

.आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
(समक्ष श्री ए.टी. वर्की, न्यायिक सदस्य एवं डॉ ए.एल. सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A.L. Saini, AM]

I.T(SS).A. No. 83/Kol/2018
Assessment Year: 2011-12

Assistant Commissioner of Income-tax, Central Circle-3(2), Kolkata.	Vs.	M/s. Majestic Commercial Pvt. Ltd. (PAN: AAECM6437E)
Appellant		Respondent

&

C.O. No.135/Kol/2018
In I.T(SS).A. No. 83/Kol/2018
Assessment Year: 2011-12

M/s. Majestic Commercial Pvt. Ltd.	Vs.	Deputy Commissioner of Income-tax, Central Circle-3(2), Kolkata.
Cross Objector		Respondent

For the Appellant/Revenue	Shri Vijay Shankar, CIT, Sr. DR
For the Respondent	Shri D. S. Damle, FCA

Date of Hearing	07.02.2020
Date of Pronouncement	20.03.2020

ORDER

Per Shri A.T.Varkey, JM:

The appeal and cross objections are preferred by the revenue and the assessee (as captioned in the cause list above) against the order of theLd. CIT(Appeals) - 21, Kolkata [in short, hereinafter ‘ld. CIT(A)’] dated 22-06-2018 for the Assessment Year 2011-12.

2. Brief facts of the case as noted from the orders of the authorities below are that, for the AY 2011-12, a return of income was filed u/s 139 on 30-03-2012 declaring total income of Rs.75,987/- which was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’). A search u/s 132 was thereafter conducted against Bankatesh Group, to which the assessee belongs, on 29-05-2012 (hereinafter referred to as the ‘first search’). In the course of search, documents belonging to the assessee were found and seized and thereafter proceedings u/s 153C were initiated against the assessee on 08-02-2013. After examining the seized material, books of accounts and documents furnished in support of the return of income, the AO completed the assessment u/s 153C/143(3) for the AY 2011-12 on 30-03-2015. Subsequent thereto, another search u/s 132 was conducted against the Bankatesh Group, on 02-03-2016 (hereinafter referred to

as the 'second search'). As such the assessment for AY 2011-12 completed on 30-03-2015, did not abate consequent to the second search. The AO thereafter initiated proceedings u/s 153A for AY 2011-12 on 05-11-2016 and notices u/s 143(2) & 142(1) of the Act were issued calling for details/information. The AO issued SCN dated 07-12-2017 wherein he extensively extracted the financials of the assessee for FYs 2007-08 to 2009-10 and observed that the share capital of Rs.35.50 crores raised by the assessee in the earlier year/s and its deployment in acquiring shares of other bodies corporate were bogus. The AO mentioned the names of Shri Anand Sharma and Janardan Chokhani in the SCN, who according to him, had provided accommodation entries to the assessee. The AO further observed that the investments allegedly acquired in the years prior to AY 2011/12 were sold by the assessee during the relevant year with the sole purpose to accommodate the unaccounted monies of the assessee, and the sale proceeds were used by the group concerns of the assessee. With these observations, the AO show caused the assessee to explain why the loans and advances of Rs.35,23,90,625/-appearing in the appellant's audited accounts for the year ended 31/03/2011 should not be treated as its unexplained investments. The assessee responded in writing to the SCN, which is placed at Pages 389 to 407 of the Paper Book. The AO however did not agree with the assessee's contention. According to AO the assessee had ostensibly disposed its existing investments and out of the proceeds received it had made alternative investment in form of loans & advances etc. The AO held that the source of investment in loans & advances remained unexplained which was assessed to tax u/s 69 of the Act. In the assessment order, running into 118 pages, the AO extensively reproduced statements of Shri Anand Sharma, Shri Janardan Chowkhani and Shri Neeraj Jain to justify the impugned addition. The AO also set out several flow charts and named them cash trails/billing trails, which according to him, corroborated his conclusion that the assessee had routed its unaccounted monies in the guise of sale of the investments. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A). In his detailed order the Ld. CIT(A) however did not find merit in the addition made u/s 69 of the Act and deleted the same. Aggrieved by the same, the Revenue is in appeal before us. The grounds of appeal preferred by the Revenue are as under:

- 1. The Ld. CIT(A) was not justified in making deletion of Rs. 35,54,34,500/- without appreciating the findings of the AO and the observations made by the AO in the assessment order passed u/s 153A/143(3) of the Income Tax Act, 1961.*

2. *The Ld. CIT(A) was not justified by not considering facts that the assessee company was acquired by the Banktesh Group on 14.05.2010 from the Jama Kharchi entry provider who during the course of statement on oath has accepted to have provided accommodation entries to the assessee group as beneficiary and the MCA data of these companies by using whom the unaccounted money on the assessee group was pumped into the books of accounts of the assessee does not falsify the fact that all the directors of these companies were dummy director and controlled and managed by entry providers.*
3. *The Ld. CIT(A) was not justified by not considering facts that the companies to whom investments (as on 31.03.2010) were sold at cost were also controlled by accommodation entry provider and the identity of these concerns were not proved and the creditworthiness has not been established as during the assessment stage all notices issued to verify the genuineness of transaction returned unserved*
4. *The Ld. CIT(A) was not justified by not considering facts that E-Mail ID which was used by the assessee to file ROC return was also used by the entry operator to file ROC return of the companies controlled by the entry operator.*
5. *The Ld. CIT(A) was not justified by not considering facts that the creditworthiness of the companies (shell companies controlled by entry operator) whose names are appearing in the cash trail and billing (fund) trail has not been established.*

3. The assessee also filed cross objections challenging the validity of the addition made by the AO as well as the assessment order passed u/s 153A of the Act. The cross objections raised by the assessee are as under:

1. *For that on the facts and in the circumstances of the case, the Ld. CIT (A) ought to have held the order passed u/s 153A read with 143(3) to the ab initio void and bad in law.*
2. *For that on the facts and in the circumstances of the case, the Ld. CIT (A) ought to have held the additions, made in the order passed u/s 153A/143(3) for AY 2011-12 to be bad in law in view of the fact no incriminating material or document pertaining to the assessee was either found and / or seized in course of the search.*
3. *For that on the facts and in the circumstances of the case, the Ld. CIT (A) ought to have held the assessment order passed by the AO u/s 153A be held to be bad in law and ab initio void because no search action under section 132 of the I.T. Act, 1961 was conducted by the IT Department against the assessee company.*

4. Assailing the action of the Ld. CIT(A), the Ld. CIT, DR vehemently supported the order of the AO. He submitted that Shri Anand Sharma was an entry operator who had admitted under oath on several dates, that the assessee company was originally controlled and managed by him through dummy directors who functioned as per his directions. Referring to his statement extracted in the assessment order, the Ld DR submitted that the averments of Shri Anand Sharma substantiated the AO's case that the assessee had

availed accommodation entries towards raising equity capital, making investments and thereafter to sell investments through these entry operators. The Ld. CIT, DR argued that the Ld. CIT(A) was unjustified in disregarding the statements of the said entry operators. Referring to the flow charts, which were described as cash trails/billing trails by the AO, the Ld. CIT, DR submitted that some of these charts showed that there were cash deposits at the 5th to 7th layer of the transaction trail which raised serious doubts on the creditworthiness of the purchasers of the investments. He therefore submitted that the AO had conclusively established that the source of investments made by way of loans & advances in AY 2011-12 remained unexplained and hence urged that order of the AO be restored.

5. Per contra the Ld. AR supported the order of the Ld. CIT(A). He pointed out that the Ld. CIT, DR's averment that Shri Anand Sharma had admitted that the assessee company was originally controlled and managed by him through his nominees and that he had provided accommodation entries to the assessee was factually incorrect and the same was not borne out from any incriminating material found in the course of search. He took us through each of the statement of Shri Anand Sharma extracted by the AO in the assessment order to show that nowhere had he implicated the assessee or the Bankatesh Group directly or indirectly. He showed that in his statements, Shri Sharma had explained general modus operandi followed by him for providing accommodation entries but nowhere did he name either the assessee or any person belonging to Bankatesh Group or admitted that he had provided accommodation entries to the assessee. He particularly took us through Pages 15 to 29 of the assessment order to show that the Investigating Officer who had recorded statement of Shri Sharma had raised pointed questions regarding accommodation entries allegedly provided by him to several business houses. While answering these questions Mr. Sharma had admitted of providing accommodation entries to the several business houses named therein. However neither any question of the authorized officer nor any answers of Mr. Sharma even remotely suggested that the assessee or for that matter Bankatesh Group was beneficiary of accommodation entries allegedly provided by Shri Sharma. The Ld. AR thus submitted that both the AO's as well as the Ld. CIT, DR's case which rests solely on the alleged statements of Shri Sharma is devoid of any merit. He further submitted that the transactional charts prepared by the AO and referred to by the Ld. CIT, DR were only a smokescreen. Taking us through the flow charts, the ld. AR showed that not only was the

AO able to identify the persons who purchased the investments sold by the assessee but the AO was also able to ascertain the source as well as source of source of funds. Making reference to the payment trail discussed in the assessment order the Id. AR submitted that the AO had extended payment trails to 5-7 layers after which he allegedly found cash deposits in the bank accounts of some proprietorship concerns. According to him, these facts first proved the source as well as source of source of funds was transacted only through banking system and each party was clearly identifiable. Even with regard to the cash deposits in bank accounts at the end of 5th -7th layer, he stated that no evidence was brought on record by the AO which would even remotely suggested that the cash deposited in the bank accounts of these proprietorship concerns belonged to the assessee and represented unaccounted income of the assessee. He also showed that the AO also did not bring on record any tangible material to prove that the ultimate source of money received by the assessee was the cash deposited in these accounts and but for such cash deposits the assessee would not have received any amount from the purchasers of the shares. He pointed out that identities of these proprietorship concerns were not established nor found mention in the statements of so-called entry operators extracted in the assessment order. He therefore contended that these cash flow charts were nothing but unsubstantiated and unverified allegations of the AO and therefore the Ld CIT (A) rightly allowed relief to the assessee.

