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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5330/Del/2016 :Asstt. Year: 2007-08
ITA No. 5332/Del/2016:Asstt. Year: 2009-10
ITA No. 5333/Del/2016 :Asstt. Year: 2010-11
ITA No. 5334/Del/2016 :Asstt. Year: 2011-12
ITA No. 5335/Del/2016 :Asstt. Year: 2012-13

ACIT, Central Circle-14, New Delhi-110055	Vs	Sh. Parminder Singh Kalra, A-29, Friends Colony, New Delhi-110065
(APPELLANTT		**(RESPONDENT)**
PAN No. AAJPK2441E		

With

CO No. 342/Del/2016 :Asstt. Year: 2009-10
CO No. 343/Del/2016 :Asstt. Year: 2010-11
CO No. 344/Del/2016 :Asstt. Year: 2011-12
CO No. 345/Del/2016 :Asstt. Year: 2012-13

Sh. Parminder Singh Kalra, A-29, Friends Colony, New Delhi-110065	Vs	ACIT, Central Circle-14, New Delhi-110055
(APPELLANTT		**(RESPONDENT)**
PAN No. AAJPK2441E		

ITA No. 4575/Del/2016 :Asstt. Year: 2006-07
ITA No. 4576/Del/2016 :Asstt. Year: 2007-08
ITA No. 6701/Del/2017 :Asstt. Year: 2006-07
ITA No. 6702/Del/2017 :Asstt. Year: 2007-08

Sh. Parminder Singh Kalra, A-29, Friends Colony, New Delhi-110065	Vs	ACIT, Central Circle-14, New Delhi-110055
(APPELLANTT		**(RESPONDENT)**
PAN No. AAJPK2441E		

Assessee by :Sh. Ved Jain, Adv.
Revenue by :Ms. Sushma Singh, CIT DR

Date of Hearing:15.04.2021		**Date of Pronouncement:15.06.2021**

ORDER

Per Bench:

The present appeals have been filed by the Revenue against the orders of ld. CIT (A)-XXVI, New Delhi for the A.Ys. 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13 dated 18.07.2016 and by the assessed against the orders of ld. CIT (A)-XXVI, New Delhi for the A.Ys. 2006-07 & 2007-08 dated 18.07.2016 &22.09.2017 confirming the penalty. The assessee has also filed Cross Objections for AY 2009-10 to AY 2012-13.

ITA No. 4575/Del/2016: Assessement Year 2006-07
ITA No. 4576/Del/2016: Assessement Year 2007-08

2. Since, the issues involved in both the years are common and related, there being adjudicated together.

3. In ITA No. 4575/Del/2016 for the assessment year 2006-07, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) {CIT(A)} is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the learned AO has no jurisdiction to frame assessment and make the impugned addition under section 153A of the Act in the absence of incriminating material being found during the course of the search.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO is barred by limitation having been passed beyond the statutory period prescribed in the Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law

in rejecting the contention of the assessee that the assessment order passed without issue of statutory notice under Section 143(2) by the learned AO is bad in law and liable to quashed.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO otherwise stands vitiated and is liable to be quashed as the same has been passed on direction of the higher authorities.

7. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the learned AO has made the additions on the basis of material collected at the back of the assesse without establishing the authenticity of the document relied upon and without providing a copy of the same and an opportunity to rebut the same and without taking the investigation and the enquiry to the logical end.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the assessment order passed by the learned AO is bad in law and liable to be quashed as the same has been passed in gross violation of the principles of natural justice and without providing the opportunity to the appellant for cross examination.

8. On the facts and in the circumstances of the case, the Ld. CIT(Appeal) erred in law in rejecting the assessee's contention that statement made by the appellant u/s 132(4) of the Act, had no evidentiary value as it was made under coercion

and that it was refracted when the coercion was lifted by the ADI (Inv.).

9. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law, in confirming the addition of an amount of Rs.8,51,10,905/- on account of alleged deposits in bank account with HSBC Bank, Switzerland, despite nothing adverse having come on record in the investigation or enquiry initiated by the Ld. AO.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition was made in the hand of the assessee without bringing any cogent material or evidences that the alleged investment has been made by the assessee.

11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that in the alternative and without prejudice to above, the learned AO has erred in taking the peak credit balance of US$ 19,03,332.38 as unexplained investment of the year under consideration despite there being an opening balance of US$ 17,31,710.93 stated by A.O. herself in the assessment order.

12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the settled position of the law that additions under Section 69 can only be made in respect of investment made during the financial year relevant to the assessment year."

4. In ITA No. 4576/Del/2016 for the assessment year 2007-08, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) {CIT(A)} is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the learned AO has no jurisdiction to frame assessment and make the impugned addition under section 153A of the Act in the absence of incriminating material being found during the course of the search.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO is barred by limitation having been passed beyond the statutory period prescribed in the Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed without issue of statutory notice under Section 143(2) by the learned AO is bad in law and liable to quashed.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO otherwise stands vitiated and is liable to be quashed as the same has been passed on direction of the higher authorities.

7.(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the learned AO has made the additions on the basis of material collected at the back of the assesse without establishing the authenticity of the document relied upon and without providing a copy of the same and an opportunity to rebut the same and without taking the investigation and the enquiry to the logical end.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the assessment order passed by the learned AO is bad in law and liable to be quashed as the same has been passed in gross violation of the principles of natural justice and without providing the opportunity to the appellant for cross examination.

8. On the facts and in the circumstances of the case, the Ld. CIT(Appeal) erred in law in rejecting the assessee's contention that statement made by

the appellant u/s 132(4) of the Act, had no evidentiary value as it was made under coercion and that it was retracted when the coercion was lifted by the ADI (Inv.).

9. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.61,22,916/- on account of alleged deposits in bank account with HSBC Bank, Switzerland, despite nothing adverse having come on record in the investigation or enquiry initiated by the Ld. AO.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition was made in the hand of the assessee without bringing any cogent material or evidences that the alleged investment has been made by the assessee."

Facts of the case:

5. A search and seizure operation was carried out on 28.07.2011 at the premises of the assessee on the basis of information received under information of exchange mechanism to the effect that the assessee owns an account at HSBC containing substantial credits which are not disclosed to the department.

6. Thereafter, the AO issued notice u/s 153A directing the assessee to file the return of income. In response to the

notice, the assessee filed the return on 17.01.2014. During the course of the assessment, the AO raised the issue of the assessee having account with HSBC Bank. The assessee was confronted with a 6 page document containing personal and financial details of the assessee's account in HSBC.

7. In response thereto, the assessee filed detailed reply vide letter dated 27.02.2015 stating that he did not have any foreign bank account. It was also stated by the assessee that no incriminating documents relating to any foreign bank account was found and seized during the course of search.

Arguments taken up by the assessee before the revenue authorities:

8. As regards, the statement of the assessee recorded on the date of the search and referred to in the show-cause notice by the AO, the assessee stated that on several occasions during the course of the search, he had stated that he never had any foreign bank account. He further stated that on the date of the search, he was surrounded by search officials and insisted upon recording his statement of their choice. Thus, the statement recorded was as per the information available with the search team.

It was contended that the statement given was factually incorrect and made under duress. It was contended that the statement so given was neither voluntary nor true.

9. The assessee also invited attention to the letter dated 30.08.2011 wherein he has explained in detail the manner in which the statement was recorded. It was also contended by the assessee that the allegation levied in the show-cause notice that the foreign bank account belongs to him was without any basis and credible evidence. The assessee also submitted to the Assessing Officer that he had not provided any evidence to the assessee to show that he ever had any foreign bank account. It was also stated by the assessee that as per the enclosure with the said notice, the same were not bank statement as is being alleged. On the contrary, it appears to be an extract/information that depicts month wise balances.

10. The assessee also challenged the authenticity and credibility of the document which is being relied upon and on the basis of which, the allegation was made. It was also pointed out that the alleged document does not carry any indication that it relates to any bank account held by the assessee in his name in HSBC, Zurich. It was also pointed out that the said document does not carry any signature or stamp of any authority. Moreover, the said document

apparently is a photocopy not legible without any reference to the original of such document and the person who was in possession of such original document.

11. It was also pointed out that even on the basis of the alleged document and the figures appearing in the sheet, it cannot be said that such investment was made during the instant year.

Contentions of the Assessing Officer:

12. The AO rejected the above explanation and the issues raised by the assessee. The AO held that the statement recorded was not under coercion and the retraction is an afterthought. The AO thereafter referring to the various answers recorded in the statement held that the answers were given by the assessee himself. It was also further held that the assessee has not been able to produce any evidence of coercion or pressure while recording the statement. The AO held that the statement made by the assessee is binding on him and the plea of the assessee regarding retraction is not acceptable.

13. On the issue, that the assessee has not been provided any evidence to show that he held any foreign bank account, the AO was of the view that the assessee's own admission in the statement is an evidence against him. The

AO also held that information obtained under information exchange mechanism is credible information and the same can be used against the assessee.

14. On the above said basis, the AO held that the figures stated in the documents belong to the assessee and accordingly held that the assessee is the owner/beneficial owner of the bank account of HSBC, Switzerland and the same is not disclosed in the return of income. Accordingly, an addition of Rs.8,46,98,290.91 being the peak amount stated therein of USD 1,90,332.38 in the month of March, 2006 @ of 44.50 per dollar was made. The AO further made an addition of peak of USD 9,272.23 in the month of November, 2005 by applying a USD rate of 44.50 equivalent to Rs.4,12,614.23.

15. Thus, an addition totaling Rs.8,51,10,905/- was made u/s 69 as unexplained investment for the AY 2006-07.

16. Further, in the AY 2007-08 on the same reasoning and basis the AO made an addition of USD 1,29,576.30 by taking peak during this year of USD 20,32,908.68 minus the peak of USD 1,90,332.38 considered in the preceding year and applying USD rate of 45.50 which was to Rs.58,95,722/-. The AO further made an addition of USD 4993.28 by taking the peak during the year of USD

7784.47 minus the peak of USD 2,791.19 considered in the preceding year by applying a USD rate of 45.50 which comes to Rs.2,27,194/-. Thus, in total the addition of Rs.61,22,916/- was also made u/s 69 in AY 2007-08 as unexplained investment.

17. The AO also made an addition of Rs.1,12,880/- in AY 2007-08 on the assumption that the assessee would have earned interest at the rate of 4% in respect of the last credit balance in the account.

18. Aggrieved by the order of the AO, the assessee filed appeal before the ld. CIT (A) and raised various grounds both legal and factual.

Proceedings before the ld. CIT (A):

19. On the various contentions raised by the assessee, the ld. CIT (A) called for remand reports from the AO from time to time which dealt with the following issues:

i. That no incriminating document has been found during the course of search and hence, no addition could be made in the year under consideration in view of the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (2016) 380 ITR 573.

ii. The assessment was time barred as no notice has been issued u/s 143(2) after filing of the return by the assessee.

iii. The time limit for completion of assessment has been taken as 31.03.2015 on the basis of the Explanation 8 below Section 153B

iv. Information received under information exchange mechanism through DTAA/DTAC. The specific basis of the conclusion reached in assessment order for making addition.

20. In response thereto, the AO submitted remand reports dated 13th& 19th October, 2015, wherein it was submitted as under:

i. It was stated that the information was received by the Indian competent authority from the respective competent authority as per which, the assessee was having an account with HSBC Bank, Zurich, Switzerland. It was stated that the information received has provided the details of the assessee, address, date of birth etc. This information also provided month wise balance in this HSBC Account at Zurich for a certain period. It was also stated in the remand report that the assessee has given a statement on oath wherein he himself has accepted

to have a foreign bank account. Thus, the identity of the assessee and genuineness of the document stands established.

ii. As regards the non-issuance of notice u/s 143(2), the AO in the remand report stated that is not mandatory to issue notice u/s 143(2) for finalizing assessment u/s 153A in view of the judgment of the Hon'ble Delhi High Court in the case of Ashok Chadha Vs ITO 327 ITR 399.

iii. On the issue of time limit for completion of assessment, the AO stated that this contention has already been rejected during the course of assessment. The first reference for complete information by the competent authority was made on 21.02.2012 and till the date of passing the assessment order i.e. on 09.03.2015, information was not received.

21. In response to the above remand report, the assessee filed a detailed rejoinder on 05.11.2015 further raising the following issues:

i. The AO has not brought any incriminating material so as to give jurisdiction to the AO for making reassessment u/s 153A in respect of an assessment year where assessment has not abated.

ii. On the issue of non-issuance of notice u/s 143(2) post filing of return, the assessee relied upon the judgment of Hon'ble Supreme Court in the case of ACIT Vs Hotel Blue Moon 321 ITR 362 and few other judgments.

iii. On the issue of assessment having been framed after expiry of the time limit prescribed u/s 153B, the assessee in its rejoinder pointed out that this reference to FTD was made on 21.02.2012 i.e. even before the initiation of the assessment proceedings on 21.11.2012 and hence, no extension will be available for this reference. The assessee also raised the issue that the AO has not submitted any evidence of such reference being made on 21.02.2012. It was raised that the contention of the AO that no reply has been received for over 3 years till the passing of the assessment order on 09.03.2015 from a sovereign Government is unbelievable. The AO has not brought any correspondence or evidence so as to substantiate its contention off extended period. The assessee also raised the issue that extension in this case, if any, will be available for 6 months not 12 months as was the law at the time reference was made.

iv. The AO in the remand report has admitted that it was the information received not the bank statement.

v. The observation by the AO that information provided that the assessee has opened HSBC account in the name of various foundations is incorrect as there is no mention of HSBC in the 6 page document referred to by the AO.

vi. Such information nowhere states that the assessee has opened HSBC account at Zurich in the name of various foundations.

vii. The observation by the AO that the month wise balances in the alleged documents are balance in the bank account is factually incorrect as can be seen from documents which apparently are of investment and not the month wise balances in the bank account.

viii. On the issue of statement of the assessee, the AO in the remand report has ignored the preliminary statement recorded at the beginning of the search where the assessee has categorically denied of having bank account outside India.

ix. The AO has also not referred to the letter dated 30.08.2011 where the assessee has brought on

record that the statement recorded on the date of search was under coercion, duress and tutored.

x. The AO has not rebutted the allegation that the statement was extracted from the assessee by showing a false document and hence, the same cannot be considered.

xi. The AO in the remand report has stated that the deposit in the account belongs to the assessee but he has neither provided the copy of bank statement showing deposit of such alleged amount nor clarified whether these are the deposits in the bank account or are something else.

xii. In the rejoinder, the assessee also pointed out that a cursory look at the documents shows that it is not a bank account or bank statement on the assumption of which the addition has been made.

22. In view of the above issues raised by the assessee, the ld. CIT (A) called for a second remand report on the following specific issues:

i. The AO to confirm whether the 6 pages document referred to in the remand report was with the search party and consequently with the AO before assessment was started.

ii. On the issue of assessment being barred by limitation, in view of Section 153(4), Explanation 1 Clause (viii), the AO was asked to clarify when the last reference was made and the result thereof.

iii. AO to clarify, if no reply has been received at all from the competent authority.

iv. Copy of letter received from the competent authority from whom information was received by CBDT and subsequently the AO.

v. AO to clarify with respect to observation in the assessment order and authorized representative's objection whether the document is an extract of bank account.

vi. AO to clarify on the issue that information not in Swiss language, where allegedly the account is maintained.

vii. AO to clarify whether the information means-photocopy of original or extracted from another document.

viii. AO to clarify whether the amount shown is in US Dollar.

ix. AO to clarify whether the amount shown has to be taxed in this year, not in any earlier year.

x. AO to clarify how the entities Bunfield Invests/Nine on Ten Foundation are linked/operated by the assessee.

xi. AO to clarify how assessee could be treated as beneficial owner.

xii. AO to respond on the issue that assessment order has been passed on direction of higher authorities with reference to the order sheet of the AO dated 20th February, 2015 and 24th February, 2015.

23. The AO submitted its second remand report dated 28.12.2015. In this remand report, the AO stated as under:

i. That the 6 page document containing the extract of bank account maintained by the assessee in HSBC, Zurich was very well with the search party and the same was confronted to the assessee.

ii. On the issue of no reply having been received from the competent authority, the AO admitted that the assessment has been framed on the basis of the information received from the competent authority of France.

iii. The AO submitted the details of the chain of information received by CBDT and consequently by the AO.

iv. In response to the question whether the 6 page document is an extract of bank account, the AO submitted that 6 page document was having the conclusive details of bank account.

v. In response to the question that information was not in Swiss language, the AO stated that the language in which information was received is not material and the contents are important for disposal off the case.

vi. On the issue of assessment order having been passed on the directions of higher authorities, the AO stated that in view of the seriousness of the matter, the directions given by the CIT.

24. In response to the above remand report, the assessee filed second rejoinder on 07.01.2016. In this rejoinder, the assessee submitted as under:

i. The assessee stated that it is apparent from the 6 page document which is being relied upon by the AO as a bank statement is not a bank statement. These pages are carrying just some balances over a certain period and are definitely not a bank statement.

ii. On the issue of limitation, in the rejoinder, the assessee again raised the issue that no evidence has

been submitted by the AO regarding the reference made in the reply received.

iii. As regards the chain of information, it was pointed out that this was all internal correspondence within the Department. Further, this correspondence establishes that the information used by the AO to frame the alleged assessment is not authentic as the same has been just passed on by the France Government.

iv. On the issue of language of the document, the assessee pointed out that this issue is with regard to the authenticity of the document and whether the document relied upon for making addition is a true copy of the bank account.

v. It was pointed out that the AO admitted in the remand report that this is not a bank account but the information received and if so, the issue which arises is who has provided the information, from where the information was picked up. The AO's reply on the specific issue whether this is a copy of bank statement or the information jotted down from some document is silent.

vi. The assessee also raised the issue whether the information means photocopy of original or something written from another document.

vii. The assessee also pointed out that the AO has not clarified whether the amount stated in the alleged document is in US dollars and whether the amount shown has to be taxed in this year. The information apparently being incomplete, it cannot be said that the amount is to be taxed in the year under consideration and for this purpose, it becomes important to find out the author of the person who jotted down this information and the source from which he jotted down this information.

viii. It was also pointed out that the extension of one year completing assessment u/s 153B on the basis of reference being made will not be available in this case as per the facts emerging from remand report.

25. The assessee further filed its submissions on 09.02.2016 raising the issue of authenticity of 6 page document and cross examination of the person who provided such information. The assessee also submitted evidences in the form of press reports whereby the Switzerland Government has replied to the references made by the Competent Authority immediately after the reference was made to support its contention that extension in the present case will be available under clause (viii) of Explanation below Section 153B only from the date when reference was made when reply was received from the

Swiss authorities and not one year as has been assumed by the AO. In this, the assessee also brought to the notice of ld. CIT (A) that the refusal to provide information to India is on the ground that the source is not authentic.

26. The assessee submitted another rejoinder dated 19.02.2016 pointing out that:

i. Merely the information was received from French Government will not authenticate the information contained in the document unless the source and the person from whom the French Government has obtained this document is authenticated and such person is subjected to examination of the veracity of the information contained therein. In this regard, the assessee raised the following issues:

   a. Whether this 6 page document is a bank statement or not?
   b. If not, what this document is?
   c. How this document came into the possession of the French authorities which has been stated in the assessment order/remand report?
   d. Identity of the person who has authored this document and cross examination of the person who has authored such document?

e. If this is not bank statement how additions have been made assuming the figures stated therein as the balances in the bank account?

f. If this is not bank statement, then what is the basis for making additions have been made in the year under consideration?

ii. On the issue of assessment order having been passed beyond the period of limitation, the assessee raised the following specific issues:

a. The date on which the AO made reference to the Indian Competent Authority for each of the assessment year.

b. Copy of such letter written by the AO to the Indian Competent Authority for each of the assessment year.

c. The date when the Indian Competent Authority made a reference to the competent authority of the Switzerland, for each of the assessment year.

d. Copy of the letter written by the Indian competent authority to the competent authority of the Switzerland for each of the assessment year.

e. The date and reply received by the Indian competent authority from the Switzerland competent authority for each of the assessment year.

f. The date and reply received by the AO from the Indian competent authority.
g. The basis on which the AO in the remand report has stated that no reply has been received from the Swiss authorities.
h. Copy of any other evidence/letter received by the AO from the Indian competent authority.

iii. On the issue that the 6 page document is not a bank account, the assessee raised following specific issues:
a. Whether this 6 page document is a bank statement or not?
b. If not, what this document is?
c. How this document came into the possession off the French authorities which has been stated in the assessment order/remand report?
d. Identity of the person who has authored this document and cross examination of the person who has authored such document?
e. If this is not bank statement how additions have been made assuming the figures stated therein as the balances in the bank account?

f. If this is not bank statement, then what is the basis for making additions have been made in the year under consideration?

iv. On the issue of language of this 6 page document, it was again pointed out that the allegation is that this bank account is maintained with HSBC, Switzerland and how come the document is in French Language. The AO has not made any effort to find out whether HSBC is maintaining its accounts in French language.

v. On the issue of order having been passed on the direction of CIT, it was contended that AO has admitted because of the seriousness of the case, the order has been passed on the direction of CIT and hence, the order stands vitiated placing reliance in the judgment of Hon'ble Supreme Court in the case of Greenworld Corporation 314 ITR 008.

27. Subsequent to the above, the AO filed another report dated 26.02.2016 where he stated that the 6 page document is an extract of the bank statement containing personal details of the account holder. This document was handed over under Article 28 of the DTAC between India and France by the French Competent Authority to the Indian Competent Authority.

28. In response thereto, the assessee filed another rejoinder dated 12.04.2016 wherein the following was submitted:

i. It was pointed out that in this remand report, the AO has admitted that the 6 page document on the basis of which addition has been made presuming it to be a copy of the bank account is not a bank account. Further, the contention of the AO that this is an extract of the bank statement is also not correct as is apparent from the alleged 6 page document where certain figures mentioned are regarding investment. There is neither any credit nor debit of any money withdrawn which is in a bank statement. It was pointed out that the second question as to what this document is, the AO has simply has stated "not applicable" meaning thereby he doesn't want to commit anything about the nature of this document. Having replied the first question that it is not a bank statement, the answer to the second question clearly shows a confirmation by the AO that this is not a bank statement.

ii. As regards the issue how this document has come to the possession of French Authority, the AO stated that the Indian Authority got it from the

French Authority it so as to establish its authenticity. The AO has not answered it because he himself did not know from where the Government of France obtained this document.

iii. On the query no. 4 regarding the identity of the person who has authored this document, the AO stated that the information was provided by the Competent Authority of France. He has not answered the specific question who has authored this document. Identity of this person has not been found out. The AO is also silent on the cross examination of such person.

iv. On the issue that the 6 page document is not a bank statement, then how the addition has been made, by assuming the figures stated therein as balance in the bank account, the AO has simply stated “not applicable”. This is again admission that this being not a bank statement, then the addition made assuming the figures stated therein as balance in the bank account is incorrect.

v. In this remand report, the assessee also pointed out that other specific issues raised in its rejoinder dated 19.02.2016 have not been answered by the AO.

29. Thereafter, the AO submitted another report dated 04.05.2016 wherein he enclosed letter dated 13.01.2012 written by Director of investigation to JS, FT &TR-I, CBDT, requesting him to seek information from Switzerland Tax Authority and letter dated 21.02.2014 written by Under Secretary to CCIT, Central – Delhi, informing that the first reference was made as per the enclosure i.e. on 21.02.2012.

30. In response thereto, the assessee filed another rejoinder dated 19.05.2016 pointing out that these letters submitted by the AO are internal correspondence and are not evidences of the letter written by the Indian Competent Authority to Swiss Tax Authority. The AO has not been able to point out any material which was found during the course of the search for the year under consideration. As regards the statement of the assessee, it was also submitted that in absence of any incriminating material, that cannot be basis for making addition in assessment u/s 153A in view of the judgment of Hon'ble Delhi High Court in the case of CIT VsHarjeev Aggarwal in ITA No. 8/2004 dated 10.03.2016. It was also pointed out that there was no material of any undisclosed income being earned during the year under consideration and hence, addition u/s 69 is untenable.

Excerpts from the order of the Ld. CIT(A):

31. The ld. CIT (A) vide order dated 18.07.2016 confirmed the addition of Rs.8,51,10,905/- made by the AO u/s 69 as unexplained investment in AY 2006-07 and of Rs. 61,22,916/- in AY 2007-08.

32. On the legal issue of addition being unsustainable in absence of any incriminating material found during the course of search, the ld. CIT (A) held that a detailed statement of the assessee has been recorded during the course of search operation wherein he has admitted that he has maintained bank account with HSBC, Switzerland. This admission is on the part of the assessee given during the course of the search and accordingly, he rejected the contention of the assessee.

33. On the issue of assessment order having been passed beyond the time limit prescribed, the ld. CIT (A) held that as per the evidence submitted by the AO, the reference was made on 21.02.2012 and the AO in the remand report has clarified that no information with regard to the said reference has been received till the date of the assessment. He further held that the internal communication placed on record of having made the reference for exchange of information coupled with the fact that the AO has placed

on record an unambiguous clarification that no information had been received in reference to the impugned reference till the date of assessment will suffice for extending the period by one year and hence, the assessment was completed within the extended period of limitation.

34. On the issue of no notice having been issued u/s 143(2), the ld. CIT (A) relying upon the judgment of Hon'ble Delhi High Court in the case of Ashok Chadha Vs ITO 20 Taxmann.com 387 held that issue of notice u/s 143(2) is not mandatory and accordingly, this contention off the assessee was also rejected. The judgment relied upon by the assessee of Hon'ble Delhi High court in the case of Nikki Drugs in ITA No. 442/2015, dated 03.12.2015 was distinguished by the ld. CIT (A).

35. The contention of the assessee that assessment order stands vitiated having been passed on the specific direction of the CIT was also rejected by the ld. CIT (A) on the ground that approval is required to be obtained by the AO from the Addl. CIT/JCIT as per provision of Section 153D. The ld. CIT (A) further held that administrative control of CIT has not been exceeded and the CIT in his administrative capacity was sell within his right.

36. On the merit off the addition, the ld. CIT (A) held that the information relied upon by the AO has been handed over by competent authority of French Government and hence, the contention of the assessee that information is not authentic or reliable was not acceptable.

37. On the issue of language of communication, the ld. CIT (A) was of the view that since this information was received from French Government and not from Switzerland, that is why it is in French.

38. The ld. CIT (A) was of the view that due process had been followed in the handing over of information.

39. The ld. CIT (A) further held that the contention that the said document do not contain complete information with regard to the deposit/withdrawal does not take away material significance revealed by these documents that assessee had substantial deposit indicated by monthly balances recorded in the said documents.

