be rejected.

2) As to the Ground that Notice issued u/s.153A was bad in law :
2.1 The assessee contended that the notice issued u/s. 153A of the Act was bad in law on the ground that notice does not indicate as to whether it is proposed to assess or re-assess and is thus vague. Section 153A is reproduced below:

Section 153A:
"(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153 in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under Section 132A after the 31St day of May 2003, the Assessing Officer shall —

(a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b) in the prescribed form and verified in the

prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 ;

(b) Assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this (sub-section) pending on the date of initiation of the search under section 132 or making of requisition under section 132A as the case may be, shall abate."

2.2 In this connection, it is respectfully submitted that clause (a) of section 153A(1) deals with issue of notice to such person, where a search is initiated u/s.132 or books of accounts etc. are requisitioned u/s.132A, requiring him to furnish the return within a prescribed period for each of the Assessment years involved with the search proceedings. The clause also stipulates that the return of income to be furnished in response to such notice under clause (a) were to be considered as Return required to be furnished u/s.139.

2.3 Under clause (b) of section 153A, the AO shall assess or re-assess the total income of six assessment years once the return is filed in response to clause (a).

2.4 The provisions of these two clauses are distinct and separate and one will not overlap one another. In view of this clear and distinct provisions of both clause (a) & (b), there is no need for the Assessing Officer to specify whether the notice being issued u/s.153A is to "assess" or "reassess" the total income, since such exercise has to be carried out under clause (b) only after the return is filed under clause (a).

2.5 In view of the above provisions of section 153A enshrined in clauses (a) and (b), the AO assumes jurisdiction to "assess" or "reassess" only after the return is filed. If the return is not filed, AO cannot assume jurisdiction to assess or reassess the total income. In view of this, it is requested that the assessee's contention in this regard may be rejected.

3) As regards the scope of assessment pursuant to notice u/s. 153A.

3.1 As informed by the Assessing Officer vide letter dated 05-01-2018, during the course of search incriminating documents relating to the loans / ICDs given by the assessee company were found and seized as Bundle No. A/REL/01, A/REL/02, A/REL/03, A/REL/04, A/REL/05 from the assessee's premises at No.1, Brunton Road, Opp. Old Passport Office, M.G.Road, Bangalore. Key amongst these are Bundle No. A/REL/03 and A/REL./04 which are registers containing the details of ICDs. Copy of the same is enclosed as Annexure F and Fl. After examination and analysis of the documents, addition on accounts of interest accrued on ICDs has been made as under :

Assessment Year	*Addition on account of Interest accrued on ICDs*
2009-10	14,72,595
2010-11	28,79,68,656
2011-12	29,73,46,928
2013-14	43,72,04,622
2014-15	45,02,26,725
Total	1,47,42,19,526

3.2 Since there is seizure of incriminating material based on which additions are made, the ratio decided in the case of CIT vs. Lancy Constructions (2016) 66 taxmann.com 264 (Karnataka) by the Jurisdictional High Court has no application to the facts of this case.

3.3 The Hon'ble Karnataka High Court in the case of Canara Housing Development Company 62 taxman.com 250 (Karnataka) held that once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the "total income" of each year and then pass the assessment order. The relevant portion of the Jurisdictional High court order is reproduced below:

> *"10. Section 153A of the Act starts with a non obstante clause. The fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section*

153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered bySection 153A, by even making reassessments without any fetters, if need be. Therefore, it is clear even if an assessment order is passed under Section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the total income of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section makes it clear the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under Section 132, the said proceeding shall abate. If such proceedings are already concluded by the assessing officer by initiation of proceedings tinder Section 153A, the legal effect is the assessment gets reopened. The block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. The Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are initiated under Section 153A of the Act, the legal effect is even in case where the assessment order is passed it stands reopened. In the eye of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during

the search, in order to find out what is the "total income" of each year and then pass the assessment order.

3.4 The Ld. CIT(A) relying on the above Judgements of the jurisdictional High Court in the case of Canara Housing Development Company opined that the subsequent decision of the Hon'ble Karnataka High Court in the case of Lancy Constructions has not changed the position as the former decision has not been considered in latter decision. Hence, the decision in the case of Canara Housing Development Company (supra) holds good in the facts of the present assessee's case.