6. The Ld. AR also took us through the billing trails extracted by the AO and submitted that in these flow charts there was not even a suggestion that any cash was deposited in any account at any point. Instead the flow charts showed that source of fund identified by the AO was in fact payments made by some well-known companies from their regular bank accounts. He submitted that the AO's conclusion that these well-known companies connived with the assessee for routing its unaccounted monies, was nothing short of a fantastic story, bordering fantasy. He submitted that though the AO passed a lengthy order he was not able to bring on record any clinching material which showed that the payments made by these well-known companies were treated to be bogus or fictitious in their respective income tax assessments, from which one may draw adverse inference against the assessee. He thus contended that even the billing trails prepared by the AO did not in any manner supported his conclusion that the monies received by the assessee from sale of investments was assessee's own undisclosed income.

7. In support of the cross objections, the Ld. AR submitted that the name of the assessee did not feature in any of panchanamas drawn upon conclusion of the search and therefore in absence of any evidence to show that search u/s 132 was carried out against the assessee the initiation of proceeding/s 153A and consequent order passed u/s 153A/143(3) was bad in law and ab initio void. He further submitted that the none of the documents bearing identification marks BC/1 to BC/6, BUL/1 to BUL/5 and AB/1 which were seized by the Investigating Authorities in the course of search contained any incriminating material which could even remotely be linked to the addition of Rs.35,54,34,500/- made in the assessment order.

8. He further submitted that statements of so-called entry operators extracted in the impugned order were recorded by different officers of Income-tax Department in the year 2013/2014 and therefore it could not constitute incriminating material found in the course of search conducted on 02-03-2016 consequent to which impugned assessment proceedings emanated. The Ld AR took us through the assessment order to show that in the order the AO had admitted that these statements were obtained from other departmental officials, which showed that these were not collected or found in the course of search conducted on 02-03-2016. He further pointed out that these statements were also available to the AO who had framed earlier orders u/s 153C/143(3) for AYs 2007-08 to 2012-13 on 30-03-2015. However since these statements did not contain any material incriminating the assessee of any wrong doing, no adverse inference was drawn either against the share capital raised by the assessee or the deployment of funds in the form of investments or in respect of assessee's transactions involving transposition of investments during the previous year relevant to AY 2011/12. He thus submitted that in absence of any incriminating material found in the course of search and in view of the fact that the income-tax assessment for AY 2011-12 was unabated as on 2/3/2016, the addition made by the AO u/s 68 was legally unsustainable.

9. In his rejoinder the Ld. CIT, DR furnished the written submissions in which he relied on several judicial precedents to support his contention that an addition made by the AO, which is not based on any incriminating material found in the course of search, is legally sustainable. The Ld. CIT, DR further requested that the Revenue should be granted time to furnish a factual report rebutting the contentions put forth by the Ld. AR against the merits of the additions as well as in support of their cross objections. On being

permitted to do so, the Ld CIT DR furnished the AO's report dated 05-02-2020 along with supportings on 07-02-2020 which is dealt with in the subsequent paragraphs.

10. We have carefully considered the rival submissions and perused the material placed on our record by both the parties. Since the facts concerning the grounds raised in appeal and cross objections are common, they are being disposed-off together. The facts of the case have been extensively discussed both by the AO and Ld. CIT(A) but at the cost of repetition, we deem it fit to recapitulate the same for better understanding of the issues under our adjudication. The assessee a private limited company, was incorporated in 2006. In AY 2007-08 it raised equity capital of Rs.35.55 crores. Out of the funds raised from issue of equity shares the assessee acquired shares of other bodies corporate at the cost of Rs.35.50 crores till 31-03-2007. From the documents placed at Pages 225 to 261 of the paper book, it is noted that the assessee's case for AY 2007-08 was selected for scrutiny. On perusal of the copies of the documents furnished before the AO in the course of assessment proceedings we note that the source monies received from the subscribers to share capital was examined after conducting enquiry from all share subscribers u/s 133(6) of the Act. For such reason in the assessment completed u/s 143(3) of the Act, no adverse inference was drawn in respect of the share capital raised or its deployment in shares of other bodies corporate. Investments in shares were continued to be made and held in the subsequent years as well and principal source of acquiring the shares, was the equity capital raised in FY 2006-07. First search was conducted on Bankatesh Group on 29-05-2012. Pursuant thereto proceedings u/s 153C were conducted against the assessee for the AYs 2007-08 to 2011-12 vide notices dated 08-02-2013. In the assessments u/s 153C/143(3) for AYs 2007-08 to 2011-12, no adverse inference was drawn by the AO's predecessor regarding the genuineness of the share subscriptions received which was the primary source of the funds for making investments inter alia including the loans & advances. Fund deployment position as it prevailed on 31-03-2007 continued thereafter until 31-03-2010, which is evident from the financials extracted by the AO in the assessment order. From the copies of the orders dated 30-03-2015 passed u/s 153C/143(3) for AYs 2008-09, 2009-10 & 2010-11 it is noted that no adverse inferences were drawn by the AO in any of these years nor any doubt was cast regarding the genuineness of the investments held or the sources of making investments in the shares which the assessee held as on 31-03-2010. During FY 2010-11 the assessee sold the investments held as on 31-03-2010 and received proceeds of Rs.35,54,34,500/- which

were deposited in its Bank and thereafter again deployed in alternative modes like loans & advances. No adverse inference was drawn either with regard to sale of investments or its subsequent utilization in the order dated 30-03-2015 passed u/s 153C/143(3) for the AY 2011-12.

11. In light of the facts as narrated in the preceding paragraph, we note that on the date of second search i.e. 02-03-2016, income tax assessment for AY 2011-12 was unabated. The provisions of Section 153A, forming part Chapter XIV of the Act contain special provisions for completing assessments in case of Search conducted u/s 132 or requisitions u/s 132A. These provisions can be invoked only in cases where the Income-tax Department has exercised its extra ordinary powers of conducting search and seizure operations after complying with stringent pre-conditions prescribed in Section 132 of the Act. We do not deny the Id. CIT, DR's contention that once a search u/s 132 is conducted against a person then irrespective whether any incriminating material is found, the AO is required proceed against such person for completing the assessments u/s 153A of the Act for the specified six assessment years. To this extent, there is no quarrel. However we find that Section 153A itself creates the differentiation amongst specified six assessment years depending whether prior to search, the proceedings are abated or not. We note that the relevant section itself clarifies that where an assessment was already completed against an assessee and any appeals or further proceedings are pending then such appeals or other proceedings do not abate. We therefore find that merely because an assessee is subjected to search u/s 132, such fact by itself does not give carte blanche to the Department to subject such an assessee to the rigors of the assessment afresh for all the six years. It is for this reason that the Parliament in its wisdom has categorically created two classes among the six years, (a) un-abated assessment and (b) abated assessments. Consequent to a search conducted u/s 132 of the Act, the AO is required to issue notices u/s 153A to assess the income of the assessee for six assessment years preceding the date of search. These six assessment years comprise of assessments which are not abated and assessments which are pending on the date of search and therefore it is treated to be abated. In case of abated assessments, the AO is free to frame the assessment in regular manner and determine the correct taxable income for the relevant year inter alia including the undisclosed income, having regard to the provisions of the Act. However, in relation to unabated assessments, which were not pending on the date of search, there is an embargo on the powers of the AO. In case unabated assessments, the AO can re-assess

the income only to the extent and with reference to any incriminating material which the Revenue has unearthed in the course of search. Merely because an assessee is subjected to search, he cannot be placed on a different pedestal or put in a more disadvantageous position than an assessee who is not subjected to search unless in the course of search some incriminating documents or evidence or information is gathered by the Investigating authorities so as to vest the AO with the necessary powers to make additions to the total income in relation to assessments which did not abate on account of search. Considering these aspects the Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla reported in (2016) 380 ITR 573 (Del) held as under:-

“37. On a conspectus of section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the Ld AOs as a fresh exercise.

The Ld AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The Ld AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Ld AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to complete assessment proceedings.

Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the Ld AO.

Completed assessments can be interfered with by the Ld AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered

in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

38. The present appeals concern AYs 2002-03, 2005-06 and 2006-07, on the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

12. We find that the Hon'ble Delhi High Court while adjudicating the appeal in the case of CIT vs Kabul Chawla (2016) 380 ITR 573 had judicial note of host of the earlier decisions in the cases of CIT vs Anil Kumar Bhatia reported in (2013) 352 ITR 493 (Del) ; CIT vs Chetan Das Lachman Das reported in (2012) 211 Taxman 61 (Del HC) ; Madugula Venu vs DIT reported in (2013) 215 Taxman 298 (Del HC) ; Canara Housing Development Co. vs DCIT reported in (2014) 49 taxmann.com 98 (Kar HC) ; Filatex India Ltd vs CIT reported in (2014) 229 Taxman 555 (Del HC) ; Jai Steel (India) vs ACIT reported in (2013) 219 Taxman 223 (Del HC) ; CIT vs Murli Agro Products Ltd reported in (2014) 49 taxmann.com 172 (Bom HC) ; CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd reported in (2015) 374 ITR 645 (Bom HC) and All Cargo Global Logistics Ltd vs DCIT reported in (2012) 137 ITD 287 (Mum ITAT) (SB). We also find that Revenue's SLP against against the decision of the Hon'ble Delhi High Court in the case of Kabul Chawla (Supra) was dismissed by the Hon'ble Apex Court which is reported in 380 ITR (St.) 4 (SC).

13. We also find that the Hon'ble Jurisdictional High Court in the case of Principal CIT vs M/s Salasar Stock Broking Ltd in G.A.No. 1929 of 2016 ITAT No. 264 of 2016 dated 24.8.2016 endorsed the aforesaid view of Hon'ble Delhi High Court in Kabul Chawla's case. It also placed reliance on its own decision in the case of CIT vs Veerprabhu Marketing Ltd reported in (2016) 73 taxmann.com 149 (Cal HC) and held as follows:

"Subject matter of challenge is a judgement and order dated 18th December, 2015 by which the learned Tribunal dismissed an appeal preferred by the Revenue registered as ITA No.1775/Kol/2012 and allowed a cross-objection registered as CO-30/Kol/2013 both pertaining to the assessment year 2005-06. The learned Tribunal was of the opinion that the Assessing Officer had no jurisdiction under Section 153A of the Income Tax Act to reopen the concluded cases when the search and seizure did not disclose any incriminating material. In taking the aforesaid view, the learned Tribunal relied upon a judgement of Delhi High Court in the case of CIT[A] vs. Kabul Chawla in ITA No.707/2014 dated 28th August, 2014. The aggrieved Revenue has come up in appeal.