40. The ld. CIT (A) further held that there is detailed admission by the assessee and also the refusal to sign the consent form. Further, the contention of the assessee that impugned credit has not been made in the year is also not valid as AO has placed sufficient evidence on record to show that the peak amount had been in the assessee'sbank

account during the year. The evidences highlighted by the AO have to be appreciated in the light of the period of limitation of domestic tax authorities to access the information of banking authorities abroad. Thus, the onus was on the assessee which he has failed to discharge and hence, the AO was justified in making the addition. On this basis, the ld. CIT (A) upheld the order of the AO.

41. On the issue of addition of interest of Rs.1,12,880/- in AY 2007-08, the ld. CIT (A) deleted the same. The ld. CIT (A) held that the AO has made such addition merely on the basis of presumption that assessee would have earned interest at the rate of 4% on the credit balance in its bank account on February, 2007. However, there is no evidence to support such addition. Further, the ld. CIT (A) held that it is a fact that no such information is evident from the documents received by the AO from French Government under information exchange mechanism of DTAC.

42. Aggrieved by the order of the ld. CIT (A), the assessee is in appeal in respect of the additions confirmed by the ld. CIT (A) and revenue is in appeal in respect of deletion of addition made on account of interest in AY 2007-08.

Arguments of the Ld. AR before the Tribunal:

A) On the issue of limitation-Section 153B:

43. Taking the legal grounds first, the ld. Counsel of the assessee submitted that the assessment order passed by the AO is time barred as the same has been passed beyond the statutory limit prescribed under the provision of the Act. The ld. AR submitted that the search has been carried out on the assessee on 28.07.2011. As per the provisions of Section 153B of the Act, the assessment u/s 153A ought to have been culminated by 31st March, 2014 in view of the provision of Section 153B(1)(a) of the Act. In the present case, assessment case to an end as per the assessment order on 09.03.2015. The Department is relying on clause (viii) of Explanation to Section 153B of the Act to claim extension of the period of limitation by one year without producing evidence of any reference having been made.

44. The ld. AR submitted that the AO's contention is that the alleged reference was made on 21.01.2012. At that point in time, clause (viii) of Explanation to Section 153B, as it then stood, provided for extension of time period to complete the assessment by 6 months as against by one year. He submitted that is vide the Finance Act, 2012 that the period of extension of 6 months was increased to one year. This amendment was made effective from 01.07.2012.

The ld. AR submitted that in absence of any explicit declaration that such amendment is retrospective in operation, such amendment has to be considered as prospective in nature and it is only the references made on or after 01.07.2012 which can be eligible for the extended period of one year. The ld. AR submitted that wherever legislation prescribes a date of applicability of a provision to be date other than 1st April off the year, it is with reference to transaction that takes place after such date. He argued that this is normal in the case of amendment to provision of TDS, etc. In the case in hand as well, the amendment has been made applicable w.e.f. 01.07.2012 and the benefit of extended period of one year vide the amendment made vide Finance Act 2012 will only be available qua references made on or after 01.07.2012. He accordingly argued that at best, 6 months extension can be considered to be available in the case in hand in which case, the assessment order should have been passed by 30.09.2014. He argued that since the order was passed on 09.03.2015, the same is barred by limitation and liable to be quashed.

45. The ld. AR further argued in an alternate that even if it is assumed that the amended provision is applicable, then too, as per the clause (viii) of Explanation to Section 153B, the extended period is to be considered as the period

of one year or the period between the date on which the first reference is made by the competent authority and the date on which information is last received, whichever is less. To compute such period, onus is on the Department to bring copies of the letter exchanged. In absence thereof, the benefit of extended period cannot be considered. He submitted that the ld. CIT(A) erred in holding that the internal communication placed on record should be sufficient to settle the issue of having made the reference for exchange of information and that the clarification from AO that no information has been received till date of assessment order is sufficient. He submitted that the AO must produce authentic document /correspondence on record to demonstrate that he is entitled to extended period of limitation.

46. The ld. AR argued that since the AO has failed to bring on record any correspondence in this regard, the extended period of one year cannot be assumed merely on the basis of assertion made by the AO. As such, the ld. CIT(A) has gone wrong on relying upon a simple assertion made by the AO without there being any evidence to support such assertion. It was submitted that limitation is an important issue and it is AO who is seeking extended period and as such, onus is upon him to produce evidence. Having failed to do so, despite repeated remand reports being called

upon by the ld. CIT(A), the assessment order needs to be quashed as being barred by limitation.

47. The ld. AR further submitted in an alternate that the reference having been made even before the initiation of assessment proceedings u/s 153A, the extension will not be available. In this regard, the ld. AR pointed out that the reference in the present case has been made as per the AO on 21.01.2012 whereas the assessment proceedings were initiated by the AO by issuance of notice u/s 153A on 21.11.2012. Accordingly, the reference having been made even before the initiation of assessment proceedings, the extended period of limitation cannot be available.

B) Non-issue of notice u/s 143(2):

48. The ld. AR on the next legal ground submitted that the assessment is bad in law as undisputedly, no notice u/s 143(2) has been issued and served on the assessee after filing of return of income in response to notice u/s 153A. The ld. AR submitted that the ld. CIT(A) erred in placing reliance on the judgment of the Hon'ble Delhi High Court in the case of Ashok Chadha Vs ITO 20 Taxmann.com 387 to hold that issuance off notice u/s 143(2) is not mandatory in respect of order passed u/s 153A. He submitted that though the issue is decided against the

assessee in the said judgment, however, the said judgment is no longer a good law in view of the subsequent judgments of the Hon'ble Delhi High Court on the subject matter of issuance of notice u/s 143(2).

49. He submitted that in the judgment of Ashok Chadha (supra), the Hon'ble Delhi High Court has discussed at para 10 that in the case of CIT Vs Madhya Bharat Energy Corpn. in ITA No. 950/08 decided on 11.07.2011, the Hon'ble Court has held that there is no requirement to issue notice u/s 143(2) in absence of any specific requirement for the same u/s 147 of the Act. Thereafter, the Hon'ble Court has held that there is no such requirement in Section 153A as well vide para 11. Further, the Hon'ble Court has held vide para 13 and 14 that the words "so far as may be" used in Section 153(1)(a) cannot be stretched to the extent of mandatory issue of notice u/s 143(2).

50. The ld. AR submitted that the judgment of Hon'ble Delhi High Court in the case of CIT Vs Madhya Bharat Energy Corpn. ITA No. 950/08 decided on 11.07.2011on which reliance was placed in the case of Ashok Chadha (supra), for holding that no notice is required in absence of a specific requirement of issuance provided under the provisions of the Act is no longer a good law, as this

decision has been reviewed by the Hon'ble Delhi High Court in revenue Petition No. 441/2011 vide order dated 17.08.2011. This fact has been noted by the Hon'ble High Court in the case of Pr. CIT Vs Shri Jai Shiv Shankar Traders Pvt. Ltd. (2016) 383 ITR 448 dated 14.10.2015 and it has been held that it is mandatory to issue notice u/s 143(2) in proceedings u/s 147 of the Act as well. Further, he submitted that a number of judgments have been pronounced by the Hon'ble Delhi High Court wherein the Court has taken a view that it is mandatory to issue notice u/s 143(2) in proceedings u/s 147 of the Act as well.

51. He submitted that the provision of Section 148 and Section 153A are in *pari-materia* as both require notice to be issued by the AO requiring assessee to furnish the return and once the same is so furnished, both the provision provide that "the provisions of the Act, shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139 off the Act". He submitted that the interpretation of the expression "so far as may be" has to be same for both the provision of Section 147 and Section 153A. The ld. AR submitted that once it has been held in the subsequent judgments by the Hon'ble Delhi High Court that it is mandatory to issue notice u/s 143(2) in respect of proceedings u/s 147, the words "so far as may be" should be given same interpretation under both

the provision of Section 148 and 153A and accordingly, the requirement to issue notice u/s 143(2) should be seen as mandatory for assessment u/s 153A as well.

52. The ld. AR further submitted that the words "so far as may be" appearing in Section 148 were interpreted by the ITAT Delhi Special bench in the case of Raj Kumar Chawla Vs ITO (2005) 94 ITD 1 wherein it was held that assessment u/s 147 is invalid if the notice u/s 143(2) is not issued within 12 months from the end of the month in which return u/s 147 was filed after issuance of notice u/s 148. To cure such time barred assessments, the law was amended retrospectively vide the Finance Act, 2006 and two provisos to Section 148 were inserted to cure the defect in relation to returns filed prior to Section 01.10.2005 in certain circumstances. However, an Explanation was inserted in the Act vide the Finance Act, 2006 w.e.f. 01.10.2005 in Section 148(1) so as to clarify that the provisions of the said provisos shall not apply in relation to any return which has been furnished on or after 01.10.2005 in response to a notice served u/s 148(1). The ld. AR submitted that this act of the legislation itself reflects that the legislation also considers that the issuance of notice u/s 143(2) is mandatory in view of the words "so far as may be" and the same interpretation should be given even to the provision of Section 153A.

53. The ld. AR further submitted that the ld. CIT(A) erred in distinguishing the judgment of the Hon'ble Delhi High Court in the case of Pr. CIT Vs Nikki Drugs & Chemicals Pvt. Ltd. (2016) 386 ITR 680. Further, the AO also placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT Vs Laxman Das Khandelwal in Civil Appeal No. 6261-6262 of 2019 to put forth its contention that non-issuance of notice u/s 143(2) renders the proceedings void and the same is not curable u/s 292BB of the Act.

C) No incriminating material seized during search:

54. The next legal ground argued by the ld. AR was that the assessment years under consideration i.e. AY 2006-07 and AY 2007-08 were completed assessment and not abated assessment and hence, no addition can be made in absence of incriminating material found during the course of search in view of the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (2016) 380 ITR 573 and other such judgments on the issue.

55. The ld. AR argued that the additions were based on two premises as can be seen from assessment order. One premise is the 6 page document received allegedly under exchange of information mechanism through DTAA/DTAC which was available with the department prior to the date

of search. Second is the statement of assessee recorded during the search through coercion which was subsequently retracted. With regard to 6 page document, the ld. AR submitted that the said document was available prior to the date of search itself. This is an undisputed fact. The same is evident from the communication between the Director of Investigation Wing and the Pr. CIT placed in the paper book. The said document accordingly cannot constitute incriminating material found during the course of the search.

56. In support thereof, the ld. AR placed reliance on the judgment of ITAT Delhi in the case of AnuragDalmiaVs DCIT in ITA Nos. 5395 & 5396/Del/2017 and in the case of Krishan Kumar Modi Vs ACIT in ITA No. 2892/Del/2017 and ITAT Benches of Kolkata in the case of Shri BishwanathGarodiaVs DCIT in ITA Nos. 853, 854, 855 & 856/Kol/2016 and Yamini Agarwal Vs DCIT 83 Taxmann 209 (Kol. Trib.).

D) Statement u/s 132(4):

57. As regards, the statement recorded during the course of search, the ld. AR submitted that firstly, the same was obtained under coercion on 28.07.2011 which stands subsequently retracted by the assessee on 30.08.2011 and

as such no cognizance of such statement can be taken. It is a settled law that a statement obtained under coercion and a statement which was tutored cannot be used against the assessee.

58. The ld. AR further submitted that without prejudice to the above, it is settled law that statement recorded during the course of search does not constitute incriminating material. In this regard, the ld. AR placed reliance on the following judgments:

- *Pr. CIT Vs Best Infrastructure (India) Pvt. Ltd. (2017) 397 ITR 82 (Del.)*
- *CIT VsHarjeev Aggarwal (2016) 290 CTR 263 (Del.)*
- *Vascroft Design Pvt. Ltd. Vs ACIT in IT(SS)A Nos. 129 & 130/Ahd./2015*
- *Shri Nirmal Kumar KediaVs DCIT in ITA Nos. 124 to 126/JP/2019*
- *Shri BrijBhushanSinghalVs ACIT in ITA No. 1412/Del/2018*
- *Krishan Kumar Modi Vs ACIT in ITA No. 2892/Del/2017*
- *AnuragDalmiaVs DCIT in ITA Nos. 5395 & 5396/Del/2017*
- *Shri BishwanathGarodiaVs DCIT in ITA Nos.853 to 856/Kol/2016*

59. Further, in support of the above, the ld. AR also placed reliance on the recent judgment of the Hon'ble Delhi High Court in the case of PCIT Vs Anand Kumar Jain (HUF) in ITA No. 23/2021 dated 12.02.2021 to contest that

statement recorded u/s 132(4) does not constitute incriminating material and no addition can be made on the basis of statement alone without any reference to material gathered during the course of search operations.

60. Further, the ld. AR also relied on the CBDT's Circular F.No. 286/2/2003/IT(Inv.) dated 10.03.2003 which was reiterated CBDT's Circular No. 286/98/2013-IT(Inv.) dated 18.12.2014 and submitted that the Board has emphasized upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

61. The ld. AR submitted that in the case in hand, admittedly, no incriminating material whatsoever has been gathered during the course of search. On the contrary, on the basis of a note carried by the search party, the assessee was forced to give a statement on the dotted lines by the search party. It is an admitted fact that no material whatsoever was found regarding assessee having any bank account outside India during the search. Accordingly, the additions made by the AO are against the provision of the law and are unsustainable.

62. The ld. AR further submitted that without prejudice to the above, even if it assumed that the statement

constitutes incriminating material, addition can be made only in the year to which the incriminating material pertains. In this regard, the ld. AR placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT Vs Singhad Technical Education Society (2017) 397 ITR 344 and the judgment of Hon'ble Delhi High Court in the case of PCIT Vs M/s SMC Power Generation Ltd. in ITA No. 406/2019.

63. The ld. AR submitted that in the case in hand, in the statement recorded, it is nowhere stated that the amount has been deposited by the assessee in the bank during the year under consideration. On the contrary, in the statement, it has been stated that the account was opened in 2002 and the amount was invested on various dates in 2002. In this regard, the ld. AR placed reliance on question no. 7 and 18 of the statement recorded. The ld. AR submitted that it is a settled law that if the revenue has to rely on the statement, the statement must be read in entirety. In this regard, the ld. AR placed reliance on a number of judgments which is a part of its case law compilation.

64. The ld. AR submitted that on going through the statement, the entire amount was invested prior to FY 2006 and accordingly, even if, the statement could be considered

as incriminating material, it does not constitute incriminating material qua the year under consideration. Consequently, addition cannot be made during the year under consideration in view of the aforesaid position of law laid down by the Hon'ble Apex Court in the case of Singhad Technical Education Society (supra) and as has been echoed by the Hon'ble Delhi High Court in the case of SMC Power Generation Ltd. (supra).

65. On merits, ld. AR submitted that the entire basis of making the addition is revolving around the two allegation of the AO. One is the statement recorded during the search. The second is the 6 page document/ information. The ld. AR submitted that the addition cannot be made considering the same individually or collectively.

66. With regard to the 6 page document being the information received from French Competent Authority on the basis of which the AO has made the addition, he submitted that there is no authenticity to this information received by way of 6 page document which was received by way of pen drive. It is not that the case this information was obtained from Bank. The source of information with French Authority, its author, basis has not been revealed despite repeated request.

67. He submitted that merely because the information is received from France under the DTAC agreement does not make the information credible. He submitted that the French Competent Authority has just worked like a courier and that too without knowing from where and from whom it received such information. He submitted that if SBI receives an anonymous letter containing certain information about various people of ICICI bank account, that information is passed on to the Income Tax Department, the mere fact that such information has been received by the Income Tax Department from the SBI will not make itself make the information as a credible evidence unless ICICI bank confirms the same as true.

68. The source of such information and the fact thereof are still to be investigated and established. He argued that in this case, mere receipt of information from anonymous source will not give credibility and authenticity to such information. In the present case, there is no dispute that Indian Income Tax Department has received a pen drive from French Competent Authority. But what is contained in pen drive does not become authentic in the absence of the information and the identity from which the French Competent Authority obtained the said pen drive being established. There is no answer to this issue by the AO despite repeated remand report being called by the ld.

CIT(A). The ld. AR invited attention to the correspondence shared by the AO during the hearing before the ld. CIT(A) to demonstrate that what is being tried to establish is the pen drive having been received from the French Authority. There is no link brought on record about this pen drive with any bank account with HSBC, Switzerland.

69. The ld. AR further argued that unless the author of the information is established and it is not brought on record as to how French Government got in possession of the information, the information cannot be considered to be authentic.

70. The ld. AR further also submitted that the case of the revenue is that this pen drive contains a bank statement of the assessee with HSBC Bank, Switzerland whereas a cursory look at the print out of this pen drive clearly shows that it is not a bank statement but merely a memoranda, the authenticity of which cannot be claimed merely on the basis that it has been received from French Competent Authority. It was further submitted that this is neither original nor Photostat.

71. He further submitted that the 6 page document is not a bank statement. He submitted that there is no basis for alleging that it is a HSBC bank account. Nowhere, HSBC

has been stated in the 6 page document. There is no debit or credit as is normal in a bank statement. The ld. AR took us through the 6 pages document to demonstrate that the word "HSBC" is not appearing anywhere in this 6 page document. On this basis, he contended that it is not understood on what basis it is being assumed that this is HSBC bank account. He further pointed out that the revenue has been seeking information from Swiss authorities about HSBC Bank account, Geneva as is evident from page 5 to 7 of paper book filed by the ld. DR. he submitted that the fact that the revenue is seeking the bank statement confirms that the AO is not having bank statement and hence it is asking the bank statement from Swiss Authorities.

72. The ld. AR submitted that it is an admitted fact by the AO that he was not having the bank account. This fact has been admitted in the remand report dated 13.10.2015 where the AO has stated that information has not been received till the date of assessment order. The ld. AR pointed out that in this situation two issues arises.

73. First, in case the AO was having sufficient evidences, where was the need to obtain further information?

74. Second, in case evidences were not sufficient, whether the AO has been able to obtain any further evidence or not.

75. Obtaining information from HSBC, Switzerland by the revenue authorities itself confirms the fact that the AO was not having any credible evidence to make the addition. Accordingly, the information available with the AO was neither sufficient nor credible to make the addition. Further, it is admitted by the AO that no further information has been received. If that be so, addition made was premature and simply at the fag end of the assessment, the AO made the addition without having any credible and sufficient evidence. Thus, the AO has made addition prematurely. In case information with the AO was sufficient there would have been no need to seek information from Swiss Authorities. He argued that this supports that the contention that information with the AO was not authentic, it was not a bank statement, it was not any original document, it was not sent by HSBC and it was not even sent by Swiss Authorities.

76. He further pointed out that as per the document submitted by the AO in the remand proceedings before the ld. CIT(A) regarding the authenticity of the pen drive, there is a letter dated 26.06.2015 placed at PB page 250 from DIT(Inv.)-2, to Pr. CIT (Central-II) wherein it has been

stated that print out from the content of the pen drive pertaining to Delhi Region were handed over to DGIT(Inv.) on 14.07.2011. The print out so received contained base sheets of account of the assessee of HSBC Bank, Geneva, Switzerland. The ld. AR invited attention to the paper book filed by the ld. DR where in the proforma regarding request for information, the information has been sought from HSBC Bank, Geneva at page 6 of the first paper book filed by the ld. DR. Thus, allegation as per the pen drive is of bank account of HSBC bank at Geneva, Switzerland falls flat. However, he pointed out that in the assessment order, addition has been made by the AO of HSBC Bank at Zurich. Geneva and Zurich are two different cities and hence, the very basis of making the addition by the AO itself is contradictory. The ld. AR contended that addition is being made on the basis of account with HSBC Bank, Geneva or HSBC Bank, Zurich itself is not clear. The ld. AR contended that in the case of ITO Vs PradipBurman, CC No. 5257922/16, the ACMM has expressed that such inconsistencies leads to grave doubt on the authenticity of the USB drive and its contents and the prosecution charges were dropped.

77. The ld. AR further submitted that since the 6 page document is unauthentic and unreliable, the said data cannot be relied upon. He submitted that it is a settled law

that suspicion however strong, cannot take the place of evidence and that addition cannot be made on the basis of suspicion and in this regard, the ld. AR placed reliance on various judgments forming part of its case law compilation.

78. With regard to the statement, the ld. AR submitted that it is an undisputed fact that the said statement was subsequently retracted. Once that is the case, the said statement cannot be relied upon. He submitted that it is a typical case where the statement was obtained under coercion. The ld. AR submitted that it has been explained before the AO as well as the ld. CIT(A) that on the date of search, the assessee was surrounded by search officials and was coerced upon recording his statement of their choice. The statement recorded was as per the information tutored by the search team which is factually incorrect and made under duress. The statement so given was neither voluntary nor true.

79. The ld. AR further submitted that without prejudice to the above, even going by the statement, no addition can be made during the year under consideration. The ld. AR contended that the alleged statement of the assessee also does not support the case of the AO of making addition in the year under consideration. In this regard, the ld. AR invited attention to Section 69 of the Act under which the

addition has been made by the AO. As per this section, in case of any unexplained investment, the addition has to be made in the year in which such investment has been made. This section does not give any discretion to the AO to make the addition in the year of his choice. The ld. AR on the basis of the above contention invited attention to the statement. He submitted that the response to question no. 7 and 18 are very clear. As per this statement, the investment has been made in 2002. He submitted that the AO himself has not considered statement as the basis though he is referring to in the assessment order. Thus, addition on the basis of statement in the year under consideration is unsustainable.

80. The ld. AR further submitted that for making any addition u/s 69 of the Act onus is on the department to prove that there is unexplained investment. The ld. AR pointed out that such onus has not been discharged. The ld. AR further submitted that it is an admitted fact by the AO himself that upon reference being made to Swiss Authorities under the DTAA, no reply has been received by the revenue till date. Further, no incriminating material whatsoever has been found during the course of the search. In view of such facts, no adverse inference can be drawn in the case in hand and the addition ought to be deleted.

Submissions of the Ld. DR:

81. In reply, the ld. DR supported the order passed by the AO as confirmed by the ld. CIT(A). She submitted that the addition made by the AO deserves to be upheld. In support of her contentions, the ld. DR filed her arguments in writing.

A) On the issue of limitation-Section 153B:

82. It was contended by the ld. DR that the order passed by the AO is legally valid and within the time prescribed under the law.

83. In respect of the ground raised by the assessee that the assessment order is barred by limitation as the same has been passed beyond the time prescribed, the ld. DR submitted that the order has been passed within the extended time as per clause (viii) of the Explanation below Section 153B. She submitted that as per this clause, the limitation to pass assessment order gets extended by a period of one year or the period starting from the date on which the reference is made and ending with the date on which the information requested is last received, whichever is less. She submitted that in the case in hand, it is an

admitted position of the AO that no reply has been received by him till date of passing the assessment order. Accordingly, the limitation period shall be extended by a period of one year. The ld. DR referred to her paper book page 8 which is letter dated 26.05.2015 from Under Secretary (FT&TR Division) to Pr. CIT (Central-II) wherein a reference was made to a letter dated 22.04.2015 received from Swiss Government where it has been stated that the correspondence with the Swiss Government is going on and the Swiss Government has informed that the basis of which information was sought do not sufficiently demonstrate that the sources/evidences are independent from the HSBC list. Further, the Swiss Government sought an explanation to substantiate the link between certain companies/entities mentioned in request letter with the Taxpayer concerned. She submitted that such letter is proof that no reply was received prior to date of passing of assessment order on 09.03.2015 and accordingly, the extended period of one year shall be available. Therefore, she submitted that the assessment order has been passed within the extended period of limitation.

84. The ld. DR further submitted the following synopsis on this issue:

"2. The issue referred is with regard to the assessment order passed by the AO and the assessee alleging that the same is barred by the limitation in view of clause (viii) of Explanation 1 of Sub-Section 3 of Section 153B of the IT Act.

3. Further, the assessee has also taken the ground that the AO has wrongly recorded in the assessment order that the assessee had given concurrence for the extension of time upto 31.03.2015.

4. This issue of assessment order being barred by limitation has been taken up by the assessee both during the assessment stage as well as at the first appellate stage before the Ld. C1T(A). The AO has also dealt with this issue in the assessment order and the Ld. CIT(A) has given a very detailed and comprehensive finding that the order which is passed on 09,03.2015 was well within the time and the assessee's contention have been dismissed by the Ld. CIT(A) by giving a very reasoned finding in the appeal order.

5. Even-though this issue has been dealt comprehensively in the appellate stage, the comments on this issue are once again being provided to further elaborate the finding of Ld. CIT(A).

5.1 A search and seizure operation was carried out in the case of Mr. Parminder Singh Kalra and Consortium Security

Pvt. Ltd. and other associated concerns on 28.07.2011. In the normal circumstances as per the provisions of Sec. 153B(1) the assessment in the search and seizure operation cases was required to be completed within the period of 2 years from the end of the financial year in which the last of the authorization for search u/s 132 or requisition u/s 132(A) was executed. As in this case, search was conducted on 28.07.2011 and all the warrants have been executed within FY 2011-12 only, accordingly, in the normal circumstances the limitation date for competing assessment u/s 153A was 31.03.2014.

5.2 Further, as during the course of search and seizure operation, it was found out that the assessee was having foreign accounts/ foreign assets, accordingly, a reference was made by the Director of lnvestigation-2, New Delhi vide letter no. DIT Inv.-11/FB/11-12/72 (copy enclosed) dated 13.01.2012 to FT&TR Division to request for the information about the assessee from the Switzerland Tax Authority. Further, the competent authority of India for exchange of information i.e. Joint Secretary(FT&TR-I) has made the first reference to Switzerland Tax Authority vide letter F.No. 504/0070/2012-FTD-I dated 21.02.2012 [copy of letter of FT&TR vide F.No. 504/70/2012-FTD-I dated 21.02.2014 to "this effect is enclosed). In response to the reference made

by the JS (FT&TR), no information has been received till the passing of the order i.e. 09.03.2015.

6. Before proceeding further, it would be very pertinent to first refer to the Explanation-(ix) of Sub-Sec. 3 of Sec. 153B which governs the time limit for completion of assessment u/ s 153A of the IT Act. For ready reference, the explanation referred above is reproduced below:

Explanation (ix) of Sub-Sec. 3 of Sec. 153B

"(ix) the period commencing from the date on which a reference or first of the. references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one gear, whichever is less;"

6.1 From the plain reading of the explanation, it is crystal clear that the period starting from the date on which the competent authority of India, i.e. JS(FT&TR-I) in the instant case, makes a reference to the foreign authority i.e. 21.02.2012 in the instant case, under the agreement i.e. DTAA between India and Switzerland and the period would be completed only when the information of the last reference is received by the Pr. Commissioner i.e. Pr. Commissioner of

Income lax (Central)-2 in the instant case and the completion date is extended to maximum 01 (One) year if no information is received i.e. 31,05.2015 in the instant case as mi information is received.

