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2.2 Home Country Yum! entity hereby agrees to release and discharge the international assignees from all obligations and rights whatsoever, including any lien on employment, if any, and from all actions, claims and demands towards Home Country Yum! entity, while they were working as employees of Home Country Yum! entity. Home Country Yum! entity hereby also agrees that while the international assignees are in India on deputation, it shall not enforce any kind of contractual obligations that the international assignees have/had as employees of Home Country Yum! entity.

2.3 During the period of deputation, for administrative convenience, Home Country Yum! entity shall make payment towards salary, bonus and all other eligible benefits to the international assignees as per terms agreed with the international assignees (on behalf of Yum! Restaurants (India) Private Limited) at the time of the deputation and intimate Yum! Restaurants (India) Private Limited of the same.

2.4. Yum! Restaurants (India) Private Limited shall reimburse Home Country Yum! entity for payments made towards salary, bonus and all other eligible benefits of the international assignees in relation to the period of deputation. For this purpose, Home Country Yum! entity would produce the necessary documentary evidence supporting the payment towards salary, bonus and all other eligible benefits to the international assignees, to Yum! Restaurants (India) Private Limited, to enable the latter to make the payment.

2.5 All other costs and expenses in India relating to the international assignees, including without limitation, reasonable expenses relating to boarding and lodging, food and beverage, travel and other miscellaneous expenses associated with the performance of work by the international assignees shall be borne by Yum! Restaurants (India) Private Limited.

2.6 Yum! Restaurants (India) Private Limited shall be responsible for complying with the requirements of withholding tax under the Indian tax laws, on salary and other related entitlements paid to the international assignees.

2.7 Once the international assignees are deputed to Yum! Restaurants (India) Private Limited, the Home Country Yum! entity shall not have the right to recall any of such deputed personnel Home Country Yum! entity will also not be under any obligation to replace any of the deputed personnel in the event where any of such personnel terminate their employment while under the deputation at Yum! Restaurants (India) Private Limited for any reason."

14 The assessee has further filed the letter of deputation which is available at page 429 of the paper book and other evidence certifying the role of Mr. Vinod Mahboobani in the day-to-day functioning of Yum! Restaurants (India) Private Limited. He not only attended the board's meetings of the said concern, but he also signed the financial statements of Yum! Restaurants (India) Private Limited in his capacity as director. The said statement is available at page 87 of the paper book. The evidence need to be seen in their entirety as the burden of proving that the foreign assessee has a permanent establishment in India and consequently it has to be taxed on the business generated by such permanent establishment is initially on the Revenue. Such is the proposition laid down by the hon'ble Supreme Court in *Asst. DIT* v. *E-funds IT Solutions Inc.* [2017] 399 ITR 34 (SC). In such a scenario, the question of taxability of service permanent establishment in India of the assessee-company is answered in the negative. The evidence have also been gone into by the Commissioner of Income-tax (Appeals), who has given detailed finding in para 4.2.3, which reads as under :

> "4.2.3. Now, it is to be seen what kind of services have been provided and who is service provider. Mr. Vinod Mahboobani, a highly qualified and experienced professional, was employed with Yum! Restaurants (Asia) Pte. Ltd. as vice president-legal and worked in the capacity of a senior legal counsel for the operations of Yum! Restaurants (Asia) Pte. Ltd. in Asian and Middle East countries. He was sent on deputation by Yum! Restaurants (Asia) Pte. Ltd. to Yum! Restaurants (India) Private Limited vide deputation agreement between two entities. Clauses 2.1 to 2.7 of the deputation agreement have been reproduced above. Perusal of these clauses show that Sh. Mahboobani was under direct control and superintendence of Yum! Restaurants (India) Private Limited and the appellant discharged the employee from all obligations and rights whatsoever, including lien on employment. The functioning of the development team of Yum! Restaurants (India) Private Limited was supervised by Mr. Ajay Bansal (director in Yum! Restaurants (India) Private Limited) who resigned in January 2007. In order to appoint a suitable professional with requisite qualifications and experience in this specialised field, Mr. Vinod Mahboobani was deputed to Yum! Restaurants (India) Private Limited to perform such functions in India. Therefore, essentially he was deputed to India as a replacement for Mr. Ajay Bansal. Once his deputation period expired, Mr. Vinod Mahboobani was permanently moved to the payroll of Yum! Restaurants (India) Private Limited to continue his employment with Yum! Restaurants (India)

Private Limited with effect from August, 2008. During the period under consideration, salary was paid by the appellant to Sh. Mahboobani in Singapore and it was reimbursed by Yum! Restaurants (India) Private Limited on cost to cost basis. Thus, salary of deputed person is born by Yum! Restaurants (India) Private Limited who is also responsible for tax obligations on salary payment. Yum! Restaurants (India) Private Limited has deducted tax at source on salary paid and has also paid fringe benefit taxes as applicable. Therefore, it is clear that salary paid to Sh. Mahboobani has been brought to tax in India and Yum! Restaurants (India) Private Limited has claimed it as its business expenditure. The Assessing Officer has again taxed the same amount as fee for technical services which amounts to double taxation. All the facts and circumstance of the case and clauses of deputation agreement indicate that Sh. Mahboobani was employee of Yum! Restaurants (India) Private Limited and Yum! Restaurants (Asia) Pte. Ltd. had simply acted as conduit to pay salary to him in Singapore as his family was there in Singapore."

15 The learned Departmental representative for the Revenue has failed to controvert the said finding of the Commissioner of Income-tax (Appeals). In the absence of the same, it cannot be said that the assessee had service permanent establishment in India.

16 Another aspect which is to be kept in mind for the taxability of service permanent establishment is that the expenses of salary cost needs to be deducted from the business income generated by the permanent establishment in India, which in the present case would be nil. In other words, there will be no income attributable to the permanent establishment. We find no merit in the stand of the Revenue in this regard.

17 Before parting, we may also refer to another aspect of the taxability in the hands of the assessee-company, i. e., income arising on account of deputation of Mr. Vinod Mahboobani and whether the same constitute service permanent establishment. The issue is whether there is rendering of services of technical nature, taxable as fee for technical services under article 5(6) read with article 12 of the Double Taxation Avoidance Agreement. We find no merit in the stand of the Assessing Officer in this regard, i. e., existence of service permanent establishment and provision of technical services ; the same cannot co-exist. In any case under article 12 of the Double Taxation Avoidance Agreement, the clause of "make available" needs to be fulfilled to hold existence of permanent establishment for technical services. In the absence of fulfilment of "make available" clause, it is not possible to hold that there is taxability of fee for technical services

under article 12 of the Double Taxation Avoidance Agreement. Further, we find no merit in the stand of the Assessing Officer in treating the reimbursement received by the assessee-company from Yum! Restaurants (India) Private Limited on account of salary payment as fee for technical services. We have already held in the paras above that Mr. Vinod Mahboobani was working as an employee of Yum! Restaurants (India) Private Limited and not as an employee of the assessee-company. The reimbursement of salary had no element of income and was not taxable. In any case since Mr. Vinod Mahboobani had already paid taxes in India on the aforesaid salary, the same amount being taxed as fee for technical services in the hands of the assessee-company, would amount to double taxation. Upholding the order of the Commissioner of Income-tax (Appeals), we dismiss the ground of appeal raised by the Revenue in this regard.

18 Now, coming to the next aspect, i. e., the attribution of business income to the alleged permanent establishment of the assessee-company in India.

19 The issue which is arising in the present appeal is whether there is DAPE. The Assessing Officer has alleged the existence of DAPE on account of alleged marketing activities undertaken by the Indian entity on behalf of the assessee-company. The case of the assessee before us is that it is an entity in Singapore and has entered into a technology licence agreement with only Yum! Restaurants (India) Private Limited, which was in charge of operations of Pizza Hut and KFC restaurants in India. In order to run its business, Yum! Restaurants (India) Private Limited had franchised different outlets and was also running own stores. Yum! Restaurants Marketing Pvt. Ltd. (in short "YRMPL") was set up for undertaking advertisement, marketing and promotion activities on behalf of Yum! Restaurants (India) Private Limited and its franchisees. The assessee-company was not a party to this agreement which was exclusively between the Indian concern and its marketing company. The Assessing Officer was of the view that the marketing activities also benefit the assessee-company and hence DAPE.

20 The condition which needs to be fulfilled in article 5(8) of the Double Taxation Avoidance Agreement between India and Singapore for holding of DAPE and the same reads as under :

> "8. Notwithstanding the provisions of paragraphs (1) and (2), where a person—other than an agent of an independent status to whom paragraph (9) applies—is acting in a contracting State on behalf of an enterprise of the other contracting State that enterprise shall be deemed to have a permanent establishment in the first mentioned State, if—

(a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ;

(b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, or

(c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise."