3.5 In view of this legal position, relying on the decision of the Hon'ble jurisdictional High Court in the case of Canara Housing Development Company (supra), it is respectfully prayed that the assessee's ground on the scope of assessment u/s.153A may be rejected.

4. Addition of Interest on ICDs (in A.Y. 2009-10, 2010-11 , 2011-12, 2013-14 & 2014-15):

This issue was examined by the AO and addition was made in A.Y. 2009-10, 2010-11 , 2011-12, 2013-14 & 2014-15. The CIT(A) upheld the addition in all the years after thoroughly analyzing the method of accounting followed by the appellant. Therefore, I rely upon the CIT(A) order in all the years.

5. Loss of Gold (A.Y. 2011-12) :-

This issue was examined by the AO and the addition was made. The CIT(A) upheld the addition in Para 9 (on page 52) of CIT(A) order after thoroughly analyzing the issue. In this connection, reliance is placed on the Orders of the CIT(A) and AO.

6. Book Profit u/s.115JB :-

6.1 This issue was examined by the AO and addition was made in A.Y. 2012-13, 2013-14 & 2014-15 in view of the Amendment brought in section 115JB through Finance Act, 2011 by way of insertion of Proviso to Section 115 JB(6) w.e.f. 1.4.2012. The said amendment stipulates that the SEZ profits are also to be included in the Book Profits for computing MAT u/s. 115 JB which were hitherto excluded by virtue of provisions of sub-section 6 to section 115JB.

6.2 In the computation shown in the return of income, the assessee did not include SEZ profits in book profits on the ground that it has challenged the constitutional validity of this amendment. The AO did not agree with this contention and in view of the clear provision of law subsequent to above amendment, SEZ profits were added for computing the book profits and in turn the MAT. The CIT(A) upheld the addition after thoroughly analyzing the issue. Therefore, I rely

upon the CIT(A) order on this proposition.

Prayer :
7. In view of the factual matrix and legal position as brought out in the foregoing paragraphs, it is prayed that this Hon'ble Tribunal may uphold the orders of the lower authorities for the cause of equitable justice."

6. We have considered the rival submissions. First we take note of various facts which are relevant for deciding these technical aspects and the issues on merit. The search in the present case was conducted on 17.12.2013. The AO issued notices u/s 153A of the I T Act on 04.07.2014 for these Assessment years except A.Y. 2014 – 15 asking the assessee to file return of income within 30 days from the receipt of these notices. In response to these notices, the assessee filed letter dated 19.09.2014 stating that the return of income already filed by the assessee for these 6 years may be treated as return in response to these notices u/s 153A of I T Act.

7. In Para 5 of the assessment order for A. Y. 2008 – 09, it had been noted by the AO that for this year, assessment order u/s 143 (3) was passed on 30.12.2010 determining a total income of Rs. 237,31,56,326/- and against this assessment order, appeal is filed by the assessee before CIT (A) which was pending. Only one issue on merit raised by the assessee in this year is about calculation of exemption u/s 10AA. There is no other issue on merit in this year apart from three technical objections noted above.

8. In Para 5 of the assessment order for A. Y. 2009 – 10 also, it had been noted by the AO that for this year, the assessment order u/s 143 (3) was passed on 30.12.2011 determining a total income of Rs. 125,40,29,393/- as against nil income declared in the return of income and against this assessment order, appeal is filed by the assessee before CIT (A) which was pending. In this year also, there is only one issue raised by the assessee on merit being addition on account of interest on ICD apart from three technical objections noted above.

9. Similarly, In Para 5 of the assessment order for A. Y. 2010 – 11 also, it had been noted by the AO that for this year, assessment order u/s 143 (3) was passed on 03.07.2012 determining a total income of Rs. 181,88,48,635/- as against nil income declared in the return of income and against this assessment order, appeal is filed by the assessee before CIT (A) which was pending. In this year, the assessee has raised two issues on merit. First issue on merit is about calculation of exemption u/s 10AA. The second issue raised on merit in this year is about addition on account of interest on ICD apart from three technical objections noted above.