6.2 Thus, in the instant case, as the reference was made by the JS(FT&TR-2) on 21.02.2012 and no information has been received for a one year period, accordingly, period of maximum of one year is excluded from the lime barring date or in other words, the time barring date of 31.03.2014 in the instant case gets extended by 12 months i.e. 31.03.2015.

7. Now, coming to the assessee's ground that as the notice u/s 153A was issued on 21.12.2012, accordingly, the extension of time can be allowed only when a reference has been made after the issuance of notice. This issue has already been dealt by CIT(A) but it is once again mentioned that it has no basis because the explanation (ix) of Sec. 153B sub section 3 clearly and categorically mentions that the extension of time is available from the date JS(FT&TR) makes a reference to the foreign authority. Now, time limits for assessment in the search and seizure case is governed by sec. 153A of the IT Act which provides that the assessment and the re-assessment of the assessee's total income in respect of each assessment year falling within 6

assessment years and the year in which search and seizure takes place has to be completed mandatorily.

7.1 Further, the sec. 153A also provides that the proceeding gets abated from the date of search in all the years in the case of a person where search is initiated u/s 132 or 132A of the IT Act. Thus, in the instant case, as the search was initiated on 28.07.2011, accordingly, from that date onwards, the AO was duty bound to complete the assessment and the re-assessment proceedings in the last 6 years as per the provisions of Section 153A and accordingly, during the pendency of the assessment proceedings, a reference was made by the Director of lnvestigation-2 to JS(FT&TR-II) for providing information so that the same can be used in the case of assessee for the assessment or re-assessment proceedings.

8. Thus, the assessee's ground that a reference was made before the date of issuance of notice u/s 153A is totally devoid of merits because as per the sec 153A the period of assessment or re-assessment has to be started from the date of initiation of search and from that date onwards the assessment and the re-assessment proceedings are pending and accordingly, clearly in line with the provision of sec, 153A r.w.s. 153B a reference was made by the DIT(lnv)-2, New Delhi to the JS(FT&TR-II).

9. Further, as per the section 153B it is not important who makes the reference whether it Investigation authorities or the Central charge authority, but the time limit gets extended only from the day the reference was made by the competent authority i.e. JS(FT&TR). In the instant case, it is established beyond doubt that the reference was made by JS(FT&,TR) on 21.02.2012 and as no information was received, accordingly, one year extension was available to the AO for completion of assessment i.e. till 31.03.2015 which is time barring/ limitation date of the assessment in the instant case.

9.1 Accordingly, the AO passed an order on 09.03.2015 which is well within the limitation date.

10. Further, it has been mentioned by the assessee that the AO has wrongly mentioned in the assessment order that during discussion, the assessee had agreed for extension of time till 31.03.2015. Without going into the merits of the discussion between the assessee and the Assessing Officer, the passing reference in the assessment order by the AO has no meaning because the limitation date is governed by the provision of the IT Act and discussion between the AO and the assessee has no meaning within the provisions of the IT Act. As it has been conclusively established in the above referred paras that limitation date in the case is

31.03.2015, accordingly, the assessee's contentions are totally devoid of merits and are baseless. Accordingly, the same may be rejected."

B) Non-issue of notice u/s 143(2):

85. In respect of the ground raised by the assessee that the assessment framed is without jurisdiction as no notice u/s 143(2) was issued post filing of the return of income by the assessee in response to notice u/s 153A. She submitted that the ld. CIT(A) rightly rejected such contention. It was contended that in an assessment framed u/s 153A, there is no requirement to issue notice u/s 143(2) after the assessee has filed the return in response to notice u/s 153A. She submitted that this issue is squarely covered against the assessee by the judgment of the Hon'ble Jurisdictional Delhi High Court in the case of Ashok Chadha (supra). In this judgment, it has been held that there is no requirement to issue notice u/s 143(2) in search cases. She also submitted that the judgments relied upon by the ld. AR are distinguishable since they are in the context of assessment proceedings under normal assessment proceedings or u/s 147. The procedure for Section 153A is different and in such cases, once return is filed, the AO is duty bound to complete the assessment. Thus, it is not an issue of jurisdiction which arises

consequent to issue of notice u/s 143(2). She submitted that the AO assumes jurisdiction for reassessment consequent to the search and not consequent to the issue of notice u/s 143(2).

C) No incriminating material seized during search:

86. In respect of ground raised by the assessee that in the absence of any incriminating material found during the course of search, no addition can be made. The ld. DR submitted that both the statements as well as the bank statement constitute incriminating material for the purpose of making the addition and accordingly, the ratio laid down by the Hon'ble Delhi High Court in the case of Kabul Chawla (supra) shall not apply. She submitted that the assessee has admitted in the statement recorded during the course of search that he is the owner of the bank account held with HSBC Bank. She contended that statement coupled with the bank statement received from French Competent Authority constitute incriminating material for the purpose of making the addition. She argued that the incriminating material was well with the department and the same has been duly confronted to the assessee during the search which the assessee has also accepted. She further argued that the existence of incriminating material is not a prerequisite for assessment

u/s 153A and relied on the various judgments of Hon'ble High Court of Allahabad, Hon'ble High Court of Kerala wherein it was held that the assessment need not be restricted to the seized material only. She argued that the word "incriminating material" has a wide connotation and cannot be interpreted narrowly. She argued that the bank statement was more than incriminating in nature. She relied on the ratio given by the Ld.CIT(A) which has been mentioned above in this order.

D) Statement u/s 132(4):

87. She further submitted that the fact that the statement is retracted is not relevant as retraction is merely an afterthought. In support of the contention, she filed a written synopsis which reads as under:

"It is humbly submitted that the following submission may kindly be considered in this case

1. Submission regarding the statement recorded of assessee on 28.07.2011, and his subsequent retraction on 30.08.2011 i.e. after 32 days,

2. it is respectfully submitted that the following case laws which are in favour of Revenue may kindly be considered:

a) Decision of Hon'ble Gujarat High Court in the case of Arti Gases vs. DIT (Inv.) 248 ITR 55 has held that notice u/s

131(1A) can be issued after completion of search u/s 132 of the IT Act.

It observed

With regard to the petitioner's contention that the summon issued under section 131(1A) was bad in law and beyond jurisdiction of the issuing authority, notices under section 131(1A) can also be issued after completion of the search undertaken under the provisions of section 132; it would be absolutely logical to call for information so as to have better particulars or to have complete idea about the material seized during the search. If some material is seized at the time of the search and the authorised officer wants to have some details so as to understand the nature of the documents, he may issue notice under section 131(1A). In a given case such a notice may not only help the department but can also help the assessee. If the assessee is in a position to give more explanation so as to satisfy the authorised officer that the documents seized by him do not reveal any undisclosed income, but the income or transactions referred to in the documents had been duly shown by him in his books of account or if the assessee gives any information to the effect that the first impression of the authorised officer with regard to the nature of the documents was not correct, such a notice would help the

assessee himself. If the assessee is called upon to give some information or to explain certain documents or writings seized during the process of search, no harm can be caused to the assessee and such particulars can be helpful not only to the department but to the assessee also. The Court, therefore, could not agree that such a notice could be issued only before the initiation of proceedings under section 132. Moreover, even under the provisions of section 133, the Assessing Officer or the officers referred to in the said section are having power to call for information. So issuance of such a notice during or after the search could not be said to be bad in law.

b) Decision of Hon'ble P&H High Court in the case of Bachitar Singh vs. CIT 328 ITR 400 (Punjab and Haryana) additions on the basis of statement recorded during the course of survey u/s 133(A) of IT Act was upheld even when the assessee retracted it after a couple of months.

c) Decision of Hon'ble Delhi High Court in the case of DayawantiVs CIT [2016] 390 ITR 496 (Delhi)where Hon'ble Delhi High Court held that where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by

Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

d) In the case of B. Kishore Kumar Vs CIT (62 taxmann.com 215, 234 Taxman 771) has held that where Hon'ble Supreme Court dismissed SLP against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents.

B Kishore Kumar Vs CIT (52 taxmann.com 449) Madras High Court confirmed.

e) Decision of Hon'ble Supreme Court of India in the case of M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-238-SC-IT)has held that where Hon'ble Supreme Court dismissed SLP challenging the judgment, whereby the High Court had held that statement made u/s 133A could be relied upon for purposes of assessment, in absence of any contrary evidence or explanation as to why such statement made was not credible.

M/s Pebble Investment and Finance Ltd Vs ITO (2017-TIOL-188-HC-MUM-IT) Bombay High Court confirmed.

f) Decision of Hon'bleGauhati High Court in the case of Greenview Restaurant vs. ACIT [2003] 263 ITR 169 (Gauhati) thatupheld validity of statement on oath despite retraction since the assessee failed to prove that there was any threat, inducement or coercion.

"9. The primary facts pertaining to the search of the premises of the appellant-firm and its other groups on September 22, 1993, and the recording of statements of Baban Singh, its partner, are admitted. The appellant's objection is that the statements were recorded by using force and coercion on its said partner.
This was on September 23, 1993, in the presence of two witnesses. The retraction of the statement came only on December 24, 1993, followed by a reiteration on the part of the appellant on February 20, 1995, in the course of the assessment proceeding. There is evidently a delay on the part of the appellant and its partners in retracting the statements re-corded. The attention of this Court has not been drawn to any material on record to establish that any attempt was made on behalf of the appellant to prove the allegation of inducement threat or coercion through the witnesses. We have examined the impugned orders rendered by the learned Tribunal with the reasonings in support of its finding against the complain of threat, inducement or coercion and we find no good and sufficient reason to differ

from it. In our view, in the facts and circum-stances of the case, having regard to the materials on record, the appellant has failed to establish that the statements of its partner, Baban Singh, had been recorded in the course of the search by using coercion, threat or inducement. We, therefore, dismiss the contentions advanced by the learned senior Counsel for the appellant in this regard and affirm the conclusion on the learned Tribunal on this count."

Landmark decision on the issue of retraction of confessional statements, Hon'ble Supreme Court in the case of Surjeet Singh ChhabraVs. Union of India 1 SCC 508, wherein the Hon'ble Supreme Court has held that "confessional statements" made before Customs Officer though retracted within six days is an admission and binding since Custom Officers are not Police Officers.

g) CIT VsMukundray K. Shah [2007] 160 Taxman 276 (SC)/[2007] 290 ITR 433 (SC)/[2007] 209 CTR 97 (SC)

A search conducted at assessee's premises led to seizure of a diary, which contained purchasing of nine per cent RBI relief bonds by assessee from funds received from two firms 'B' and 'C' in which he was a partner. Tribunal after examination of cash flow statement held that two firms were used as conduits by assessee; that 'A' had made payments to 'B' and 'C' for benefit of assessee, which enabled him to

buy nine per cent RBI Relief Bonds and upheld finding of Assessing Officer. Upheld addition u/s 2(22(e) of I.T. Act.

h) Video Master Vs JCIT 66 taxmann.com 361 (SC)/[2015] 378 ITR 374 (SC)/[2016] 282 CTR 221

where Hon'ble Supreme Court held that where addition on account of undisclosed income was based on statement of partner of assessee-firm, it could not be said that addition was based on no evidence

i) Bhagirath Aggarwal Vs CIT (31 taxmann.com 274, 215 Taxman 229, 351 ITR 143)

where Hon'ble Delhi High Court held that an addition in assessee's income relying on statements recorded during search operations cannot be deleted without proving statements to be incorrect.

j) CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi)
where Hon'ble Delhi High Court held that where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under sec. 132(4)

admitting that said gift was bogus, impugned addition was to be confirmed.

k) Smt.Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi)

where Hon'ble Delhi High Court held that where inferences drawn in respect of undeclared income of assessee were premised on materials found as well as statements recorded by assessee's son in course of search operations and assessee had not been able to show as to how estimation made by Assessing Officer was arbitrary or unreasonable, additions so made by Assessing Officer by rejecting books of account was justified.

l) Raj Hans Towers (P.) Ltd. Vs CIT (56 taxmann.com 67, 230 Taxman 567, 373 ITR 9)

where Hon'ble Delhi High Court held that where assessee had not offered any satisfactory explanation regarding surrendered amount being not bona fide and it was also not borne out in any contentions raised before lower authorities, additions so made after adjusting expenditure were justified (SURVEY CASE)

m) PCIT Vs Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)

where Hon'ble Delhi High Court held that Where assessee surrendered certain income by way of declaration and withdraw same after two years without any satisfactory explanation, it could not be treated as bona fide and, hence, addition would sustain (SURVEY CASE)

n) Decision of Hon'ble High Court of Chhattisgarh in the case of ACIT vs. Hukum Chand Jain - [2010] 191 Taxman 319 (Chhattisgarh)

The search and seizure operations were conducted at the business and residential premises of the assessee. In course of search, statement of the assessee was recorded under section 132(4) wherein he surrendered Rs. 30 lakhs as undisclosed income for the block period and offered that whatever taxes would be worked out on the surrendered income, he was prepared to pay the same. However, in response to the notice issued under section 158BC, he offered only Rs. 3,52,000 in his case and the aggregate amount of Rs. 2,05,500 in the case of his 3 sons as their undisclosed income. The Assessing Officer, however, completed assessment by including the amount of undisclosed income offered by the assessee besides specific

additions based on material, which could not be explained by him. On appeal, the Commissioner (Appeals) deleted the addition. The Tribunal dismissed the revenue's appeal holding that confessional statements made during search are often vulnerable, as the person making such statements remains under great stress and strain and he does not have relevant details, documents and books of account and in the absence of the same, precise computation relating to mode of utilization of such income and year of investment cannot be clearly furnished.

On the revenue's appeal to the High Court:

HELD

From the principles of law laid down in various judgments, it may be deduced that admission is one important piece of evidence, but it cannot be said that it is conclusive. It is rebuttable. It is open to the assessee, who made admission, to establish that confession was involuntary and the same was extracted under duress and coercion. The burden of proving that the statement was obtained by coercion or intimidation lies upon the assessee. Where the assessee claims that he made the statement under the mistaken belief of fact or law, he should apply for rectification to the authority who passed the order based upon his statement. The retraction should be made at the earliest opportunity

and the same should be established by producing any contemporaneous record or evidence, oral or documentary, to substantiate the allegation that he was forced to make the statement in question involuntarily. [Para 27]

In the instant case, search was conducted in the presence of the assessee and his sons and seizures were effected. The assessee was confronted with the documents seized during search proceedings, but he could not explain the same. He could not explain the recovery of cash and jewellery and in his statement under section 132(4), he surrendered Rs. 30 lakhs as his undisclosed income for the block period and further expressed his willingness to pay the taxes worked out against the surrendered undisclosed income. He further stated that he was surrendering the income to avoid the dispute with the Income-tax department and for mental peace. The assessee had further stated that he was signing his statement after reading and understanding the same without any coercion and the same had been further countersigned by his 3 sons. The assessee did not retract his statement immediately after the search and seizure was over and in the return also, no explanation was offered for the surrender of the undisclosed income of Rs. 30 lakhs at the time of search and seizure operations under section 132(4). The allegation of duress and coercion was made for the first time in the year 2004, i.e., after almost 2 years

when the Assessing Officer confronted them with their statements under section 132(4) and they were asked to explain as to how the said undisclosed income did not find place in their returns. The department's contention that there were no mitigating circumstances to show that the admission/surrender made by the assessee was retracted at the earliest part of time with corroborative evidence had substance. There was substance in the argument that the assessee surrendered undisclosed income only when he was not able to explain the unaccounted cash, gold jewellery, other documents and loose papers found during search and by volunteering surrender of undisclosed income, he induced the search party not to proceed with collection of other evidence and to accept the surrendered amount. Apart from that, the assessee made alternative plea that in case any other additions were made to his income, then the same should be set off from the amount of Rs. 7.5 lakhs in each case, as surrender was made to cover up all the possible leakages of the revenue and to cover all the unexplained loose papers, etc., and the same was accepted by the Assessing Officer. From perusal of the order of the Commissioner (Appeals) as also of the Tribunal, it was found that none of the forums had recorded a finding that the statement under section 132(4) was obtained under duress. The assessee had totally failed to discharge the

burden of proving that the statement was obtained under coercion or intimidation. He did not make any complaint to the higher authorities alleging intimidation or coercion for retracting the statement under section 132(4). The Tribunal had confirmed the order of the Commissioner (Appeals) by observing that surrender was made under bona fide mistake, though it was never the case of the assessee before any of the forums that the surrender was on account ofbona fide mistake. The appellate forums, while reversing the orders of the Assessing Officer, are legally bound to dwell upon specific reasons assigned by the Assessing Officer for not accepting the explanation of the assessee. In the instant case, the Assessing Officer had assigned cogent reasons for not accepting the retraction of the statement under section 132(4) by the assessee. From perusal of the orders of the appellate forums, it was found that without meeting the reasoning of the Assessing Officer for not accepting the explanation of the assessee, the order had been reversed and explanation has been accepted, that too on a ground which was never agitated by the assessee before any of the forums. [Para 30]

Thus, the assessee had failed to discharge the onus of proving that confession made by him under section 132(4) was as a result of intimidation, duress and coercion or that the same was made as a result of mistaken belief of law or

facts. The Assessing Officer was justified in assessing the income of the assessee on the basis of surrender of undisclosed income made by the assessee under section 132(4). The orders passed by the Commissioner (Appeals) and the Tribunal were to be set aside and the order passed by the Assessing Officer was to be restored. [Para 31]

o) Decision of Hon'ble High Court of Bombay in the case of Paras Shantilal Shah vs. DCIT, Mumbai [2017] 81 taxmann.com 104 (Bombay) dated 21.08.2015

In this case the addition made on the basis of statement recorded during search, was upheld by Honb'le Bombay High.

In this case during search, certain jewellery was found in possession of assessees. The assessees in a statement made on oath under section 132(4), admitted that jewellery recovered from them and in their locker was part of their undisclosed income and offered same to tax. Subsequently, the assessees filed a letter before the revenue explaining that the part of the allegedly undisclosed jewellery belonged to their father, the late mother and their minor children as shown in the valuation reports of jewellery in their possession. The Assessing Officer did not accept

assessee'sexplanation and added value of said jewellery as assessees' undisclosed income.

Held that subsequent letter written to the department did not indicate that assessees were retracting the earlier statements made on oath. Further, it did not state that the earlier statements were incorrect or even make an attempt to explain away the categorical statement on oath. There was also no allegation of any ill treatment which led to assessees to make a statement. Therefore, said communication could not supersede/replace the statement made on oath under section 132(4). Therefore, the seized jewellery was rightly treated as unaccounted income of assessee.

p) Decision of Hon'ble Supreme Court of India in the case of BannalalJat Constructions (P) Ltd. [2019] 106 taxmann.com 128 (SC) dated 08.04.2019

In this case where the Tribunal as well as Rajasthan High Court had upheld the additions made on the basis of statement recorded under Section 132(4) during search but subsequently retracted, Apex Court dismissed the SLP filed by the assessee . In the case, a search was carried out at business premises of assessee-company. In course of search proceedings, statement of director of assessee-company was recorded under section 132(4) admitting certain undisclosed

income. In course of assessment, Assessing Officer made addition to assessee's income on basis of statement given by its director although subsequently, director of assessee-company retracted said statement .Tribunal, however, finding that statement had been recorded in presence of independent witness, confirmed addition made by Assessing Officer .High Court also opined that mere fact that director of assessee-company retracted statement at later point of time, could not make said statement unacceptable . It was further opined that burden lay on assessee to show that admission made by director in his statement was wrong and such retraction had to be supported by a strong evidence showing that earlier statement was recorded under duress and coercion - High Court finding that assessee failed to discharge said burden, confirmed order passed by Tribunal."

Submitted by,
Sd/-
(Sushma Singh)
Commissioner of Income Tax (DR)
F-Bench, ITAT, New Delhi

88. On merits of the case, the ld. DR argued that the categorical admission of the assessee in the statement recorded and the bank statement received from the French

Government clearly reveal that the assessee is the owner of an undisclosed bank account. She placed reliance on the findings of the ld. CIT(A) in this regard. The ld. DR submitted that the ld. CIT(A) has called a number of remand reports and the AO has replied to each and every issue raised by the assessee before the ld. CIT(A). The ld. CIT(A) after thoroughly examining all the facts and the evidences on record has confirmed the addition. She submitted that the AO was justified in making the addition in the year under consideration as the 6 page document clearly demonstrated that the assessee was still holding such investment in the year under consideration. As regards the contention of the ld. AR. that the addition in the year under consideration on the basis of the statement of the assessee is unsustainable, she submitted that the AO has to make assessment on human probabilities. In support of her contention, she relied upon the judgment of the Supreme Court in the case of SumatiDayalVs CIT, (1995) 80 Taxman 89 (SC).

89. As regards the authenticity of the 6 page document, she reiterated what has been contended by the AO in the remand report submitted to the CIT(A) that the 6 page document is a print out of the pen drive received from the French Competent Authority and as such, its authenticity

cannot be doubted. She submitted that once information has been received from a competent authority, then that information cannot be doubted and as such and the contention of the Id. AR that this information is not authentic is not correct. In such cases, the AO is not supposed to establish the source from where the French Competent Authority has obtained such information. On the issue that the 6 page document is not a bank statement, she submitted that it is not important whether this 6 page document is a bank statement or not but what is important, prime and relevant is the "information" contained therein. She submitted that though apparently there is no debit or credit as is usual in a bank statement, but the fact remains that this information pertains to the assessee. On the issue of language in which this 6 page document has been written, she submitted that this document is in French language since the documents are received from French Competent Authority. She submitted that it is a common knowledge many Indians have parked their funds outside India and assessee is one of them. She submitted that it is a clear case where the assessee himself has admitted in the statement recorded during search that it has opened a bank account outside India. The statement recorded during the course of search clearly establishes the fact that the assessee was having a bank account

outside India. She submitted that the retraction made by the assessee later on was an afterthought. She reiterated that the AO has made the addition by taking into consideration both the statement and the 6 page document. She submitted that the assessee has also refused to sign the consent waiver form and thus failed to discharge the onus casted upon him and argued that accordingly, the order of the ld. CIT(A) need to be upheld.

Rebuttal of Ld. AR:

90. In rejoinder, the AR submitted that the assessee having retracted the statement, the same cannot be used against the assessee. The fact that the search party was carrying the 6 page document on the basis of which the assessee was forced and his statement was extracted. This clearly demonstrates that the search party has gone to carry out the search with a preconceived notion and has obtained a statement on the information already in possession of the revenue department. Further, the assessee has filed the retraction on 30.08.2011.

91. It was also pointed out by the Id. AR that the search party has recorded preliminary statement on the date of the search where the assessee has categorically stated that he does not have any bank account outside India.

92. It was only after the assessee was coerced the statement was given as is evident from the facts and the same was retracted giving the entire details and sequence and a letter was filed before the DDIT, Unit-II.

93. It was argued that the contention of the ld. DR and the case laws cited in support thereof are not applicable. It was also submitted by the Id. AR that when there are two statements and the earlier one categorically stating that there is no bank account outside India, the later on statement cannot be given a priority over the earlier statement. Further, the earlier statement supports the case of the assessee that the second statement was obtained under coercion late in the night.

94. Without prejudice to the above, the ld. AR submitted that even if the retraction is ignored, still the addition on the basis of the statement cannot be sustained in the year under consideration. He referred to the statement whereby it is discernible that investment, if any, being alleged has not been made in the year under consideration. He again referred to the provision of section 69 with that of the statement of the assessee to reiterate that on the basis of such statement, the addition in the year under consideration cannot be made. He submitted that it is an allegation of AO that assessee has made investment during

the year under consideration and as such, onus was upon him to bring material to substantiate such allegation.

95. He submitted that letter dated 26.05.2015, page no. 8 of the paper book filed by ld. DR, supports the case of the assessee. It proves that the basis of which information was sought do not sufficiently demonstrate that the sources/evidences are independent from the HSBC List. This letter instead of supporting the case of the AO in fact supports the case of the assessee that the so called 6 page document on the basis of which addition has been made has been found not credible by the Swiss Government itself.

96. The ld. AR further submitted that it is an admitted fact by the AO that in the remand report dated 13.10.2015 filed before ld. CIT(A) at paper book page 226 relevant page 231, that information was not received by the time assessment order was passed. Thus, the very basis of making the addition does not stand. On the reliance by the Id. DR on the judgment of SumatiDayal (supra), the Id. AR submitted that the said judgment is not applicable. In that judgment, the issue was of human probabilities. In case, the argument of the Id. DR is taken to the logical conclusion, this would mean that human probability is that every taxpayer has a bank account outside India. As such,

on the contrary, this judgment would support the case of the assessee. It was reiterated that the doubt however strong cannot take place of the legal proof. In support thereof, the Id. AR placed reliance on the judgment of Hon'ble Supreme Court in Umacharan Shah 85 Bros. Vs CIT (37 ITR 271 SC). He further submitted that though income tax proceedings are not bound by the strict rule of evidence but that does not mean that addition can be made without evidence. In support thereof, the Id. AR placed reliance on the judgment of Supreme Court in the case of Dhakeshwari Cotton Mills vs CIT [1954] 26 ITR 775 (SC).

97. He submitted that the Id. DR could not justify how on the basis of statement, the addition can be made in the year under consideration. The Id. AR also referred to the judgment of PradipBurman reported in CC No.525792/16 whereby a similar issue has come up about the authenticity of the document and the court has held that there is grave doubt on the data received from French Competent Authority.

98. The ld. AR also filed written submission which reads as under:

"Undisputed Facts:-

1. CBDT receives a pen drive from French Authority on 28.06.2011.

2. Print out taken of the pen drive.

3. A 6 page document is stated to be that pertaining to the assessee and on the basis of this document, it is stated that this is bank account of the assessee with HSBC, Geneva.

4. A search is carried out on the assessee on 28.07.2011

5. No incriminating document found during the course of search.

6. A statement of the assessee is recorded where he has stated that he has opened a bank account in 2002 (answer to Q 7 at PB Volume I pg 31) and amount were deposited in Zurich on various dates in 2002-04 ranging from 2 crore to 5 crore (answer to Q18 PB Volume I pg 33).