Mr. Bagaria, learned Advocate appearing for the assessee, submitted that more or less an identical view was taken by this Bench in ITA 661/2008 [CIT vs. Veerprabhu Marketing Ltd.] wherein the following views were expressed -

"We are in agreement with the views expressed by the Karnataka High Court that incriminating material is a pre- requisite before power could have been exercised under section 153C read with section 153A.

In the case before us, the assessing officer has made disallowances of the expenditure, which were already disclosed, for one reason or the other. But such disallowances were not contemplated by the provisions contained under section 153C read with section 153A. The disallowances made by the assessing officer were upheld by the CIT(A) but the learned Tribunal deleted those disallowances."

In that view of the matter, we are unable to admit the appeal. The appeal is, therefore, dismissed."

14. In his written and oral submissions, the ld. CIT, DR relied on several judgments of the Hon'ble High Courts justifying addition made in the order u/s 153A for the AY 2011-12 which on the date of search did not abate. After careful perusal of each judgment relied upon by the Ld. CIT, DR in his submissions but having regard to the specific facts involved in the assessee's case, we find that none of the judgments advance the revenue's case since the factual and legal matrix of the present case is distinguishable. For the following reasons therefore, we find that the Revenue's case is not furthered by the judgments relied upon by the Ld. CIT, DR.

(A) In the case of Sunny Jacob Jewelers and Wedding Centre Vs DCIT (362 ITR 664), the facts were that the assessee firm conducted business of manufacture and sale of gold jewellery from six business concerns. In the course of search evidence was found that the assessee would make actual sales by issue of estimate slips and in support of such fact corroborative statements of cashier and staff was collected by the Department. Material found in the course of search primarily concerned AY 2008-09. It was further observed by the AO that Commercial Tax Department had collected similar information for the year 2006 as well. The AO accordingly initiated proceedings u/s 153A for all six assessment years preceding the date of search. The question posed before the Hon'ble High Court was whether in absence of any incriminating material found in relation to all six assessment years, the AO was justified in initiating assessment proceedings u/s 153A for all the six years. On these facts the Hon'ble High Court observed that there was no prohibition or embargo on the Department to collect information and evidence for each and every year for the six previous years in order to initiate proceedings under section

153A of the Act. Answering this question is favour of the Revenue, the Hon'ble Kerala High Court upheld the initiation of proceedings u/s 153A for all six years but remitted the matters back to the file of the AO for framing fresh assessments considering the evidences and statements gathered in the course of search. In the present case the Ld. CIT(A) has nowhere held that the initiation of proceeding u/s 153A for the AY 2011/12 was invalid. He deleted the addition in view of the fact that no worthwhile material or evidence was found and seized in the course of search or was brought on record by the AO which could persuade him to uphold the AO's order. From the order impugned in the appeal we note that nowhere in the assessment order, AO was able to point out that any particular incriminating document or evidence found in the course of search on the basis of which the addition on account of unexplained investment could justifiably be made. We therefore find that the on the facts and the issue involved in the present appeal, the judgment of the Hon'ble Kerala High Court was not applicable.

(B) In the case of Dayawanti Gupta Vs CIT reported in 390 ITR 496, the additions were made on the basis of the admission made by the assessee's son u/s 132(4) with reference to incriminating material found in the course of search. Assessee's case before the Hon'ble Delhi High Court was that the statement admitting additional income was not given by her. She had categorically mentioned that she did not have her own source of income and that she was a proprietor of a concern only on paper. On these facts the Hon'ble High Court held that it was not in dispute that in course of search, incriminating material in relation to out of books turnover was found and with reference thereto the statement of the assessee's son was recorded in which he had admitted of earning undisclosed income. In the circumstances when the assessee was the owner of the proprietary concern which was carrying on the business, the Court upheld the Revenue's action of making addition on account of profits from such undisclosed business transactions. We however find that in the present case neither the assessee nor any of its directors have admitted of earning any undisclosed income nor in the impugned order the AO has brought on record any tangible incriminating material which was found in the course of search with reference to which the addition made can be justified. For these reasons therefore the judgment of the Hon'ble Delhi High Court is not applicable.

(C) In the case of B Kishore Kumar Vs DCIT, reported in 229 Taxman 614, it was found by the Hon'ble Madras High Court that in the course of search the assessee himself

stated in his sworn statement u/s 132(4) with reference to loose papers found in the course of search from his premises that he had separate business income which was not included in his returns and outstanding loans were to be recovered with interest. The Court thus found that the assessee himself had made a clear admission with reference to incriminating evidence found during the search and therefore the addition with reference to assessee's own statement was held to be justifiable in the assessment framed u/s 153A of the Act. In the present case no incriminating material was found from the assessee nor any person belonging to Bankatesh Group had admitted in his statement any undisclosed income with reference to any material or evidence found in the course of search. On these facts therefore the judgment of the Hon'ble Madras High Court has no application.

(D) In the case of CIT vs S. Ajit Kumar, which is reported in 404 ITR 526, along with the search u/s 132 against the assessee, simultaneous survey proceedings were conducted against the assessee's contractor and the interior decorator who had constructed the assessee's house. In the statements recorded u/s 133A, these connected persons had admitted of receiving payments in cash which were not found recorded in the books of the assessee. On these facts and evidences the question arose whether any addition was permissible while framing the assessee for the block period. Although the Hon'ble Apex Court upheld the addition made, it also held that, *'It is a cardinal principle of law that in order to add any income in the block assessment, evidence of such must be found in the course of the search under Section 132 of the IT Act or in any proceedings simultaneously conducted in the premises of the assessee, relatives and/or persons who are connected with the assessee and are having transaction/dealings with such assessee.'* Applying this principle, the Court held that since in the simultaneous proceedings conducted against connected parties, with whom the assessee had transactions, evidence was found regarding undeclared payments, the assessment of undisclosed income was justified. We however note that no proceedings were simultaneously conducted against the so-called entry operator Shri Anand Sharma nor any documentary evidence supporting assessee's transactions with any of the entry operators was found from the assessee's premises during the course of search. We therefore find that the facts of the present case were materially different from the facts before the Hon'ble Apex Court in the case of S. Ajit Kumar (supra) and in that view of the matter the said judgment does not have any application.

(E) As regards the Id. CIT, DR's reliance on the judgment of the Hon'ble Allahabad High Court in the case of Raj Kumar Arora Vs CIT (367 ITR 517), we find that in the said judgment, the Hon'ble High Court simply followed the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Anil Kumar Bhatia (supra). The decision of the Hon'ble Delhi High Court in that case was however subsequently distinguished by the same Court in its later judgment in the case of CIT Vs Kabul Chawla (supra). The judicial principles to be applied in the matter of framing of assessments u/s 153A for unabated years have been elaborately laid down in the said later judgment, which we have already set out earlier. We therefore hold that this decision also doesn't help the cause of the Revenue.

15. On the contrary we note that the issue involved in the present appeal appears to be answered by the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Best Infrastructure (India) Pvt Ltd reported in 397 ITR 82. In this case along with assessee's search, simultaneous search was also conducted upon Mr. T who admitted to providing accommodation entries to the assessee in form of share application monies, in lieu of cash. Relying on the statement of Mr. T, the AO made additions u/s 68 in the assessments framed u/s 153A for unabated AYs 2005-06 to 2009-10. On appeal the Hon'ble High Court reiterated the settled legal position that unless there is incriminating material qua each of the AYs in which additions are sought to be made, pursuant to search and seizure operation, the assumption of jurisdiction under Section 153A of the Act would be vitiated in law. In view of the aforesaid legal position, the Hon'ble High Court observed that the director of the assessee had admitted undisclosed income only in relation to the year in which search was conducted and no income was admitted in relation to any of the earlier six years. It further observed that no incriminating material was found from the assessee's premises which could justify the additions made u/s 68 of the Act. As regards the statement of Mr. T, the Hon'ble High Court noted that that not only the assessee had denied not knowing the said person but even the Revenue never afforded the opportunity of his cross examination to the assessee. It was further observed that Mr. T had also subsequently retracted his statement. For the reasons aforesaid, the Hon'ble High Court held that the statement of Mr. T could not be considered to be incriminating evidence justifying the inference against the assessee in relation to unabated assessment. Applying the ratio laid down in said judgment to the facts of the present case, we find that the assessee's case is on a much better footing. In the first instance we note that no

simultaneous search or survey proceedings were carried out against Mr. Anand Sharma when the second search was conducted against the assessee in March 2016. We further find that nowhere in the statements of so-called entry operators they had admitted of providing accommodation entries to the assessee during the relevant year. In fact we find that prior to the completion of assessment u/s 153A on 31-12-2017, the AO himself never personally examined any of the so-called entry operators nor was opportunity of cross examination afforded to the assessee though the addition was justified solely with reference to their so-called statements. On the contrary we find that although the statements of the so-called entry operators recorded in 2013 and 2014 were available with the AO's predecessor who completed the assessments u/s 153C on 30-03-2015, he did not find that the said statements constituted any incriminating evidence found in the course of search and therefore no adverse inference was drawn with reference to the said statement. Having regard to these facts, we therefore find that the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Best Infrastructure (India) Pvt Ltd (supra) is more appropriate in deciding the present appeal.

16. Considering the decisions of the judicial authorities on the subject, particularly the decision of Hon'ble Calcutta High Court in the case of PCIT vs Salasar Stock Broking Ltd. (supra) which is binding upon this Tribunal, we hold that in the case of unabated assessments of an assessee, no addition is permissible in the order u/s 153A unless it is based on any incriminating material found during the course of search.