21 The aforesaid conditions need to be satisfied for establishing DAPE in India and in the absence of the same, it cannot be said that the assessee-company had DAPE. The Assessing Officer has failed to establish his case and where none of the conditions specified in article 5(8) of the Double Taxation Avoidance Agreement have been satisfied, then it cannot be said that the assessee had any DAPE in India. In any case, the marketing activities undertaken by the YRMPL were on behalf of the Yum! Restaurants (India) Private Limited and its franchisees and in the absence of any link whatsoever with the business of the assessee-company, there is no merit in attribution of contribution made by the independent third-party franchisees, to constitute permanent establishment of the assessee-company in India.

22 Further, the assessee has no permanent establishment in India and no business undertaken in India, hence no fixed place permanent establishment also.

23 Before parting, we may also refer to the decision of the hon'ble Delhi High Court in *Centrica India Offshore Pvt. Ltd.* (supra). The facts of the said case are at variance where Centrica UK was providing services to the Indian company through seconded employees to ensure quality control and management of their vendors of outsourced activities, with the intention to provide staff with appropriate expertise and knowledge about process and practices implemented. The facts of the present case are at variance and hence, the said decision is not applicable to the present facts. We find no merit in the issues raised by the Revenue. The grounds of appeal raised by the Revenue are thus dismissed.

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

25 Order pronounced in the open court on 6th July, 2020.

[2020] 81 ITR (Trib) 454 (Chandigarh)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHANDIGARH "B" BENCH]

MANJIT SINGH

v.

DEPUTY COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION)

N. K. SAINI *(Vice-President)* and
SANJAY GARG *(Judicial Member)*

December 17, 2019.

SS ▸ ITA 1961, ss 147, 148
AY ▸ 2009-10
HF ▸ Assessee

REASSESSMENT—NON-RESIDENT—ASSESSING OFFICER HAD NO JURISDICTION TO REOPEN ASSESSMENT—NOTICE NOT VALID—INCOME-TAX OFFICER TRANSFERRING CASE THEREAFTER TO ASSESSING OFFICER OF COMPETENT JURISDICTION FULLY CONVINCED THAT HE HAD NO JURISDICTION TO MAKE ASSESSMENT IN CASE OF ASSESSEE—TRANSFER OF SUCH VOID PROCEEDINGS TO ASSESSING OFFICER OF COMPETENT JURISDICTION DID NOT VALIDATE HIS ACTION AND PROCEEDINGS—NO NOTICE ISSUED BY ASSESSING OFFICER OF COMPETENT JURISDICTION—REASSESSMENT NOT VALID—INCOME-TAX ACT, 1961, SS. 147, 148.

In the year 2012, the Income-tax Officer Dasuya raised queries regarding the deposit of amount of Rs. 30.68 lakhs in the bank account of the assessee, but remained silent for four years. Thereafter, the Income-tax Officer Hoshiarpur issued queries about the same bank transactions. The assessee informed the Income-tax Officer at Hoshiarpur that he was a non-resident Indian, attaching further necessary details such as copies of his permanent account number, passport, permanent resident card. After considering the permanent account number details of the assessee, the Income-tax Officer, Hoshiarpur transferred the case to the Income-tax Officer, Dasuya. The Income-tax Officer, Hoshiarpur did not make any comments about the non-resident status of the assessee. Again the Income-tax Officer, Dasuya raised queries and issued notice under section 148 of the Income-tax Act, 1961 to the assessee. The assessee, in response, again duly affirmed that he was a non-resident Indian and contended that the jurisdiction to assess him did not vest with the Income-tax Officer, Dasuya. Thereafter, the Income-tax Officer, Dasuya again issued a letter to the assessee and after being satisfied, transferred the case to the Additional Director, Chandigarh for taxation.

Thereafter, the Deputy Commissioner neither recorded any reasons to believe that income of the assessee had escaped assessment nor issued any notice under section 148. The Deputy Commissioner continued the proceedings from the stage these were left by the Income-tax Officer, Dasuya. Though the fact that the assessee was a non-resident Indian, was duly mentioned to the Income-tax Officer, Hoshiarpur and the entire record along with reply of the assessee was transferred to the Income-tax Officer, Dasuya, and the Income-tax Officer Dasuya also was informed by separate replies that the assessee was a permanent resident of the U. S. A., the Income-tax Officer Dasuya, continued to proceed with the reassessment and issued notices under section 148. He completed the reassessment which was confirmed by the Commissioner (Appeals). On appeal :

Held, *(i) that the fact that the assessee was a non-resident Indian was very much on the record. Under the circumstances, the Income-tax Officer Dasuya had no jurisdiction to initiate reopening of the assessment by way of issuance of notice under section 148. However, thereafter he transferred the case to the Additional Director fully convinced that he himself had no jurisdiction to make the assessment in the case of the assessee. No notice under section 148 was issued by the Deputy Commissioner, Chandigarh to the assessee. Since the Income-tax Officer, Dasuya had no jurisdiction to reopen the assessment, any notice issued by him had no legal validity. The Deputy Commissioner, Chandigarh did not issue any notice under section 148 to the assessee. Therefore, the very reopening of the assessment without issuance of notice under section 148.*

(ii) That the reassessment proceedings initiated by the Income-tax Officer, Dasuya were without jurisdiction and the proceedings were void ab initio. Hence, any transfer of such void proceedings to the Assessing Officer of competent jurisdiction did not validate his action and the proceedings. Even otherwise, under the provisions of section 127 the Income-tax Officer, Dasuya himself had no jurisdiction to suo motu transfer the case to the Deputy Commissioner. Rather, the transfer of the case under the provisions of section 127(1) could be ordered by the competent authority prescribed in the provisions

LT. COL. PARAMJIT SINGH *v.* CIT [1996] 220 ITR 446 (P&H) *referred to.* (para 2)

I. T. A. No. 867/Chd/2018 (assessment year 2009-10).

Sudhir Sehgal, Advocate, for the assessee.

Amit Shukla, Senior Departmental Representative, for the Department.

ORDER

The order of the Bench was pronounced by

1 Sanjay Garg ***(Judicial Member)***.—The present appeal has been preferred by the assessee against the order dated January 7, 2018 of the Commissioner of Income-tax (Appeals)-43, New Delhi (hereinafter referred to as CIT(A)).

2 The assessee in this appeal has taken the following grounds of appeal :

"1. That the learned Commissioner of Income-tax (Appeals) has grossly erred in not holding that the Assessing Officer, Dasuya had no jurisdiction to issue the notice under section 148 specially, when it was duly intimated to the Assessing Officer, Dasuya and Hoshiarpur that the assessee is NRI.

2. That the Assessing Officer Dasuya and Hoshiarpur having accepted the contention of the Assessing Officer that they did not have the jurisdiction to frame the assessment and later on transferred the file to the Assessing Officer, Deputy Commissioner of Income-tax (International Taxation), Chandigarh, who framed the assessment on the basis of earlier notice as issued under section 148 by the Assessing Officer at Dasuya and, thus, there was lack of jurisdiction by the Assessing Officer, Dasuya and, as such, the assessment as framed by the Assessing Officer, International Taxation, Chandigarh is null and void.

3. That the finding of the Commissioner of Income-tax (Appeals) on the issue of jurisdiction to issue the notice under section 148 as given in para 5.3 of the order is contradictory because once the Assessing Officer at Dasuya and Hoshiarpur having realised that they did not have the jurisdiction over the case and transferred the file to the Assessing Officer, International Taxation, Chandigarh, having the proper jurisdiction and, as such, the finding of the Commissioner of Income-tax (Appeals) that the Assessing Officer at Dasuya has the area-wise jurisdiction and, therefore, he had the jurisdiction to issue the notice under section 148 is totally devoid of any valid reasoning.

4. That the finding of the Commissioner of Income-tax (Appeals) that the initiation of proceedings under section 148 by the Income-tax Officer, Dasuya are in order, is against the facts and circumstances of the case.

5. That the Commissioner of Income-tax (Appeals) has failed to appreciate that at one given point of time only one the Assessing Officer could have the jurisdiction and failed to follow the judgment

of the hon'ble Punjab and Haryana High Court in the case of *Lt. Col. Paramjit Singh* v. *CIT* [1996] 220 ITR 446 (P&H) ; 89 Taxman 536.

6. That the Commissioner of Income-tax (Appeals), while giving the above finding have failed to appreciate that the Assessing Officer, Deputy Commissioner of Income-tax International Taxation, Chandigarh could not rebut any of the contentions of the assessee with regard to the valid jurisdiction of the Income-tax Officer, Dasuya.