7. The above statement was retracted by the assessee by letter dated 30.08.2011.

8. A reference is made to Swiss authorities on 21.02.2012 for obtaining information about a bank account of the assessee with HSBC, Zurich.

9. Notices are issued for reassessment under Section 153A on
21.11.2012.

11. No notice under section 143(2) issued by the AO post filing return by the assessee.

12. AO issues notice under section 142(1), whereby assessee denies having any hank account outside India.

13. The AO made addition of Rs.8,51,10,905/- as unexplained investment under section 69 taking peak of the amount stated in 6 pg document in AY 2006-07 and Rs.61,22,916 in AY 2007-08. AO has further assumed that assessee would have earned interest on such investment and made addition of interest in AY 2007-08 onwards assuming 4% as interest rate.

14. The additions as can be seen from assessment order are based on two premises. One premise is the statement of assessee recorded during the search. The second is the 6 page document.

15. In para 5.1 on page 17, AO has stated that the 6 page document is a credible information. The AO further in para 5.3 has stated that statement recorded is credible. In para 5.5 on page 25 of the assessment order, AO in response to

assessee contention of proving evidence that assessee has a foreign bank account, has stated that the assessee's own statement of having bank account is evidence.

Issues:-

In view of above facts, the following issues arise:-

1. Addition is under section 69 as unexplained investment.
2. Basis for this addition is information received from French Authority and assessee's own statement.

3. Section 69 reads as under:-

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assesseeo f such financial year.

4. As per above section, addition under section 69 section is to be made in the financial year in which assessee has made investment.

5. Now, the issue which needs consideration is that whether as per the statement, can it even be alleged that assessee has made investment in the financial year 2005-06 which is relevant to asstt. year 2006-07 under consideration. The complete statement is at PB Volume I page 29-42 and also extensively quoted in assessment order at page 17- 22 of the assessment order. In this statement, the answer to Question 7 and 18 are very clear. The investment has been made in 2002-04. Thus, the AO herself has not considered statement as the basis though she is referring to in the assessment order. Thus, addition on the basis of statement in the year under consideration is unsustainable.

6. Now coming to information received from French Authority. Firstly, there is no authenticity to this information which was received by way of pen drive. It is not that this information was obtained from Bank. The source of information with French Authority, its author, basis till today has not been revealed despite repeated request. The contemporaneous media reports, on the other hand, clearly

reveals that the data is erroneous, unauthentic and unreliable.

7. The 6 pg document is not a bank statement. What is the nature of this document? How it is being alleged it is HSBC bank account. Nowhere, HSBC has been stated. There is no debit or credit as is normal in a bank statement. Whether addition is being made on the basis of account with HSBC Geneva or HSBC Zurich. This 6pg document as per French Authority stated in letter dated 26.06.2015 PB Volume I page 250 is HSBC Bank Geneva. The reference in statement is HSBC Zurich.

8. The Revenue has been seeking information from Swiss authorities about HSBC Bank Account, Geneva as is evident from page 5 to 7 of paper book filed by the learned DR. The tax period is stated froml.4.2000 to 31.12.2011. Item nos. 2 and 3 on pg 6 of this paper book confirm that AO is not having bank statement. That is why it is asking information from Swiss Authorities. Further, it has been confirmed by the AO in the remand report dated 13.10.2015 at pg 226 relevant pg 231 that information was not received till the date of assessment order. Thus, AO has made addition pre-maturely. In case information with AO was sufficient and authentic as is being alleged, what for this information was sought for? This, supports the contention that information with AO was not authentic. It was not a bank statement. It

was not any original document. It was not sent by HSBC; it was not sent by Swiss Authorities.

9. In view of the above facts, there are glaring inconsistencies in the allegations levied by the AO.

10. Statement doesn't support the addition during the year under consideration.

11. The 6 pg document is not a bank statement.

12. That there is no explanation about contradiction HSBC Geneva vs HSBC Zurich.

No addition in absence of incriminating material

13. Return of income was filed by the assessee on 25.06.2006. The said return of income was assessed under section 143(3) of the Act vide order dated 10.12.2008 placed at PB Volume I page no 113. The search has been conducted on 28.07.2011. The assessment being a completed assessment, an addition can be made only on the basis of incriminating material found during the course of search. In this regard, reliance is placed on the following judgments:

- *Hon'ble Delhi High Court in the case of CIT v. Kabul Chawla [2016] 380 ITR 573.*

- *Delhi High Court in the case of Pr. CIT v. Best Infrastructure (India) Pvt. Ltd. [2017] 397 ITR 82*
- *Delhi High Court in the case of Pr. CIT v. MeetaGutgutia [2017] 395 ITR 526*
- *Hon'ble Supreme Court of India in the case of CIT v. Sinhgad Technical Education Society in Civil Appeal No. 11080 of 2017 dated 29th August, 2017*

No incriminating material whatsoever found during the course of search

14. In the case in hand, it is an undisputed fact that no incriminating material whatsoever has been found during the course of search gua the addition made. Accordingly, in view of the aforesaid judgments, no addition can be made during the year under consideration. Reliance is placed on the following judgments wherein on similar facts, the addition has been deleted on, inter-alia, the ground that in absence of incriminating material, no addition can be made:

- *ITAT Delhi in the case of AnuragDalmia versus DCIT, I.T.As. No.5395 And 5396/DEL/2017*
- *ITAT Delhi in the case of Krishan Kumar Modi versus ACIT, ITA No.2892/Del/2017*

- *ITAT Kolkata. in the case of Shri BishwanathGarodia versus DCIT, I.T.A. Nos. 853 & 854 /KOL/ 2016, I.T.A. Nos. 855 & 856 /KOL/ 2016*

Premise for making addition in the case in hand

15. In the case in hand, there are two premises for making the addition as under:

- *6 page document on the basis of which search was carried out: The first basis for making the addition is the 6 page unverified, unauthenticated, alleged document (as reproduced in para 3.1 of the assessment order) received allegedly under exchange of information mechanism through DTAA/DTAC which was available with the Department prior to the date of search.*
- *Statement: The second basis for mocking the addition is statement of the assessee obtained under coercion which was subsequently retracted.*

6 page document available prior to search - thus not incriminating material

16. With regard to 6 page document (so-called bank statement), without prejudice to the fact that the said document is not reliable (submitted below in detail) it is submitted that the said document was available prior to the

date of search itself. This is an undisputed fact. The same is evident from, inter-alia, the communication between the Director of Investigation Wing and the Pr. CIT placed at PB Volume I page 250. Accordingly, the said document cannot constitute incriminating material for the purpose of making the addition. In this regard, reliance is placed on the following judgments:

- *ITAT Delhi in the case of AnuragDalmia versus DCIT, I.T.As. No.5395 And 5396/DEL/2017*
- *ITAT Delhi in the case of Krishan Kumar Modi versus ACIT, ITA No.2892/Del/2017*
- *ITAT Kolkata in the case of Shri BishwanathGarodia versus DCIT, I.T.A. Nos. 853 & 854 /KOL/ 2016, I.T.A. Nos. 855 & 856 /KOL/ 2016*

Statement does not constitute incriminating material

17. As regards the statement recorded during the course of search, firstly, the same was obtained under coercion on 28.07.2011 which was subsequently retracted by the assessee on 30.08.2011. Accordingly, said statement cannot be relied upon.

18. In any case, it is submitted that it is it settled law that statement recorded during the course of search does not

constitute incriminating material. In this regard, reliance is placed on the following judgments:

- *Hon'ble Delhi High Court in the case of Pr. CIT v. Best Infrastructure (India) Pvt. Ltd. [2017] 397ITR 82*
- *Delhi High Court in the case of CIT versus Harjeev Aggarwal, (2016) 290 CTR 263*
- *ITAT Ahmedabad in the case of Vascroft Design Pvt. Ltd., versus ACIT , I.T(SS).A. Nos. 129, 130, /Ahd/2015*
- *ITAT Jaipur in the case of Shri Nirmal Kumar Kediaversus DCIT (vice-versa), ITA 124 to 126/%JP/2019*
- *Hon'ble ITAT Delhi in the case of SH. BrijBhushanSingal versus ACIT, ITA No. 1412/Del/2018*

19. Further, reliance is placed on the following judgments in this regard:

- *ITAT Delhi in the case of Krishan Kumar Modi versus ACIT, ITA No.2892/Del/2017*
- *ITAT Delhi in the case of AnuragDalmia versus DCIT, I.T.As. No.5395 And 5396/DEL/2017*
- *ITAT Kolkata in the case of Shri BishwanathGarodia versus DCIT, I.T.A. Nos. 853 & 854 /KOL/ 2016, I.T.A. Nos. 855 & 856 /KOL/ 2016*

20. Further, reliance is placed on the recent judgment of the Hon'ble Delhi High Court in the case of PCIT (Central) - versus Anand Kumar Jain (Huf) - ITA 23/2021 wherein it has been held that no addition can be made on the basis of statement alone without anu reference to material gathered during the course of search operations.

21. Further attention is invited to the CBDT's Circular F. No.286/2/2003/IT (Inv) dated 10.03.2003 which was reiterated CBDT's circular No. 286/98/2013IT (Inv.), dated 18th December, 2014 wherein the Board has emphasized upon the need to focus on gathering evidences during, search/purvey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

22. In the case in hand, admittedly, no incriminating material whatsoever has been gathered during the course of search. Thus, no addition can be made.

Even if the statement constitutes incriminating material; it does not constitute incriminating material qua the near under consideration

23. Without prejudice to the above, even if it assumed that the statement constitutes incriminating material, addition can be made only in the year to which the incriminating

material pertains. In this regard, reliance is placed on the judgment of Apex Court in CIT v. Singhad Technical Education Society (2017) 397 ITR 344 (SC) [Para 18].

24. Delhi High Court in Pr. CIT (Central) versus M/S. Smc Power Generation Ltd., ITA 406/2019 has followed the said judgment of the Apex Court in Singhad (supra) and held that the same logic will apply to proceedings under section 153A as well.

25. In the case in hand, in the statement recorded, it is nowhere stated that the amount has been deposited by the assessee in the bank during the year under consideration. On the contrary, the assessee has categorically stated that the account was opened in 2002 and the amount was invested on various dates in 2002. In this regard, it is pertinent to note the question no 7 and 18 [PB Volume I page 31 and 33] in respect thereof which reads as under:

Q. 7. Can you recollect as to when was it opened?
Ans. Sometime in 2002.

Q. 18 What amount was given at the instruction Charlie and what amount was deposited by him in your account?
Ans. Various amount were given on various dates in 2002 in Delhi ranging from Rs. 2 crore to 5 crore.

26. If the Revenue to rely on the statement, the statement must be read in entirety. In this regard, reliance is placed on the following judgments:

- *Supreme Court in the case of State of Orissa and Ors. vs. MangaljiMuljiKhara&ors. &Titaghur Paper Mills Co. Ltd. &Anr. in [1985] 60 STC 213*
- *Madhya Pradesh High Court in the case of Shri Digambar Jain AndOrs. vs Sub Registrar, AIR 1970 MP 23*
- *Delhi High Court in the case of CIT v. Vatika Township Pvt. Ltd. in IT A No. 1329/2010 dated 10.09.2010*
- *Gujarat High Court in the case of Glass Lines Equipments Co. Ltd. v. CIT [2002] 253 ITR 454*
- *ITAT Jaipur in the case of Om Prakash Agarwal v. ACIT in IT A Nos. 721 to 726/JP/2015 dated 23.011.2016*
- *ITAT Delhi in the case of Anant Raj Industries Limited vs. AO, TTJ 119, 865*

27. Thus, going by the statement, the entire amount was invested prior to FY 2006. Accordingly, even if the statement could be considered as incriminating material, it does not constitute incriminating material qua the year under consideration. Consequently, addition cannot be made during the year under consideration in view of the aforesaid position of law laid down by the Apex Court in the case of

Sing had and as has been echoed by the Hon'ble Delhi High Court in the case of Smc Power Generation Ltd. (supra).

28. In view of the above, in absence of any incriminating material found during the course of search, no addition can be made.

6 page document is unauthentic and unreliable

29. Additionally, it is submitted that the 6 page document loose documents, which were handed over in a USB drive, on the basis of which search is carried out is unauthentic and unreliable. Merely because information is received from France under the DTAC agreement does not make the information credible. Based on contemporaneous media reports [PB Volume II page no.404-424], such information has been made available to the Indian Income tax authorities through means, the legitimacy of which, is a matter of doubt. The media reports reveals that the data is contains errors as reported by HSBC and is therefore inadmissible as also held bu Supreme Court of Switzerland (refer news reports).

30. In the above circumstances, said data cannot be relied upon. It is a settled law that addition cannot be made on the basis of suspicion. Reliance is placed on the recent judgment of Hon'ble Delhi High Court in the case of Pr. CIT vs. Smt.

Krishna Devi, ITA 125/2020, dated 15.01.2021 wherein it has been held that no addition can be made merely on the basis of suspicion in absence of any evidence on record of in absence of adequate inquiry.

31. Without prejudice to the above, it is pertinent to mention that in any case, the loose papers do not have any adverse bearing on the case of the assessee. It is pertinent to note the following in this regard:

(i) Nowhere the name of the bank i.e. 'HSBC' is mentioned in the impugned document.
(ii) The so called bank statement does not look like bank account at all. In the communication between the Director of Investigation Wing and the Pr. CIT, it has been stated that the document is in the nature of 'base sheet' [PB Volume I page 250].
(iii) That from the said abstracts of statement reproduced in the Assessment order, it appears to be belonging to some "Nine On Ten Foundation" and "Bunfield Invest SA" which are separate entities.

(iv) There is no amount or balance which is outstanding in the name of the assessee.

(v) The documents do not indicate at all that at any transaction was ever conducted by the assessee during the

relevant assessment year in the alleged bank accounts with the other entities stated therein.

(vi) These documents further do not indicate any link or relationship of the assessee.

(vii) It is nowhere reflected from the documents that the assessee ever operated the said account during the period relevant to the assessment year.

(viii) There is no document which shows that the money held by these entities in these accounts has been remitted to the assessee in any way.

(ix) It is also not explained anywhere as to what is the constitution of the above said entities/companies mentioned in the said documents, what is the legal status of the entities, what is connection of the assessee with the bank account numbers mentioned against the said entities which are companies and not individuals and what is the role played by the assessee in the said entities.

(x) The said document nowhere contains the name or whereabouts of the organization or person from whom the same has been received. Even name of any bank has not been mentioned in the same.

32. In CC No.525792/16, ACMM vide order dated 18.11.2020 in the case of ITO vsPradipBurman, the ACMM has considered the above said aspects and as specifically observed that there are material inconsistencies in the content which leads to grave doubt on the authenticity of the USB drive and its contents.

33. Furthermore, in the assessment order, Id. AO has made the addition by stating that the alleged account is held in HSBC Zurich [Refer para 3 of assessment order]. However, as per the 6 page document, the alleged account of the assessee is at HSBC Geneva. In this regard, it may be relevant to mention that from the communication between the Director of Investigation Wing and the Pr. CIT placed at PB Volume I page 250, it is evident that the base sheets from the USB drive received from French Authority contains account details in HSBC Bank, Geneva. These inconsistencies show that the Id. AO is not sure or clear as to where the alleged bank account of the assessee was opened i.e. in which branch. In CC No.525792/16, ACMM vide order dated 18.11.2020 in the case of ITO vsPradipBurman, the ACMM has taken note of such fact as well and observed as under:

> *"32. It is clear from the complaint and assessment order that the alleged account is stated to be opened in HSBC*

Zurich but as per the testimony of CW-6 and documents Ex. CW-6/2 annexure Ex. CW-6/2 Page 1A to 14 of additional documents filed on 08.09.2016, the alleged account of the accused is at HSBC Geneva.These inconsistencies show that the complainant himself is not sure or clear as to where the alleged bank account of the accused was opened i.e. in which branch. No effort was made to enquire from Swiss Authorities or French authorities to clarify the aforesaid inconsistencies.

33. No explanation for this material inconsistency has been given by the complainant department despite leading ample evidence. This inconsistency hits at the roots of the entire prosecution version as the identity of the bank account qua which the prosecution has been launched has come under grave suspicion. This inconsistency further creates a grave doubt on the authenticity of the USB drive and its contents. If it is the same USB drive which was containing the information qua HSBC Geneva and was sent by French authorities to India, as is mentioned in the letters and certificate exhibited by CW-6 , then question of conducting investigation and assessment about HSBC Zurich did not arise.lt further shows that investigation qua HSBC Zurich was conducted in the air and complaint is filed without any basic material as the drive comprised of information qua HSBC Geneva and not Zurich. If the

version of the complaint and assessment order qua existence of account in HSBC, Zurich is true and correct then it can be safely held that the USB drive sent by French embassy was not the correct drive or that correct drive was sent to India but printouts of some other drive were taken by the officials. This inconsistency shows that no occasion ever arose to conduct the present investigation and file the complaint. It further indicates that the documents Ex. CW-1/5 are not trustworthy, authentic and reliable."

34. Further, it is an admitted fact that upon reference being made to Swiss Authorities under the DTAA, no reply has been received by the Revenue. This implies that no adverse inference can be drawn in the case in hand based on the above said documents.

35. In view of the above, without prejudice to the fact that the loose papers are highly unreliable, they do not have any adverse bearing on the case of the assessee.

Other arguments in brief:-

36. Onus is on the department for making any addition u/s 69, Section 69B or Section 69C of the Act and to prove that there is understatement of investment or unexplained

expenditure /investment. That, such onus has not been discharged.

37. It is a settled law that no addition can be made in absence of enquiry merely on the basis of suspicion. There is no evidence in the case in hand to justify the addition.

38. In the reference letter, as has been brought on record by the Id. DR, it has been stated that the account was created in 2001. It is a settled law that addition under section 69 cannot be made in respect of opening balance or amount deposited in bank account in earlier years.

Non issuance of notice under section 143(2)

39. In the reference letter, as has been brought on record by the Id. DR, it has been stated that the account was created in 2001. It is a settled law that addition under section 69 cannot be made in respect of opening balance or amount deposited in bank account in earlier years.

40. In the case in hand, no notice under section 143(2) has been issued. Ld. CIT(A) placing reliance on the judgment of Ashok Chadha vs ITO, 20 Tax.mann.com 387 (Delhi) held that issuance of notice under section 143(2) is not mandatory in respect of order passed under section 153A.

41. In this regard, it is submitted that the said judgment doesn't hold good in view of the subsequent judgments of the Hon'ble Delhi High Court on the subject matter of issuance of notice.

42. Further, reliance is also placed on the judgment of the Hon'ble Delhi High Court in the case of PR. CIT-06 versus Nikki Drugs & Chemicals PVT. LTD., [2016] 386 ITR 680, where the Hon'ble High Court has held that notice under section 143(2) is required to be issued when the return is to be subject to scrutiny under section 153A of the Act.

Assessment order is time barred

43. Search has been carried out on assessee on 28.07.2011. Thus, as per the provisions of section 153B of the Act, assessment u/s 153A ought to have been culminated by 31st March, 2014 in view of the provision of section 153B(1)(a) of the Act. However, in the present case, assessment came to an end as per the assessment order on 09.03.2015. Thus, the assessment order passed per se is beyond the limitation prescribed under the law.

44. The Revenue seeks to rely on clause (viii) of Explanation to section 153B (1) of the Act to claim extension of the period of limitation by 1 year.

45. At the outset, it is submitted that the reference was made on 21.02.2012. At that time, clause (viii) of Explanation to section 153B provided for time period of 6 months as against 1 year. Vide Finance Act, 2012, the period of 6 months was increased to 1 gear with effect from 01.07.2012. It is submitted that only the references made on or after 01.07.2012 will be eligible for the extended period of 1 year. Wherever legislation prescribes a date of applicability of a provision to be date other than 1st April of the year, it is with reference to transaction that takes place after such date. This is normal in the case of amendment to provision of TDS, etc. Thus, the benefit of extended period of 1 year vide the amendment made vide Finance Act 2012 will only be made to references made on or after 01.07.2012. In view of the same, if 6 months extension is considered, the assessment order was required to be passed by 30.09.2014. However, the order was passed on 09.03.2015. Thus, the order is barred by limitation and liable to be quashed.

46. Without prejudice to the above, even if it is assumed that the extended period of 1 year is available, then the extended period is to be considered as the period of 1 year or the period between the date on which the first reference is made by the competent authority and the date on which information is last received, whichever is less. To compute such period, onus is on the Department to bring copies of the

letter exchanged. In absence thereof, the benefit of extended period cannot be considered."

99. We have heard the rival submissions and perused the order passed by the authorities below and also the paper book, judgments and other material placed on record by both the parties. The assessee has raised various legal contentions besides challenging the addition on merit. The only issue here in this appeal is the addition of Rs.8,51,10,905/- made by the AO as unexplained investment made by the assessee during the year u/s 69 of the Act.

100. The assessee has raised 13 grounds of appeal.

101. Ground Nos. 1 & 2 are general in nature and need no adjudication. Ground No. 3 is regarding no incriminating material being found during the course of search which we shall deal with while adjudicating ground Nos. 7 to 12.

102. Ground No.4 raised by the assessee is that the assessment is barred by limitation having been framed beyond the time limit prescribed u/s 153B of the Act. As per the provision of Section 153B of the Act, as applicable in the case of the assessee, the assessment has to be framed within the period of two years from the end of the

financial year in which search is carried out. In the case of the assessee, the search was carried out on 28.07.2011. Accordingly, the period of two years end on 31.03.2014. The assessment in this case however has been made on 09.03.2015. The AO has relied upon the clause (viii) of Explanation below Section 153B which gives an extension for completion of assessments.

103. The ld. AR on this aspect has raised four issues.

i. The first issue is that the clause (viii) as on the date of the reference i.e. 21.01.2012 which provided extended limit of 6 months only will be applicable and hence the order will be barred by limitation.

ii. The second issue raised by the Id. AR is that the AO, despite repeated remand report being called by the CIT(A), has failed to place any evidence of making reference and reply thereof. Since AO is invoking extension of limitation on this basis, the onus was upon him to produce evidences in support thereof, which he has failed.

iii. The third issue raised by the Id. AR on this aspect without prejudice to the above is that even if reference was made on 21.01.2012 as is being contended by the AO, it is not possible that no reply to such requisition by the

Competent Authority would have been received from the other Competent Authority of a Sovereign Nation. The AO has simply made a statement without giving any evidence on this aspect.

iv. The fourth issue raised by the ld. AR is that reference having been made on 21.01.2012 as is being by contended by the ld. AO, even before the initiation of the proceedings under section 153A, the extension of limitation for assessment proceedings will not be available.

104. The factual matrix of the case is as under:

1.	Whether a search was conducted on 28.07.2011 ?	Yes	~~No~~
2.	Whether the documents based on which addition has been made seized during the search ?	~~Yes~~	No
3.	Whether the documents based on which addition has been made were available with the department before the search?	Yes	~~No~~
4.	Whether details /document of any foreign bank account found and seized during the search ?	~~Yes~~	No
5.	Whether a statement u/s 132(4) has been recorded on the date of search ?	Yes	~~No~~
6.	Whether the assessee feigned ignorance of any foreign bank account in the preliminary statement ?	Yes	~~No~~

7.	Whether the assessee agreed of having the bank account abroad in the statement recorded on 28.07.2011 ?	Yes	~~No~~
8.	Whether as per the statement the account was opened in the year 2002 ?	Yes	~~No~~
9.	Whether as per the statement, the deposits were made in the year 2002 or not ?	Yes	~~No~~
10.	Whether the assessee accepted of making deposits to the tune of Rs.2 to 5 crores ?	Yes	~~No~~
11.	Whether the balance amount in the month of May 2006 pertains to deposit during the year ?	~~Yes~~	No
12.	Whether the assessee filed letter of retraction of the statement on 30.08.2011 before the DDIT, Unit-II(1) ?	Yes	~~No~~
13.	Whether the amounts shown in the document deposited in financial years 2005-06 and 2006-07 ?	~~Yes~~	No
14.	Whether the documents bear the stamp of any bank/logo ?	~~Yes~~	No
15.	Whether as per the document, the date of creation of the account and the trust was 29.01.2001/06.02.2001/16.01.2002/15.01.2002 ?	Yes	~~No~~
16.	Whether the information has been provided by the Competent Authorities of France ?	Yes	~~No~~
17.	Whether the HSBC Bank confirmed the information ?	~~Yes~~	No
18.	Whether the AO held that the documents are the	Yes	~~No~~

	account of HSBC Zurich ?		
19.	Whether the Director(Inv.) held that the documents are the account of HSBC Geneva ?	Yes	~~No~~
20.	Whether it has been clarified the bank statement belongs to HSBC Geneva or HSBC Zurich ?	~~Yes~~	No
21.	Whether the CBDT handed over the set of documents (Computer Printout) to the respective DGIT ?	Yes	~~No~~
22.	Whether the CBDT information (CIT-Inv. CBDT) mentioned the documents relating to HSBC Geneva ?	Yes	~~No~~
23.	Whether CBDT certified them as HSBC accounts ?	~~Yes~~	No
24.	Whether CBDT held that the "information/printed documents" pertain to information of the bank accounts ?	Yes	~~No~~
25.	Whether a certificate u/s 65B of Indian Evidence Act drawn by the US/ CBDT confirms receipt of USB pen drive ?	Yes	~~No~~
26.	Whether the Director(Inv.) made reference to regarding the bank account through FT&TR ?	Yes	~~No~~
27.	Whether any bank account details have been received by the FT&TR ?	~~Yes~~	No
28.	Whether time limits u/s 153B stand extend when a reference is made by Competent Authority ?	Yes	~~No~~
29.	Whether the extension of the time limit of 12 months is allowed even in the absence of receipt of reply ?	Yes	~~No~~
30.	Whether the extension of time depends on the	~~Yes~~	No

	outcome of the reply received, if any,		
31.	Whether as per the protocol notification dated 27.12.2011, the information can be provided only after 01.04.2011 ?	Yes	~~No~~

Decision:

A) On the issue of limitation-Section 153B

105.It may be relevant to refer to the clause (viii) below Explanation to section 153B, as on 21.01.2012,

"Explanation:- In computing the period of limitation under this section-
(i)
.....
(viii) the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less, shall be excluded."

106.The above clause was amended by the Finance Act, 2012 w.e.f. 01.07.2012 wherein the expression "six months" was substituted with the words "one year". The amended clause (viii) read as under:

"Explanation:- In computing the period of limitation under this section-
(i)

.....

(viii) the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of One year, whichever is less, shall be excluded."