17. In view of the above legal position, let us now proceed to examine whether the income which the AO assessed in the order impugned in this appeal was based on or made with reference to any incriminating document found in the course of search and therefore would justify the addition made u/s 69 of the Act. On perusal of the panchnamas enclosed at Pages 316 to 344 of the paper book, it was noted that documents bearing identification mark BC/1 to BC/6, BUL/1 to BUL/5 and AB/1 were seized by the Investigating Authorities. After going through the contents of these documents, and also the summary chart placed at Pages 345 to 350 of the paper book explaining the contents of the seized documents, it is noted that none of the material seized can be said to be incriminating in nature or which would even remotely suggest that the source of the investments made in AY 2011-12 remained unexplained. When this factual aspect was put to the notice of the Ld. CIT, DR, he furnished the AO's report dated 05-02-2020

along with which the AO furnished document printed from path D:/BC HD1/BANKTESH GR_57_Burtolla St/Prakash/Balance Sheet/Majestic Party. By making reference to this document the AO claimed that all the investments were sold through journal entry and that no transactions were conducted through the banking channel which according to him proved that in reality neither the investments existed nor were they actually sold during the year. The relevant document furnished by the AO in his report is reproduced hereunder:

D:\B5 HD 1\BANKTESH GR_57_Burtolla St\prakash\e\Balance Sheets\Majestic party
Day Book 1-Apr-2010 to 31-Mar-2011

Date	Particulars	Vch Type	Debit Amount		Credit Amount	
			Inwards Qty	Outwards Qty	Inwards Qty	Outwards Qty
5/19/2010	Chandraghanta Traders Pvt. Ltd. Abhishek Polyplast Pvt. Ltd.-I Gulmohar Builders Pvt. Ltd.-I	Journal	7500000.00			2500000.00 5000000.00
5/28/2010	Bank Charges Union Bank of India	Payment	50.00			50.00
6/5/2010	Jeenmata Suppliers Pvt. Ltd. Ajay Software Pvt. Ltd.-I Aditya Financial Consultants Pvt. Ltd.-I	Journal	16000000.00			11000000.00 5000000.00
6/15/2010	Audit Fees Payable Cash	Payment	1100.00			1100.00
6/19/2010	Chandraghant Commerce Pvt. Ltd. Ajay Software Pvt. Ltd.-I	Journal	7500000.00			7500000.00
6/22/2010	Jeenmata Merchants Pvt. Ltd. Ajay Software Pvt. Ltd.-I Aditya Financial Consultants Pvt. Ltd.-I Gulmohar Power & Fuel Pvt. Ltd.-I Arindam Sekhar Garments Marketing Pvt. Ltd.-I	Journal	14500000.00			7000000.00 1000000.00 500000.00 6000000.00
8/11/2010	Maniratan Investment Advisory Pvt. Ltd. Gulmohar Enclave Pvt. Ltd.-I	Journal	10000000.00			10000000.00
8/21/2010	Chandraghanta Financial Consultants Pvt. Ltd. Gulmohar Builders Pvt. Ltd.-I	Journal	8500000.00			8500000.00
8/28/2010	Bank Charges D C B	Receipt		1564.00		1564.00
8/30/2010	Bank Charges D C B	Payment	460.00			460.00
8/30/2010	Bank Charges D C B	Payment	552.00			552.00
8/30/2010	Bank Charges D C B	Payment	552.00			552.00
10/1/2010	Filling Fees Cash	Payment	500.00			500.00
10/15/2010	Compliance Fees Payable Cash	Payment	1100.00			1100.00
10/21/2010	Filling Fees Cash	Payment	500.00			500.00
11/27/2010	Filling Fees Cash	Payment	500.00			500.00
12/1/2010	Virat Trading Pvt. Ltd. Bhaneshwari Dealcom Pvt. Ltd.I Eastern Tea Traders Pvt. Ltd.-I Manish Merchants Pvt. Ltd.-I Jhilmil Traderlink Pvt. Ltd.-I Jain Advertising Seervices Pvt. Ltd.-I Fav Starwell Properties Pvt. Ltd-I Debvjani Estates Pvt. Ltd.-I	Journal	34500000.00			3500000.00 1000000.00 20000000.00 7500000.00 1000000.00 1000000.00 500000.00
12/1/2010	Om Commosales Pvt. Ltd.	Journal	39000000.00			

	Pawanputra Advertising Pvt. Ltd.-I		40000.00
	Gulmohar Power & Fuel Pvt. Ltd.-I		7000000.00
	Abhishek Polyplast Pvt. Ltd.-I		3900000.00
	Ajay Software Pvt. Ltd.-I		70000.00
	Arindam Sekhar Garments Marketing Pvt. Ltd.-I		4250000.00
	Boon Valley Traders Pvt. Ltd.I		900000.00
	Gulmohar Enclave Pvt. Ltd.-I		5070000.00
	Confident Distributors Pvt. Ltd.-I		120000.00
	Gulmohar Tower Pvt. Ltd.-I		7000000.00
	Harish Tie-Up Pvt. Ltd.-I		1800000.00
	Kamal Kunj Commodities Pvt. Ltd.-I		4850000.00
	Manish Merchants Pvt. Ltd.-I		3600000.00
	Mgv Properties Pvt. Ltd.-I		100000.00
	Moran Plant & Machinery Pvt. Ltd.-I		300000.00
12/8/2010	Dream Trexim Pvt. Ltd.	Journal	22000000.00
	Manish Merchants Pvt. Ltd.-I		22000000.00
12/10/2010	Bonus Trexim Pvt. Ltd.	Journal	6000000.00
	Parasramka Holdings Pvt. Ltd.-I		5500000.00
	Mgv Properties Pvt. Ltd.-I		500000.00
12/15/2010	Jwalaji Commotrade Pvt. Ltd.	Journal	21000000.00
	Priti Tradefin Pvt. Ltd.-I		1000000.00
	Pawanputra Advertising Pvt. Ltd.-I		16900000.00
	Moran Plant & Machinery Pvt. Ltd.-I		3100000.00
1/1/2011	Rangmahal Distributors Pvt. Ltd.	Journal	5500000.00
	Pawanputra Advisory Services Pvt. Ltd.-I		500000.00
	Pingal Sales Pvt. Ltd.-I		5000000.00
1/5/2011	Quest Infrastructure Pvt. Ltd.	Journal	47200000.00
	Puja Promoter Pvt. Ltd.-I		47200000.00
1/10/2011	Ranisati Projects Pvt. Ltd.	Journal	110800000.00
	Puneet Oils & Chemicals Pvt. Ltd.-I		6000000.00
	RKS Consutraction Pvt. Ltd.-I		1100000.00
	Sadabahar Commodities Pvt. Ltd.-I		3350000.00
	SRB Agricultural Pvt. Ltd.-I		10500000.00
	Sri Ram Dealcom Pvt. Ltd.-I		5900000.00
	Tanish Infotech Pvt. Ltd.-I		5850000.00
	Tanish Tradecom Pvt. Ltd.-I		7400000.00
	Trimurti Advisory Services Pvt. Ltd.-I		985000.00
	Zebra Consultancy Pvt. Ltd.-I		6500000.00
	Puja Promoter Pvt. Ltd.-I		28055000.00
	Pawanputra Advertising Pvt. Ltd.-I		35160000.00
3/8/2011	Virat Solution & Services Pvt. Ltd.	Journal	5434500.00
	Vishakha Technologies Pvt. Ltd.-I		5000000.00
	Puja Promoter Pvt. Ltd.-I		434500.00
3/18/2011	Bank Charges	Payment	295.00
	Union Bank of India		295.00
3/21/2011	Bank Charges	Payment	90.00
	Union Bank of India		90.00
3/21/2011	Bank Charges	Receipt	295.00
	Union Bank of India		295.00
3/31/2011	Printing & Stationery	Payment	764.00
	General Exp.		1211.00
	Telephone Exp.		355.00
	Cash		2330.00
3/31/2011	Audit Fees	Journal	1100.00
	Audit Fees Payable		1100.00
3/31/2011	Compliance Fees	Journal	1100.00
	Compliance Fees Payable		1100.00
3/31/2011	Depreciation	Journal	7668.00
	Furniture		7668.00

18. In his rebuttal the Ld. AR however submitted that the document referred in the AO's submission was part of the assessee's regular books for the FY 2010-11. He submitted that since the assessee had sold its investments, appropriate entries in its books

were routed through journal day book which was part of the assessee's books of account maintained regularly. He further drew our attention to the AO's order to show that nowhere therein the AO at any place had claimed that the document bearing identification mark D:/BC HD1/BANKTESH GR_57_Burtolla St/Prakash/Balance Sheet/Majestic Party was incriminating in nature or that the addition was made with reference to said document. Document, referred by the AO in his report dated 05-02-2020, was never mentioned as incriminating in any of the notices issued u/s 142(1) or the show cause notices issued on 27-11-2017 & 07-12-2017 or in the order impugned. We therefore find merit in the Ld. AR's submission that in the face of his contention that no incriminating document was found in the course of search justifying the addition made, the AO at the stage of second appeal invented the said material seized in the course of search and touted it to be incriminating evidence on the basis of which addition was justifiable. By relying on the said document, which is seen to be entries made in the journal / day book, a case is made out by the AO in his report claiming that the transactions involving sale of investments were made through mere journal entries without there being actual realization of monies. We however find that submission of the AO to the above effect is not only contradictory to the findings in the assessment order but self-defeating as well. In the impugned order the AO made out a case that in the garb of sale of investments, the assessee had introduced its unaccounted monies with the help of Shri Anand Sharma, who provided accommodation entries for sale of shares. In support of such conclusion, apart from his sworn statement, the AO relied on the cash trail charts extracted at Pages 78 to 83 of the assessment order. Similarly the AO also alleged that the assessee had availed accommodation entries in the form of bogus billing allegedly carried out by some bodies corporate and cash generated from such billing trail was brought back into the assessee's accounts. At the stage of hearing of this appeal however the AO has tried to make out altogether a new case by stating that, *the assessee sold entire investments through journal entry and no transactions were entered through bank*. We therefore do not find merit in the contradictory submissions made at this stage.