7. Notwithstanding the abovesaid ground of appeal, the learned Commissioner of Income-tax (Appeals) has erred in rejecting the various ·documentary evidence, as furnished during the course of proceedings before him with regard to the justification of deposits in the bank account of the assessee.

8. That the Commissioner of Income-tax (Appeals) has erred in rejecting the documentary evidence as furnished before him in a summary manner without any cogent material, which is against the facts and circumstances of the case.

9. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of."

The brief facts relating to the issue are that as per the AIR information 3
received by the Income-tax Officer, Dasuya there was a substantial deposit of Rs. 30.68 lakhs in the bank account of the assessee. The Assessing Officer Dasuya, therefore, issued letter dated February 14, 2012 to the assessee to explain about the aforesaid transactions of the deposits in the bank account. Thereafter, another notice dated October 31, 2012 was issued to the assessee for verification of the financial transactions in the bank account of the assessee with PNB Branch, Tanda, District Hoshiarpur during the financial year 2008-09 relating to the assessment year 2009-10. However, it appears that none of the aforesaid notices could be served upon the assessee. Thereafter, a letter dated January 18, 2016 was issued by the Income-tax Officer, Hoshiarpur asking the assessee to furnish the details and source of the deposits made of the aforesaid amount of Rs. 30.68 lakhs in the bank account of the assessee maintained with PNB, Tanda, District Hoshiarpur. The assessee vide letter dated February 9, 2016 replied to the aforesaid letter to the Income-tax Officer, Hoshiarpur stating therein that he was a NRI person living in the USA for the last 30 years. That he had a good business in the USA. That his family was residing in India and he was sending money to his wife and mother through Western Union regularly. Along with the said letter, the assessee also sent his copies of the permanent account number card, passport, permanent resident (PR) card, etc., and further confirmed that he did not have any taxable income in

India. Thereafter, the Income-tax Officer, Hoshiarpur transferred the case of the assessee to the Income-tax Officer, Dasuya vide letter dated February 15, 2016 stating therein that as per the permanent account number card, the Income-tax Officer, Dasuya was vested with the jurisdiction over the assessee. The Income-tax Officer, Dasuya, thereafter, vide letter dated February 3, 2016 again called for information from the assessee regarding the aforesaid bank transactions. In reply to the said letter, the assessee stated that his reply dated February 9, 2016 to be considered in this respect whereby he had given the necessary details. Thereafter, the Income-tax Officer Dasuya issued a notice dated March 30, 2016 stating that he had reason to believe that the income of the assessee had escaped assessment and thereby he proposed to reopen/reassess the income of the assessee under section 147 of the Income-tax Act, 1961. The assessee filed the reply through his counsel, i. e., advocate Shri Surinder Singh to the aforesaid notice on April 27, 2016 stating that he was an NRI person living in the USA for the last 30 years and that he did not have any taxable income in India. That he was having 25 acres of agricultural land and accordingly, income therefrom was exempt from taxation. Thereafter, the Income-tax Officer Dasuya issued notice dated May 2, 2016 under section 142(1) of the Act asking the assessee to file the return of income along with documents. Another letter dated May 18, 2016 was issued by the Income-tax Officer, Dasuya requesting Shri Surinder Singh advocate, authorised by the assessee to furnish documentary evidence regarding the claim of the assessee that he was an NRI and permanently residing in the USA for the last 30 years. Shri Surinder Singh, advocate (counsel for the assessee) filed a letter dated May 27, 2016 to the Income-tax Officer, Dasuya along with copies of the passport, permanent account number and permanent resident card of the assessee Shri Manjit Singh reflecting his permanent resident status in the USA.

In the meantime, a return of income, as called for, was also filed by the assessee for the year under consideration, i. e., 2009-10. While processing the return of the assessee, another letter dated June 10, 2016 was issued by the Income-tax Officer Dasuya to the assessee to attend either in person or through his representative and to furnish the necessary documents, as called for. The assessee again supplied the necessary details along with the evidence to prove that the assessee was a permanent resident of the USA. The details regarding the period of stay to the assessee in the USA were also furnished.

4 Considering the aforesaid details, the Income-tax Officer Dasuya vide letter dated August 3, 2016 transferred the case of the assessee to the

Additional Director of Income-tax (ADIT) (International Taxation) stating therein that since the assessee was a permanent resident of the USA and, thus, was having a NRI residential status, hence, the jurisdiction to make assessment of the income of the assessee vested with the Additional Director of Income-tax (International Taxation). It was further informed that it was a time barred case which was getting time barred on December 31, 2016. Thereafter, the Deputy Commissioner of Income-tax (International Taxation) NWR, Chandigarh proceeded to make the assessment in question. Since the assessee did not participate in the proceedings, the impugned order was passed under section 144 ex parte of the assessee making the impugned addition of Rs. 30.68 lakhs as income from undisclosed sources. Further, some other additions were also made and the total income of the assessee which was assessed at Rs. 38,82,580.

5 Being aggrieved by the said order of the Assessing Officer, the assessee preferred an appeal before the learned Commissioner of Income-tax (Appeals), wherein, the assessee agitated the validity of the reassessment order framed by the Deputy Commissioner of Income-tax (International Taxation) on the ground of validity of the reopening of the assessment, however, the learned Commissioner of Income-tax (Appeals) did not agree with the contentions raised by the assessee, hence, rejected the legal ground taken by the assessee. The assessee during the appellate proceedings furnished the additional evidence whereon remand report was called from the Assessing Officer. Considering the remand report of the Assessing Officer and submissions of the assessee, the learned Commissioner of Income-tax (Appeals) did not find any merit in the appeal of the assessee and accordingly dismissed the same. The assessee, thus, has come in appeal before us.

6 We have considered the rival submissions. The main and foremost grievance of the learned counsel for the assessee in this case is regarding the validity of reassessment order framed by the Deputy Commissioner of Income-tax (International Taxation) on the ground of non-issuance of notice under section 148 of the Act by the Deputy Commissioner of Income-tax (International Taxation). It has submitted that the assessment has been framed by the Deputy Commissioner of Income-tax (International Taxation) on the basis of the borrowed satisfaction of the Income-tax Officer, Dasuya instead of himself forming the belief regarding the escapement of income of the assessee.

As per the narration of events as discussed above, firstly, in the year 2012, the queries were raised by the Income-tax Officer Dasuya regarding the aforesaid deposit of amount of Rs. 30.68 lakhs in the bank account of

the assessee, however, thereafter the Income-tax Officer Dasuya remained silent for about four years. Thereafter, the Income-tax Officer Hoshiarpur issued queries vide letter dated February 18, 2016 about the same bank transactions. The assessee vide letter dated February 9, 2016 informed the Income-tax Officer Hoshiarpur that he was a non-resident Indian, further necessary details like copies of the permanent account number card, passport, permanent resident card, etc., were attached with the said letter. However, after considering the permanent account number details of the assessee, the Income-tax Officer, Hoshiarpur transferred the case to the Income-tax Officer, Dasuya. The Income-tax Officer, Hoshiarpur did not make any comments about the non-resident status of the assessee. Again queries were raised by the Income-tax Officer, Dasuya and even a notice under section 148 of the Act was also issued by the Income-tax Officer, Dasuya to the assessee. The assessee, in response, again duly affirmed that he was a non-resident Indian and that the jurisdiction to assess him did not vest with the Income-tax Officer, Dasuya. Thereafter, the Income-tax Officer, Dasuya again issued a letter to the assessee and after being satisfied, he himself transferred the case to the Additional Director of Income-tax (International Taxation), Chandigarh for taxation. Thereafter, the learned Deputy Commissioner of Income-tax (International Taxation) neither recorded any reasons to believe that income of the assessee had escaped assessment nor issued any notice under section 148 of the Act. The Deputy Commissioner of Income-tax (International Taxation) continued proceedings from the stage these were left by the Income-tax Officer, Dasuya. A perusal of the above sequence reveals that the Income-tax Officer Dasuya did not have any jurisdiction over the assessee and, as such, the notice under section 148 of the Act by the Income-tax Officer, Dasuya being without jurisdiction was not valid. Though the fact that the assessee was a non-resident Indian, was duly mentioned to the Income-tax Officer, Hoshiarpur and the entire record along with the reply of the assessee was transferred to the Income-tax Officer, Dasuya, apart from that the Income-tax Officer Dasuya also was informed vide separate replies, as mentioned above, that the assessee was a permanent resident of the USA, the Income-tax Officer Dasuya, continued to proceed with the reassessment and issued notices under section 148 of the Act.