10. For A. Y. 2011 – 12, the details of earlier assessment order, if any, is not available in the assessment order passed u/s 153A but in Para 2 of this assessment order, this is noted that return of income was filed on 29.09.2011 declaring nil income and as per page 14 of the assessment order, total income was computed on this basis that business income as per assessee's computation of income was Rs. 261,75,26,293/- and after making three additions including one addition of Rs. 3344,94,72,518/- u/s 68 already deleted by CIT (A) and two additions confirmed by him of Rs. 29,73,46,928/- being interest on ICDs and Rs. 19,39,23,044/- being value of 99.055 Kilos of gold claimed as misappropriated, total income was computed at Rs. 3655,82,68,783/-. In respect of one addition of Rs. 3344,94,72,518/- u/s 68 already deleted by CIT (A), the revenue is not in appeal before us but the assessee is in appeal before us for two additions, sustained by CIT (A) of Rs. 29,73,46,928/- being interest on ICDs and Rs. 19,39,23,044/- being value of 99.055 Kilos of gold claimed as misappropriated, total income was computed at Rs. 3655,82,68,783/-. In addition to this, one more issue on merit is raised by the assessee in this year. This issue is about calculation of exemption u/s 10AA. These objections on merit are in addition to three technical objections noted above.

11. For A. Y. 2012 – 13 also, the details of earlier assessment order, if any, is not available in the assessment order passed u/s 153A but in Para 2 of this assessment order also, this is noted that return of income was filed on 02.11.2012 declaring a loss of Rs. 19,45,15,739/- and as per page 6 of the assessment order,

total income was computed on this basis that business income as per assessee's computation of income was Rs. 431,26,84,469/- and after allowing deduction u/s 10AA – SEZ of Rs. 334,66,15,379/-, net business income was computed at Rs. 96,60,69,090/-. Income from house property is stated to be of Rs. 15,30,980/- and in this manner, total income for this year is determined at Rs. 96,76,00,070/-. Book Profit u/s 115JB was determined at Rs. 431,88,17,344/- after adding Rs. 334,66,15,379/- being SEZ Profit. In this year, only two issues on merit are raised by the assessee. First such issue is about addition of Rs. 334,66,15,379/- for determining the Book Profit u/s 115JB. Second issue raised on merit is about calculation of exemption u/s 10AA. These objections on merit are in addition to three technical objections noted above.

12. For A. Y. 2013 – 14 also, the details of earlier assessment order, if any, is not available in the assessment order passed u/s 153A but in Para 2 of this assessment order also, this is noted that return of income was filed on 29.09.2013 declaring total income of Rs. 114,07,52,370/- and as per pages 5 & 6 of the assessment order, total income was computed on this basis that business income as per assessee's computation of income was Rs. 489,51,41,984/- and after allowing deduction u/s 10AA – SEZ as per re working of Rs. 341,98,44,394/- and after adding Rs. 43,72,04,622/- on account of ICD Interest, , net business income was computed at Rs. 362,24,24,409/-. Income from house property is stated to be of Rs. 11,40,973/- and in this manner, total income for this year is determined at Rs. 362,35,65,382/-. The AO also allowed deduction of Rs. 78,22,24,217/- u/s 80IC and in this manner, net taxable income was determined at Rs. 284,13,41,165/-. Book Profit u/s 115JB was determined at Rs. 489,61,55,048/- after adding Rs. 345,01,73,711/- being SEZ Profit. In this year, two issues on merit are raised by the assessee. One issue is about addition of Rs. 345,01,73,711/- for determining the Book Profit u/s 115JB. The second issue on merit is about addition of Rs. 43,72,04,622/- on account of ICD Interest. These objections on merit are in addition to three technical objections noted above.

13. In A. Y. 2014 – 15, the assessment order is u/s 143 (3) rws 153D. In this year, return of income was filed by the assessee on 29.11.2014 declaring income of

Rs. 136,16,72,590/-. In this year, total income was determined at Rs. 181,18,99,312/- after making addition of Rs. 45,02,26,725/- on account of ICD Interest. Book Profit u/s 115JB was determined at Rs. 273,27,50,184/- after adding Rs. 212,17,19,682/- being SEZ Profit. In this year also, two issues on merit are raised by the assessee. One issue is about addition of Rs. . 212,17,19,682/- for determining the Book Profit u/s 115JB. The second issue on merit is about addition of Rs. 45,02,26,725/- on account of ICD Interest. There is no technical objection in this year.