19. On perusal of the document annexed to the AO's report submitted before us, we find it to be a print-out of the day book from the regular books maintained electronically by the assessee. On examination of the entries in the document, it is noted that the ledger inter alia contains journal entries passed during FY 201/11 on share investments sold to several parties. The entries in the day book tallied with the sale of investments enlisted

by the AO in the impugned order. The said ledger is therefore prima facie part of the regular books of the assessee having no incriminating contents whatsoever. We further note that even the Ld. CIT, DR was unable to correlate or link as to how the contents of this statement led to unearthing of unexplained investment by the AO. We also note that the investments which were sold during the relevant year and which find mention in the document D:/BC HD1/BANKTESH GR_57_Burtolla St/Prakash/Balance Sheet/Majestic Party reflected in the Investment Schedule appearing in the assessee's balance sheet as on 31-03-2010. In the assessment orders under Section 153C dated 30-03-2015 and 153A dated 31-12-2017 for the AY 2010-11, no finding was recorded either by the AO's predecessor or by the AO himself that the investments held by the assessee as on 31-03-2010 were bogus or fictitious. We therefore find that information contained in the referred document was part of the regular books of the assessee and therefore by no stretch of imagination be construed to be 'incriminating' in nature. Moreover even the AO in his report dated 05-02-2020 has not specified as to how this material was considered by him to be 'incriminating' in nature or as to how this document formed the basis for the addition made u/s 69 of the Act. Before we proceed further, it is first relevant to understand as to the meaning of the expression "incriminating material" or evidence. There can be several forms of incriminating material or evidence. In order to constitute an incriminating material or evidence, it is necessary for the AO to establish that the information, document or material, whether tangible or intangible, is of such nature which incriminates or militates against the person from whom it is found. Some common forms of incriminating material are for instance, where the search action u/s 132 of the Act reveals information (oral or documented) that the assets found from the possession of the assessee in form of land, building, jewellery, deposits or other valuable assets etc. do not corroborate with his returned income and/or there is a material difference in the actual valuation of such assets and the value declared in the books of accounts. Further, incriminating evidence may also constitute of information, tangible or intangible which suggests or leads to an inference that the assessee is carrying out certain activities outside books of accounts which is not disclosed to the Department. Incriminating material also comprises of document or evidence found in search which demonstrates or proves that what is apparent is not real or what is real is not apparent. In other words, if an assessee has recorded transactions in his books or other documents maintained in the ordinary course then in order to hold the material or evidence found in

the course of search to be incriminating in nature, then seized document should lead to conclusion that the entries made in the books of the assessee do not represent true and correct state of affairs. Rather the evidence unearthed or found in the course of search should establish that the real transaction of the assessee was something different than what was recorded in the regular books and therefore the entries in the books did not represent true and correct state of affairs i.e. the assessee has undisclosed income/expense outside the books or that the assessee is conducting income earning activity outside the books of accounts or all the revenue earning activities are not disclosed to the tax authorities in the books regular maintained or the returns filed with the authorities from time to time etc. The nature of the evidence or information gathered during the search should be of such nature that it should not merely raise doubt or suspicion but should be of such nature which would prima facie prove that real and true nature of transaction between the parties is something different from the one recorded in the books or documents maintained in ordinary course of business. In some instances, the information, document or evidence gathered in the course of search, may raise serious doubts or suspicion in relation to transaction reflected in regular books or documents maintained in the ordinary course of business, but in such case the AO is not permitted to straightaway treat such material to be 'incriminating' in nature unless the AO thereafter brings on record further corroborative material or evidence to substantiate his suspicion and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs. Until these conditions are satisfied, it cannot be held that every seized material or document is incriminating in nature justifying the additions in unabated assessments. For the reasons already discussed earlier, we thus hold that the seized document identified as D:/BC HD1/BANKTESH GR_57_Burtolla St/Prakash/Balance Sheet/Majestic Party was not incriminating. Instead it was a print out of the day book from the regular books of accounts.

20. We may, in this regard, gainfully refer to the decision of this Tribunal in the case of Daffodil Vincom Pvt Ltd Vs DCIT in ITA (SS) Nos. 95 & 96/Kol/2018 dated 28.06.2019. In the decided case the AO had added the share capital raised by the assessee in AYs 2011-12 & 2012-13 by way of unexplained cash credit u/s 68 of the Act in the assessments framed u/s 153A of the Act. Before the Tribunal the assessee contended that the addition u/s 68 was not based on any incriminating material found in the course of search and therefore the additions made in unabated assessments of AYs 2011-12

&2012-13 were unsustainable. Per contra the Revenue contended that the additions were made with reference to documents ID Marked SFA/01 and SFA/02 which were seized in the course of search and hence urged that the AO had rightly made the impugned addition. Upon examining the contents of the seized material referred to by the Revenue, this Tribunal noted that it comprised of bank account statements which formed part of the regular books of the assessee and these accounts were disclosed to the Department prior to the search. The Tribunal observed that indeed these documents were found during the course of search and seizure operation but for such reason alone these could not be held as incriminating in nature justifying the impugned addition. It was noted that all the entries of deposits and withdrawals of the said bank account statement formed part of the regular books of account and therefore these documents did not constitute incriminating evidence which could be linked to the impugned additions. The Tribunal therefore, in absence of any incriminating material found in the course of search, deleted the additions made in the orders u/s 153A in the unabated assessments for AY 2011-12 & AY 2012-13. For arriving at this conclusion this Tribunal relied on the following observations of theco-ordinate Bench in the case of M/s A ONE Infra Projects Pvt. Ltd Vs DCIT in IT(SS) A No. 91/Kol/2018.

“8. In the present case, the addition of Rs.15,00,000/- by treating the share application money as unexplained cash credit under section 68 was made by the Assessing Officer in the assessment completed under section 153A of the Act on the basis of Bank account found during the course of search and since the said Bank account as well as the transactions reflected therein were duly disclosed by the assessee in its return of income originally filed for the year under consideration, we find ourselves in agreement with the contention of the ld. Counsel for the assessee that the same cannot be treated as incriminating material found during the course of search.”

21. We note that similar issue also came up for consideration before the Delhi Bench of this Tribunal in the case of HBN Insurance Agencies Vs ACIT in ITA No. 3783/Del/2014 dated 23.12.2019. In this case the AO had added cash deposits made in bank account in the assessments framed u/s 153A of the Act. On appeal the assessee contended that the additions made u/s 68 were not based on any incriminating material found in the course of search whereas the Revenue claimed that the balance sheet, bank statements etc. found and seized in the course of search constituted ‘incriminating material’ which justified the impugned addition. The Hon’ble Tribunal rejected the Revenue’s argument and deleted the addition by observing as under:

“In our considered opinion, the profit and loss account and balance sheet of the assessee company, by any stretch of imagination, cannot be considered as incriminating material. It is also not the case of the Revenue that the bank accounts were unearthed during the search operation. On these facts, the ratio laid down by the Hon'ble High Court of Delhi in the case of Kabul Chawla [supra], squarely apply wherein the Hon'ble High Court of Delhi held as under:

.....

Respectfully following the ratio laid down by the Hon'ble High Court of Delhi and Hon'ble Supreme Court [supra], we are of the considered view that the assessment framed u/s 153A of the Act for both the Assessment Years under appeal deserves to be set aside. We, accordingly direct the Assessing Officer to delete the impugned additions from both the Assessment Years.”

22. For the reasons set out in the preceding paragraphs and the judicial precedents discussed above, we are of the considered view that the alleged document now being referred by the Revenue to justify the impugned addition did not constitute incriminating material and therefore no addition was legally permissible in the assessment framed u/s 153A for the AY 2011-12 for which the assessment did not abate when the search was conducted on 02-03-2016. Ground Nos. 1 & 2 of the cross objections therefore stand allowed.

23. Now coming to the order of the Ld. CIT(A) deleting the addition of Rs.35,54,34,500/- on merits, we note that in the order impugned the AO had justified the addition by primarily relying on the statements of Mr. Anand Sharma & Mr. Janardhan Chowkhani. According to AO, the subscriptions received by the assessee from numerous shareholders in AY 2007-08 and deployment of the funds raised from issue of equity shares was not genuine but these represented mere accommodation entries provided by the said entry operators. Since the investments held by the assessee in shares of other bodies corporate by itself was not genuine, the AO concluded that the proceeds realized by the assessee during FY 2010-11 from sale of investments was nothing but undisclosed income of the assessee introduced in the garb of sale proceeds of shares. The Ld. CIT(A) however held that the conclusions drawn by the AO were not borne out from the facts on record. The relevant findings of the Ld. CIT(A) in this regard was as follows:

“3. I note that in the initial part of the impugned order, the Ld. AO extensively set out the statements of Mr. Anand Sharma & Mr. Jnardhan Chowkhani, two alleged entry operators whose services were allegedly availed. According to Ld. AO the appellant was incorporated, operated & managed at the behest or at the instance of Mr. Anand Sharma who provided accommodation entries to the appellant since its inception. In his statement Mr. Sharma & Mr. Chowkhani had listed out names of several persons claimed to be

functioning under their respective control & supervision. With reference to statements of Mr. Sharma, Mr. Chowkhani and others which were all recorded in 2013 & 2014, an inference has been drawn by the Ld. AO that the transactions in the form of accommodation entries for sale of investment in shares were conducted by these entry operators. After taking into account the documents furnished by the Ld. AR, I however find that the conclusions drawn by the Ld. AO are prima facie not borne out from the facts on record. In the first instance it was observed that the investments, which were liquidated during the relevant year, were acquired by the appellant in the years prior to FY 2010-11 and as such these were existing investments appearing in the appellant's books as at the beginning of the relevant previous year. The total cost of investments as on 01.04.2010 was Rs.35,54,34,500/-. The principal source of fund used in acquiring the investments was appellant's equity capital which at the beginning of the relevant previous year was Rs.35,56,10,000/-. From the material on record I find that the appellant issued its equity capital during FY 2006-07 relevant to AY 2007-08. Total subscription raised in that year was Rs.35,56,10,000/-. The regular assessment u/s 143(3) for AY 2007-08 was framed on 05.05.2009. It appeared from the order u/s 143(3) that prior to completion of assessment; enquiry was conducted by the Ld. AO regarding genuineness of the subscription amounts received by issuing notices to share subscribers. It further transpired that subsequent to search against 'Banktresh Group' in 2012, both the Investigating Officer as well as Assessing Officer had conducted enquiry about the shares issued by the appellant during FY 2006-07 and after examining the relevant share subscribers, no adverse inference regarding subscription amounts received was drawn by the AO in the assessment framed u/s 153C/143(3) dated 30.03.2015. I also find that in the impugned order the Ld. AO per se did not bring on record any material to disprove or disbelieve the genuineness of the share subscription amounts received in AY 2007-08.