The fact that the assessee was a NRI was very much on the record. Under the circumstances, the Income-tax Officer Dasuya had no jurisdiction to initiate reopening of the assessment by way of issuance of notice under section 148 of the Act. However, thereafter he transferred the case to the Additional Director of Income-tax (International Taxation) fully

convinced that he himself had no jurisdiction to make assessment in the case of the assessee.

Admittedly, no notice under section 148 of the Act by the Deputy Commissioner of Income-tax (International Taxation), Chandigarh to the assessee was issued. Since the Income-tax Officer, Dasuya had no jurisdiction to reopen the assessment, hence, any notice issued by him has no legal validity. So far as the Deputy Commissioner of Income-tax (International Taxation), Chandigarh is concerned, he admittedly did not issue any notice under section 148 of the Act to the assessee, therefore, the very reopening of the assessment without issuance of notice under section 148 of the Act by the Assessing officer of the competent jurisdiction, is bad in law and the consequential assessment framed under section 147 of the Act is not sustainable in the eyes of the law and the same is accordingly liable to be quashed. **7**

So far as the argument of the learned Departmental representative that the Income-tax Officer, Dasuya had transferred the case to the Deputy Commissioner of Income-tax (International Taxation), Chandigarh and, hence, there was no requirement of issuing of fresh notice under section 148 of the Act as per the provisions of section 127(4) of the Act is concerned, we do not find any force in the above contention of the learned Departmental representative. Firstly, the reassessment proceedings initiated by the Income-tax Officer, Dasuya were without jurisdiction and the same were void ab initio, hence, any transfer of such void proceedings to the Assessing Officer of competent jurisdiction did not validate his action and the proceedings. Even otherwise, as per the provisions of section 127 of the Act, the Income-tax Officer, Dasuya himself had no jurisdiction to suo motu transfer the case to the Deputy Commissioner of Income-tax (International Taxation). Rather, the transfer of the case as per the provisions of section 127(1) of the Act can be ordered by the competent authority prescribed in the said provisions. **8**

In view of this, the reopening of the assessment by the Deputy Commissioner of Income-tax (International Taxation) was not valid and the same is accordingly quashed.

In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on December 17, 2019.

[2020] 81 ITR (Trib) 462 (Amritsar)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — AMRITSAR BENCH]

TARLOK KUMAR

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

L. P. SAHU *(Accountant Member)* and
RAVISH SOOD *(Judicial Member)*

June 30, 2020.

SS ▸ ITA 1961, s 133A
AY ▸ 2009-10
HF ▸ Assessee

UNDISCLOSED INCOME—HOTEL BUSINESS—ASSESSEE'S OBJECTION AGAINST CERTAIN EXPENDITURE BEFORE COMMISSIONER (APPEALS) NOT PROPERLY DEALT WITH—ASSESSING OFFICER TO VERIFY ADDITION MADE ON HOTEL BUILDING—ASSESSING OFFICER TO GIVE TELESCOPING IF ASSESSEE PAID TAXES ON ENTIRE SURRENDERED AMOUNT—IF NOT ASSESSING OFFICER TO CONSIDER AMOUNT ON WHICH ASSESSEE PAID TAXES—ASSESSING OFFICER TO GRANT DEPRECIATION IF ASSESSEE ELIGIBLE ON HOTEL BUILDING AND IF DEPRECIATION NOT CLAIMED WHILE CALCULATING TAXABLE INCOME OF ASSESSEE—INCOME-TAX ACT, 1961, S. 133A.

The assessee was in the hotel and restaurant business and filed his return for the assessment year 2009-10. During the course of a survey under section 133A(1) of the Income-tax Act, 1961 at the business premises of the assessee a sum of Rs. 960 having been found in cash the assessee offered to tax an amount of Rs. 35 lakhs as its undisclosed income for the assessment year 2009-10 subject to no penal action under the Act. The assessee also admitted undisclosed investment of Rs. 35 lakhs in the hotel business. Thereafter, he assessed the total income of the assessee at Rs. 38,95,160. The Commissioner (Appeals) confirmed the addition. On appeal :

Held, *that some of the expenditure was not related to the assessment year 2009-10 and this objection was also taken before the Commissioner (Appeals) but he had not properly dealt this matter while deciding the appeal of the assessee. Therefore, this matter was to be remanded to the Assessing Officer for further verification regarding the addition made on the hotel building. The Assessing Officer was also directed to give telescoping from the surrendered income if the assessee had paid taxes on the entire surrendered amount. If it was found otherwise, the Assessing Officer was directed to consider the amount on which the assessee had paid taxes. The Assessing Officer was also*

directed to grant depreciation on the hotel building if the assessee was eligible under the Act and if the depreciation was not claimed while calculating the taxable income of the assessee.

Cases referred to :

Anil Rai *v.* State of Bihar [2001] 7 SCC 318 (para 9)

CIT (Dy.) *v.* JSW Ltd. [2020] 79 ITR (Trib) 585 (Mumbai) (para 10)

Otters Club *v.* DIT (Exemption) [2017] 392 ITR 244 (Bom) (para 10)

Shivsagar Veg. Restaurant *v.* Asst. CIT [2009] 317 ITR 433 (Bom) (para 9)

I. T. A. No. 501/ASR/2014 (assessment year 2009-10).

Tarun Bansal, Advocate, for the assessee.

Charan Dass, Departmental representative, for the Department.

ORDER

The order of the Bench was pronounced by

L. P. SAHU ***(Accountant Member)***.—This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals), Bathinda, dated May 30, 2014, on the following grounds of appeal : 1

1. That the learned Commissioner of Income-tax (Appeals) wrongly confirmed addition of Rs. 5,00,000 in the name of Sh. Suresh Kumar as cash credit, and did not allow the telescopic benefit out of amount surrendered at Rs. 35 lakhs during survey dated January 21, 2009.

2. That the learned Commissioner of Income-tax (Appeals) wrongly confirmed the addition of Rs. 6,00,000 in the name of Sh. Rakesh Kumar as cash credit, and did not allow the telescopic benefit out of the amount surrendered at Rs. 35 lakhs during survey dated January 21, 2009.

3. That the learned Commissioner of Income-tax (Appeals) wrongly confirmed the addition to building account at Rs. 3,45,156 without telescoping the amount surrendered at Rs. 35 lakhs in survey dated January 21, 2009.

4. That the Revenue has not appreciated that the assessee co-operated and surrendered Rs. 35 lakhs in survey dated January 21, 2009 when it was the first year of business and no benefit of surrender was allowed to the appellant.

5. That the learned Commissioner of Income-tax (Appeals) has not allowed depreciation on the hotel building valued at Rs. 76,02,895,

nor has he given any finding on disallowance of depreciation, on a specific ground taken before him.

6. That the order is bad in law as well as on facts. The order may kindly be set aside modified or any other relief be allowed.

2 Brief facts of the case are that the assessee was engaged in hotel and restaurant business and filed his return of income on September 22, 2009. A survey under section 133A(1) of the Act was conducted at the business premises of the assessee, hotel Shagun, Barnala By-pass on January 21, 2009 and during the course of survey Rs. 960 was found in cash and the assessee had offered to tax an amount of Rs. 35,00,000 as its undisclosed income for the assessment year 2009-10 subject to no penal action under the Income-tax Act, 1961. The assessee also admitted the undisclosed investment of Rs. 35 lakhs in the hotel Shagun. Thereafter, the Assessing Officer issued statutory notices to the assessee. Finally, the Assessing Officer framed the assessment assessing the total income of the assessee at Rs. 38,95,160.

3 Aggrieved by the order of Assessing Officer the assessee appealed before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) after considering the submissions of the assessee and findings of the Assessing Officer dismissed the appeal of the assessee.

4 Further aggrieved, the assessee is in appeal before the Income-tax Appellate Tribunal.

5 Ground Nos. 1, 2, 3 and 4 are arising out of the addition made by the Assessing Officer under section 69B of the Act at Rs. 14,45,156 (Rs. 5,00,000 + 6,00,000 + 3,45,156), therefore, they are disposed of together.

6 The learned authorised representative before us reiterated the submissions made before the lower authorities and in addition to this, the learned authorised representative submitted that during the course of assessment proceedings, the accountant has filed wrong balance-sheet and the matter was also could not present before the Assessing Officer because some impounded papers relating to the consideration of hotel business was not related to this impugned assessment year. This matter was also taken up before the Commissioner of Income-tax (Appeals) but the Commissioner of Income-tax (Appeals) disposed of this matter by stating that the remand report is silent in this regard and he directed the Assessing Officer to verify the fact the impugned records and to take a remedial action in accordance with the Income-tax Act, 1961 but till date no any remedial action has been taken by the Assessing Officer. The learned authorised representative also requested for the telescoping from the surrendered amount of Rs. 35 lakhs as surrendered during the course of survey proceedings against the

addition made by the Assessing Officer. Finally, the learned authorised representative requested to send the matter back to the file of the Assessing Officer for further verification of the relevant assessee's expenses incurred by the assessee for construction of the hotel building which are placed on record and does not relate to the impugned assessment year but the additions have been made by the Assessing Officer in this year.