14. First, we decide the technical aspects one by one. First technical aspect is about validity of search raised in A. Ys. 2008 – 09 to 2013 – 14. In this regard, various submissions are made by both sides. As per the learned DR of the revenue, reliance has been placed on a judgment of Hon'ble apex court rendered in the case of N. K. Jewellers vs. CIT as reported in 85 Taxmann.com 361 and it is submitted that in this case, it was held that in view of the amendments made in section 132 by Finance Act, 2017, the reason to believe or reason to suspect as the case may be, shall not be disclosed to any person or authority or Appellate Tribunal as recorded by the Income Tax Authority u/s 132. Reliance was also placed on a judgment of Hon'ble Karnataka High Court rendered in the case of Pratibha Jewellery House vs. CIT as reported in 88 taxmann.com 94 and the retrospective amendment in section 132 w,r.e.f. 01.04.1962 was taken note of and it was held that even the appellate authorities are prohibited from going into the reasons recorded by the concerned income tax authority against the assessee or tax payer. Learned AR of the assessee was also heard.

15. We have considered the rival submissions and by respectfully following the judgments cited by the learned DR of the revenue of Hon'ble Apex Court and Hon'ble Karnataka High Court as noted above, we decline to interfere in the order of CIT (A) on this issue,. Accordingly, this technical aspect is decided against the assessee.

16. The second technical issue raised by the assessee is this that the Notice issued by the AO u/s 153A is bad in law. In the written submissions filed on behalf of the assessee as reproduced above, this is the submission that notice issued u/s 153A

is bad in law because it is not specified in the notice as to whether it is for assessing or reassessing the income of the assessee. As per the submissions of the learned DR of the revenue as reproduced above, the notice to be issued is to ask the assessee to file return of income for the relevant six years as per clause (a) of sub section (1) of section 153A and the question of assessment or reassessment is as per clause (b) of sub section (1) of section 153A and hence, both these clauses are separate and should not be mixed.

17. We have considered the rival submissions and in our considered opinion, as per clause (a) of sub section (1) of section 153A, at the stage of issue of notice u/s 153A, the only requirement is to ask the assessee to file return of income for relevant six years covered by section 153A and whether after filing of return of income, the assessment to be made by the AO will be assessment or reassessment has to be determined afterwards and not at the time of issue of notice u/s 153A. In this view of the matter, we find no merit in this technical objection raised by the assessee and the same is rejected.

18. Third technical issue raised by the assessee is this that the additions made in these assessment orders passed u/s 153A are not arising from the seized material and therefore, these additions are outside the scope of section 153A of the I. T. Act. There is no technical issue raised in A. Y. 2014 – 15. Hence, this third technical issue is relevant for six assessment years from A. Y. 2008 – 09 to 2013 – 14. In this regard, this is the submission on behalf of the assessee that the addition made in the assessment orders for these six years are not arising from the seized material. As against this, the submission of the learned DR of the revenue is this that as informed by the AO vide letter dated 05.02.2018,during the course of search, incriminating documents relating to loans/ICDs given by the assessee company were found and seized as bundle No. A/REL/01 to A/REL/05 from the assessee's premises at No. 1, Brunton Road, opp. Old passport office, M. G. Road, Bangalore and after examination and analysis of these documents, addition on account of interest accrued on ICDs has been made in each of these six years. Reliance was placed by the assessee on a judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Lancy Constructions, 295

CTR 454. Learned DR of the revenue has submitted that this judgment is not applicable in the present case because incriminating material was found in the present case.