4. In the impugned order the Ld. AO has alleged that the appellant was creation of Mr. Anand Sharma at whose behest the affairs of the appellant were conducted or managed. In support of this inference the Ld. AO relied on the three statements recorded from Mr. Sharma on 02.07.2013, 06.01.2014 & 06.02.2014. By Ld. AO's own admission the statements of Mr. Sharma were available with the Ld. AO since 2013 and onwards. The only conclusion one can therefore draw is that the statements of Mr. Sharma were available before the AO's predecessor who framed the assessments both for the AYs 2007-08 & 2011-12 on 30.03.2015 u/s 153C/143(3). In his statement Mr. Sharma had allegedly claimed that the companies controlled & managed by him were having registered offices at 275, B.B. Ganguly Street, Kolkata – 700 012&3, Khetra Das Lane, Kolkata - 700 012. From the information on record however I find that the registered office of the appellant was never situated at any of the two addresses. It is also noted that in his statement Mr. Sharma had identified several companies, which were allegedly controlled, managed and operated, by him but the name of the appellant did not appear in the said list. The statement of Mr. Sharma also contained list of several persons / individuals who allegedly functioned under his control, supervision & superintendence and through whom Mr. Sharma controlled & managed the affairs of the companies and/or the companies who provided accommodation entries. From the list of directors of the appellant since its inception, it was found that none of the persons who discharged the responsibilities as the Directors of the appellant, found mention in the statements of Mr. Sharma. I therefore find that in the impugned order the AO did not bring on record any direct or cogent material or evidence to establish that any of the directors of the appellant at any point in time functioned under the supervision or superintendence of Mr. Sharma. I note that the orders u/s 153C/143(3) for the AYs 2007-08 & 2011-12 were passed on 30.03.2015 whereas the statements of so-called entry operators, Mr. Anand Sharma & Mr. Chokhani were

recorded by the Income-tax authorities in 2013 & 2014. As such these statements were available with the Department when orders u/s 153C/143(3) were passed. I however find that despite the statements of Mr. Sharma & Mr. Chokhani on record, while framing the assessments for AY 2007-08 & 2011-12 u/s 153C on 31.03.2015 the Assessing Officer did not draw adverse inference that the capital raised by the appellant and its deployment in acquiring shares of other companies was not genuine but mere accommodation entries provided by Mr. Sharma.

5. I note that out of the capital subscription monies received totaling Rs.35,56,10,000/-, the appellant had acquired & held shares of other bodies corporate. The Balance Sheet of the appellant as on 31.03.2007 disclosed that the appellant's equity capital was Rs.35,56,10,000/- out of which Rs.35,50,15,000/- was invested in acquiring shares & securities. In the assessments u/s 153C/143(3) for the AYs 2007-08 & 2011-12, no adverse inference was drawn by the Ld. AO's predecessor about the genuineness of subscription amount received and its deployment in acquiring shares & securities of other bodies corporate or loans advanced to parties. The fund deployment position as prevailing on 31.03.2007 continued till 31.03.2010 as seen from the fact that as on 31.03.2010 also the share capital of the appellant was Rs.35,56,10,000/- where as investment in shares was Rs.35,54,34,500/-. From the copies of the orders dated 30.03.2015 passed u/s 153C/143(3) for AYs 2008-09, 2009-10 & 2010-11; I find that in none of the orders for these years adverse inferences were drawn nor any doubts were raised by the AO regarding the genuineness of the investments made or the sources for making investments in the shares. Even though these orders were passed much after the statements of Mr. Sharma & Mr. Chokhani were recorded, the AO's predecessor had nowhere alleged that the investments of the appellant in shares of other companies were either bogus or in the nature of accommodation entries lacking real substance. In this factual background therefore it is necessary for me to ascertain the veracity of the findings recorded by the Ld. AO in the year in which the assessee chose to transpose its investments by selling the existing investments and deploying the funds received in alternate mode or form.

6. I note that just as the Ld. AO relied on the statements of Mr. Sharma, references were made at different places of the impugned order to the statements recorded by the Investigating Officers, from Mr. J. Chokhani & Mr. Neeraj Jain. According to Ld. AO, in the statements recorded both these individuals had identified certain individuals who were controlled, managed and supervised by them. In their statements they had explained the alleged modus operandi employed by them in providing accommodation entries. I find that even though in the impugned order the Ld. AO extensively extracted the statements of these individuals, the assessment order is bereft of specifics and does not address the issue as to whether the admissions by the two individuals implicated the appellant directly. The Ld. AO's order is completely silent & bereft of any specific data or information correlating any particular sale of share or investment by the appellant with accommodation entries by any of these individuals nor the Ld. AO has brought on record that part of the admission either by Mr. Sharma or Mr. Chowkhani or Mr. Jain wherein they have admitted of providing accommodation entries to the appellant or to 'Bankatesh Group' to which the appellant belongs. Save & except for repeatedly stating that the appellant had availed the services of the accommodation entry providers, the Ld. AO did not bring on record any clinching evidence which established that the monies realized by the appellant from sale of existing investments represented undisclosed income of the appellant introduced in the form of sale proceeds. In the impugned order, no doubt the Ld. AO has labored hard and extensively extracted the statements of so called entry operators and persons functioning under their control. The statement of the entry operators was serious enough to warrant enquiry and

investigation by the Ld. AO. But in my opinion the adverse inference on the basis of these statements was permissible only if the Ld. AO could correlate appellant's transactions with any of the statements or acts of the said entry operators and not otherwise. On examining the impugned order however I find that no direct or cogent material has been brought on record by the Ld. AO which would persuade me to hold that proceeds realized on sale of existing investment could be legally considered as appellant's unexplained investment of the FY 2010-11."

24. At the time of hearing of appeal, the Ld. CIT, DR merely reiterated the findings of the AO and claimed that the statements of Mr. Sharma, Mr. Chowkhani and others recorded in 2013 & 2014, clearly showed that the transactions involving sale of investment shares, in reality were in the nature of accommodation entries provided by these entry operators. However after carefully examining the statements, which were extensively extracted by the AO in the impugned order, we find that in none of the answers given by the so-called entry operators to the questions posed by the concerned officers, did they admit of providing accommodation entries either to the assessee or to 'Bankatesh Group' to which the assessee belongs. We find that in none of the answers reproduced in the assessment order, any of the so-called entry operator had admitted that the subscription to the assessee's equity shares were bogus or that investments held by the assessee in other bodies corporate were not genuine. We also find that none of the persons whose statements have been extracted in the assessment order admitted of providing accommodation entries during FY 2010-11 through which the assessee's own unaccounted income was introduced in the garb of sale proceeds of investments.

25. When confronted with this factual position, even AO in his report dated 05-02-2020 placed before us, admitted that the name of the assessee had not been stated by the entry operator. The relevant extract of the AO's report is as follows:

"From the above it is absolutely clear that although the name of the assessee has not been stated by the entry operator Shri Anand Sharma but his nature of business, earning commission by providing accommodation entries to the beneficiaries with the use of his 500 companies cannot be ruled out."

26. We further note that the AO in his report dated 05-02-2020 was not able to dispute the Ld. CIT(A)'s finding that none of the Directors who held office at any time on the Board of the assessee featured in the list of dummy directors alleged to be controlled and managed by the entry operators. Instead we note that the AO made a generic statement that out of the six directors, two persons viz. Shri Sandeep Singh, who was Director from February 2006 to December 2011, and Somnath Chakraborty, who was Director from

February 2006 to May 2012, held office of 'Directors' in 'various companies' which found mention in departmental database of shell companies. The AO however did not provide the specific names of so called 'various shell companies' nor he provided the database of shell companies allegedly prepared by the Department. We also note that in the order impugned AO had drawn inference against the assessee on the ground that the afore-mentioned two Directors also functioned as directors of some unrelated bodies corporate in which few persons allegedly controlled and managed by the entry operators, also acted as Co Directors. In our opinion this was a tenuous connection which was erroneously invoked by the AO for drawing adverse conclusion against the assessee. Mere fact that one of the Directors of the assessee held office of the Director along with some tainted person in some other unconnected body corporate could not be a sufficient reason for the AO to hold that the assessee was a dummy company controlled and managed by so-called entry operator. Such circumstance was not sufficient for treating the information about the common directorship of a person to be incriminating in nature justifying the addition u/s 69 of the Act. For the same reason, we also hold that the fact that email ID mentioned in an ROC filing of the assessee was same as that of some alleged shell company cannot be reason enough to justify the addition made by the AO u/s 69 of the Act.

27. In the appellate order, the Ld. CIT(A) while repelling the AO's conclusion that the assessee was controlled and managed by the entry operator, recorded a finding that the past and present address of the assessee was not located at any of the addresses mentioned by Shri Anand Sharma in his statements. When confronted with this finding, the AO in his report dated 05-02-2020 was unable to controvert the same. The relevant extracts of the AO's report is as follows:

"The Anand Sharma has not mentioned the address of the assessee but admitted on several occasions before the DDIT(Inv) Kolkata to have controlled over 500 shell companies for providing accommodation entries..."

28. As regards the Revenue's grievance that Ld. CIT(A) failed to appreciate the fact that the notices issued by the AO remained unserved and in that view of the matter the addition made by the AO in respect of sale proceeds of investments u/s 68 of the Act was justified, we find that the transactions in question involved receipt of proceeds on sale of investments. It was not a case where any share subscription monies were raised which may lead to an inference that the appellant would have had a continued relationship with

the shareholder nor was the money received by way of loans which would result in creation of creditor-debtor relationship on long term basis. Unlike in such cases where share application monies are raised or unsecured loans are received; the appellant cannot be expected to continue with relationship on long-term and be aware of the address of the persons to whom it had sold investments on one-off occasion and that too more than 6-7 years ago. We find that at the point of time when the investments were sold, the sale bills were raised on the purchasers citing the address provided by them at that material time and the issue of invoice was followed with physical delivery of share certificates and in lieu the payments were received. Except for the foregoing acts, no other act was performed either by the seller or the purchaser. It was therefore a case where two unrelated persons conducted a trading transaction and the considerations were exchanged at the same time. We thus find merit in the submissions of the Id. AR that the assessee had one-off transactions with the parties to whom shares were sold in FY 2010-11 and the assessee did not have any transaction thereafter. Since in exchange of the price received, the assessee had parted with asset of the equal value, there was no reason for the assessee to be concerned with the source of funds out of which the payments were made by the purchaser. Accordingly when there was no continuing relationship with the purchasers, thenpost the conclusion of saletransactions and applying the tests of human probabilities, the non-service of noticescould not be viewed adversely by the AO. In thefacts of the present case therefore such non-compliance wasnot decisive to justify the impugned addition in the hands of the assessee u/s 68 of the Act.