On the other hand, the learned Departmental representative relied on **7** the order of the Assessing Officer and submitted that the assessee had accepted during the course of survey proceedings of Rs. 35 lakhs and paid the taxes subject to some conditions. The assessee also could not justify the loan taken, which has rightly been decided by the Commissioner of Income-tax (Appeals). During the course of the appellate proceedings before the Commissioner of Income-tax (Appeals), a remand report was called for from the Assessing Officer on the basis of written submissions/ objections made by the assessee. In the rejoinder the assessee could not substantiate the objections raised by the Assessing Officer. Therefore, the order of the Commissioner of Income-tax (Appeals) should be restored.

After hearing both the sides and perusing the entire material available **8** on record and the order of the authorities below and paper books filed by the assessee, we noted from the impounded paper obtained during the course of survey proceedings, it is clear that some of the expenditure which are not related to the impugned assessment year and this objection was also taken before the Commissioner of Income-tax (Appeals) but the Commissioner of Income-tax (Appeals) has not properly dealt this matter while deciding the appeal of the assessee. Therefore, as per our considered opinion, this matter should go back to the file of the Assessing Officer for further verification regarding the addition made on the hotel building. The Assessing Officer is also directed to give telescoping from the surrendered if the assessee has paid taxes on the entire surrendered amount. If it is found otherwise, then the Assessing Officer is directed to consider the amount on which the assessee has paid taxes thereon. The Assessing Officer is also directed to grant depreciation if the assessee is eligible as per the Income-tax Act on the hotel building and if the depreciation was not claimed while calculating the taxable income of the assessee. Needless to say, a reasonable opportunity of being heard be given to the assessee and the assessee is directed to co-operate with the Assessing Officer for early disposal of the case. We order accordingly.

Now, a procedural issue comes before us that though the hearing of the **9** captioned appeal was concluded on February 7, 2020, however, this order is being pronounced much after the expiry of 90 days from the date of

conclusion of hearing. We find that rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1962, which envisages the procedure for pronouncement orders, provides as follows :

"34.(5) The pronouncement may be in any of the following manners :

(a) The Bench may pronounce the order immediately upon the conclusion of hearing.

(b) in case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date of pronouncement.

(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board."

As such, "ordinarily", the order on an appeal should be pronounced by the Bench within not more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of the directions of the hon'ble High Court in the case of *Shivsagar Veg. Restaurant* v. *Asst. CIT* [2009] 317 ITR 433 (Bom), wherein, it was, inter alia, observed as under (page 437) :

"We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the apex court in the case of *Anil Rai* v. *State of Bihar* [2001] 7 SCC 318 and to issue appropriate administrative directions to all the Benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment."

In the rules so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order

within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.

We also find that the aforesaid issue has been answered by a co-ordi- **10**
nate Bench of the Tribunal, viz., Income-tax Appellate Tribunal, Mumbai "F" Bench in *Dy. CIT* v. *JSW Ltd.* [2020] 79 ITR (Trib) 585 (Mumbai) (I.T.A. No. 6264/Mum/2018 dated May 14, 2020), wherein, it was observed as under (page 592) :

> "Let us in this light revert to the prevailing situation in the country. On March 24, 2020, the hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income-tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that the hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated May 6, 2020 read with order dated March 23, 2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that 'in case the limitation has expired after March 15, 2020 then the period from March 15, 2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown'. The hon'ble Bombay High Court, in an order dated April 15, 2020, has, besides extending the validity of all interim orders, has also observed that, 'It is also clarified that while calculating time for disposal of matters made time-bound by this court, the period for which the order dated March 26, 2020 continues to operate shall be added and time shall stand extended accordingly', and also observed that 'arrangement continued by an order dated March 26, 2020 till April 30, 2020 shall continue further till June 15, 2020". It has been an unprecedented situation not only in India but all over the world Government of India has, vide notification dated

February 19, 2020, taken the stand that, the coronavirus 'should be considered a case of natural calamity and FMC, (i. e., force majeure clause) may be invoked, wherever considered appropriate, following the due procedure . . . .'. The term 'force majeure' has been defined in *Black's Law Dictionary*, as 'an event or effect that can be neither anticipated nor controlled'. When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an 'ordinary' period.

In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time-limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only inconsonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act, 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club* v. *DIT (Exemption)* [2017] 392 ITR 244 (Bom), the hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation the hon'ble Bombay High Court itself has, vide judgment dated April 15, 2020, held that directed 'while calculating the time for disposal of matters made time-bound by this court, the period for which the order dated March 26, 2020 continues to operate shall be added and time shall stand extended accordingly'. The extraordinary steps taken suo motu by the hon'ble jurisdictional High Court and the hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time-limits are to remain in force. In our considered view, even without the words 'ordinarily', in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of

time-limits set out in rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963. Viewed thus, the exception, to 90 day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

Respectfully following the above judicial decision of the hon'ble Bombay **11**
High Court and the Tribunal, we are of the considered view that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963.

In the result, the appeal of the assessee is allowed for statistical pur- **12**
poses.

Order pronounced in pursuance with rule 34(4) of the Income-tax **13**
(Appellate Tribunal) Rules, 1963 by putting the copy of the same on notice board on June 30, 2020 at Amritsar.

[2020] 81 ITR (Trib) 469 (Chandigarh)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHANDIARGH "B" BENCH]

ROHIT KUMAR JINDAL (HUF)

v.

INCOME-TAX OFFICER

N. K. SAINI *(Vice-President)* and
SANJAY GARG *(Judicial Member)*

July 6, 2020.

SS ▸ ITA 1961, s 144
AY ▸ 2013-14
HF ▸ Assessee

INCOME FROM UNDISCLOSED SOURCES—EX PARTE ASSESSMENT—LOAN—CREDITWORTHINESS AND GENUINENESS OF CREDITOR—ASSESSING OFFICER AFTER VERIFICATION OF DOCUMENTS INCLUDING AUDITED BALANCE-SHEET, ETC., NOT FINDING ANY FAULT IN DOCUMENTS—ASSESSING OFFICER NEITHER DOUBTING NOR CALLING FOR ANY FURTHER EVIDENCE FROM ASSESSEE TO PROVE SOURCE OF DEPOSITS IN ACCOUNT OF CREDITOR—ASSESSEE PROVING CREDITOR POSSESSED OF SUFFICIENT FUNDS TO MAKE ADVANCES TO IT—CREDITOR SHOWING VERY LOW INCOME NOT A DETERMINATIVE FACTOR FOR DETERMINING CREDITWORTHINESS OF CREDITOR—NO DOUBT RAISED EITHER BY ASSESSING OFFICER OR BY

COMMISSIONER (APPEALS) REGARDING RECEIPT BY ASSESSEE FROM SAVINGS ACCOUNT OF INDIVIDUAL—ADDITIONS UINSUSTAINABLE—INCOME-TAX ACT, 1961, S. 144.

The assessee was in the business of trading in iron and steel and declared an income of Rs. 6,25,135 for the assessment year 2013-14. Notices were issued to the assessee but on failure of the assessee to appear or file the relevant information or explanation, the Assessing Officer completed the assessment ex parte making certain additions. The Commissioner (Appeals) admitted the additional evidence and called for a remand report from the Assessing Officer in respect of the various evidence or explanation given by the assessee. After considering the remand report, counter-objections of the assessee on the remand report and also after considering the submissions of the assessee, he allowed partial relief. On appeal :

Held, *that in respect of the addition of Rs. 90.75 lakhs and further a sum of Rs. 5 lakhs claimed to have been received from creditor, the Assessing Officer in his remand report stated that the creditor had declared a low income of Rs. 99,057 only for the assessment year 2013-14. He observed that the creditworthiness and genuineness of the loan from the creditor had not been proved. However, he had mentioned in the remand report that the assessee had furnished before the Assessing Officer a copy of the audited balance-sheet of the creditor. Further, the Assessing Officer, in order to verify the creditworthiness of the creditor and the genuineness of the transactions had called for documents from the Assessing Officer of the creditor. The Assessing Officer after verification of the documents including the audited balance-sheet, etc., could not find any fault in the documents. The Assessing Officer neither doubted nor called for any further evidence from the assessee to prove the source of deposits in the account of the creditor. However, the assessee claimed that the receipts were in the normal course of business of the creditor. The assessee furnished all the details before the Assessing Officer which were required to prove the creditworthiness of the creditor and genuineness of the transactions. The assessee had proved that the creditor was possessed of sufficient funds to make the advances to it. Even the Assessing Officer had not pointed out any defect in the evidence furnished by the assessee in this respect. The only contention of the Assessing Officer in the remand report was that E had shown very low income in the assessment year 2013-14. That itself was not a ground to reject the creditworthiness of the creditor. An assessee may or may not earn considerable income during an assessment year but that fact itself was not determinative of the creditworthiness or financial capability of such an assessee. When the assessee and even the Assessing*

Officer had called for necessary records from the Assessing Officer of the concern but could not find any discrepancy or fault in the records, hence, the action of the Assessing Officer in rejecting the creditworthiness of the creditor solely on the ground that its income for the instant year was low was not justified. Further in the remand proceedings neither the Assessing Officer asked the assessee to furnish further evidence in respect of the source of deposit into the accounts of the creditor nor called the creditor to prove the source of deposits. The Assessing Officer had called for the necessary details and documents from the concerned Assessing Officer and had not rebutted the authenticity of the documents. Hence the findings of the Commissioner (Appeals) upholding the additions made by the Assessing Officer on this ground was not justified.