19. We have considered the rival submissions. We find that this is reported by the AO in remand report also as noted by CIT (A) on page 36 of his order for A. Y. 2009 – 10 that during the search, registers containing details of ICDs given by the assessee to various parties against collateral in the form of property at varying rates of interest was seized and the assessee was not offering interest on all these ICDs on accrual basis. Hence, it is not acceptable that no incriminating material was found and therefore, we find force in the submissions of the learned DR of the revenue that the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Lancy Constructions (Supra) is not applicable in the present case. Learned DR of the revenue has placed reliance on another judgment of Hon'ble Karnataka High Court rendered in the case of Canara Housing Development Company vs.CIT as reported in 274 CTR 122. Although in this case, the dispute before Hon'ble Karnataka High Court was this that whether, CIT can invoke revisionary powers u/s 263 in respect of original assessment order passed by the AO in those cases, where, the AO has subsequently passed order u/s 153A. In this case also, incriminating material was found as noted in Para 2 of this judgment. This was held in this case that once the assessment is validly reopened, the AO has to take into account three types of income to complete the assessment or reassessment as the case may be. These three types of income are 1) income disclosed in the return of income, 2) Undisclosed income found during the search and 3) any other income which is not disclosed in the earlier return and not unearthed during the search. In our considered opinion, if incriminating material is found in course of search, in the assessment u/s 153A, all three types of income noted above has to be assessed by the AO and therefore, we find no merit in this third technical objection also. We reject the same.

20. Now, we decide the issues on merit. First issue on merit is about the addition made by the AO in respect of interest accrued on ICDs. This issue is raised by

the assessee in five Assessment Years i.e. Assessment Years 2009-10, 2010-11, 2011-12, 2013-14 &2014-15. The submission of the assessee on this issue is already reproduced above and the main thrust of the assessee is on this that the assessee is not following dual accounting system and all its accounting including the accounting of interest on ICDs was under the mercantile accounting system. As against this, it is the stand of the AO that the assessee is following cash system of accounting in respect of accounting of interest on ICDs. In order to decide this issue we have to examine the factual aspects on this issue. Hence we have gone through the annual reports of the assessee company made available before us. As per the Annual Report for the year ending as on 31.03.2009 relevant to Assessment Year 2009-10, it has been stated in Schedule 'S' that as per significant accounting policies followed by the assessee, the accounts have been prepared on accrual basis. Similarly as per annual reports for the year ending as on 31.03.2010 relevant to Assessment Year 2010-11 also significant accounting policies are stated in Schedule 'S' as clause 6 thereof is the statement regarding the revenue recognition. For ready reference the same is reproduced herein below.

> "***6. Revenue recognition:***
> *Sales are recorded net of trade discounts, rebates and value added tax, if any and are inclusive of foreign currency fluctuation. Some of the goods have been imported on provisional basis without fixing the gold price. Some of the goods have also been exported on provisional basis without fixing the price of gold. All the provisional imports and exports have been accounted for as per the custom's assessment of the goods. When the price of import shipment is fixed or when the price of the export shipment is fixed, the final invoice is submitted to the customs; the differential is accounted for as purchase or sales. However during the year the management has changed the accounting policy and accounted for the additional liability on account of increase in gold price as prevalent on 31st March 2010 in the case of all outstanding provisional imports and due to this change in accounting policy the profit for the year has been understated by Rs. 31,93,21,126.*
> *Making charges income is recognized on dispatch of goods.*
> *Interest on bank deposits and other interest bearing loans are accounted on accrual basis. However during the year the management has changed the accounting policy with regard to accounting of interest income on interest bearing loans other than bank deposits to cash basis due to which the profit for the year has been has been understated by Rs. 14,82,02,244/-*
> *Dividend income on investments is accounted for when the right to receive the payment is established.*"

21. From the above, it is seen that as per the assessee itself, the management in the present year has changed the accounting policy with regard to accounting of interest income on interest bearing loans other than bank deposits and the changed system is cash basis and due to this, the profit for the year ending as on 31.03.2010 has been stated to be underreported by Rs. 14,82,02,244/-. Hence it is seen that the assessee itself has admitted in annual report that from accounting year 2009-10, in respect of interest on ICDs, the assessee is following cash system of accounting and because of that, the profit of the assessee was underreported in that year by an amount of Rs. 14,82,02,244/-. Now we examine the annual report for the year ending as on 31.03.2011. In this year also, it has been stated in Para 6 of significant accounting policies in respect of revenue recognition that interest on bank deposits and other interest bearing loans is accounted on accrual basis. But since from previous Financial Year, the company has adopted the accounting policy with regard to accounting of interest income on interest bearing loans other than bank deposits to cash basis instead of accrual basis and for this reason, the profit for the year ending as on 31.03.2011 has been understated by Rs. 33,08,58,068/-.