107. In this case, the reference as per AO's contention has been made on 21.01.2012 when the extended period was 6 months only. This period of 6 months was extended to one year w.e.f. 01.07.2012. Assessment in this case was initiated by the AO on 21.11.2012 when notice under section 153A was issued for filing return of income. Since notice under section 153A was issued on 21.11.2012 and the reference at that time was pending, we are of the view that the period as prescribed under this clause (viii), when assessment proceedings were initiated will be available.

108. The Id. AR has referred to section 153B(1) to contend that AO is bound by this time limit with reference to the date of search i.e. two years from the end of the year in which search was carried out. This period gets extended by this clause in case a reference has been made. We are not in agreement with the contention of the ld. AR that the

extension has to be counted from the date of the search as provided under section 153A and thus, only period of only 6 months will be available because on the date of the search i.e. 28.07.2011, this clause provided only period of 6 months. We are of the view that if the legislature has extended the period during the pendency of the proceedings, then, such extended period will be available in the absence of any specific provision linking such extension with the date of the search. The contention of the ld. AR would have been correct had the time period for completion of assessment under the amended provision would have expired. Then, the later on amendment could not have revived the proceedings which stood barred by limitation when the amendment has been made. In the present case, the amendment was made w.e.f. 01.07.2012 and as on that date, the proceedings were alive and hence, the extended period of limitation by the amendment made w.e.f. 01.07.2012 being a procedural law will be available to the AO.

109. The second contention of the ld. AR is that there is no evidence of making any reference and any reply being received. In this regard, on going through the remand report dated 04.05.2016, we note that the AO has submitted letter dated 21.02.2014 from Under Secretary FT&TR (III) to CCIT (Central-Delhi) whereby he has

enclosed a chart giving name of the assessee and reference number and date [Paper book page 391] when as per the Under Secretary, FT & TR (III), the first reference was made. The contention of the ld. AR before the CIT(A) and as well as before us is that this is an internal correspondence from Under Secretary FT&TR to CCIT (Central). The AO has failed to produce the copy of the reference made and as such, this evidence is not sufficient to establish that a reference was made on 21.01.2012. The CIT(A) has accepted this as a credible evidence of in support of the fact that a reference was made by the Competent Authority. Considering the overall circumstances and this being a communication from one Department to another Department, we are of the view that the reference was made by Competent Authority on 21.01.2012 and hence we reject the contention of the ld. AR on this aspect.

The third contention of the ld. AR is that as per the above clause (viii), the period commencing from the date on which the reference for exchange of information is made by a Competent Authority and ending with the date on which the information requested is last received by the Commissioner or period of one year, whichever is less, gets extended. It is the case of the AO that a reference was made by the Competent Authority and the information as requested was not received till the time of passing the

assessment order and hence, the extension in passing the assessment order will be of one year. As against this, the contention of the ld. AR is that it is not possible that a reply would not have been received from the Competent Authority of Sovereign Government. The ld. AR has invited attention to the repeated remand reports before CIT(A) whereby the AO has not placed any correspondence or reply which has been received in response to the alleged reference made on 21.01.2012.

110. Thus, the issue is whether in these circumstances, the extended period available to the AO will be that of one year or less. The Id. AR's contention is that the Swiss Competent Authority having refused to share the information in response to the request dated 21.01.2012, the period, if any, available will be from 21.01.2012 to the date when reply to such requisition has been received. Since AO is seeking extension on the basis of this clause, it was for the AO to place evidence in support thereof. Having failed to do so, the period of one year will not be available as the clause clearly states period of one year or the date on which information requested is last received. In the present case, the Swiss Competent Authority having disposed of the reference from Indian Competent Authority, the time period available will be from the date reference

was made i.e. 21.01.2012 to the date when the Swiss Competent Authority disposed of the reference.

111. On going through the remand report dated 13.10.2015 we note that the AO in this report has categorically stated that the first reference was made on 21.02.2012 by the Competent Authority for complete information but it was not received till the date of the assessment order i.e. 09.03.2015. Thus, the AO has made a categorical statement that information was not received till the date of passing of the order. The Id. AR is harping on the issue that it is not possible that a reply would not have been received to the reference made by the Competent Authority. His contention is that inability to provide the information in response to the reference being made will dispose of the reference and hence, the period available for extension will be from the date as is being contended when reference was made till the date when such inability is communicated by Swiss Competent Authority. The AO has not shared any communication which includes the reference made by the Indian Competent Authority and the reply received from the Swiss Competent Authority. The contention of the Id. AR is that for invoking extension of limitation, the onus was upon the AO to bring such material on record.

112. We are of the opinion that AO in the remand report has made a categorical statement that till the date of the order i.e. 09.03.2015, reply was not received. The AO has made a categorical statement in the remand report, we cannot ask the AO to establish a negative evidence that no reply was received from the Swiss Competent Authority. Accordingly, we reject this contention of the ld. AR.

113. The fourth contention of the ld. AR of the assessee is that the Competent Authority has made a reference as per the AO himself on 21.01.2012. On this basis, it is the contention of the ld. AR that the reference having been made even before the initiation of assessment proceedings u/s 153A, the extension will not be available. In the present case, the assessment proceedings have been initiated on 21.11.2012 when notice u/s 153A was issued. The assessment consequent to this notice could have been completed by 31.03.2014. Since a reference was made on 21.01.2012 as per the AO, the extended period available will be as per clause (viii) of the Explanation below Section 153B. The contention of the ld. AR that the benefit of this clause will not be available in case such reference has been made before the initiation of assessment proceedings is not correct. Section 153B provides time limit for completion of assessment. This clause (viii) of Explanation below this Section 153B is part of this Section 153B itself. Section

153B cannot be read dehors the clause (viii) of the Explanation. We are of the view that it does not matter when the reference was made whether before the assessment proceedings having been initiated or later on. The time period for completion of assessment will include the extended period in case a reference has been made. Accordingly, we reject this contention of the ld. AR.

114. In view of the above, we hold that the assessment passed by the AO is not barred by limitation. Accordingly, we dismiss this ground raised by the assessee.

B) Non-issue of notice u/s 143(2)

115. Ground No. 5 raised by the assessee is that the assessment order passed by the AO is bad in law as no notice u/s 143(2) was issued after the assessee has filed the return in response to notice u/s 153A. This issue was raised by the assessee before the ld. CIT(A) and in the remand report submitted by the AO, he has not disputed this fact. However, ld. CIT(A) has supported his order on the ground that notice under section 143(2) is not required to be issued in case of an assessment post search under section 153A of the Act. This issue whether notice under section 143(2) is prerequisite for framing assessment under section 153A consequent to the search has come up earlier in the case of Ashok Chadha (supra). The jurisdictional High Court has interpreted the provision of section 153A and has held that notice under section 143(2) is not a prerequisite for framing assessment under section 153A consequent to the search. Though the ld. AR has relied upon various judgments in support of his contention, but we are of the view that those judgments are distinguishable as none of the judgments were on the issue of assessment being framed under section 153A consequent to the search. The issue being covered by the judgment of the jurisdictional High Court, we dismiss this ground of the assessee.

116. Ground No. 6 raised by the assessee is that the assessment order passed by the AO stands vitiated as the same has been passed on direction of higher authorities. The contention was that in the present case, the assessment order has been passed under the directions and dictate of the higher officials and hence, the assessment is bad in law. It was further contended that the non-application of mind and interference of the higher authorities was of such nature that show-cause notice for 7 assessment years, all were issued as per verbal instructions of the Additional Commissioner as per noting in the proceeding sheet on 20.02.2015, which was received by the assessee on 23.02.2015 and in this notice the assessee was directed to file the reply to all assessment year(s) by 24.02.2015. Further, on 24.07.2015 the assesee sought adjournment on the ground of 24 hours-notice for 7 assessment years, the AO, on the direction of the CIT as noted in the proceeding sheets, allowed 72 hours to file reply for all 7 notices.

117. It was contended that these facts clearly reveal the compelling circumstances and preset mind of the then Addl. CIT / CIT and that the assessment orders and impugned additions are made on the directions of the higher authorities only, and therefore, there is no

application of mind by the Ld. AO under such dictate. Similar contention was raised by the assessee before the ld. CIT(A). The ld. CIT(A) has called for a remand report on this issue and the AO in the remand report dated 28.12.2015 has clarified that CIT and Addl. CIT are supervisory authorities and they monitor the progress of sensitive cases. Thus, in the instant matter, directions were given by the Addl./Joint CIT and CIT in view of the seriousness of the matter including the unaccounted transaction of HSBC, Zurich. The ld. CIT(A) after taking into consideration the above reply from the AO has held that these directions do not in any way convey that the AO has been influenced to decide the case before her in any particular manner. CIT in has administrative powers and the Addl.CIT has statutory powers under the act.

118.As per provision of section 119(1), the CBDT has been empowered to issue instructions and directions to other income tax authorities as it may deem fit from time to time. However, such directions or instructions cannot be issued so as to require any income tax authority to make a particular assessment or to dispose of particular case in a particular manner. This restriction is on the Board. In the present case, the CIT being the supervisory authority, we are of the view that he was well within his right to issue administrative direction to the AO. It cannot be said that

the order vitiated on account of such supervisory authority having been exercised by the Addl.CIT. In fact, the provisions of Section 153D provides that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year u/s 153A except with the prior approval of the Joint/Addl. Commissioner. Accordingly, this ground of appeal is dismissed.

C) No Incriminating material seized during the search:

119. Ground Nos. 7 to 12 are regarding addition of Rs. 8,51,10,905/- on account of the alleged deposit in bank account with HSBC Bank, Switzerland. The AO has held that the assessee is the owner/beneficial owner of the HSBC bank account, Switzerland, the details of which he has stated in the assessment order and the said bank account is not disclosed in his return of income for the year under consideration. The AO on the basis of the above finding and that the assessee being a resident and having failed to explain the source of credit in the said bank account, made the addition of the peak credit balance in the said account. The basis for reaching the above finding is the 6 page document received by the Competent Authority in India from the Competent Authority of France and statement of the assessee recorded during the search. The above findings have been confirmed by the ld. CIT(A).

120. On going through the assessment order and the order passed by the ld. CIT(A), we note that the addition has been made and sustained primarily on the basis of two materials. The first is the 6 page document/ information which was received by Competent Authority in India from the Competent Authority France on 14.07.2011 i.e. before

the search. The second being the statement of the assessee recorded on the date of the search.

121. The contention of the ld. DR is that the 6 page document received from French Competent Authority is an authentic document and hence, the AO is justified in making the addition on the basis of this document. The contention of the ld. DR further is the fact of the bank account being held by the assessee as per this 6 page document gets corroborated from the statement of the assessee recorded on the date of the search where he has admitted of having a bank account with HSBC, Switzerland.

122. As against this, the contention of the ld. AR is that the 6 page document is not an authentic document and nor it is a bank statement considering which the AO has made the addition. As regards the statement of the assessee recorded during the course of the search, the contention of the ld. AR is that the same was obtained under coercion and stands already retracted and as such, said statement cannot be used against the assessee. The search party has gone to carry out the search with a preconceived notion and has obtained a statement as suits.

123. Without prejudice to above, the contention of ld. AR is that the addition on the basis of the alleged statement even otherwise cannot be sustained in the year under consideration as unexplained investment under section 69 of the Act as in the statement, no such investment has been made during the year under consideration as per the statement.

124. The contention of the ld. AR further is that statement recorded during the search cannot considered to be incriminating material in view of the judgment of Hon'ble Jurisdictional High Court. He contends that no addition can be made in respect of the year under consideration as the assessment is a non-abated one and no incriminating material has been found during the course of the search.

125. He further contends that onus to make the addition under section 69 is on the AO who has failed to discharge the same. He contends that the addition has been made based on suspicion.

126. Now, the first issue is the 6 page document which revenue is contending as bank statement of the assessee with HSBC Bank, Switzerland and contending to be an authentic document. The addition has been made by the AO and sustained by the CIT(A) holding the 6 page

document as a bank account. During the course of the hearing before the ld. CIT(A), the assessee has challenged the authenticity of this document and also that this document is not a bank account and more so with HSBC, Switzerland as is being contended by the Revenue. The assessee has also raised the issue that the Revenue itself is not clear whether this allegation of bank account is with HSBC, Geneva, or with HSBC, Zurich. The ld. CIT(A) has called a number of remand reports seeking clarification from the AO on the various issue raised by the assessee before the ld. CIT(A). In one of the remand reports dated 28.12.2015, the AO has enclosed a letter dated 26.06.2015 giving clarification regarding the source of the 6 page document. As per this letter, the French Competent Authority has handed over a pen drive to the Indian Competent Authority in Paris on 28.06.2011. The print out from the contents of the pen drive pertaining to Delhi region were handed over to the DGIT (Investigation). These documents after print out from the said pen drive and on this basis, it has been contended in this remand report that 6 page document is authentic. As against this, the contention of the assessee has been that merely because a pen drive has been handed over by French Competent Authority to Indian Competent Authority, the information contained in the pen drive will not become authentic. The

allegation is that the assessee is having a bank account with HSBC, Geneva, Switzerland as per this document. This information has not come from HSBC. This information has also not come from Switzerland Competent Authority where it is being alleged that the assessee is having the bank account. How this pen drive came in possession of French Competent Authority, there is no answer from any source.

127. There are various aspects that require our consideration.

1. Whether the 6 page document is a bank statement or not.
2. Whether the said document is authentic or not and
3. Whether the amounts were deposited during the year and whether they are liable to tax u/s 69 during the year.
4. Whether any incriminating material has been found during the course of search addition can be made on the basis of said document or not.

128. As regards the issue whether the 6 page document is a bank statement or not as the basic features of a bank statement are missing, specific question raised to the ld. DR on the issue whether such 6 page document is a bank

statement or not, we find that she did not controvert the fact that such document does indeed lack the basic essentials of a bank statement.

129. Further, we find that in one of the remand reports dated 28.12.2015 (paper book page 248 relevant page 249), in response to the question whether the 6 page document is a bank statement, the AO has himself stated that 'yes, the 6 pages was having conclusive details of the bank account'. The said response indicates that the AO himself doesn't consider it to be a bank statement per se. Further, we also find that in the communication between the Director of Investigation Wing and the Pr. CIT, the Direction of Investigation Wing has himself referred to the 6 document as 'base sheet' (refer paper book page 250). Further, we also note that in the proforma request made to Swiss Competent Authority (page 5 to 8 of paper book filed by the ld. DR), the AO has sought for bank statement of the assessee which indicates that the AO is otherwise not in possession of the bank statement. In the 6 page document, nowhere the name of the alleged bank i.e. 'HSBC bank' appears to be mentioned. The CBDT correspondence refers these documents as base documents/print outs/information.

130. The next issue is whether the 6 page document can be considered to be authentic or not and whether addition can be made on the basis of said document or not by considering the details contained therein to be that of a bank account. We have given our careful consideration. The source of information has always been the pen drive received from Competent French Authority. From perusal of the case records as referred to by the ld. AR, we find that the assessee has raised this contention before the ld. CIT(A) as well.

131. We further find that the ld. DR has filed a paper book which has a letter dated 26.05.2015 from Under Secretary (FT&TR Division) to Pr. CIT (Central-II) (DR paper book page 8) which is a reference to a communication received from Swiss Tax Authorities asking to file a revised requisition.It is an undisputed fact that the above said 6 page document has been received by the Indian Competent Authority from the French Competent Authority. It is the contention off the ld. DR that such fact makes the document an authentic one.

132. The ld. CIT(A) having referred to the remand report submitted by the AO on this issue held that that in view of the chain of custody and integrity of information received from the time it has been handed over to the Competent

Authority of India, till has reached the AO, there remains no doubt. There is no quarrel with the proposition that the French Competent Authority has handed over the pen drive to the Indian Competent Authority and the 6 page document is a print out of the said pen drive. But the ld. CIT(A) failed to address the argument of the assessee that the information contained in pen drive, the source thereof and author thereof and the authenticity of the information contained in the pen drive has not been established with any credible evidence or linkage with any of the document. The pen drive so received was just like an anonymous letter forwarded by French Competent Authority to the Indian Competent Authority. The issue which the ld. CIT(A) has failed to appreciate is the origin of the source of information only and certainly not the passing of the information from French Competent Authority to Indian Competent Authority, till such time the origin of source of information is authenticated.

133. Further, we hold that similar issue of authenticity of the documents has been examined and adjudicated in the case of AnuragDalmiaVs DCIT, Central Circle-26 in ITA Nos. 5395 & 5396/Del/2017 for the assessment years 2006-07 and 2007-08 dated 15.02.2018. In that case, the Tribunal held at para 22 that "*before parting, we are*

making it very clear that we have not given any finding on merits and also to veracity of the information received by the department from the foreign authorities, as to whether assessee has any link with the foreign bank accounts or not."

134. Now, coming to the issue of addition in the absence of incriminating material found during the course of search,

a similar issue has been examined and adjudicated in the case of AnuragDalmiaVs DCIT, Central Circle-26 in ITA Nos. 5395 & 5396/Del/2017 for the assessment years 2006-07 and 2007-08 dated 15.02.2018. In that case, the Tribunal at para 14, 16 & 20 held as under:

> *14. The information which has been received from the foreign authorities wherein the name of the assessee is appearing at the outset appears to be incriminating which warrants not only inquiry but also can lead to prima facie belief that assessee may be somehow link to these bank accounts. However whatever may be the incriminating information which can implicate assessee but the said information has been received as a result of search carried out on 20.01.2012. Once any document which though is in the nature of incriminating material but if it has not been found*

in the course of search, then in view of the principle laid down by the Hon'ble Jurisdictional High Court in several cases, such an addition cannot be roped in the assessment u/s.153A especially in the assessments which are not abated. If the Revenue had any incriminating material antecedent to the search, that is, it was found during the course of search or as a result of search, then in that case Revenue had various other courses of action left under the provisions of Income Tax Act, but certainly not within the ambit and scope of Section 153A read with 2nd proviso thereto.

.....

16. Thus, following the aforesaid proposition of law and admitted fact of the case that there is no incriminating material found during the course of search qua the assessment year for which impugned addition has been made, we hold that such an addition cannot be roped in in the assessment order passed u/s 153A. Accordingly, same is directed to be deleted.

.....

20. Here in this case as per the Assessing Officer still certain information are yet to be received and the material and information available with the department needs to be corroborated and needs to be further inquired into. Under these circumstances also in our opinion same cannot be done within the scope of Section 153A as we have already held that nothing has been found from the assessee during the course of search, which can preempt any post search inquiry. Albeit in abated assessments AO may have power to conduct further inquiry but not in case of unabated assessments.

135. With regard to the issue of abatement of assessment, we hold that the assessment years under consideration i.e. AY 2006-07 and AY 2007-08 were completed assessments and not abated assessments and hence, no addition can be made in absence of incriminating material found during the course of search in view of the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (2016) 380 ITR 573 and other such judgments on the issue. The ld. AR all through argued that there is no incriminating material seized during the search and the addition made during the year is not based on any seized material. It was

argued that in the absence of any seized material, no addition can be made in the non-abated assessments. He has produced the copy of the panchnama at page no. 4 to 28 of the paper book pertaining to the seizure of documents. It was argued that the Income Tax Department had the documents in their possession even before the date of search, the statement recorded and the addition made is not based on the material found and seized during the search. We have specifically asked the revenue as to the factum of the issue. The revenue fairly replied that the 6 page document is not part of the seized material. We are unable to agree with the contention of the ld. DR that the statement do constitutes seized material. In view of the judgment of Hon'ble Delhi High Court in the case of PCIT VsAnand Kumar Jain (HUF) in ITA No. 23/2021 dated 12.02.2021 wherein it was held that the statement recorded u/s 132(4) does not constitute incriminating material and no addition can be made on the basis of statement alone without any reference to material gathered during the course of search operations, we hold that no addition can be made in the instant years.

136. Further, reliance is placed on the following judgments:

- Krishan Kumar Modi Vs ACIT in ITA No. 2892/Del/2017

- Shri BishwanathGarodiaVs DCIT in ITA Nos.853 to 856/Kol/2016

137. Further, we have also perused the orders of the Co-ordinate Bench of ITAT Kolkata in ITA No. 853 to 856/Kol/2016 in the case of Biswanath GarodiaVs. DCIT. We find that the issue in the instant case is similar to the one adjudicated in the said order. The relevant part of the said order is as under:

"6. The ld. counsel for the assessee submitted that the returns of income filed by the assessee for both the years under consideration, i .e. A.Ys. 2006-07 and 2007-08 were processed by the Assessing Officer under section 143(1) prior to the date of search and since no notices under section 143(2) were issued by him for the said two years and even the period available to issue such not ices had already lapsed even prior to the date of search, the assessments for the said two years were deemed to have been completed. He submitted that the information relating to the undisclosed Bank account maintained by the assessee with HSBC, Geneva, Switzerland was available with the Assessing Officer prior to the date of search and although the search was conducted on the basis of the said information, no incriminating material whatsoever was found during the course of search relating to the

transactions reflected in the said Bank account or income arising to the assessee relating thereto. He contended that the scope of assessment made by the Assessing Officer under section 153A for both the years under consideration pursuant to the search, therefore, was limited to the income unearthed during the course of search on the basis of incriminating material found and in the absence of any such incriminating material found during the course of search, addition on account of HSBC Bank transactions or income relating thereto was beyond the scope of assessment made under section 153A. He contended that when this issue was specifically raised by the assessee during the course of appellate proceedings before the ld. CIT(Appeals), the concerned Assessing Officer had appeared before the ld. CIT(Appeals) on 21.12.2015 and agreed vide order-sheet entry dated 21.12.2015 recorded by the ld. CIT(Appeals) (copy at page no. 22 of the paper book) that the information regarding the undisclosed HSBC bank account maintained by the assessee was duly received from the CBDT and there was no incriminating documents/ books of account that were found during the course of search, which had been used in making the additions to the income of the assessee under section 153A of the Act. The ld. counsel for the assesese reiterated that in the absence of such incriminating material, the additions as made to the total

income of the assessee on account of transactions reflected in the Bank account of the assessee with HSBC Bank, Geneva, Switzerland as well as income relating thereto in the assessments completed under section 153A for both the years under consideration are not maintainable. In support of this contention, he relied on the decision of the Mumbai Special Bench of the Tribunal in the case of All Cargo Global Logistics Limited vs. DCIT reported in 137 ITD 287 as well as the decision of the Division Bench of this Tribunal in the case of ACIT vs. Pratibha Industries reported in 141 ITD 151.

7. The ld. D.R., on the other hand, strongly relied on the impugned orders of the ld. CIT(Appeals) in support of the Revenue's case on this issue. He contended that there is no such requirement of any incriminating material having been found during search to initiate proceedings under section 153A and the fact that the search is conducted and concluded in the case of the assessee alone is sufficient to give jurisdiction to the Assessing Officer to initiate the proceedings under section 153A against the assessee for the preceding six years. He contended that the scope of section 153A is very wide and it talks about total income, which includes income on the basis of incriminating material as well as without incriminating material. He also contended that the proceedings under section 143(1) are not

assessment at all and since the assessment proceedings for both the years under consideration had not been completed prior to the date of search, the scope of proceedings under section 153A was wide to assess and reassess the total income of the assessee. In support of this contention, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Bhatia (Income Tax Appeal No. 1626 of 2010 & Others dated 14.05.2012) as well as the decision of the Delhi Bench of this Tribunal in the case of ShivnathRaiHarnarain (India) Limited vs. DCIT [117 TTJ (Del.) 480].

8. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the returns of income originally filed by the assessee for both the years under consideration were duly processed by the Assessing Officer under section 143(1) well before the date of search conducted on 28.07.2011. The said search was conducted in the case of the assessee on the basis of information received by the Assessing Officer from CBDT relating to the undisclosed account maintained by the assesese with HSBC Bank, Geneva, Switzerland. During the course of search, no incriminating material, however, was found relating to the transactions reflected in the said Bank account of the assessee with HSBC Bank or any income relating thereto and this position was categorically admitted

by the Assessing Officer during the course of appellate proceedings before the ld. CIT(Appeals) as is evident from the relevant order-sheet entry dated 21.12.2015 recorded by the ld. CIT(Appeals) (copy at page no. 22 of the paper book). The question that arises now is whether in the absence of such incriminating material, any addition to the total income of the assessee can be made on account of the transactions reflected in the Bank account of the assessed with HSBC Bank or any income relating thereto in assessments completed under section 153A of the Act for both the years under consideration.

9. As per the provisions contained in Section 153A, if the search or requisition is initiated after 31.03.2003, the Assessing Officer is under an obligation to initiate proceedings under section 153A for six years immediately preceding the year of search. The Assessing Officer is then required to assess or reassess the total income of the said six years and if any assessment or reassessment out of the said six years is pending on the date of initiation of the search, the same would abate, i.e. pending proceeding qua the said assessment year would not proceed thereafter and the assessment has to be made under section 153A(1)(b) of the Act read with the 1s t Proviso there under. As regards the other years for which assessments have already been completed and the assessment orders determining the

assessee's total income are subsisting at the time when the search or requisition is made, the scope of assessment under Section 153A is limited to reassess the income of the assessee on the basis of incriminating material found during the course of search.

10. At the time of hearing before us, the ld. D.R. has contended that the processing of returns of income filed by the assessee as made by the Assessing Officer under sect ion 143(1) could not be regarded as assessment and it is, therefore, not a case where the assessments for both the years under consideration could be said to have been completed. He has also contended that the conclusion of such alone is sufficient to give jurisdiction to the Assessing Officer to proceed against the assessee under section 153A of the Act. In support of this contention, he has relied on the unreported decision of the Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (supra). In the said case, a question was posed by the Hon'ble Delhi High Court in paragraph no. 12 of its order as to whether the Assessing Officer was empowered to reopen the proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search where an assessment order had already been passed in respect of all or any of those six assessment years either under section 143(1) or section 143(3) of the Act and such order was

already in existence having been passed prior to the initiation of search/requisition. Although this question was not finally answered by the Hon'ble Delhi High Court in the case of Anil Kumar Bhatia (supra), it is quite clear from the said question raised by the Hon'ble Delhi High Court that there was no distinct ion made by Their Lordships in the assessments completed under section 143(1) and section 143(3) for determining the scope of the proceedings under section 153A. However, the said question arose specifically for the consideration of Mumbai Bench of this Tribunal in the case of ACIT vs. Pratibha Industries reported in 141 ITD 151 and after referring to the discussion made by the Hon'ble Delhi High Court in this context in the case of Anil Kumar Bhatia (supra), the Tribunal held that the only logical conclusion which could be traced out by harmonizing the legislative intendment and the judicial decision was that where the assessments had already become final prior to the date of search, the total income has to be determined under section 153A by clubbing together the income already determined in the original assessments and the income that is found to have escaped assessment on the basis of incriminating material found during the course of search. To arrive at this conclusion, reliance was placed by the Tribunal on the decision of Special Bench, Mumbai in the case of All Cargo Global Logistic Limited (supra), wherein it

was held that even though all the six years shall become subject matter of assessment under section 153A as a result of search, the Assessing Officer shall get the free hand through abatement only on the proceedings that are pending. But in a case or in a circumstances where the proceedings have reached finality, assessment under section 143(3) read with section 153(3) has to be made as was originally made and in a case certain incriminating documents were found indicating undisclosed income, then addition shall only be restricted to those documents/incriminating material.