In respect of the addition of amount of Rs. 2.60 lakhs the assessee had explained the addition of amount of Rs. 2.60 lakhs saying that the amount had been transferred from the savings bank account of the partner through real time gross settlement. However, the Assessing Officer in the remand report had observed that the assessee had failed to furnish the documentary evidence in this regard. In his counter-objections, the assessee had contended that the copy of the savings bank statement of the partner was duly filed. The Commissioner (Appeals) observed that there was transfer of an equal amount of Rs. 2.60 lakhs in the same account, the source of which was not explained. On appeal :

Held, *(i) that the Commissioner (Appeals) simply noted that there was a deposit into the account, and that he doubted the genuineness of the transactions whereas the claim of the assessee was that all the details were called for, were duly furnished and that the deposits in the individual bank account of R were through banking channels. When the assessee had proved the source of deposit and genuineness of the transactions, the assessee without being called upon to prove the source of source by the Assessing Officer was not expected to furnish the further details. No doubt had been raised either by the Assessing Officer or by the Commissioner (Appeals) regarding the receipt of Rs. 2.60 lakhs by the assessee from savings bank account of the individual was concerned.*

(ii) That the assessee could not prove with reliable evidence the source of the amount of Rs. 4.75 lakhs and the creditworthiness of the creditor and genuineness of the transaction. Thus, the addition to the extent of Rs 4.75 lakhs was upheld whereas the remaining part of the additions out of the total additions Rs. 1,03,10,000 was deleted.

(iii) That so far as the observation of the Assessing Officer on the remand report that the partner had withdrawn only Rs. 23.20 lakhs from his capital account, whereas as per the assessee's books of account Rs. 85 lakhs had been received from the partner from his capital account, the assessee had explained that the amount in fact was transferred from the account of the firm. The Assessing Officer had called for income-tax return and balance-sheet of the firm and duly verified the transaction. The Commissioner (Appeals) had not doubted the genuineness of the transaction. The only reason for which the Commissioner (Appeals) upheld the addition made by the Assessing Officer was that the assessee had not proved the source of numerous deposits in the bank account of the firm. The Assessing Officer and the Commissioner (Appeals) had rejected the transactions on the basis of identical reasons. However, regarding the issue of creditworthiness the addition made by the authorities in respect of the loans from the parties amounting to Rs. 1,42,55,000 was deleted. The transaction relating to the remaining amount of Rs. 2.90 lakhs from R stood accepted by the Commissioner (Appeals).

I. T. A. No. 1344/Chd/2018 (assessment year 2013-14).

Sudhir Sehgal, Advocate, for the assessee.

Sandeep Dhaiya, Commissioner of Income-tax, for the Department.

ORDER

The order of the Bench was pronounced by

1 SANJAY GARG ***(Judicial Member)***.—The present appeal has been preferred by the assessee against the order dated August 28, 2018 of the Commissioner of Income-tax (Appeals)-2. Ludhiana (hereinafter referred to as "the CIT(A)").

2 The assessee in this appeal has taken the following grounds of appeal :

"1. That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has erred in confirming the addition amounting to Rs. 2,66,60,000 made by the Assessing Officer vide order under section 143(3) dated March 22, 2016 against the income of Rs. 6,25,135 declared by the appellant in its return of income.

2.(a) That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has erred in confirming the addition to the tune of Rs. 1,03,10,000 on account of the additions in the capital account of the assessee by holding the same as unexplained additions as his finding in para 7.6.7 of the appellate order.

2.(b) That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has erred in upholding the addition made by the Assessing Officer in respect of capital addition made by the assessee ignoring the fact that the complete sources of addition were duly furnished by the appellant being transfer of funds from M/s. Euro Steels.

2.(c) That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has factually erred in holding that there were any cash deposits in the bank account of M/s. Euro Steels as per his finding in para 7.6.5 of his order.

2.(d) That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has erred in concluding that the assessee was liable to explain the source of deposits in the hands of M/s. Euro Steels as per his findings in para 7.6.5 of his order.

3. That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has erred in confirming an addition to the tune of Rs. 1,62,50,000 on account of alleged unexplained unsecured loans taken by the appellant during the assessment year as per his findings in para 7.7.9 of the appellate order.

4. That the worthy Commissioner of Income-tax (Appeals)-2, Ludhiana has ignored the documents filed before him, which clearly depicts identity, creditworthiness of the sources of the addition to the capital and addition to unsecured loans and genuineness of the transactions.

5. That the worthy Commissioner of Income-tax (Appeals)-2. Ludhiana has erred in confirming the ad hoc addition of Rs. 1,00,000 on account of disallowance of expenses for personal use.

6. The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed of.

3 The brief facts of the case are that the assessee (Hindu undivided family) is engaged in the business of trading of iron and steel under the name and style of its proprietary concern, namely, M/s. R. D. Steel and has filed its return of income for the year under consideration on September 26, 2013 declaring therein an income of Rs. 6,25,135. The case was selected for scrutiny assessment under section 143(3) of the Income-tax Act, 1961 (in short, "the Act"). The Assessing Officer gave various notices to the assessee but on failure of the assessee to appear or file the relevant information/ explanation, the Assessing Officer proceeded to frame the assessment ex parte of the assessee under section 144 of the Act making the following additions :

(i)	Addition on account of unexplained addition in capital account of the assessee-Hindu undivided family	Rs. 1,03,10,000
(ii)	Addition on account of unexplained unsecured loans for want of necessary details	Rs. 2,19,71,000
(iii)	Addition on account of disallowance of interest amount debited to the profit and loss account	Rs. 7,24,475
(iv)	Addition on account of unexplained investment in fixed assets	Rs. 7,58,150
(v)	Addition on account of disallowance of depreciation on newly purchased assets	Rs. 1,13,722
(vi)	Addition on account of disallowance out of various expenses debited to the profit and loss account for want of bills/vouchers	Rs. 1,00,000

4 Being aggrieved by the above order of the Assessing Officer, the assessee preferred an appeal before the learned Commissioner of Income-tax (Appeals). The assessee also furnished additional evidence before the Commissioner of Income-tax (Appeals) and explained the reasons for which its representatives could not appear before the Assessing Officer. The learned Commissioner of Income-tax (Appeals) admitted the additional evidence and called for remand report from the Assessing Officer in respect of the various evidence/explanation given by the assessee. After considering the remand report, counter-objections of the assessee on the said remand report and also after considering the submissions of the assessee, the learned Commissioner of Income-tax (Appeals) partly allowed the appeal of the assessee. He, however, has confirmed the additions as contested vide the above noted grounds of appeal.

5 We have heard the rival contentions of the learned authorised representatives of both the parties and have gone through the record. Our findings in respect of the matter are as under :

6 *Ground No. 1* : Ground No. 1 is general in nature. The assessee, in this ground has contested the total addition amounting to Rs. 2,66,60,000. However, the assessee vide subsequent grounds has contested specifically each part of the aforesaid total addition. Hence, this ground will be automatically taken care in our adjudication on the subsequent grounds.

7 *Ground No. 2* : The assessee vide this ground has contested the addition of Rs. 1,03,10,000 on account of introduction of the said amount in the capital account of the assessee treating the same as unexplained income of the assessee. The assessee claimed that out of the aforesaid amount, Rs. 90,75,000 were received by way of transfer through banking channels from M/s. Euro Steels. The source of the amount in the hands of Euro

Steels was from receipts in the normal course of business via banking channels. The assessee in this respect filed copy of the bank statement of M/s. Euro Steels, confirmation in this respect from the said entity.