22. In the year ending as on 31.03.2012, the assessee has reported regarding revenue recognition in Note No. 24 that interest on bank deposits and other interest bearing loans is accounted for on accrual basis. Similar is the observation for annual accounts for the year ending 31.03.2013 that the interest on bank deposits and other interest bearing loans is accounted on accrual basis and identical note is there in annual report for the year ending as on 31.03.2014. In course of hearing before us, this query was made by the bench whether there is any change in the accounting system regarding revenue recognition in respect of interest on ICDs and in reply, it was submitted by ld. AR of assessee being Director of the assessee company that the method adopted is same in all the years but the reporting in the two years i.e. year ending as on 31.03.2011 and 31.03.2012 is different because of some confusion. Hence it is seen that the method of accounting adopted by the assessee for accounting of interest on ICDs is same in all these years and at least in two years, the assessee itself has

accepted that the assessee is accounting for the interest on ICDs on cash basis.Now the question is whether such reporting in these two years is correct or not. This is the submission of the assessee that the assessee has written off the interest accrued but not received in the same year and therefore, it should be accepted that the assessee is following mercantile system of accounting in respect of accounting of interest on ICDs also in all the years.

23. In our considered opinion, before holding that the assessee is adopting cash system of accounting in respect of interest income on ICDs as stated by the assessee in the Annual reports of two years i.e. Accounting year ended on 31.03.2011 & 31.03.2012, it has to be ascertained that the interest income has really accrued by applying real income theory as approved by Hon'ble apex court in the case of State Bank of Travancore vs. CIT as reported in 158 ITR 102. In this case, it was held that the concept of reality of the income and the actuality of the situation are relevant factors which go to the making up of the accrual of income but once accrual takes place and income accrues, the same cannot be defeated by any theory of real income. The concept of real income may have to be given precedence in computation of income in a particular case but accrued income cannot be waived as not having accrued to the assessee. In this case, the issue was decided against the assessee and in favour of the revenue because of the facts of that case. As per the facts of that case, it was seen that the assessee neither decided to treat interest income on sticky advances as bad debt nor claims deductions under s. 36(2) but still enters the same with a diminished hope of recovery in the suspense account. Hence, as per this judgment, it was held that real income theory has to be considered but this has to be examined from the facts of each case as to whether the real income has accrued or not and if the real income has accrued then the same has to be brought to tax and the assessee can claim deduction u/s 36 (2) as per law after writing off the same in its books but if it has not accrued and has become irrecoverable even before its accrual, then even under mercantile system of accounting, it cannot be brought to tax because no real income has accrued to the assessee. In the present case, the conduct of the assessee is different. As against debiting the account of the debtor by interest amount and crediting interest

suspense account instead of interest receipt account, in the present case, the assessee has neither debited the account of the debtor nor credited interest account or interest suspense account or any other account by whatever name. In the present case, the case of the assessee is this that the interest income is not receivable at all and therefore, the assessee has passed entries in memorandum books by debiting the debtor and crediting the interest account and before the year end, such entries were reversed and as a result, at the year end, no debit remains in the accounts of the debtors and no credit remains in any account being interest receipt account or interest suspense account or any other account by whatever name. But this claim of the assessee was not examined by the lower authorities that the income has not accrued or arisen and it is irrecoverable since very beginning. Under these facts, we feel it proper that the matter should go back to the file of the AO for a fresh decision. We order accordingly and we set aside the order of CIT (A) on this issue and restore this issue back to the AO for a fresh decision with the direction that the AO should first examine this aspect as to whether the interest income has arisen/accrued or not in the facts of the present case. If the assessee is able to establish that the interest has become irrecoverable before its accrual than it should be accepted that the interest has not accrued and consequently, it cannot be brought to tax even under mercantile system of accounting. But if it becomes irrecoverable after accrual of the income than the same has to be brought to tax in the year of accrual and the assessee may claim deduction as per law u/s 36 (1) (vii) in any year afterwards by writing of the same in its books.