11. Keeping in view the discussion made above, we hold that the additions as finally made to the total income of the assessee on account of transactions reflected in the Bank account of the assessee with HSBC, Geneva, Switzerland and income relating thereto for both the years under consideration are beyond the scope of section 153A as the assessments for the said years had become final prior to the date of search and there was no incriminating material found during the course of search to support and substantiate the said addition. The said additions made for both the years under consideration are, therefore, deleted allowing the relevant grounds of the assessee's appeals."

138. The Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (supra) held as under:

> *"vii. Completed assessments can be interfered with by the A.O. 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"*

139. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. MeetaGutgutia (2017) 395 ITR 526 in paras 69 to 72 has held as under:

> *"69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be accepted to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.*

70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

Conclusion

72. To conclude:

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A. of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04."

140. The above Judgment is confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. Therefore, on this reason also no addition could be made of any unexplained bank deposits or interest earned thereon in any of the assessment years. In view of the above, we set aside the Orders of the authorities below and delete the entire additions.

141. Hence, keeping in view, the entire factum of the case, we hold that the addition made vide the assessment u/s 153A in the absence of any incriminating material is not sustainable.

D) Statement u/s 132(4) - Whether the amounts have been deposited in the instant years?

142. The ld. CIT(A) relied on the statement of the assessee. The ld. AR argued that the said statement has been retracted vide letter dated 30.08.2011 and in any case, on going through the statement, it nowhere comes out that such investment for which addition has been made was made during the year under consideration.

143. On going through the assessment order, we find that the AO has made the addition under section 69 as unexplained investment made during the year. For the purpose of adjudicating the issue, it may be relevant to take note of section 69 which reads as under:

"Unexplained investments.

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments

may be deemed to be the income of the assessee of such financial year."

144. As per the above cited provision of section 69 of the Act, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

145. Now, in the light of the above provision, we may go through the statement of the assessee to find out whether the assessee has admitted to have made investment during the year under consideration. The AO has quoted the statement in the assessment order. We have gone through the entire statement. There is no admission that any investment has been made during the year under consideration. On the contrary, we find that in this statement, it is coming out that investment has been made in the year 2002. It may be relevant to quote the relevant para of the statement as referred by the AO in the assessment order:

"Q. 7. Can you recollect as to when was it opened?
Ans. Sometime in 2002.

Q. 18 What amount was given at the instruction Charlie and what amount was deposited by him in your account?
Ans. Various amount were given on various dates in 2002 in Delhi ranging from Rs.2 crore to Rs.5 crore."

146. With the assistance of both the ld. AR and ld. DR, we have again gone through the statement of the assessee recorded during the search which has been used by the AO for making the addition. The ld. DR could not point out that anywhere in the statement, there is any admission by the assessee of having made any investment during the year under consideration. Further, the statement nowhere shows that any investments were made during the year under consideration. Section 69 as stated herein above, is very categorical that addition, if any, has to be in the year in which investment is made. Section 69 has three important limbs,

(i) the assessee has made in the financial year certain investment:
(ii) such investments are not recorded in the books of accounts, if any, maintained by him; and

(iii) the assessee offers no explanation or that his explanation is not satisfactory.

147. If all the three limbs/conditions are satisfied, the section provides that the value of such investments may be deemed to be the income of the assessee of that financial year. It is pertinent to point out that Section 69 deems unexplained investment as income of the assessee in the year when the investment has been made. This is evident from usage of the expression "such financial year" boomerangs back to the expression 'financial year' used in the earlier part of the section i.e. the financial year immediately preceding the assessment year in which the assessee has made the investments. Therefore, from a plain reading of Section 69, it is clear that in case of any unexplained investment, the addition can be made only in the year in which such investment has been made. The section does not give any discretion to the AO to make the addition in the year of choice of revenue. We find that the Co-ordinate Bench of ITAT Mumbai in the case of Shankar R. MhatreVs ACIT 117 ITD 241 has also held that primary requirement is that investments had to be made by the assessee in the financial year immediately preceding the assessment year. Further, we also draw support from the decision of the Co-ordinate Bench of ITAT Delhi in the case of Km. Preeti Singh Vs ITO in ITA No. 6909/Del/2014,

where speaking through one of us, the Co-ordinate Bench observed as under:

"(4) We have heard both sides patiently and attentively. We have also considered all the materials on our record. At the time of hearing before us, the relevant facts are not in dispute. Firstly, it is not disputed that the total investment made by the assessee in this year was Rs. 12,58,100/- and the remaining investment was made in earlier years. It is also not disputed that out of the aforesaid investment of Rs.12,58,100/-, the total payment amounting to Rs.6,05,100/- was made by cheque and the remaining balance of Rs.6,53,100/ - was made by cash. It is also not disputed that the assessee had sufficient deposits in her bank account due to brought forward deposits of earlier year at the beginning of the year under consideration to explain the source of aforesaid transactions by cheque totaling Rs.6,05,000/-. It is further not disputed that the deposits in the bank accounts of the assessee at the beginning of the year had accumulated in the past, across several years. It is also not disputed that the assessee had made significant amounts of withdrawals in cash, out of her bank account in an earlier year.

(4.1)It will be useful to refer to Section 4 of I.T. Act, which is the charging section. For ease of reference, Section 4 is reproduced as under:-
"Charge of income-tax.

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act. "

(4.1.1) On perusal of Section 4(1) of IT. Act, it is obvious that in the year under consideration, no addition can be made in respect of investments in property made by the assessee in earlier years or in respect of deposits in bank

accounts of the assessee made in earlier year which brought forward to this year for making cheque payments of the aforesaid total amount of Rs. 6,05,100/ -. Moreover, in any case, when certain amounts were invested by the assessee and also, certain other amounts were deposited in the bank account of the assessee, in previous years relevant to earlier A.Ys.; such investments or deposits could not possibly have been out of the income of the previous year under consideration (relevant to A.Y. 2009-10). It is well settled that each year is separate and self- contained period. Income Tax is annual in its structure and organization. We take strength from decisions reported at KikabhaiPremchand vs. CIT 24 ITR 506(SC); ITO vs. MurlidharBhagwan Das [1964] 52 ITR 335 (SC); CIT vs. British Paints India Ltd. 188 ITR 44(SC) and CIT vs. BasantRaiTakht Singh 1 ITR 197 (SC) for the proposition that each 'previous year' is a distinct unit of time for the purposes of assessment and further, that the profits made; and the liabilities of losses made before or after the relevant previous year are immaterial in assessing income of a particular year; unless in accordance with proviso to Section 4(1) of I.T. Act, there is statutory provision to the contrary, authorizing income of a period other than the previous year under consideration to be charged to income-tax (such as Section 7 IB of I.T. Act and Section 72 of I.T. Act which allow losses to be carried forward). Useful

reference may also be made to in the RatanchandLallumal 4 ITR 189 (All.), Jagannath Ram Dayal CIT 18 ITR 375 (All); M.K Muhammad Ibrahim vs. CIT 10 ITR 64 (Mad.), CIT vs. Jug Sah Muni Lai Sah 7 ITR 522 (Patna), CIT vs. Planters Co. Ltd. 123 ITR 648 (Mad.), CIT vs. Spunpipe 141 ITR 246 (Guj.), DebaprasannaMulcharjee vs. CIT 20 ITR 293 (Cal.), CIT vs. Bijli Cotton Mills Pvt. Ltd. (All.) and CIT VsPartabmullRameshwar 107 ITR 526 (Cal.) for proposition that; even if certain income has escaped tax in the relevant assessment year, because off a device adopted by the assessee or otherwise, it does not entitle revenue to assess the same as the income of any subsequent year when the mistake becomes apparent."

148. Now, in the case in hand, as noted above, as per the statement of the assessee, the entire amount has been invested in the years prior to the assessment year under consideration i.e. prior to AY 2006-07. There was no evidence to prove either by the way of statement or by the way of documents available with the department that the amounts have been deposited during the instant assessment year. It is a settled law that a statement has to be read in entirety. The AO in case wants to rely upon the statement, he has to read the statement as a whole and cannot read it the way it suits him. The statement of the assessee nowhere states that any investment has been

made in the year under consideration. If that be so, irrespective of the fact whether such statement has been retracted subsequently or whether such statement constitute incriminating material or not, we are of the view that the addition, on the basis of this statement, cannot be made in the year under consideration.

149. In this context, we also refer to the order of the Co-ordinate Bench of ITAT Delhi in the case of K.K. Modi Vs ACIT in ITA No. 2892-94/Del/2017 dated 05.07.2019. In that case, it was held that the addition u/s 69 has to be made in the year in which the investments have been made. The facts of the case of K.K. Modi (supra) are similar to the facts of the instant case.

150. The relevant portion of the said order is as under:

"5.3 As per the aforesaid provisions of section 69, where the assessee is found to have made any investment not recorded in the books of account in any financial year and the assessee is not able to explain its source to the satisfaction of the assessing officer, then, the value of the investments is deemed to be unexplained income of the assessee in financial year in which investments were made. Therefore, for section 69 of the Act to be applied, the undisclosed investment must be found to be relating to any

particular year and in that year, in the absence of satisfactory explanation of the assessee value of investments is subjected to tax.

XXX

5.6 In the present case, on perusal of the papers relied upon by the assessing officer, it is seen that there is reference to various dates. There is no specific date wherefrom the date of investment in the so-called bank account can be determined. As per the English translation, the date of creation of the profile of the so-called bank account is reflected as 09.01.2001 and another date of creation is mentioned as 30.01.2001 and both the dates are much prior to assessment year 2006-07, the year under consideration. Moreover, it is noticed that the amounts reflected balances carried forward from earlier period and there is no reference to any deposition being made in the said bank account which could be related to any of the assessment years 2006-07 or 2007-08. Of course, there is reference to certain balances for the period November, 2005 to February, 2007, which has been relied upon by the assessing officer, but it is noticed that the said balances are merely balances and not any deposits. In this context, the Ld. Senior Counsel vehemently contended that if one were to strictly construe the document as it is, then, no addition could have been made in any of the assessment years under consideration

since as per the document the account was created much earlier and there is no evidence of deposition of any amount in any of the assessment yeas beginning with assessment year 2006-07. It was contended that the assessee merely offered the amount to tax in assessment year 2012-13 to avoid litigation and if at all the said amount could only been taxed in the said year, being the year of search, as per the provisions of section 69A of the Act.

5.7 On thorough and serious consideration, we find substantial merit in the aforesaid contention of the Ld. Sr. Counsel that if at all the amount on the basis of the papers relied upon could only be taxed in year of search, when the said papers were, for the first time, confronted to the assessee. This is for the reason that the paper nowhere shows any amount being deposited in any of the assessment years beginning with assessment year 2006-07. Therefore, neither in assessment year 2006-07 nor in assessment year 2007-08, the two years in which additions have been made by the assessing officer, the assessed could be regarded as having made any investment and therefore, the provisions of section 69 of the I.T. Act cannot, in our view, be applied in those assessment years. Further, the documents relied upon actually refer to creation of account in earlier assessment year, much prior to assessment year 2006-07."

151. We may further point out that it is settled law that statement cannot be read in isolation without any corroborative material. In the present case, we find that there is no evidence placed on record by the AO to corroborate the statement. Moreover, the Revenue itself is not clear whether the information pertains to the alleged bank account maintained with HSBC, Zurich or HSBC, Geneva as is evident from the paper book filed by the Revenue. No response has been received in response to the reference made to Swiss Competent Authority. No incriminating material whatsoever has been found during the course of the search. Under the facts and circumstances in our view, the provisions of Section 69 are not attracted to the assessee in the instant year. The AO has made the addition on the basis of suspicion pertains to the bank account.

152. Keeping in view, the overall facts, we are of the view that the addition made by the AO in the assessment years 2006-07 and 2007-08 cannot be sustained. Accordingly, we direct the AO to delete the same.

ITA No. 4576/Del/2016 AY: 2007-08:

153. In assessee's appeal for the assessment year 2007-08 in ITA No. 4576/Del/2016, the ld. Counsel for the parties have submitted that the facts and the issue involved is the same as that involved in the assessee's appeal in ITA No. 4575/Del/2016 for the assessment year 2006-07. Accordingly, in view of our findings for the assessment year 2006-07, we direct the AO to delete the addition. In the result, the appeal of the assessee is allowed.

ITA No. 5330/Del/2016: AY: 2007-08:

154. In the appeal filed by the revenue in ITA No. 5330/Del/2016, the only issue is the addition of interest assuming such interest would have been earned by the assessee from HSBC Bank account. Since, we have deleted the addition made by the AO as unexplained investment with the HSBC Bank A/c, as a consequence thereto, the addition of interest assuming such interest would have been earned on the deposit cannot be sustained. Even otherwise, this addition of interest by the AO is merely by indulging into surmises that such interest would have been earned despite there being any evidence thereof. Accordingly, we uphold the order of the ld. CIT(A) on this issue and the appeal of the revenue is dismissed.

155. In the result, the appeal of the assessee for the assessment year 2007-08 in ITA No. 4576/Del/2016 is allowed and the appeal of the revenue in ITA No. 5330/Del/2016 is dismissed.

ITA No. 5332/Del/2016 A.Y. 2009-10:

156. Following grounds have been raised by the revenue:

"1. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.40,00,000/-made by AO on account of Unexplained expenditure.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.12,23,083/- made by AO on account of disallowance u/s 14A.

3. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 16,51,661/- made by AO on account of interest on foreign deposits.

4. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 11,77,070/- made by AO on account of disallowance of interest u/s 36(1)(iii).

5. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 24,77,843/- made by AO on account of capital introduced."

Ground No. 1

Unexplained Expenditure:

157. The relevant portion of the order of the Assessing Officer with regard to this ground is as under:

"6. Vide submission 11.02.2014, assessee submitted in response to the question raise regarding marriage/social function, that total amount spent was approximately Rs.40,00,000/- on his son's marriage. Assessee has not explained any source regarding the same and has not furnished any detail of the same which he had himself admitted to have spent. Assessee has not even linked the expenditure so made with any withdrawals from his bank account. Therefore, in view of the assessee's own admission of such amount to have been spent on marriage but not substantiated with any corroborative evidence addition of Rs.40,00,000/- is made as unexplained expenditure in the hands of the assessee."

Addition : Rs.40,00,000/-

158. The ld. CIT (A) deleted the addition holding that the amounts spent on the marriage has been duly explained.

159. Before us, the revenue argued that the assessee having submitted that the expenditure has been incurred in connection with the marriage of the son of the assessee but failed to explain the source of such expenditure.

160. From the record, we find that the assessee has spent an amount of Rs.21,40,000/- from the bank A/c No. 6662

with HDFC Bank and Rs.18,60,000/- was met by assessee's wife Smt. Tripat Kaur. The details of expenditure are as under:

1. <u>Payments made to Hotel for marriage programme</u>

Particulars	Cheque	Date	Bank	Amount	Sourc
Payments made to Park Hyatt, Goa for wedding programme	475603 475656 475662 494183	11-06-2008 17-09-2008 23-09-2008 21-11-2008	HDFC Bank HDFC Bank HDFC Bank HDFC Bank	750000 1000000 925000 4432.5	TK PSK PSK PSK
Total				**2679432.**	
Less : received from R. S. Anand	103845	06-11-08	HSBC	650000	RSA
Net Amount				2029432.5	

2. <u>Payments made Air tickets for guests</u>

Particulars	Cheque	Date	Bank	Amount	Sourc

Amount paid to Global E-travel Solutions Pvt. Ltd. towards cost of Air tickets for guests	475604	11-06-2008	HDFC Bank	500000	TK

3. <u>Cash withdrawn from bank A/c for expenses</u>

Particulars	Cheque	Date	Bank	Amount	Sourc
Cash drawn for meeting marriage expenses	475622	06-08-2008	HDFC Bank	100000	TK
	495403			500000	TK
		09-09-	HDFC		
	475653	2008	Bank	500000	PSK
	451250			100000	PSK
		08-09-	HDFC		
		2008	Bank		
		08-08-	HDFC		
		2008	Bank		
Total				**1200000**	

4. <u>Other Expenses</u>

Particulars	Cheque	Date	Bank	Amount	Sourc
Amount paid to 'Wedding Gurus' xxx show at marriage programme	494178	13-09-2008	HDFC Bank	75000	PSK

Amount paid to Jerry Pinto for decoration of venue of wedding function	494177	13.09.2008	HDFC Bank	40000	PSK
Amount paid to Saroja Communications for invitation cards	475667	23.09.2008	HDFC Bank	78000	PSK
	495408			10060	TK
Amount paid to Spice Jet	475654	17.04.2008	HDFC Bank	4240	PSK
Amount paid to Spice Jet		13.09.2008	HDFC Bank		
Total				207300	
G. Total				3936732.50	

161.The amount of Rs.64,000/- has been explained to be out of the cash in hand. On going through the bank statement, we find that the explanation of the assessee with regard to Rs.40,00,000/- is based on the withdrawals from the bank duly examined by the ld. CIT (A). Hence, we decline to interfere with the order of the ld. CIT (A) on this ground.

Ground No. 2 and 4

Disallowance u/s 14A and section 36(1)(iii):

162. Ground no. 2 and Ground no. 4 in Revenue's appeal are regarding the deletion of addition of Rs. 12,23,083/- on account of disallowance of disallowance under section 14A and the deletion of addition of Rs. 11,77,070 under section 36(1)(iii). Since the issue of disallowance under section 14A is linked to the disallowance under section 36(1)(iii), we will first take up the ground no. 4 regarding disallowance of interest under section 36(1)(iii).

163. The AO has made disallowance of Rs. 11,77,070/- under section 36(1)(iii) of the Act and Rs. 12,23,083/- under section 14A. During the year, the assessee has earned interest income of Rs. 36,72,034/- and has claimed an interest expenditure of Rs. 24,00,153/- against such income. The AO was of the view that the assesse has failed to establish the nexus between the borrowed and the lent funds. He disallowed proportionate interest of Rs. 11,77,070/- under section 36(1)(iii) and the balance, he disallowed invoking section 14A.

164. The CIT(A) has deleted the addition holding that the assessee has borrowed funds on interest and the same have been advanced, during the year, on which it has

earned interest. As such, there is no logical basis for making disallowance under section 36(1)(iii).

165. The ld. DR submitted that the CIT(A) was not justified in deleting the disallowance under section 36(1)(iii). She submitted that the assessee has failed to prove the nexus between the borrowed funds and the amount advanced on which interest has been earned and as such, disallowance under section 36(1)(iii) by AO need to be upheld.

166. The ld. AR, in reply, submitted that during the year, assessee had borrowed interest bearing funds to the tune of Rs. 3,03,50,275 [PB page no 53 and 54]. The assessee had utilized such funds towards advancing interest bearing loan to the tune of Rs. 3,41,00,000/- [PB page no 53 and 54]. Additionally, there were certain interest free advances made to Mr. Gurdeep Singh, RK Gupta during earlier years by the assessee from his own capital and to another party Omega Finhold Private Limited during the year from owned funds. He submitted that during the course of proceedings, AO vide letter dated 20.02.2015 (PB page no. 114), required the assessee to show cause as to why disallowance of interest @ 13.5% on interest free loan to the aforesaid three parties should not be made. In response thereto, the assessee filed a reply dated 26.02.2015 (PB

page no. 115-118) wherein it was explained that all the interest bearing funds were utilized for making interest bearing advances. It was pointed out that the assessee was sanctioned overdraft facility of Rs. 400 Lacs. from State Bank of Patiala (SBOP) in October 2017. The interest free loan of Rs.15 Lacs was given to Mr. Gurdeep Singh in FY 2006-07 and Rs. 37 Lacs was given to Mr. RK Gupta in FY 2005-06 i.e. before sanctioning of the bank overdraft facility. It was thus established that there was no nexus between the interest free loans and the borrowed funds. In support thereof, the ld. AR invited to the sanction letter from bank dated 1.9.2007 (PB pg. no. 119 - 122) and confirmation letter of party since the inception of loan (PB page no. 123-126). As regards loan to the third party (Omega Finhold Pvt. Ltd.), it was submitted that the same had been paid during the year under consideration, but out of assessee's own funds and not out of the borrowed funds of lending business. The same was also corroborated with the ledger account of the assessee in the books of the party (PB page no. 104) and assessee's bank statement (PB page no.100-102). The AO without considering the reply of the assessee from proper perspective made an addition of Rs. 11,77,070, being proportionate disallowance of interest paid on borrowing vide the assessment order alleging that the assessee has not been able to establish the nexus

between the borrowed and interest earning advances. The AO alleged that the assessee's contention that all borrowed funds were utilized for earning income has not been substantiated with any credible evidence. The CIT(A) after perusing the evidences on record has rightly deleted the addition by giving a categorical funding that all interest bearing loans to the tune of Rs. 3,03,50,275 had been advanced on interest.

167. We have considered the rival submissions and perused the order passed by the authorities below and the paper book. On going through the same, we find that all the interest bearing funds have been utilized towards interest bearing advances. This is evident from the balance sheet whereby interest bearing loan was Rs. 3,03,50,275 against which, interest bearing advances are Rs. 3,41,00,000 i.e. more than the amount borrowed. Further, from the bank statement, it is apparent that there is a direct nexus between the amount borrowed and the amount advanced. The CIT(A) on the issue of disallowance under 36(1)(iii) has examined this issue and has given the following finding:

"18. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings. It is

seen that the assessee had borrowed amount on interest during the year under consideration and the loans had been advanced on interest two different parties also during the year under consideration only. The assessee had filed copy of the bank statement before the AO as well copy of each of the parties to whom the amount has been advanced on interest. The facts also highlight that the assessee had advanced interest bearing amounts totaling Rs.3,41,00,000 as on 31.3.2009 as against interest bearing loans raised amounting to Rs. 3,03,50,275/- on the said date. This fact clearly shows that the amount borrowed on interest has been used specifically and exclusively for advancing amounts of interest for the purposes of earning income. The facts that an amount of Rs. 46.80 lakh has been given as loans free of interest in earlier years cannot effect the arguments taken by the assessee on the issue. The assessee had sufficient capital of loan owned as evident from the capital account and any amounts out of the same advanced in the earlier years for whatever personal circumstances, cannot be the basis to disallow the interest on amounts borrowed as the said amount has been duly used for the interest earning income. The appellant had also submitted before the AO at para 4 on his reply dated 26.12.2004 that the interest free loan given to Shgurdeepsingh at rs 15 lacs had been advanced in FY 2006-07 out of which Rs 3.20

lacshad been received in Fy 2007-08 and balance was outstanding at the end of this financial year. Similarly the amount advanced to rar R.K. gupta was in FY 2005-06 out of which an amount of Rs 2 lacs had been received back in Fy 2006-07 and 35 lacs in FY 2008-09 and nothing was outstanding. Further the amounts advanced to Omega Finhold pvt. Ltd. had been from personal funds as evident from perusal of bank statement of SBOP account wherein the interest bearing loans are credited., in view of the detailed analysis of the facts of the case there is no logical basis in the AOs action making the disallowance of Rs.11,77,770 /-. The same is directed to be deleted."

168. The ld. DR could not point out any reason to interfere with the above findings recorded by the CIT(A). Accordingly, we uphold the order of the CIT(A) on this ground. Accordingly, ground no. 4 of the Revenue's appeal are dismissed.

169. Now, coming to ground no. 2 regarding the disallowance of Rs. 12,23,083 under section 14A. The AO has made this disallowance on the reasoning that the assessee has earned dividend income during the year which is exempt. Since assessee has incurred interest expenditure of Rs. 24,00,153/-, proportionate disallowance

under Rule 8D of Rs. 21,39,724 need to be made. However, considering the fact a disallowance of Rs. 11,77,070/- has been made under section 36(1)(iii), the balance disallowance i.e. Rs. 12,23,083/- is made under this head. The CIT(A) had deleted this addition holding that the entire interest expenditure was for business purposes.

170. It was contended by the ld. DR that CIT(A) was not justified in considering that the interest expenditure was for business purposes. She contended that assessee has given interest free loan and hence, it cannot be assumed, that the interest paid on amount borrowed from the bank was for business purposes and hence, disallowance under section 14A made by the AO need to be sustained.