29. We further observe that the Ld. CIT(A) also found fundamental infirmity in the AO's logic of making addition on account of unexplained investments in AY 2011-12 because the Ld. CIT(A) found that the primary source of funds utilized for making investments was never in dispute. The Ld. CIT(A) held that when the facts on record clearly established that the appellant all along held shares & securities worth Rs.35,54,34,500/-, then the disposal of such investments and its transposition to investments in alternate form could not be held to be in-genuine or unexplained. The relevant findings of the Ld. CIT(A) is as follows:

“7. I note that in the impugned order the Ld. AO made the addition on account of unexplained investments. It is however not understood as to how the sale proceeds realized by the appellant have been considered by the Ld. AO to be appellant's income on account of being unexplained investment for the AY 2011-12. A bare perusal of the appellant's audited balance sheet as at 31.03.2010, established that as of 01.04.2010 the appellant was

holding shares & securities of other bodies corporate having cost of Rs.35,54,34,500/-. These investments were admittedly made in FY 2009-10 or earlier. In all the past assessments as well as in AY 2010-11, the AO never questioned the source for making investments in shares. The investments were accepted to be duly explained in the order for the AY 2010-11. During FY 2010-11, the appellant sold these investments & received proceeds Rs.35,54,34,500/- which were deposited in the appellant's Bank. In this factual background it is beyond comprehension as to how the investments acquired in earlier years and whose source of acquisition was accepted to be genuine was considered by the Ld. AO to be unexplained in AY 2011-12 being the year of sale. I therefore find fundamental infirmity in the Ld. AO's logic of making addition on account of unexplained investments in AY 2011-12 being the year in which the investments were transferred and not acquired."

30. Before us, neither the Ld. CIT, DR nor the AO in his report dated 05-02-2020, was able to controvert this finding of the Ld. CIT(A). It is noted that the Ld. CIT(A) also examined the facts and circumstances concerning the amounts deposited in the assessee's bank account by way of proceeds realized from sale of investments and whether such sale proceeds could be assessed as income under the provisions of the Act. The Ld. CIT(A) also examined the cash flow charts and billing flow charts prepared by the AO, based on which the Ld. CIT(A) repelled the AO's conclusion that the true source of sale proceeds of the investments was the unaccounted monies of the assessee. The relevant findings of the Ld. CIT(A) was as follows:

"8. Be the same as it may, the issue to be decided is whether the amounts deposited in the appellant's bank account by way of proceeds realized from sale of investments was assessable as income of the appellant under any of the specific provision of I.T. Act, 1961. I find that save & except, placing reliance on the statements of Mr. Sharma, Mr. Chokhani & Mr. Jain, the Ld. AO per se did not bring on record any clinching evidence or cogent material which linked sale of shares with alleged accommodation entries provided by the entry operators. The statements of the entry operators set out by the AO in his order nowhere even suggested let alone established that any of them admitted in specific terms that accommodation entries were in fact provided to the appellant. I find that in response to show cause issued the appellant had furnished before the Ld. AO all the transactional documents substantiating the payments received on sale of shares. From the documents as were furnished before the Ld. AO in support of the sale of shares I find that the payments against the sale of shares was received through banking channel and even as per the Ld. AO's own admission the source as well as source of source for receipt of sale consideration was found through banking route only. According to Ld. AO in some instances however, cash deposits were found in the accounts of proprietary concerns of few individuals at the end of trail of transactions, which in the Ld. AO's opinion proved his charge that proceeds though received by cheques issued by the share purchasers were in fact appellant's undisclosed income.

9. In my considered opinion the conclusions drawn by the Ld. AO were far-fetched. In the first instance it has to be borne in mind that the appellant the investments in shares which were sold during the relevant year were acquired out of its own funds which were properly accounted and disclosed in its books. If one accepts theory put forth by the Ld. AO, then the answered question is what happened to the funds which originally funded

share acquisition in the earlier years. The appellant during the relevant year sold the existing investments and realized the price for the same from third parties. Unlike fresh subscription received to its shares or fresh loan received which can be considered to be unexplained cash credit, the transaction in the present case involved exchange of one asset against receipt of sum equivalent. In exchange of the asset parted with, the appellant was paid its equivalent price by the third party and therefore unlike provisions of Section 68, the onus was not on the appellant to prove the source of source. By selling its existing investments the appellant merely realized the price of the asset parted with. On scrutiny of the Ld. AO's order particularly the flow chart at Pages 78 to 83, it is noted that the immediate source for payments received on sale of shares has always been the funds available in the bank accounts of the purchasers. From these charts I find that in each & every case the Ld. AO was able to identify the purchaser with its name, PAN & particulars of its bank accounts. In other words, the Ld. AO was satisfied about the identity of the persons who had acquired the shares from the appellant against which price was paid. It is also noted from the flow chart that not only the Ld. AO was able to identify the person who paid the price but the Ld. AO was further able to trace the person from whom the requisite funds were received by the share purchaser out of which the payments were made to the appellant. These charts further show that the AO himself was able identify the source as well as source of source. Both the sources of payments received as per AO's charts were within the banking circle only. In few cases, the Ld. AO extended the payment trail upto four to six layers, and at the end of transaction trail he allegedly found cash deposits totaling Rs.3,59,50,000/- in the proprietary accounts. In my opinion in the present context it was wholly immaterial for the Ld. AO to undertake the exercise of identifying the ultimate source of receipt of sale proceeds because the transaction in question was sale of investments by the appellant to an unrelated party. It is not in dispute that the appellant was holding shares of other bodies corporate which were acquired by paying valuable consideration. The shares transferred during the year were acquired by the assessee in the prior years out of the declared & accounted source. In the past assessments, the Ld. AO had accepted that the investments held were acquired by the appellant out of its own funds which was accepted to be genuine. I also note that in the impugned order the Ld. AO himself agreed with the fact that the shares which the appellant held, were issued by companies which belonged to reputed groups such as Rathore Group, Rungta Group, Electrosteel Group, Singh Group etc. In the circumstances against transfer of shares the appellant had received its monetary value which was paid by unrelated parties. The manner & mode in which share purchasers arranged requisite funds to meet cost of purchase was of no concern to the appellant. From what sources and on what terms the purchasers arranged the requisite funds for purchase of investments was entirely at the discretion of the purchasers and over which the appellant did not have any say. Irrespective whether the requisite funds were arranged by begging or borrowing, the appellant per se did not have any control or say in the matter.

10. Even if one accepts the AO's proposition that in some instances he found that there were deposits in cash in the few accounts at the end of trail of transactions even then I find that the information disclosed by the Ld. AO did not conclusively prove that the monies deposited in these accounts actually belonged to the appellant or that the cash deposits were arranged by the appellant or that money received by the appellant was in fact the same cash as was deposited in some account which did not have direct nexus with appellant's transactions. Even though in the flow charts extracted at Pages 78 to 83 of assessment order, the Ld. AO listed out names of few proprietary concerns in whose accounts the cash was allegedly deposited; I find that nowhere in the assessment order the Ld. AO was able to identify the persons to whom these proprietary concerns belonged. I

also find that that no statements of any of the so-called proprietors of bank accounts was recorded by the Ld. AO or by any officer of the Department admitting the fact that the cash deposited in the bank accounts was provided to them by the appellant or that the cash was deposited for the ultimate benefit of the appellant. In fact the close analysis of the fund flow chart shows that it does not even conclusively prove that the cash deposited in several accounts by itself constituted the sole source for the amount which the appellant ultimately received as proceeds for sale of shares.

11. To illustrate, one may take example of Rs.50,00,000/- which the appellant received from M/s J.M. Merchants Pvt Ltd on 25.06.2010. At Page 78 of the assessment order the AO depicted in the chart form the manner in which payment was effected to the appellant. According to Ld. AO the entire sum of Rs.50,00,000/- had a corresponding cash source of Rs.50,10,000/- deposited in the eleven proprietary concerns. At Page 78 of the assessment order, the Ld. AO has provided the said cash link. However from the said cash link it is noted that by AO's own admission after cash of Rs.50,00,000/- was deposited in the account of Shree Ganpati Investment; it paid total sum of Rs.1,00,00,000/- to Jwalaji Commerce Pvt Ltd ('JCPL') on 25.06.2010 in two tranches of Rs.40,00,000/- & Rs.60,00,000/-. Out of the said Rs.1,00,00,000/-, JCPL in turn paid only Rs.75,00,000/- to Shobha General Suppliers Pvt Ltd ('SGSPL') on 25.06.2010 which in turn paid only Rs.50,00,000/- to M/s J.M. Merchants Pvt Ltd. Thereafter M/s J.M. Merchants Pvt Ltd paid Rs.50,00,000/- to the appellant on 25.06.2010. If one analyzes the said fund flow chart, then it is apparent that the immediate source of receipt of Rs.50,00,000/- in the appellant's hand was M/s J.M. Merchants Pvt Ltd and the source of source was M/s SGSPL. The transaction between the appellant and M/s J.M. Merchants Pvt Ltd and the transaction between M/s J.M. Merchants Pvt Ltd and SGSPL was admittedly through banking channel. SGSPL received sum of Rs.75,00,000/- from JCPL who in turn had received Rs.40,00,000/- & Rs.60,00,000/- through proper banking channel from Shree Ganpati Investment. In the account of Shree Ganpati Investment there was a cash deposit of only Rs.50,00,000/-. Having regard to the fact that Shree Ganpati Investment by itself had Rs.50,00,000/- in its bank account and which was paid through account payee cheque to JCPL, it can also lead to conclusion that the sum of Rs.50,00,000/- paid in cheque was successively transferred & received by the appellant. Merely because at the fifth layer there was deposit of cash by itself did not lead to conclusion that it was only the cash deposit which was the ultimate source. Moreover when the appellant had transferred the shares to M/s J.M. Merchants Pvt Ltd and parted with the equity shares of equivalent sum in favour of J.M. Merchants Pvt Ltd it was wholly inappropriate for the appellant to examine the source of funds from which the purchaser of the shares had raised the requisite sum. Moreover even the facts brought on record by the Ld. AO did not conclusively prove that it was only the cash deposited in the account of Shree Ganpati Investment was the actual source for the amount paid by M/s J.M. Merchants Pvt Ltd to the appellant. It is also apparent from the impugned order that no material is discussed by the Ld. AO which in any manner showed that either the Investigating Authorities or any other officer of the Department had identified the individuals to whom the proprietary concerns belonged and in whose accounts the cash was allegedly deposited. The assessment order also shows that before drawing inference against the appellant the Ld. AO himself neither identified the persons to whom such concerns belonged nor any of them were personally examined by the Ld. AO to verify the true & correct facts of the case. Merely because while tracing the successive layers of transactions, the Ld. AO found certain cash deposits in the accounts of unrelated parties; on such fact alone the Ld. AO could not record a conclusive finding that the cash so deposited represented appellant's undisclosed income which was routed through several accounts. In my considered opinion the so-called evidences in the form of trail of

transactions did not conclusively prove the Ld. AO's alleged findings that the proceeds realized by the appellant from sale of investments could be considered as appellant's undisclosed income. In fact I find that before the adverse findings were recorded, the Ld. AO himself had never examined any of the parties to whom shares were sold nor opportunity of examining the parties was given to the appellant. The inference were drawn simply on the premise that the persons who had purchased the shares were entities belonging to entry operators who had provided accommodation entries.