24. The next issue on merit is regarding calculation of exemption u/s. 10AA of IT Act. Regarding this issue, this is the submission of the assessee before us that this issue is relevant for four Assessment Years i.e. 2008-09, 2010-11, 2011-12 & 2012-13. It has been submitted that the AO has reworked the claim of the assessee regarding exemption u/s. 10AA of IT Act on the basis of various additions made by the AO. He submitted that against some of these additions due to which the assessee's claim for exemption u/s. 10AA of IT Act was reduced, relief was allowed by CIT(A) and such relief has become final because no appeal has been filed by revenue against that order of CIT(A) in any of these years. But ld. CIT(A) has not directed the AO to rework the

eligible deduction u/s. 10AA of IT Act after considering the relief allowed by CIT(A). In this regard, we find that in Assessment Year 2008-09, the AO has made addition of Rs. 3871.30 Crores u/s. 68 on account of sales to Excel Goldsmith which was claimed by the assessee as export sale and included in the computation of exemption allowable u/s. 10AA of IT Act. The assessee's claim for deduction / exemption u/s. 10AA of IT Act of Rs. 670.23 Crores was disallowed by the AO. As per the order of ld. CIT(A), it was held that the export proceeds received from M/s. Excel Goldsmith was not explained receipts in the hands of the assessee but were export receipts and hence, the same cannot be added back as income of the assessee. Hence in our considered opinion, the assessee's claim for exemption u/s. 10AA of IT Act is to be reworked in the light of this relief allowed by CIT(A) in these four years. Hence on this issue, we set aside the order of CIT(A) and restore the matter back to the file of AO for fresh decision. The AO should provide reasonable opportunity of being heard to assessee and recompute the amount of deduction / exemption allowable to assessee u/s. 10AA of IT Act in the light of the relief allowed by ld. CIT(A) in these four years. This issue is also decided in favour of the assessee for statistical purposes.

25. The next issue on merit is in respect of loss of gold and this issue is only in one year i.e. Assessment Year 2011-12. In this year, this is the claim of the assessee that at the close of year i.e. as on 31.03.2011, the assessee could not reconcile its physical stock with book stock and it was found that there was a shortage of 99.055 Kgs. of gold in physical inventory as compared to the book inventory. The assessee valued the inventory on the basis of physical inventory found as on 31.03.2011 and in this manner, the inventory valued by the assessee was reduced by an amount of Rs. 19,39,23,044/-. The AO did not agree with this stand of the assessee and made addition of this amount in the income of the assessee for Assessment Year 2011-12.

26. Before us, this is the submission of ld. AR of assessee that the inventory of 99.055 Kgs. of gold which was untraceable was about 0.047% of the total gold transacted during the year and the loss could have been due to various reasons like loss in manufacturing, excess delivery made to clients, short delivery received from clients, regular pilferage or due to any other reason but the fact remained that there was shortage. It is submitted that the AO has erred in saying that the assessee has

not offered any explanation on this issue. The ld. DR of revenue supported the order of AO and CIT(A).

27. We have considered the rival submissions. We find that on page no. 52 of his order, the ld. CIT(A) has stated that as per the AO, the assessee has not been able to substantiate the loss of 99.055 Kgs. of gold. As per ld. CIT(A), he states that the claim of the assessee is not acceptable because 99.055 Kgs. of gold is not a small amount which can just vanish but he has not considered this aspect that this quantity of gold loss of 99.055 Kgs. is only 0.047% of the total gold transaction of the assessee in the present year.Moreover there was a search conducted in the case of the assessee and in spite of that, the revenue could not find out any material to show that the assessee is having any excess gold stock or that there was any evidence found in respect of any unaccounted sale of gold or gold items. Regarding this that the loss of gold could not be substantiated by bringing evidence on record, in our considered opinion, if the assessee is having any evidence in respect of loss of gold, the assessee will not allow such loss to happen. In our considered opinion, in the facts of present case, this loss of 0.047% of the loss of gold in only one year should be allowed in the facts and circumstances of the present case. We order accordingly. This issue on merit is decided in favour of the assessee.