171. In reply, the ld. AR submitted that during the course of assessment proceedings, the AO vide query no. 8 of letter dated 17.12.2014 (PB page no. 47-48), required the assessee to submit details of his investments in a prescribed format containing opening balance, addition, sale, profit or loss, closing balance and dividend received. In response thereof, the assessee vide para 8 to reply dated 30.12.2014 (PB page no. 49-113), furnished the details of investments in the desired format. From the submitted details of investments, the AO observed that during the

year under consideration, the assessee had earned a dividend of Rs. 35,854/- . Further, on perusal of the computation of income (PB page no. 2), the AO vide para 7 of the assessment order observed that the assessee had claimed dividend income of Rs. 35,854/- as exempt and interest expenditure of Rs. 24,00,153/- towards interest in money lending business. The AO then proceeded to straightaway compute the disallowance under section 14A r.w.r 8D of the Act, without discussing the issue further, or providing any basis for establishing nexus between the borrowed funds and amount invested in equity shares. It was submitted that out of the total interest of Rs. 24,00,153/- claimed by the assessee, the AO computed disallowance under Rule 8D at Rs. 21,39,724/-. However, owing to the fact that interest to the extent of Rs. 11,77,070/- was already disallowed under section 36(1)(iii) of the Act, therefore the AO restricted the disallowance under section 14A to Rs. 12,23,083/- (i.e. 24,00,153 (-) 11,77,070). The AO has further disallowed Rs. 9,16,641 (i.e. 21,39,724 (-)12,23,083) on protective basis. It was submitted that the CIT(A) has examined the entire facts as can be seen from the finding recorded in para 27 of its order. It was further contended that Rule 8D is not mandatory. Section 14A nowhere makes it mandatory for the assessee or the assessing officer to make calculation as

per Rule 8D. Sub section 2 read with sub section 3 of section 14A and sub rule (1) of Rule 8D, clearly states that the power to exercise the provision of Rule 8D is available to an assessing officer only if he is not satisfied with assessee's claim of expense with respect to the income which do not form part of the total income. In the present case, the AO has simply stated that the claims of the assessee are not acceptable, without making any reference to the books of accounts. The same therefore does not amount to recording of satisfaction as per the mandatory requirement of section 14A(2) r.w.r. 8D(1). In support thereof, the ld. AR placed on the decision of jurisdictional High Court in the case of CIT vs. Taikisha Engineering India Limited ITA 115/2014 & 119/2014 wherein it was held that unless the AO rejected the explanation or the rationale which induced the assessee to offer particular amount as expenditure with some reasoning, the mere rejection per se cannot be accepted. Ld. AR submitted that since in the instant case, the disallowance has been made by the AO, without providing any specific finding regarding dissatisfaction with the explanation given by the assessee, therefore in such a case, the disallowance of interest by invoking Rule 8D is untenable. Ld. AR also placed reliance on the following decisions:

(i) *Hon'ble Supreme Court in the case of Maxopp Investments vs. CIT and PCIT vs. D.B. Corp Ltd., Civil Appeal Nos. 104-109 of 2015*

(ii) *Hon'ble Delhi High Court (SLP against which has been dismissed by the apex court) in the case of PCIT vs. M/s. Moonstar Securities Trading and Finance Co. Pvt. Ltd., ITA 81/2018, CM APPL.2787/2018*

(iii) *Hon'ble Delhi High Court in the case of H.T. Media Ltd. vs. PCIT, ITA No. 548/2015, & ITA No. 549/2015*

(iv) *Hon'ble Delhi High Court in the case of PCIT vs. M/s. U.K. Paints (India) Pvt. Ltd., [2017] 392 ITR 552*

172.It was further contended that in the present case, while the amount of dividend income earned by the assessee is Rs. 35,854/-, the disallowance of interest computed by the AO under section 14A r.w.r 8D is Rs. 21,39,724/-. The disallowance under no circumstances can exceed the exempt income earned by the assessee. In support thereof, the ld. AR placed reliance on the decision of the jurisdictional High court in the case of Joint Investments Pvt. Ltd Versus Commissioner of Income Tax, [2015] 372 ITR 694 (Del). Reliance in this regard was also placed on the decision of Hon'ble Delhi Court (SLP against which has been dismissed by the apex court) in the case of

PCIT vs. DLF Home developers Ltd. ITA 65/2019, CM APPL. 3709/2019.

173.We have considered the rival submissions. In the present case, assessee has incurred total expenditure of Rs. 24,00,153 on account of interest, a part of which the AO has disallowed under section 36(1)(iii) and the balance he has disallowed under section 14A. While deciding the disallowance under section 36(1)(iii), we have held that the entire interest expenditure was for business purposes and hence, no disallowance is called for. The CIT(A) has also examined this issue as can be seen from his finding as under:

"27. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings. I have already analysed in detail the facts of the case in respect of the amounts borrowed by the appellant on interest and the usage thereof in the form of amounts advanced on interest. It has been held that the amount borrowed on interest most specifically the OD limit used by the assessee, has led to debit of an amount of Rs. 2400153/- in the form of interest on the said amount of loan and the same had been directly used for lending amounts on interest to different parties

which had led to earning of interest of Rs. 3672034/-. This being so there is no basis for the AO to hold the view that the amounts borrowed on interest had not been for the purposes of earning taxable income. The provisions of section 14A read with Rule 8D clearly require the AO to analyse the facts of the case so as to get to the satisfaction that certain expenditure had been incurred for earning tax exempt income and in the event of such satisfaction recourse to Rule 8D could be made. It is apparent from the perusal of the assessment order that no such exercise has been undertaken by the AO before the proceedings to resort to the machinery available under Rule 8D. This fact apart, the expenditure in the form of interest debited in the P&L account has already been examined to have been incurred for earning taxable income in the form of interest earned to the tune of Rs. 3672034/-. This being so it can be said that no expenditure has been debited in the P&L account which could be attributed to earning of exempt income. In the circumstances the primary requisite as stipulated in section 14A does not get satisfied and therefore no consequential disallowance either by resorting to the machinery available under Rule 8D or otherwise could be made. The disallowance made by the AO on protective basis is therefore directed to be deleted."

174. We are in agreement with the finding of the CIT(A) and accordingly, uphold the order of the CIT(A) and this ground of the Revenue is dismissed.

Ground No. 3

Interest on Foreign Deposits:

175. This issue stands adjudicated for the assessment year 2007-08 in ITA No.5330/Del/2016 in the appeal of the revenue. The same ratio applies this year. Accordingly, this ground is dismissed.

Ground No. 5

Capital Introduced:

176. After examination of balance sheet and the statement of affairs, the AO made addition of Rs.24,77,843/- on account of capital introduced. The details are as under:

"In response to questionnaire dated 27.01.2014, Assessee vide annexure -D of letter dated 11.02.2014 submitted business Balance Sheet as on 31.03.2009 detailed as under:

Liabilities & Capital ***Assets & Property***

Capital *Current Assets & Loans Advances*

Add: Profit for the year Rs. 12,71,883 Loans & advances(sch.A)
Amount Introduced Rs.24,77,843 Rs.37,49,725
Rs3,41,00,000

Current Liabilities & Provisions
Borrowings from
Overdraft A/c (Bal.Fig.) Rs.36,00,275
Advanced from Rs.2,67,50,000
Customers (Sch-B) Rs.3,03,50,275
Rs.341,00,000 ***Rs.3,41,00,000***

Vide questionnaire Dated 17.12.2014-Assessee was further asked to explain the source of capital introduced of Rs.24,77,843/- during the year. Vide annexure A of submission dated 30.12.2014, assesee has furnished lending Business Balance sheet detailed as under:

Liabilities ***Assets***
Capital A/c
Balance b/f Rs.12,70,023 Loans & advances Rs.3,41,00,000
Add:

A. Amount Introduced
i. Total amount transferred
from personal/other A/c Rs.1,02,50,000
ii. Less" transferred to
personal/Other A/c Rs.96,27,765 Rs.6,22,235
Rs.5,85,585
B. Interest Receivable *Rs.24,77,843*
Add: Profit during the year Rs.12,71,883
Rs.37,49,725

Loans & Advances

Bank : SBOP OD A/c *Rs.36,00,275*
Others *Rs.2,67,50,000*
Rs.3,41,00,000Rs.34100000

Vide Point No.1 of the submission dated 30.12.2014, assesee has mentioned that the earlier Balance sheet submitted on 11.02.2014 was based upon single entry system wherein amount introduced of Rs.24,77,843/- was a balancing figure and vide submission dated 30.12.2014, Balance Sheet submitted is based upon Double entry system.

In the Balance Sheet submitted on 30.12.2014, assessee has explained Capital Introduction of Rs.24,77,843/- as under:

	30.12.2014	
11.02.2014		
Balance b/fd	Rs.12,70,023	Nil
Difference between Amount lent & taken (Rs.1,02,50,000-Rs.96,27,765)	Rs.6,22,235	Nil
Interest Receivable	Rs.5,85,585	Nil
	Rs.24,77,843	Nil

Assessee was show caused vide letter dated 20.02.2015 as to why addition of Rs.24,77,843/- be not made. Assessee vide reply dated 26.02.2015 reiterated its earlier reply and has further stated that unexplained credit is based on the figure of Balance Sheet and not based on any credit entry which is found in the books of accounts.

Contentions of Assessee are not acceptable on following grounds:-

i. Assesee has not submitted any evidence of balance brought forward of Rs. 12,70,023/-

ii. No detail of amount lent & borrowed on Personal A/c is submitted and hence Rs.6,22,235/- remains unexplained.

iii. Interest Receivable of Rs.5,85,585/- is grossly wrong as interest receivable is an asset item and not liability item. This is further established by the fact that vide Annexure "G" of submission dated 11.02.2014, assessee has given detail of Loans & Advances squared up and confirmation of Consortium Securities Pvt. Ltd. Loan a/c is given wherein figure of Rs. 5,85,585/- appears on both sides signifying that on 01.04.2008 there was Nil Balance.

From the above facts it is crystal clear that assesee has not been able to prove the amount of Capital introduced of Rs.24,77,843/- and therefore addition of Rs.24,77,843/- made."

Net Addition: Rs.24,77,843/-

177. The ld. CIT (A) deleted the addition after examination of the transfer of amounts in the various bank accounts which have been declared by the assessee.

178. Before us, the Counsels relied on the respective orders of the revenue.

179. The submissions of the assessee before the revenue authorities are as under:

"12.1 The Assessing Officer has stated that since the assessee has not submitted any evidence regarding the balance brought forward, details of the amount lend and borrowed and the interest receivable, the capital introduced of Rs.24,77,843/- as shown by the assessee in his balance sheet of lending business activity is considered to be unexplained.

10.2 In this regard it is submitted that the findings recorded by the Assessing Officer are factually incorrect and contrary to the material and documents on record. The Assessing Officer has not been able to appreciate or understand the facts of the case in the right perspective. The assessee is an individual. He is not carrying on any business except the activity of giving loans on interest from the overdraft limit sanctioned by the State Bank of Patiala, loans taken on interest from friends/associates as well as from own capital funds of the assessee. The assessee by treating it as lending business activity, disclosed the income under the head 'Income From Business & Profession' in his return of income, as is evident from the computation of income placed at PB Pg. 2 - 3.

12.2.1 From the records it may be observed that he has earned interest on the advances given of Rs.36,72,034/- and he has paid interest of Rs.24,00,153/- and hence

earned net interest income of Rs.12,71,881/- from this lending business activity. All these transactions are through bank and there is no outside source and no outside introduction of the capital.

12.2.2. No separate books of account/records were being maintained and no expenditure has been claimed on this lending business activity. Thus, the assessee simply drew the statement of affairs of the lending business activity on single entry basis from the consolidated records and the capital introduced at the end of the year was the balancing figure, i.e. Rs.24,77,843/-, difference between the 'Interest bearing advances" of Rs.3,41,00,000/- reduced by the 'interest bearing loans' of Rs.3,03,50,275/- and profit for the year of Rs.12,71,883/-. The Assessing Officer asked for further details of this balancing figure to support the capital figure in the statement of affairs drawn on the basis of single entry basis.

12.2.3. During the course assessment proceedings, the assessee prepared the books of accounts of the lending business activity on the double entry system and submitted that the details that constitute the capital balance shown in the statement of affairs prepared and drawn on single entry basis from consolidated records. The details of the same

were worked out and provided as mentioned hereinabove, that interalia includes the following, as evident from PB 53:

i. Rs.12,70,023/- which was the opening balance carried forward from the previous balance sheet and duly submitted in previous assessment year.

ii. Difference of Rs. Rs.6,22,235/- (1,02,50,000 - 96,27,765) relates to net difference of the funds transfer to and from non interest bearing accounts i.e. Rs. 1,02,50,000/- received in the bank account of SBOP and Rs. 96,27,765 being amount received in HDFC Bank account relating to interest bearing accounts, etc.

iii. Further a sum of Rs.5,85,585/- was the interest accrued but not received (receivable) from the previous year which was inadvertently not shown in the previous balance sheet/statement of affairs of lending business activity, and as such had not been added to opening capital balance carried forward. This interest receivable was duly offered for tax in the previous assessment year.

iv. Thus the aggregate of these was obviously assessee's own capital, as shown as balancing figure in the balance sheet of lending business activity.

10.3 During the course of proceedings, the assessee, in support of the Capital in the statement of affairs of lending business activity, provided bank statement of all banks, with description of each deposit and withdrawal. The Ld. AO being satisfied with each debit and credit entry in the bank account / statement of the assessee did not raise any further query. Thus the capital balance reconciled with each debit and credit entries in lending business activity which were through bank entries, and which stand explained and accepted by the Ld. AO.

10.4 The Assessing Officer without appreciating the above facts has made an arbitrary and casual remark with predetermined mind set to treat it as income, stating that the assessee has failed to submit evidences and substantiate the explanation without pointing out what remains unsubstantiated or unexplained. On the basis of explanation given, and facts narrated herein below. This observation of the Assessing Officer is not correct as may be seen from the following facts.

(a) That Rs. 12,70,023/- being opening balance in the statement of affairs of lending business activity of the year under consideration gets corroborated from the closing balance of previous year, i.e. 31.03.2008 (being the difference between interest bearing loans {Rs. 13,29,977}

and interest bearing advances {Rs. 26,00,000} pertaining to lending business activity of the assessee in the previous year}.

(b) Thus, the difference of these two is the closing capital of the last year i.e. Rs.12,70,023/-. The closing capital of the last year is obviously the opening capital of this year. As regards the amount of Rs.6,22,235/-, which relates to net difference of the funds transfer to and from non interest bearing bank accounts i.e. Rs. 1,02,50,000/- received in the bank account of SBOP and Rs. 96,27,765 being amount received in HDFC Bank account relating to interest bearing accounts, etc. It is further submitted that details of each and every entry in the amounts given above to determine the balance of Rs. 6,22,235/- are duly reflected in the bank statements submitted during the assessment proceedings together with narration of every debit and credit entries. Therefore this addition to the capital of the assessee in the lending business activity of the assessee during the year under consideration stands explained and substantiated. Thus it is not an unexplained source to the capital introduction of the assessee in statement of affairs of lending business activity warranting any addition to the returned income.

(c) The figure of Rs.5,85,585/- relates to interest income earned in the preceding F.Y. 2007-08 (relevant to A.Y, 2008-09), which inadvertently was not shown as 'interest accrued but not received' on the asset side, and its corresponding credit in Capital Account in the lending business balance sheet, as this amount was not received in F.Y. 2007-08. This amount of Rs.5,85,585/- which was received on 01.04.2008 is therefore added to the Capital in the year under consideration.

(d) The above three figures, i.e. (i) Rs. 12,70,023/- is the opening capital of assessee in lending business activity in the year under consideration, (ii) Rs. 6,22,235/- is contribution of difference between funds transferred from and to as per bank statement and (iii) Rs. 5,85,585/- is interest receivable, and total of the all these entries which in aggregate makes a sum of Rs.24,77,843/- [12,70,023 + 6,22,235 +5,85,585). Thus, the assessee provided a detailed and substantiated explanation, vide letter, dated 30.12.2014 and 26.02.2015.

10.5 That the addition to the capital in statement of affairs of lending business activity is not a result of any credit entry in books or bank account that remained unexplained or unsubstantiated by the assessee. Thus, this kind of addition which related to reconciliation entries is cannot be

treated as 'unexplained cash-credit' or unaccounted investment as contemplated under the Act.

10.6 From the assessment order is quite clear and evident that the Ld. AO has not rebutted the above explanation on merit or with some documentary evidence, and just arbitrarily and with pre set mind concluded that the assessee did not submit explanation. In view of the above facts and explanation on record the Assessing Officer was not justified in making this addition and the same be deleted."

180. We have gone through the ratio and the examination undertaken by the ld. CIT (A) which is reflected in the order of the ld. CIT (A) at page no. 16. The relevant portion is as under:

"That an amount of Rs. 12,70,023 /- has been the previous opening balance capital in the balance sheet. This amount represented the difference between the interest bearing loans of Rs. 13,29,977/- and interest bearing advances at Rs. 26 lakh as on 31.3.2008. These figures are directly verifiable from the statement of affairs as per the assessment record of the AY 2008-09. Further an amount of

Rs. 6,22,235/- is the net funds transferred to and from the non-interest bearing bank accounts(HDFC) to interest bearing bank account (SBOP). The interest bearing bank account is the State Bank of Patiala from where an amount of Rs. 96,27,765/- has been transferred to HDFC Bank which is non interest bearing funds account. The amounts transferred to the State Bank of Patiala account is Rs.1,02,50,000/-. The difference between the two at Rs.6,22,635/- is the increase in the capital employed in the business of advancing loans. This increase in the capital does not represent any fresh infusion of funds from outside sources but transfer from one account of the assessee to another account as detailed above. Thirdly, the figure of Rs. 5,85,585/- represents interest income earned in the FY 2007-08 which had been shown in the said assessment order as income but the said amount had been received as on 1.4.2008 thereby leading to the increase in capital. In view of the detailed analysis as above, it becomes clear that no entry in respect of the increase in capital remain unexplained and the increase in capital actually does not represent any fresh infusion from sources other than the assessee's own accounted for funds. Therefore there is no logic in AO's action in making the impugned addition, same is directed to be deleted."

181. On going through the order, we find that the ld. CIT (A) has judiciously examined the bank account of HDFC, State Bank of Patiala and the interest earned and the capital transferred. In the absence of any factual incongruency brought to our notice by the revenue, we hereby decline to interfere with the order of the ld. CIT (A) on this issue.

182. In the result, appeal of the Revenue is dismissed.

Since, the matters have been adjudicated on merits, the CO of the assessee is treated as infructuous.

ITA No. 5333/Del/2016 A.Y. 2010-11:

183. Following grounds have been raised by the revenue:

> *"1. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.31,70,746/-made by AO on account of Unexplained cash credit u/s 68 of the I.T. Act.*
>
> *2. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.34,73,669/-made by AO on account of disallowance of interest u/s 36(1)(iii).*
>
> *3. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.15,21,850/-made by AO on account of interest on foreign deposits."*

Ground No. 1

Unexplained Cash Credit u/s 68:

184. The AO found that the closing balance as per the reconciled bank balance was Rs.2,45,75,570/- whereas as per the audited balance sheet, the closing balance sheet was Rs.2,14,05,994/-. The AO made addition of the difference amount of Rs.31,70,476/- as credit unexplained. The ld. CIT (A) deleted the addition holding as under:

"The between the two balance sheets prepared by the assessee pertaining to the bank overdraft (Loan amount at Rs.31,70,470.62/- is admitted fact. The said difference had been explained before the AO on account of the fact that the bank loan/overdraft became the balancing figure instead of capital account of the assessee on account of the incorrect inputs in the excel sheet. The assessee had submitted all the bank statements including in respect of the overdraft bank loan which did not show any difference with respect to the bank loan amount at Rs.2,45,,75,570.98. The confusion has arisen on account of the balancing figure being termed as bank loan/overdraft rather than capital which could be the resultant figure under single entry system of accounting. The same figure in respect of the affairs of the assessee had been prepared under the double entry systems which clearly reconciles the alleged difference arising out of the reasons mentioned above. The increase in the bank overdraft/loan amounting from Rs.2,14,05,094.36 to 2,45,75,570.98 leads to corresponding decrease in capital account of Rs.(-) 75,570/- as against the credit balance of Rs. 30,94,905.64 as shown in the audited balance sheet. The above detailed explanation of the assessee has not been considered and understood by the AO correctly and the impugned difference has been deemed to be income of the assessee. I don't find any reason to reject the logical explanation of the assessee

as submitted before the AO and after considering the same there is no scope to hold the view that impugned difference of Rs.31,70,476/- represented any entry which could be treated as income of the appellant. The addition made is therefore directed to be deleted."

185. We have gone through the factual content of the entire issue, the assessee is having a consolidated bank account for business activity and for personal affairs. While preparation of the audited balance sheet, the closing balance has been taken after taking into consideration the business transaction of the assessee. The borrowings from the overdraft account shown in the balance sheet as on 31.03.2010 prepared on 18.09.2010 shown a balancing figure of Rs.2,14,05,994/- which cannot be taken as the bank balance of the assessee when a single account is used for the purposes of the business and for personal transactions. The AO made addition on account of in appropriate reconciliation in the bank overdraft account and the bank statement. Hence, we decline to interfere with the order of the ld. CIT (A) on this ground.

Ground No. 2

Disallowance of Interest u/s 36(1)(iii):

186.As per the Assessing Officer, the assessee has given interest free loans of Rs.5,45,40,000/- during the year and the opening balance of the same was Rs.20,80,000/-, totaling the amount of interest free loans to Rs.5,66,20,000/-. Further, during the year under consideration, the assessee has borrowed funds from banks and others at the rate of 13.5% and has paid interest of Rs.34,73,669/-. During the year, the assessee has received loans of Rs.5,23,40,000/- and loans given of Rs.5,45,40,000/-.

187.The ld. CIT (A) held that the assessee has borrowed amounts on interest during the assessment year under consideration and such loans have been advanced on interest to different parties. The copies of the bank statement and the details of the parties to whom the amounts have been advanced on interest have been examined. The ld. CIT (A) held that the assessee has advanced interest bearing amounts of Rs.5.55 Cr. against the interest bearing loans taken of Rs.5.557 Cr. It was also held that the assessee has credited an amount of Rs.52,96,694/- as interest in the P&L A/c and also debited an amount of Rs.34,76,670/- under the head “interest”. However, on verification of the records, we find that the interest debited was Rs.29,56,361**/-** on account of interest

paid to others, and Rs.5,17,378/- on account of interest paid on OD, resulting in a profit of Rs.18,23,024/-. The opening balance of the capital of the assessee was Rs.12,71,881/-.

188. On going through the entire facts and the arguments of both the counsels, the affairs of the assessee are noted as under: (PB-4)

Loans received on account of business: Rs.3,10,00,000/-
(Tripata, Kalra, Anand, Utpal, DPBP, Vibhu)

OD on account of business:	Rs.2,14,05,094/-
Total borrowed funds:	Rs.5,24,05,094/-
Opening capital balance:	Rs. 12,71,881/-
Total funds available:	**Rs.5,36,76,975/-**
Total loans given:	**Rs.5,55,00,000/-**

(LaxmiBuildtech, Neera, Auto Links)

The interest earned and paid is part of the P&L A/c. The profit declared on this transaction was Rs.18,23,024/-.

189. In addition to the above transactions of loans the assessee has also extended loans to the tune of Rs.5,45,40,000/- to six parties namely, Harbir, Gurdeep, Galleri, Tripata, Sanjay, Realtec. During the arguments, it was submitted that the loan given to Realtec Properties

Pvt. Ltd. was infact Rs.10,00,000/- only but not Rs.1,00,00,000/- as shown at page 76 of the paper book. It was submitted that these personal loans were extended out of the own capital of the assessee but not from the business of lending.

190. This leaves us to a point, while the loans given and taken on business account and the consequent payment of interest and receipt of interest have been part of the P&L A/c and the profit earned thereof has been offered to tax, no disallowance is called for on the interest debited in the P&L A/c.

Ground No. 3

Interest on Foreign Deposits:

191. This issue stands adjudicated in the appeal of the revenue for the assessment year 2007-08 in ITA No. 5330/Del/2016 and the same ratio with regard to notional earning of interest on the presumed credit balance applies for this year too. This ground of appeal is accordingly dismissed.

192. Since, the matters have been adjudicated on merits, the CO of the assessee is treated as infructuous.

ITA No. 5334/Del/2016 A.Y. 2011-12:

193. Following grounds have been raised by the revenue:

"1. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.1,43,29,815/-made by AO on account of Unexplained cash credit u/s 68 of the I.T. Act.

2. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 2,24,00,000/- on account of profit share.

3. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.49,35,250/- made by AO on account of sale of unlisted shares.

4. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.42,08,366/- made by AO on account of disallowance u/s 14A.

5. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 15,77,464/- made by AO on account of interest on foreign deposits.

6. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 15,99,503/- made by AO on account of disallowance of interest u/s 36(1)(iii).

7. On the facts and circumstances of the case the CIT(A) has erred in deleting the addition of Rs.

19,16,415/- made by AO on account of capital introduced."

Ground No. 1

Unexplained Cash Credit u/s 68:

194. The entire portion of the relevant order of the Assessing Officer has been reproduced for the sake of ready reference and completeness:

"7. Vide show cause dated 20.02.2015, assessee was asked as to why addition of Rs. 1,43,29,815/- be not made on account of margin money of Rs. 1,00,00,000 and on account of HDFC of Rs.43,29,815/- as mentioned in Annexure C-1 of assessee's letter dated 06.01.2015.
Vide letter dated 27.02.2015, assessee has submitted that he has received Rs. 100 Lacs from the Consortium Securities Pvt. Ltd. which he had given as margin money in the earlier year. The contention of the assessee is not acceptable because the amount has not been reflected in both the Balance Sheets i.e. Audited as well as Not Audited of the assessee of A.Y. 2010-11. Assessee has tried to confuse the issue by mixing the personal and business Balance Sheet

prepared on single entry and double entry. Hence, an addition of Rs. 1,00,00,000/- is made.

Regarding credit from HDFC of Rs.43,29,815/-, assessee has submitted that it relates to the net Balance of transaction between HDFC Bank Account and State Bank of Patiala OD Account. This transaction of the assessee is also not acceptable as assessee has not given any credible evidence in the form of Bank Statement. Moreover, this Balance is not appearing in any of the Balance Sheet. Hence, an addition of Rs. 43,29,815/- is made."

195. The ld. CIT(A) deleted the addition on the grounds that the amounts received during the year have been indeed given by the assessee in the earlier years to the company namely, M/s Consortium Securities Pvt. Ltd. The relevant part of the order of the ld. CIT (A) is as under:

"27. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings. It is seen that the AO has made an addition of Rs. 1 crore on the ground that such receivable had not been recorded in the balance sheet prepared by the assessee. The explanation of the assessee clearly shows that the amounts in question had been given as margin money for transaction of shares

through its broker viz. M/s Consortium Securities Private Limited and had been received in the current year. The balance sheet prepared by the assessee was with respect to the money lending business and impugned share transactions and the related deposits of margin money was not part of the said record and accordingly had not been made part of the said balance sheet which was exclusively for the money lending business. The source of payment of said amount of Rs. 1,00,00,000/- to M/s Consortium Securities Private Limited in the earlier years and its receipt during the year under consideration has been as per the bank statement filed before the AO and as per the copy of account with the with the said entity. The AO has not brought on record anything to contradict the factual submission of the appellant on the issue as detailed above. It is a peculiar feature of the assessee's financial affairs that no formal books of accounts had been maintained which could take into account all the financial transactions entered into by the assessee and whatever balance sheet has been prepared, its for purpose of recording transaction namely the bank statements pertaining to money lending business. This being so the exclusion of a particular transaction pertaining to advance given for margin money and its receipt back in particular year could be termed as unaccounted only if the same had not been given received from the disclosed

bank accounts. It is a matter of fact that no entry in assessee's impugned bank accounts has been shown to be of unexplained nature. This being so the basis taken by the AO in making the impugned addition is not rational. Further the addition of Rs.43,29,815/- with respect to the transactions between the HDFC bank account and the State Bank of Patiala both operated by the assessee and had been treated as capital addition while preparing the accounts on double entry system. These amounts represented the transfer of funds from HDFC bank account (considered as representing personal bank account) to State Bank of Patiala (considered as money lending/business activities account). The source of funds in the said bank account has not been a subject matter of any doubt as obvious from the assessment order of the AO. The AO's observations that the assessee had not filed relevant bank statements is also contrary to the facts of the case as each bank statement of the assessee as well M/s Consortium Securities Private Limited along with narration of the entry therein had been filed before the AO. The addition made does not have any rationale in terms of the specific entry being unaccounted. The resultant addition is merely on account of lack of understanding shown by the AO in comprehending the peculiar nature of accounts maintained by the assessee. The addition made by the AO is therefore directed to be deleted."