The assessee further claimed that a sum of Rs. 2,60,000 was transferred via banking channel from personal savings account of Shri Rohit Jindal. It has been further claimed that a sum of Rs. 5 lakhs was received by way of transfer from the savings bank account of the assessee in which the amount was further received from M/s. Euro Steels via banking channels. The assessee in this respect relied upon the savings bank account statement and confirmation from M/s. Euro Steels acknowledging the payment made to the assessee. In respect of the balance payment of Rs. 4,75,000, the assessee explained that the same was received through banking channels, however, the assessee could not identify the source of the receipt. The Assessing Officer, however, in the remand report has made the following observations in respect of each of the source explained by the assessee.

"6. Further, as directed by the appellate authority, the assessee has been afforded opportunity to furnish the original documents for verification and complete source of credits made in the balance-sheet as on March 31, 2013. In response to this letter, the counsel of the assessee, Shri Jiwan Bansal, chartered accountant appeared and filed power of attorney. He was asked to furnish the following documents and produce cash book/ledger for verification :

(i) Audited balance-sheet of M/s. Euro Steels as on March 31, 2013.

(ii) Copy of lTR, computation of M/s. Euro Steels for the assessment year 2013-14.

(iii) Copy of account of M/s. R. D. Steels in the books of M/s. Euro Steels duly confirmed.

(iv) Income-tax return, computation of Sh. Ramesh Jain for the assessment year 2013-14.

The assessee has furnished the following documents :

(i) Copy of the audited balance-sheet of M/s. Euro Steels Mandi Gobindgarh.

(i) for the year ending March 31, 2013 without partners capital account (schedule "A").

(ii) Copy of account of M/s. R. D. Steels in the books of M/s. Euro Steels, Mandi Gobindgarh for the year ending March 31, 2013.

(iii) Copy of the death certificate of Sh. Ramesh Jain as copy of the income-tax return is not traceable.

7. Since the assessee has not furnished the copy of the income-tax return filed by M/s. Euro Steels for the assessment year .2013-14. In order to verify the creditworthiness and genuineness of the unsecured loan given by Sh. Rohit Jain, partner of M/s. Euro Steels, the copy of income-tax returns for the assessment years 2012-13 and 2013-14 and audited balance-sheet were called for from the Income-tax Officer, Ward-1, Patiala where the permanent account number of the firm was lying. After verification of documents supplied by the assessee and documents called for from the Income-tax Officer, Ward-1, Patiala, the following discrepancies have been noticed :

(b) During the year under consideration, the assessee has introduced capital of Rs. 1.031 crores and out of this amount, Rs. 90,75,000 have been given by the firm M/s. Euro Steels, Mandi Gobindgarh. Further the firm M/s. Euro Steels has also given Rs. 57,55,000 in the shape of unsecured loans. But on a perusal of the income-tax return of the firm, it has been noticed that the firm has filed income-tax return for the assessment year 2013-14 declaring an income of Rs. 99,057 only. Hence, the creditworthiness and genuineness of the loans revised from the firm has not been proved.

(e) Regarding capital formation of Rs. 4,75,000, the assessee has simply stated that these amounts have been received through banking channels, but has failed furnish any documentary evidence in this regard.

(f) Regarding the capital formation of Rs. 2,76,000, the assessee has stated that these amount have been transferred from the savings bank account of Rohit Kumar Jindal through real time gross settlement, but has failed to furnish any documentary evidence in this regard."

8 The assessee in his counter-objections has objected to the above observations of the Assessing Officer in the following manner :

(b) The learned Assessing Officer has alleged that the amount of capital addition of Rs. 90,75,000 and loan of Rs. 57,55,000 has been received from M/s. Euro Steels, however, M/s. Euro Steels has only filed a return of income declaring an income of Rs. 99,057 and thus, the creditworthiness of the said firm and the genuineness of the loans raised has not been proved. With regard to the same, it is submitted that merely because the said firm has declared lower profits does not lead to the conclusion that the creditworthiness and genuineness is not proved. It is also not the case of the Department that the said firm has received the funds given to the assessee from unverified sources,

instead the sources of the funds are very much genuine and have been received in the regular course of the business of the firm. Moreover, the learned Assessing Officer has accepted the bank statement and the confirmed copy of account enclosed in the paper book and no adverse inference has been drawn by the learned Assessing Officer with regard to the same. Thus, when the source of the funds received by the assessee stand duly explained and documentary evidence to that effect have been submitted then the onus of the assessee stands discharged and no addition can be made in the hands of the assessee. Thus, the explanation with regard to the same may kindly be accepted in the light of the submissions and the documents filed before your goodself.

(e) In point e, the learned Assessing Officer contended that the assessee has not furnished any documentary evidence with regard to the capital infusion amounting to Rs. 4,75,000, with regard to the same it is submitted that due to time lag in the date of credit of the said amount it is not possible to obtain any further information regarding the said capital addition and thus, it is requested that the submissions already given by the assessee may kindly be considered.

(f) In point f, the learned Assessing Officer has alleged that the assessee has not filed any documentary evidence with regard to Rs. 2,60,000 transferred from the savings bank account of the karta of the assessee, however, this allegation of the learned Assessing Officer is not at all correct as we have duly filed the copy of the savings bank statement of the karta of the assessee on pages 32-33 of the paper book and from a perusal of the same it is clear that the karta has received the said amount from the banking channels and no adverse remarks against the same has been given by the learned Assessing Officer in the remand proceedings, therefore, the explanation given by the assessee may kindly be considered and the addition with regard to the same may please be deleted.

However, the learned Commissioner of Income-tax (Appeals) has given his findings in respect of each of the above additions as under : **9**

"7.6.4 On a careful consideration of the rival contentions, it has been noticed that although the learned authorised representative of the assessee-Hindu undivided family has tried to explain the source of the addition to the capital account to the extent of Rs. 98,35,000 (Rs. 90,75,000 + Rs. 2,60,000 + Rs. 5,00,000) from various sources but failed to explain the source of capital addition of Rs. 4,75,000 at all. During the course of the appellate proceedings, it has only been

submitted that the addition to the capital account to the extent of Rs. 4,75,000 has been made through banking channels but no evidence has been enclosed to prove his contentions. So, the addition to the extent of Rs. 4,75,000 made by the Assessing Officer on account of unexplained addition to the capital account of the assessee-Hindu undivided family out of the total addition of Rs. 1,03,10,000 is, therefore, upheld for failure on the part of the assessee-Hindu undivided family to adduce any documentary evidence in respect of source of addition.

7.6.5 As regards the transfer of funds to the extent of Rs. 95,75,000 (Rs. 90,75,000 directly + Rs. 5,00,000 indirectly) from the bank account of M/s. Euro Steels is concerned, it has been noticed that there are numerous deposits in the bank account of M/s. Euro Steels during the year under consideration, the sources of which has not been explained and the source of addition to the capital account to this extent remained unexplained even during appellate proceedings. The confirmation filed by M/s. Euro Steels will have no evidentiary value unless and until the source of cash deposits in the bank account of M/s. Euro Steels are explained. The contention of the learned authorised representative of the assessee-Hindu undivided family that the source in the hands of the assessee-Hindu undivided family stand explained and action if any may be taken in the hands of M/s. Euro Steels cannot be accepted as the onus cast upon the assessee-Hindu undivided family to explain the source of deposits in the bank account of M/s. Euro Steels has not been discharged. As the deposits in the bank account of M/s. Euro Steels have not been explained and as the onus lies upon the assessee-Hindu undivided family has not been discharged, the source of capital contribution to the extent of Rs. 95,75,000 (Rs. 90,75,000-directly + Rs. 5,00,000-indirectly) in the books of the assessee-Hindu undivided family cannot be treated as explained. So, the addition to the extent of Rs. 95,75,000 made by the Assessing Officer on account of unexplained addition to the capital account of the assessee-Hindu undivided family out of the total addition of Rs. 1,03,10,000 is also upheld.

7.6.6 As regards the transfer of funds to the extent of Rs. 2,60,000 from the bank account of Sh. Rohit Jindal U/G Sh. Dev Krishn Gupta is concerned, it has been noticed that there is an transfer of equal amount of Rs. 2,60,000 in the same bank account, the sources of which remained unexplained even during appellate proceedings. As the deposits in the same bank account to the extent of Rs. 2,60,000

have not been explained and as the onus lies upon the assessee-Hindu undivided family has not been discharged, the source of capital contribution to the extent of Rs. 2,60,000 in the books of the assessee-Hindu undivided family cannot be treated as explained. So, the addition to the extent of Rs. 2,60,000 made by the Assessing Officer on account of unexplained addition to the capital account of the assessee-Hindu undivided family out of the total addition of Rs.1,03,10,000 is upheld too.