28. The next issue on merit is regarding book profit as determined u/s. 115JB of IT Act. This issue is relevant for 3 Assessment Years i.e. Assessment Years 2012-13, 2013-14 and 2014-15. On this issue, the decision of ld. CIT(A) is as under as per para 11 of his order in Assessment Year 2012-13.

> "***11. Consideration of SEZ Income while computing book profit for the purpose of MAT.***
> *The appellant has claimed that the introduction of proviso to sub section (6) of section 115JB of the Act with regard to the MAT is contrary to the scheme of SEZ and on this point the appellant filed a Writ Petition in the Honorable High Court of Karnataka. Consequent to the orders passed by the Honorable High Court of Karnataka in the Writ Petition the appellant has preferred a Writ Appeal with the Honorable Division Bench of Karnataka and the same is pending for disposal.*
>
> *The appellant disclosed these facts in the computation of income while filing the return of income and did not include the profit earned by it's SEZ Unit while calculating the book profit for the purpose of deciding the Minimum Alternate Tax (MAT).*

In this regard the AO observed in the assessment order as follows,

" Following the amendment to section 115 JB by the Finance Act 2011, sub section (6) to section 115 JB had been introduced and consequently, net profit from SEZ is required to be included in the book profit for calculation of Minimum Alternate TAX (MAT). In A.Y.'s 2012-13, 2013-14 and 2014-15 the assessee earned net profit from it's SEZ Unit but failed to include the same in the book profit for the purpose of MAT u/s 115JB.

In regard, the assessee 's submission is that it has filed a Writ Petition in the WP No. 39358/ 2012 before the Honourable High Court of Karnataka, challenging the constitutional validity of the amendment made in the Finance Act,2011. This stand of the assessee is not acceptable in view of the clear position of law. Accordingly, the book profit for MAT is recalculated as under"

The AO has then proceeded to recalculate the book profit as per the amendment in the Finance Act, 2011 and computed the. income of the assessee accordingly.

I have gone through the details and analysed the stand of the assessee that it has declared in it's return of income that it has not included the profit of the SEZ while calculating the book profit for the purpose of calculation of MAT because it is contrary to the scheme of SEZ and it has challenged the constitutional validity of the respective amendment to the Finance Act, 2011 in the Honorable High Court of Karnataka. The assessee has made this declaration in it's return of income as well as before the AO and also before me.

I have also analysed the stand taken by the AO with regard to the stand of the assessee not being acceptable in the light of the amendment to the Finance Act.

It is true that the Honorable High Court of Karnataka has not passed any final orders in this matter, hence the stand of the assessee in this matter cannot be accepted.

This ground of appeal is hence DISMISSED."

29. From the above Para reproduced from the order of CIT(A), it is seen that the recomputation of book profit u/s. 115JB has been done by the AO in view of proviso to sub-section(6) of section 115JB which has been inserted in the statute book by Finance Act, 2011 w.e.f. 01.04.2012. On this issue, this is the only submission of the assessee that the assessee has challenged the amendment and the matter is pending

in Writ Appeal before the Honorable Division Bench of the High Court of Karnataka but this is not the case of the assessee that any stay has been granted by Hon'ble Karnataka High Court in this regard. Hence in our considered opinion, action taken by the AO in this regard is perfectly in order and in case, the assessee gets any relief from Hon'ble Karnataka High Court, then only, the assessee can get some benefit in this regard. At present, there is no merit in this claim of the assessee. Hence this issue on merit is decided against the assessee.

30. Only one issue is remaining i.e. levy of interest u/s. 234A, 234B and 234C. This issue is consequential. This is the only request of the assessee before us that the AO should be directed to correctly calculate the interest after considering the relief granted by CIT(A) and by the Tribunal. In our considered opinion, no specific direction is required for this because this is admitted legal position that the issue of interest is consequential and if any relief is allowed by CIT(A) and/or Tribunal, while calculating the interest u/s. 234A, 234B and 234C, consequential relief has to be allowed by AO to assessee.

31. In the result, all these seven appeals are partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(SUNIL KUMAR YADAV)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 27th November, 2018.
/MS/

Copy to:

1. Appellant	4. CIT(A)
2. Respondent	5. DR, ITAT, Bangalore
3. CIT	6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.