196. Before us, the fact of receipt of the money and the fact of payment of money in the earlier year to M/s Consortium Securities Private Limited has not been disputed. Hence, we hold that no undisclosed income could be assessed on the amounts received as refund of margin money during the year. With regard to the amount of the transaction with HDFC Bank and State Bank of Patiala, since the amount represents transfer of funds from disclosed accounts and since reconcile, we decline to interfere with the order of the ld. CIT (A).

Ground No. 2 of Revenue's appeal and Ground no.8 of Cross Objection No. 344/Del/2016 of the assessee

Addition on account of Profit Share:

197. Page No. 76 of Annexure A-2 seized from the residence of the assessee represents as under:

Particular	*P.S. Kalra*	*Manish Mehta*	*BadalMidha*	*Samir Kalia*
Share	*12,131,973*	*12,131,973*	*12,131,973*	*12,131,973*
Less:	*6,053,855*	*6,677,851*	*4,422,213*	*5,173,444*

Balance with them				
Net Balance Payable	*6,078,118*	*5,454,122*	*7,709,760*	*6,958,529*

198. The AO held that the above seized material represents the half yearly profit to be earned by the assessee through the company Global E-Solutions Ltd. and thus determined the annual profit of Rs.2,42,63,946/-. The AO made addition holding that,

1. The paper has been found during the course of search on the residence of the assessee and the onus is on the assessee to rebut/disprove the contents of the said paper.
2. In the said paper, the same name of the assessee is clearly mentioned as the beneficiary of the amount of Rs.1,21,31,973/- for the half year ended on 30.09.2010.
3. The assessee has also failed to substantiate during the search, post search and assessment proceedings to explain as to why his name is mentioned in the said paper. It is clear that assessee is the real beneficiary

in the profits of the company to the extent of ¼ of the company's profit. The assessee's attempt to mislead the department by saying that this is the net worth or the book value cannot be accepted in absence of evidence & more so as col. 3 of the seized paper shows that the amount is actually been distributed.

199. The ld. CIT (A) deleted the addition.

200. Heard the arguments. The facts related to this issue are as under:

201. The share holding pattern of the company Global E-Solutions Ltd. is as under:

Shareholder Name	*P.S. Kalra*	*Manish Mehta*	*BadalMidha*	*Samir Kalia*
BadalMidha			*32,490*	
Mrs. ArtiMidha			*3,760*	
Mrs. Tripat Kaur	*5,454*			
M/s Consortium Securities P. Ltd.	*18,180*			
Omega Finhold P. Ltd.	*12,616*			
Santosh Mehta		*36,250*		
VeenaKalia				*36,250*
Total	***36,250***	***36,250***	***36,250***	***36,250***

202. From the above, we find that the assessee is not a shareholder but only a Director in the said company. From the balance sheet, it is found that the net worth of the company as per the seized material was Rs.4,85,27,890/- (page no. 78, 79 Annexure A-2). The assessee was representing Tripat Kaur, M/s Consortium Securities P. Ltd. and M/s. Omega Finhold P. Ltd. whose total shares was 36,250 whereas Manish Mehta, BadalMidha along with ArtiMidha and Samir Kalia were also holding equal share of 36,250. The value of the shares have been represented in the page no. 76 of Annexure A-2. From the concurrent reading and examination of the page 76 and page 78, 79 of the same Annexure A-2, we hold that the seized material doesn't represent the half yearly profit but represent the value of the shares held by and on behalf of the four persons namely P.S. Kalra, Manish Mehta, BadalMidha along with ArtiMidha and Samir Kalia.

203. In view of the above facts, we are of the opinion that AO was not justified in drawing adverse inference against the assessee. The figures stated in the seized document pertains to the said company i.e. Global e-Travel Solutions Pvt. Ltd. We are also in agreement with the contention of the ld. AR that CIT(A) was not justified in giving partial relief once the figures stated in the seized document pertains to an independent entity i.e. Global e-Travel

Solutions Pvt. Ltd. Assessment of the said company has also been made post search and no adverse inference has been drawn in respect of the seized document. Accordingly, we direct to delete the entire addition of Rs. 2,42,63,946/-. In the result, the ground no. 2 of the Revenue's appeal is dismissed and ground no. 8 of assesse's Cross Objections is allowed.

Ground No. 3

Addition on account of Sale of unlisted Shares:

204.The assessee has received an amount of Rs.52.5 lacs in the HDFC Bank on 02.06.2010 and Rs.90 lacs on 15.05.2010 in the State Bank of Patiala. On enquiry, it was submitted before the AO that the amounts have been received from two entities namely, Petal Infra Pvt. Ltd. and Stuti Agriculture Pvt. Ltd. on account of sale of shares of M/s Marvel Infracon Pvt. Ltd. The assessee has purchased of shares @ Rs.120/- per share in the financial year 2007-08 and sold at the same rate of Rs.120/- per share. The AO made addition of Rs.49,35,250/- holding that the book value of the share was Rs.78.44 only and the amount received by the assessee over and above of the book value has been paid back in cash to the investor. The relevant portion of the Assessment Order is as under:

"*It is pertinent to mention that company whose share have been bought and sold is a Private Limited Company (Closely held) whose shares are not listed/traded on the stock exchange. Therefore, no prudent investor will buy the shares for more than book value.*

This shows that the assessee has paid back the extra differential amount of Rs.49,35,250/- (120-78.44 = 41.56 × 118750) in cash to the investors."

205. We find that the assessee has purchased per share of Rs.120/- and sold at the same rate after three years. There is no evidence on record that the assessee has received more money and returned the amount to the purchaser. No seized material has been found which directs at substantiation of such impugned transaction or presumption made by the AO. Even, the bank statements do not lead to any such transfer of money or cash withdrawals to substantiate the allegations. Hence, we decline to interfere with the order of the ld. CIT (A).

Ground No. 4

Disallowance u/s 14A:

206. The Assessing Officer held that the assessee has claimed Rs.80,49,478/- towards interest in money lending business and worked out disallowance of Rs.42,08,366/- u/s 14A.

207. We have perused the order passed by the Authorities below. On going through the same, we note that the assessee has taken loan on interest and the same amount has been advanced on giving advances on interest. Thus, there is a direct nexus in respect of the amount of interest incurred and the interest earned. On going through the profit and loss account, we note that the total interest earned Rs. 12,39,86,77/- and the interest paid for earning such interest is Rs. 80,49,478/-. Further expenditure of Rs. 90 has been incurred as fees and taxes and the balance amount is the income declared by the assessee. There being a direct nexus of the borrowing of the fund and its utilization towards interest bearing advances, there is no justification for allocating any interest expenditure towards earning dividend income. It is also surprising that AO has made a disallowance of Rs. 3,01,150 as administrative expenses despite no such expenses having been incurred by the assessee. In view of these facts, we are of the view that no disallowance under section 14A is required in the present case and accordingly, we uphold the order of the

CIT(A) deleting this addition and this ground of the Revenue is dismissed.

Ground No. 5

Interest on Foreign Deposits:

208. This issue stands adjudicated in the appeal of the revenue for the assessment year 2007-08 in ITA No. 5330/Del/2016 and the same ratio with regard to notional earning of interest on the presumed credit balance applies for this year too. Accordingly, this ground is dismissed.

Ground No. 6

Disallowance of Interest u/s 36(1)(iii):

209. The AO held that the assessee has given interest free loans to the following related parties:

i) Gallery Navya
ii) Gurdeep Singh
iii) H.S. Kalra
iv) Omega Finhold Pvt. Ltd.
v) Acron Inf. Pvt. Ltd.
vi) Chirag Associates Pvt. Ltd.

210. The AO held that the total amount of the interest paid by the assessee was Rs.80,49,478/- and disallowed the

proportional amount of Rs.15,99,503/- which was computed as under:

Name of Person	***Amount of loan (INR)***	***Period***	***Period From***	***To***	***Interest Rate***	***Amount of Interest deemed***
Gallery	*200000*	*1 year*			*13.5%*	*27,000*
GurdeepSin	*10,80,000*	*1 year*			*13.5%*	*1,45,800*
H.S. Kalra	*23,90,000*	*62*	*30.10.20*	*03.01.20*	*13.5%*	*54,806*
	22,00,000	*5 months*	*04.01.20 10*	*22.06.20 10*	*13.5%*	*1,35,074*
	27,00,000	*6 months*	*23.06.20 10*	*06.01.20 11*	*13.5%*	*1,91,737*
	28,00,000	*22*	*07.01.20*	*30.01.20*	*13.5%*	*22,784*
	31,00,000	*1 day*	*30.01.20*	*31.01.20*	*13.5%*	*1,146*
	33,00,000	*4 days*	*01.02.20*	*04.02.20*	*13.5%*	*4,883*
	41,00,000	*25*	*05.02.20*	*30.03.20*	*13.5%*	*37,911*
	37,00,000	*1 day*	*31.03.20*	*31.03.20*	*13.5%*	*1,368*
Omega Finhold	*25,00,000*	*7 month & 28*	*23.06.20 10*	*21.02.20 11*	*13.5%*	*2,20,068*
	1,05,00,0	*12*	*22.02.20*	*06.03.20*	*13.5%*	*46,603*
	10,00,000	*23*	*07.03.20*	*31.03.20*	*13.5%*	*8,507*
Acron Inf. Pvt. Ltd	*50,00,000*	*294 days*	*03.06.20 10*	*28.03.20 11*	*13.5%*	*5,43,699*
Chiraga Associates Pvt. Ltd	*10,00,000*	*60 days*	*01.09.20 10*	*01.11.20 10*	*13.5%*	*22,192*
	15,00,000	*245*	*02.11.20*	*07.12.20*	*13.5%*	*1,35,925*
					Total	*15,99,50*

211.The ld. CIT (A) deleted the addition after examining that the entire interest bearing borrowed funds have been utilized for the purpose of interest bearing advances. It was categorically mentioned that the ld. CIT (A) that the P&L A/c of the assessee has been examined and the assessee has earned interest of Rs.1,23,98,677/-. From the

examining of the details available on record and the balance sheet of the assessee, we find that the assessee has got sufficient own funds to extent interest free loans. Hence, no disallowance is called for on account of interest paid especially when all the interest bearing loans were shown to have been utilized for the purpose of business.

Ground No. 7

Capital introduced:

212.The capital account as per the audited balance sheet filed by the assessee was Rs.1,30,27,866/-. Before the AO, the assessee submitted un-audited balance sheet wherein the capital introduced was shown to be Rs.1,49,44,281/-. The AO treated the difference of Rs.19,16,415/- as undisclosed income. We find that the ld. CIT (A) has deleted the addition holding that the balance in the capital account pertaining to the individual and the entity of lending business are different. On going through the record, we hold that the difference between capital account of the individual and the capital account of the business entity do not call for any determination of undisclosed income. Hence, we decline to interfere with the order of the ld. CIT (A) wherein the addition has been deleted after

examining the due reconciliation of the amounts involved in the capital account.

213. Since, the matters have been adjudicated on merits, the other legal grounds raised in the CO of the assessee are treated as infructuous. In the result, the appeal of the Revenue is dismissed and the CO of the assessee is partly allowed.

ITA No. 5335/Del/2016 A.Y. 2012-13:

214. Following grounds have been raised by the revenue:

> *"1. On the facts & circumstances of the case the CIT (A) has erred deleting the addition of Rs.6,14,300/-made by AO on account of Unexplained cash credit u/s 68 of the I.T. Act.*
>
> *2. On facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 1,44,00,000/- made by AO on account of unexplained investments.*
>
> *3. On facts & circumstances of the case the CIT (A) has erred in deleting the addition of Rs.22,31,727/- made by AO on account of unexplained investments.*
>
> *4. On facts & circumstances of the case the CIT(A) has erred in deleting the addition of*

Rs.12,85,898/- made by AO on account of disallowance u/s of interest u/s 36(1)(iii).

5. On facts & circumstances of the case the CIT (A) has erred in deleting the addition of Rs.18,65,552/- made by AO on account of interest on foreign deposit.

6. On facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs.38,36,009/- made by AO on account of disallowance u/s 14A."

Ground No. 1

Unexplained Cash Credit u/s 68:

215.The entire order of the Assessing Officer on this issue is as under:

"3. During the search dated 28.07.2011, total cash found from the various premises was Rs.1,79,62,800/-. Vide explanation given in annexure-F to the submission dated 06.01.2015 only a sum of Rs.1,73,48,500/- (seized) has been explained. The difference amount (Rs.1,79,62,800 – Rs.1,73,48,500 = Rs.6,14,300) has not been explained by the assessee. Assessee was given a final show cause on 20.02.2015. Vide reply dated 26.02.2015 assessee has explained that the cash found at various premises have not been seized and therefore no addition is warranted. Reply of the assessee has been considered and found to be not

tenable. Assessee is the key person who has offered for entire group. Further, non seizure cannot be the basis for non taxability. Hence, addition of Rs.6,14,300/- made in the income of the assessee."

216. In nutshell, addition of Rs.6,14,300/- made u/s 68 owing to non-explanation of this amount out of the total cash of Rs.1,79,62,800/- found.

217. The ld. CIT (A) deleted the addition holding that the amount has been duly explained. The amount is as under:

Avtar Singh &Gurucharan Singh	Rs. 2,32,000/-
Sanjay Vats	Rs.4,700/-
Consortium Securities	Rs.1,16,500/-
AlokGoel	Rs.15,000/-
B.S. Kalra	Rs.61,000/-
Rajendra Place Office (Petty cash)	Rs.800/-
MeharAnand Locker	Rs.50,000/-
Global E-Solutions	Rs.1,04,300/-

218. Availability of the cash which has been a part of the cash found on the date of search has not been disputed by either parties. Hence, we decline to interfere with the order of the ld. CIT (A) in deleting the addition on account of the

cash, the existence and accountability of which has been duly proved.

Ground Nos. 2

Addition on account of Unexplained Investments: Paintings (Rs.1,44,00,00/-)

219.The relevant part of the Assessing Order on this issue is as under:

"4. Assessee was asked to explain the source of paintings of Rs.2.38 crores belonging to assessee as stated in the of assessment proceedings of Mrs. Tripat Kaur.

Vide Submission dated 06.01.2015 assessee has submitted that the value of Rs.2.38 crores is tag price and not the purchase price. The assessee has submitted that this consists of 13 paintings. Submissions of the assessee have been considered which reflects 13 paintings with tag price shown as Rs 2.38 Crores. Five paintings have been shown as acquired in the year 1990. One painting has been shown as acquired in 2001, four paintings have been stated to be acquired in 2006 and three painting have been acquired in 2007 as per assessee. Details submitted by the assessee have been perused and found that assessee has not been able to produce any credible evidence. The only evidence which assessee has submitted is handmade vouchers filed

during the assessment proceedings. The same were neither found during the search nor submitted during the post search proceedings. Fact remains that assessee has not been able to reconcile the paintings of Rs.2.38 crores and submit any credible evidence. Hence, the explanation of assessee is rejected and addition of Rs. 1,44,00,000/- (2.38 crores -39.5% on account of GP i.e. Rs.94,00,000 =Rs.1,44,00,000 - GP taken in the assessment of assessee's wife case) is made in the income of the assessee."

The facts pertaining to this issue are as under:

"The assessee has paid the amounts for purchase of paintings as below:

(i) An amount of Rs.80,00,000/- (Rupees Eight Lakhs only) drawn on HDFC Bank (Cheque No. 336958 dated 17.10.2006) in favour of K.S. Radhakrishnan.

(ii) An amount of Rs.17,00,000/- (Rupees Seventeen Lakhs only) drawn on HDFC Bank (Cheque No. 286371 dated 22.03.2006) in favour of K.S. Radhakrishnan.

(iii) An amount of Rs.80,000/- (Rupees Eighty thousnad only) drawn on HDFC Bank (Cheque No. 451215 dated 13.06.2008) in favour of Suman Gupta.

(iv) An amount of Rs.10,00,000/- (Rupees Ten Lakhs only) drawn on HDFC Bank (Cheque No. 286357 dated 20.02.2006) in favour of Sanjay Bhattacharya."

220.The fact of payment of the amounts has not been disputed by the revenue authorities. The painting at Sr. No. 6 to 11 which have been explained by the assessee with regard to the source of purchase were not found in the physical inventory made at the time of the search operation and explanation sought thereof with regard to their accountability has been only because of these being recorded in the list of paintings as per Annexure -A-1, A-2 in the case of Smt. Tripat Kaur. The payments made by the assessee in the FY 2006-07 and 2007-08 have been accepted while making assessment for the said assessment years by the same AO. In view of these facts there is nothing available as per the records that could be made the basis of doubting the assessee's version with regard to the purchase either in terms of prices or in terms of source of payment. It is further seen that the painting at Sr. No. 12-13 have been claimed to be received as gift from the artists and relevant evidence in the form of confirmation by the assessee thereof by the said artists had also been produced before the AO. It is further seen that the assessee had made substantial purchases from the said artist Sh. K.S. Radhakrishnan and Sh. Gurdeep Singh. It is also seen that

both paintings have been gifted on important social occasions and had been marked as 'not for sale' (NFS) in the inventory as per Annexure A-1, A-2 in the case of Smt. Tripat Kaur. It clearly lends credibility to the impugned claim of the appellant that the paintings at Sr. No. 12-13 being receipts as gift were not meant for sale (NFS).

221.The fact that the paintings have been sourced in a particular year is clearly recorded and the seized document as per Annexure-A1 and Annexure-A2. All the purchases have been confirmed by the artists concern and the confirmations of the artists or the delivery of the paintings have not been disputed by the revenue.

222.The ld. CIT (A) has given the finding after detailed examination of the evidences filed. On going through the details containing name of the artist from whom the said paintings were acquired, mode of obtaining the same, i.e. by means of purchase or gift, along with price details viz., tag price and cost price and payment details, relevant extract of bank statement reflecting payment made to these artists, receipts issued by the artists in respect of paintings sold, acknowledgment of amount received from the assessee, copy of cheque issued towards such payment and confirmation of the artists in respect of gifted paintings and keeping in view the fact that out of the 13

paintings inventorized 5 paintings are acquired in 1990, one in 2001, 4 paintings acquired in 2006 and 3 in 2007, technically no addition is called for in the instant year.

223. Having regard to the considered decision of the ld. CIT (A), and after examination of the entire fact as mentioned above, we decline to interfere with the order of the ld. CIT (A) on this issue.

Ground Nos. 3

Addition on account of Unexplained Investments:Jewellery (Rs.22,31,727/-)

224. During the search proceedings, Gold Jewellery (5906.60 Grams), Diamond Jewellery (253.40 Carat) and Silver Utensils (3 KG) aggregating to Rs. 2,81,26,284/- as per various panchanamas was found.

225. During the assessment proceedings of Mrs. Tripat Kaur, a sum of Rs. 96 lacs has been offered for taxation in the ROI filed by her u/s 153A of the IT Act 1961.

226. Further, the assesee has explained that the following members of his family have filed the Wealth Tax Return for the Assessment Year 2009-10:

Name	**Date of**	**A.Y.**	**Weigh**	**Value**
H. S.Kalra	26.02.2010	2009-	-	Rs.
Tripat Kaur	25.02.2010	2009-	-	Rs.
Bikramjit Singh	26.02.2010	2009-	-	Rs.
Total				**Rs.66,74,07**

227. Further, the assessee has submitted the valuation report in respect of above family members giving the weights as on 31.03.2009. In addition, the assesee has submitted valuation report as on 31.03.2008 giving the details of jewellery as under:

Name	**Date of**	**A.Y./Dat**	**Weigh**	**Value**
P.S. Kalra	Not filed	31.03.20	95.31	Rs.
P.S. Kalra	Not filed	31.03.20	247.5	Rs.

228. The total weights of the Jewellery of family members as mentioned above are summarized as under:

H.S. Kalra : 946.45 Gram
Tripat Kaur : 1584.09 Gram
Bikramjit Singh Kalra : 796.45 Gram
P.S. Kalra(HUF) : 95.310 Gram

P.S. Kalra(Ind.)	:	247.522 Gram
Total Weight	:	**3668.922 Gram**

229. The difference between the jewellery found at the time of search (5906.35 gram) and as explained above (3668.922 gram) comes to 2237.428 Grams. The assesee has also explained that the following jewellery was purchased after 31.03.2009 and upto the date of search i.e. 28.07.2011.

Tripat Kaur	:	70.46 Gram
P.S. Kalra (Ind.)	:	10.17 Gram
P.S. Kalra(HUF)	:	8.31 Gram
Total	:	88.94 Gram

230. Thus, difference (2237.428 - 88.94) = 2148.488 Gram which has explained having been surrendered by Smt. Tripat Kaur in her assessment. The assessee was finally show caused for addition of Rs. 22,31,727/- on 20.02.2015. Vide reply dated 26.02.2015, the assessee reiterated his earlier stand.

231. The submission of the assesee has not been considered by the revenue authorities on the grounds that the assesee has not filed any wealth tax return in respect of his HUF jewellery of 95.310 gram and of his individual

jewellery of 247.522gram, aggregating to total 342.832 grams.

232. Hence, the value of this unexplained jewellery is added which comes to (Rs. 11,39,656/- + Rs. 10,92,071/-) aggregating to Rs. 22,31,727/- as per valuation report dated 31.03.2008 given by the assesee.

233. Thus, the dispute narrows down to accountability of the jewellery pertaining to the assessee of 247.5 gms. and P.S. Kalra (HUF) of 95.3 gms.

234. From the records, we find that the seized document page no. 50/A-14 which is the trial balance of HUF has shown the value of jewellery at Rs.17,42,755/-. Further, the page no. 32 of Annexure A-3 reflects purchase of jewellery on 13.02.2005 from Punjab Jewellers. The value as on 31.03.2001 was Rs.1,05,000/-. Further, the seized material page no. 19 of Annexure -6 KR-1 also reflects the existence of jewellery in the hands of the HUF. Further, the bills of jewellery have been produced which are as under:

18.01.2005	Rs.8,895.50/-
19.12.2005	Rs.3,12,443/-
17.02.2006	Rs.3,28,250/-

235.It is also a matter of record that from the entire jewellery found an amount of 2148 gms. has been considered as unexplained and disclosed in the Income Tax Return of Smt. Tripat Kaur. The quantity of the jewellery is less than the threshold limit of the Wealth Tax Return. Since, the evidence proved the availability of the jewellery in the hands of the HUF, the addition made is liable to be deleted. It can also be held to be reasonably valid that the assessee possesses a minimum quantity of the jewellery in his personal capacity. In the absence of any other material brought before us, we hereby decline to interfere with the order of the ld. CIT (A) on this issue.

Ground No. 4

Disallowance of Interest u/s 36(1)(iii):

236.This issue is being similar to the issue dealt at ground no. 6 of the assessment year 2011-12 except variance of the amount involved. The similar ratio is applicable to the current year as the interest bearing advances have been found utilized for extending the interest yielding advances and the interest received has been duly accounted in the P&L A/c. Hence, we decline to interfere with the order of the ld. CIT (A).

Ground No. 5

Interest on Foreign Deposits:

237.This issue stands adjudicated in the appeal of the revenue for the assessment year 2007-08 in ITA No. 5330/Del/2016 and the same ratio with regard to notional earning of interest on the presumed credit balance applies for this year too. Accordingly, this ground is dismissed.

Ground No. 6

Disallowance u/s 14A:

238.The Assessing Officer held that the assessee has claimed Rs.76,26,407/- towards interest in money lending business and worked out disallowance of Rs.38,36,009/- u/s 14A.

239.We have perused the order passed by the Authorities below. On going through the same, we note that the assessee has taken loan on interest and the same amount has been advanced on giving advances on interest. Thus, there is a direct nexus in respect of the amount of interest incurred and the interest earned. On going through the profit and loss account, we note that the total interest earned Rs. 127,85,451/- and the interest paid for earning such interest is Rs. 76,26,407/-. Further expenditure of Rs. 120 has been incurred as fees and taxes and the

balance amount of Rs. 51,58,924/- is the income declared by the assessee. There being a direct nexus of the borrowing of the fund and its utilization towards interest bearing advances, there is no justification for allocating any interest expenditure towards earning dividend income. It is also surprising that AO has made a disallowance of Rs. 2,98,882 as administrative expenses despite no such expenses having been incurred by the assessee. In view of these facts, we are of the view that no disallowance under section 14A is required in the present case and accordingly, we uphold the order of the CIT(A) deleting this addition and this ground of the Revenue is dismissed.

240. Since, the matters have been adjudicated on merits, the Cross Objection of the assessee is treated as infructuous.

ITA Nos. 6701 & 6702/Del/2017: AYs. 2006-07 & 2007-08

241. These two appeals are filed by the assessee against the order of the CIT(A) confirming the levy of penalty under section 271(1)(c) in respect of the addition on account of investment in bank account sustained by the CIT(A). In both these years, the penalty has been sustained by the CIT(A) on the ground that addition on account of

investment in both these years have been upheld. Since we have deleted the addition in both these years, the very basis of levying penalty do not survive. Accordingly, we direct the AO to delete the penalty in both these years. In the result, appeal of the assessee for AY 2006-07 in ITA No. 6701 and for AY 2007-08 in ITA No. 6702/Del/2017 are allowed.

242. In the result,

- The appeals in ITA Nos. 5330, 5332, 5333, 5334 & 5335/Del/2016 are dismissed.
- The appeals in ITA Nos. 4575 & 4576/Del/2016 are allowed.
- The CO Nos.342, 343, & 345/Del/2016 are dismissed as infructuous. Co. No. 344 is partly allowed.
- The appeals in ITA Nos. 6701 & 6702/Del/2016 are allowed.

Order Pronounced in the Open Court on 15/06/2021.

Sd/-	Sd/-
(Amit Shukla)	**(Dr. B. R. R. Kumar)**
Judicial Member	**Accountant Member**

Dated: 15/06/2021
Subodh