12. *Besides the alleged cash trail for Rs.3,59,50,000/-; the Ld. AO similarly alleged that the proceeds of Rs.26,39,34,500/- received by the appellant represented undisclosed income because the ultimate source of such amount was the payments allegedly made by some operating companies against alleged bogus billing for expenses arranged by the so-called entry operators. In charts set out at Pages 89 to 106, the Ld. AO put forth a theory that the entry operators were indulging in providing bogus bills for expenses against which few reputed companies such as ABCI Infrastructure Pvt. Ltd, Gupta Power & Infrastructure Ltd & PACL India Ltd were effecting payments to the companies controlled by entry operators. Out of the payment so collected, the entry operators by the process of layering made the payments against shares sold by the appellant. For example, the appellant received Rs.50,00,000/- from Om Commosales Pvt Ltd ('OCPL') on 30.12.2010 against sale of shares. In turn, OCPL had received Rs.68,00,000/- from M/s Bridge & Building Construction Co. ('BBCC') on 29.12.2010. BBCC had in turn received Rs.1,91,61,600/- on 28.12.2010 from M/s ABCI Infrastructure Pvt Ltd. ('ABCIPL'). ABCIPL had in turn received from PACL India Ltd in two tranches of Rs.98,10,000/- & Rs.98,10,000/-. According to Ld. AO the successive payments originating from M/s PACL India Ltd exceeding Rs.200 lacs were all in the nature of accommodation entries out of which Rs.50,00,000/- belonged to the appellant and through the process of layering the appellant's unaccounted income was laundered. In my opinion the conclusions drawn by the Ld. AO is not only far-fetched but bordering almost on the fantasy. Both M/s ABCIPL & PACL India Ltd are reputed operating companies carrying on substantial business in their own right. The Ld. AO has not brought on record any material let alone cogent material which in any manner showed that either ABCIPL or PACL India Ltd were paper companies controlled by alleged entry providers. No evidence has been discussed or brought on record by the Ld. AO which in any manner proves that before the allegation of accounting of bogus billing is leveled against PACL Group or ABCI Group; any enquiry was carried out by the Investigation Wing of the Department or by the Ld. AO from either of the two companies or whether any of Directors or officials of the said companies had admitted of availing services of entry providers for accounting of bogus bills. It also appeared from the assessment order that before drawing such conclusion the Ld. AO himself did not examine any of the companies or intermediate companies or their Directors to ascertain the true & correct facts. It appeared that the appellant having furnished the transactional documents including the source of payments made by the share purchasing companies the Ld. AO through his own sources traced the sources of payments received by share purchasing companies. Business is a dynamic process and any prudent businessman ensures that the business funds are not kept idle but are put to optimum use. For this reason the business funds do not remain idle. In the circumstances there will always be explanation for immediate source for a receipt. Since business funds are turned over in the course of business through the common kitty, it is not possible to pin point any specific source for making payment. However merely because the funds which reached the appellant's coffers had several sources as its origin by itself does not result in conclusion that the successive transactions between unrelated parties are accommodation entries or unreal entries. Before the Ld. AO recorded a conclusion that reputed companies such as*

PACL Group, ABCI Group etc. had indulged in making payments against bogus bills, heavy burden was on the Ld. AO to support such allegation with cogent evidence. The onus of proving that the apparent was not real or the real was not apparent was on the Ld. AO who was expected to discharge the same by bringing on record some positive & cogent evidence. Depiction of successive transactions between the parties through fund flow chart format only explained the Ld. AO's findings regarding the manner in which the monies received by the appellant, originated and got transacted till it reached the coffers of the share purchasing company. However production of fund flow chart by itself did not prove the AO's ultimate conclusion that all the intermediate transactions between various entities were intended to launder the appellant's unaccounted income through the process of layering. The Ld. AO was expected to bring on record some positive evidence or material in support of his conclusion, after conducting examination of therelevant parties. It is however found that the Ld. AO himself did not even examine a single person involved in the alleged process of layering or providing alleged accommodation entries but only on the basis of presumptions and theoretical chart preparations the Ld. AO came to conclusion that the amounts realized by the appellant from sale of its existing investments was unexplained investments. In my opinion the conclusions drawn by the Ld. AO were substantially based on suspicion and conjectures and not based on any irrefutable and clinching evidence.

13. *I find that the entire assessment substantially proceeded on the Ld. AO's suspicion that the appellant had indulged in laundering his unaccounted income during the relevant year. As held by the Supreme Court in the case of Uma Charan Shaw & Bros Vs CIT (37 ITR 271), howsoever grave the suspicion the Ld. AO may entertain, the suspicion cannot take place of the evidence or finding. The suspicion on the Ld. AO's part can certainly prompt him to conduct enquiry & investigation but ultimate finding of the authority must be based on the material & evidences gathered and which have live & direct nexus with the finding recorded by the authority after objective consideration of facts & evidences gathered. If the material or evidence gathered does not have any proximate cause with the finding ultimately reached then the finding of the authority has to be held to be perverse and unsustainable. In the present case even though the Ld. AO has labored hard and brought on record the statements of several alleged entry operators, I find that he was unable to pin point any specific correlation between the appellant's transactions with any of the entry operators or their companies. There is no material in the assessment order from which one can arrive at the logical inference that any of the alleged entry providers had admitted of providing accommodation entries to the appellant. On the contrary I find that in the assessment orders of the appellant for the AY 2007-08 & 2011-12, passed on 30.03.2015, the Ld. AO's predecessor had examined the share subscription amounts received and its deployment in acquiring shares of other companies. After verification of the seized records as well as report of the Investigating authorities, no allegation was made against the appellant that it had functioned under the control & management of any of the entry operators or that the appellant had indulged in providing any accommodation entries or that it was the beneficiary of the accommodation entries provided by any of the alleged entry operators. In the assessments, the share subscription amounts received during AY 2007-08 was accepted to be genuine and its corresponding deployment in investment in shares was also accepted. The funds raised by the appellant by issue of shares continued to remain with the appellant. No evidence has been brought on record by the Ld. AO which in any way proved that the capital raised in AY 2007-08 was not available with the appellant for its deployment in the assets in AY 2011-12. No case has been made out by the Ld. AO that for making fresh investments in granting of loans, the appellant had raised any fresh funds in any form during the relevant year which was*

unexplained. On the contrary the material, which the appellant has placed on record, shows that the appellant only realized its past investments and changed its manner or form in which the assets were held as on 31.03.2011. For the reasons discussed in the foregoing I therefore do not find that the conclusions drawn by the Ld. AO were legally sustainable and justified. I therefore direct the Ld. AO to delete the addition of Rs.35,54,34,500/- made on the ground of being unexplained investment.”

31. Before us, neither the Ld. CIT, DR as well as the AO were able to controvert the above findings of the Ld. CIT(A). The AO in his report dated 05-02-2020 furnished before us reiterated his findings made in the order impugned and claimed that all the companies identified in the cash and billing trail are paper/shell companies, which showed that they had no existence at all. As regards the alleged cash trails, we find that the AO himself had traced the source of the monies credited to the assessee's account. From the charts extracted at Pages 78 to 83 of assessment order, we note that the AO himself was not only able to identify the names of the payer companies but was also able to identify and establish the bank accounts of the source as well as source of source from which payments were received by the assessee. Both the source as well as the source of source was within the banking system only and there was no cash deposit found. It is true that there were cash deposits at the end of the 5th or 6th layer of the transaction, but as rightly held by the Ld. CIT(A) there was no conclusive evidence to show that the ultimate source of the amount received by the assessee was the cash deposit made in the accounts of the proprietary concerns whose identity was also not established by the AO. Even with regard to the billing trails, it is noted that the AO was unable to bring to our attention, any factual material which corroborated his finding that bogus payments made by these listed companies had come back to the assessee in the form of accommodation entries or that any cash was returned to them. In support of such an allegation no tangible material or evidence such as copies of the Income Tax assessments of the payer companies were furnished. Instead we note that the AO simply made a sweeping remark that some of the entities enlisted in the billing trail were paper/shell companies. In our considered opinion such general statement making sweeping allegation was not sufficient to justify the humongous addition while framing the addition u/s 153A of the Act, which necessarily had to be based on some tangible incriminating material found in the course of search.

32. For the reasons set out above, we therefore do not see any reason to interfere with the findings of the Ld. CIT(A). Accordingly all the grounds raised by the Revenue stand dismissed.

33. With regard to the assessee's last ground of cross objection that the order passed u/s 153A of the Act be held bad in law in absence of any valid search u/s 132 conducted against it, we note that the AO in his report dated 05-02-2020 did not dispute the fact that name of the assessee did not feature in any of the panchamas drawn up upon conclusion of the search, but he furnished a copy of the warrant of authorization dated 02-03-2016 which proved that the assessee's name featured therein. In our considered view therefore, although the name of the assessee does not feature in the panchnama but in view of the fact that warrant of authorization executed by the Department contained its name, the proceedings u/s 153A were validly initiated against the assessee. Ground No. 3 of the cross objections is therefore dismissed.

34. In the result, the appeal of the revenue is dismissed and cross objections of assessee are partly allowed.

Order is pronounced in the open court on 20th March, 2020.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 20th March, 2020

Jd. Sr. PS

Copy of the order forwarded to:

1. Appellant – ACIT, Central Circle-3(2), Kolkata.
2. Respondent – M/s. Majestic Commercial Pvt. Ltd., 57, Burtolla Street, Kolkata-700 007.
3. CIT(A)-21, Kolkata. (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata. (sent through e-mail)

True Copy,

By order,
Assistant Registrar
ITAT, Kolkata Benches