7.6.7 In a nutshell, whole of the addition of Rs. 1,03,10,000 made by the Assessing Officer in this on account of unexplained addition to the capital account of the assessee-Hindu undivided family is, therefore, upheld."

We have considered the rival contentions of the learned representatives **10** of the parties and have also gone through the record. So far as the addition of Rs. 90,75,000 and further a sum of Rs. 5,00,000 claimed to have been received from M/s. Euro Steels is concerned, the Assessing Officer in his remand report, as noted above, has rejected the contention of the assessee solely on the ground that as per the income-tax return of the said firm, the firm had declared a low income of Rs. 99,057 only for the assessment year 2013-14. He, on this score alone, observed that the creditworthiness and genuineness of the loan from the said firm had not been proved. However, it is a fact mentioned in the remand report itself that the assessee had furnished before the Assessing Officer a copy of the audited balance-sheet of M/s. Euro Steels. Further, the Assessing Officer, in order to verify the creditworthiness of M/s. Euro Steels and the genuineness of the transactions himself called for from the Assessing Officer of the said concern. The Assessing Officer after verification of the said documents including audited balance- sheet, etc., could not find any fault in the same. The Assessing Officer neither doubted nor called for any further evidence from the assessee to prove the source of deposits in the account of M/s. Euro Steels. However, the assessee claimed that the said receipts were in normal course of business of M/s. Euro Steels. The assessee furnished all the details before the Assessing Officer which were required to prove the creditworthiness of M/s. Euro Steels and genuineness of the transactions. So far as the creditworthiness of M/s. Euro Steels were concerned, the assessee proved that M/s. Euro Steels was possessed of sufficient funds to make the impugned advances to the assessee. Even the Assessing Officer has not pointed out any defect in the evidence furnished by the assessee in this respect. The only contention of the Assessing Officer in the remand report is that M/s. Euro Steels had shown very low income in the assessment year 2013-14. In

our view, that itself is not a ground to reject the creditworthiness of M/s. Euro Steels. An assessee, may or may not, earn considerable income during an assessment year but that fact itself is not determinative of the creditworthiness/financial capability of such an assessee. When the assessee and even the Assessing Officer himself has called for necessary records from his counterpart/Assessing Officer of the said concern but could not find any discrepancy or fault in the same, hence, in our view, the action of the Assessing Officer in rejecting the creditworthiness of M/s. Euro Steels solely on the ground that its income for the year under consideration was low, cannot be held to be justified.

So far as the identity of the creditor was concerned, there was no doubt raised by the Assessing Officer in this respect. M/s. Euro Steels was as separate concern in which the assessee was a partner and the same was duly assessed to the income-tax. So far as the genuineness of the transactions was concerned, even in that respect no doubt has been raised by the Assessing Officer. Admittedly, all the amounts by M/s. Euro Steels has been transferred to the assessee through banking channels. However, the learned Commissioner of Income-tax (Appeals) has rejected the contentions of the assessee and upheld the additions made by the Assessing Officer citing different reasons saying that the assessee could not prove the source of numerous deposits in the bank accounts of M/s. Euro Steels. However, as observed above, the Assessing Officer in his remand report has not pointed out any doubt about the source of numerous deposits in the bank accounts of M/s. Euro Steels. Further, the assessee has been stating that the source of the said deposits in the accounts of M/s. Euro Steels was out of its business receipts in the normal course. In the remand proceedings neither the Assessing Officer asked the assessee to furnish further evidence in respect of the source of deposit into the accounts of M/s. Euro Steels nor the Assessing Officer himself called M/s. Euro Steels to prove the source of deposits. Moreover, the Assessing Officer himself called for the necessary details and documents from the concerned Assessing Officer which were available in record as per the ITR (income-tax return) filed by the M/s. Euro Steels and has not rebutted the authenticity of the said documents, hence, in the appellate proceedings, the findings of the Commissioner of Income-tax (Appeals) upholding the additions made by the Assessing Officer on this ground cannot be held to be justified.

So far as the additions of the amount of Rs. 2,60,000 is concerned, the assessee has explained that this amount has been transferred from the savings bank account of Shri Rohit Kumar Jindal through real time gross settlement. However, the Assessing Officer in the remand report has

observed that the assessee has failed to furnish the documentary evidence in this regard. In his counter objections, the assessee has contended that the copy of the savings bank statement of Shri Rohit Kumar Jindal was duly filed, copy of which was placed at the paper book pages 32 and 33. The learned Commissioner of Income-tax (Appeals), however, in this respect has observed that there was transfer of an equal amount of Rs. 2,60,000 in the same account, the source of which was not explained. However, the contention of the learned counsel in this respect has been that even the source of the deposit in the savings bank account of Shri Rohit Kumar Jindal cannot be doubted as all the transactions carried out in the said account were through banking channels.

As noted above, the Assessing Officer has not gone through the bank account statement filed by the assessee of Shri Rohit Kumar Jindal. However, the Commissioner of Income-tax (Appeals) duly noted that the said amount of Rs. 2,60,000 was transferred from the personal account of Shri Rohit Kumar Jindal. Since no queries were raised by the Assessing Officer in the remand proceedings regarding the source of deposit in the savings bank account of Shri Rohit Kumar Jindal, there was no reason for the assessee to furnish the evidence relating to the source of source without being asked for. The learned Commissioner of Income-tax (Appeals) simply noted that there was a deposit into the said account, therefore, he doubted the genuineness of the transactions, whereas the claim of the assessee was that all the details whatever were called for, were duly furnished and that the alleged deposits in the individual bank account of Shri Rohit Kumar Jindal were through banking channels. In our view, when the assessee has proved the source of deposit and genuineness of the transactions, therefore, the assessee without being called for to prove the source of source by the Assessing Officer was not supposed to furnish the further details. No doubt has been raised either by the Assessing Officer or by the Commissioner of Income-tax (Appeals) regarding the transaction so far as the receipt of Rs. 2,60,000 by the assessee from savings bank account of the individual is concerned.

So far as the addition of Rs. 4,75,000 was concerned, the assessee admittedly could not prove with reliable evidence the source of the said amount and the creditworthiness of the creditor and genuineness of the transaction.

In view of the above discussion, the addition to the extent of Rs. 4,75,000 **11** is upheld whereas the remaining part of the additions out of the total additions Rs. 1,03,10,000 is ordered to be deleted. This ground of the appeal is accordingly partly allowed.

12 *Ground Nos. 3 and 4* : The assessee through these grounds of appeal has agitated the addition of Rs. 1,62,50,000 on account of the alleged unexplained unsecured loans. The assessee in this respect explained that the assessee-Hindu undivided family availed of many short and long-term loans from various banks as well as financial institutions. As the position of the business further declined, the assessee was in dire need of funds, therefore, the brother-in-law of the karta of the assessee and other family members of the karta of the Hindu undivided family advanced different sums of money to the assessee in order to help it out of the financial crunch. The assessee received a total loan of Rs. 2,19,71,000 from the family members and friends of the karta of the Hindu undivided family. The assessee in this respect has given the details of the parties as under :

(i)	Transferred from M/s. Kiran Industries, a proprietary concern of the mother of the assessee through M/s. Dev Krishan Jindal and Sons, Hindu undivided family	Rs. 19,95,000
(ii)	Transferred from M/s. Euro Steels through Mrs. Smriti Jindal W/o karta of the assessee-Hindu undivided family	Rs. 20,00,000
(iii)	Transferred from the bank account of Sh. Ramesh Jain father-in-law of the karta of the assessee-Hindu undivided family transferred from M/s. Euro Steels through Shri Rohit Jain, karta of the assessee-Hindu undivided family	Rs. 54,31,000
(iv)	Transferred from M/s. Euro Steels through Mrs. Superna Jindal, sister of the karta of the assessee-Hindu undivided family	Rs. 26,55,000
(v)	Transferred from M/s. Euro Steels through Sh. Rohit Kumar Jindal, karta of the assessee-Hindu undivided family	Rs. 11,00,000
(vi)	Through personal savings bank account of Sh. Rohit Kumar Jindal, karta of the assessee-Hindu undivided family	Rs. 2,90,000
	Total	Rs. 2,19,71,000

13 The assessee in this respect explained as under :

"From Dev Krishan Jindal and Sons ('HUF') - Rs. 9,95,000

The said addition of the unsecured loans amounting to Rs. 19,95,000 was received from Dev Krishan Jindal and Sons ('HUF'). This is evident from the bank statement of Dev Krishan Jindal and Sons (Hindu undivided family) enclosed in the paper book at pages 39-41. From a perusal of the same it is clear that the said amount has actually been received form M/s. Kiran Industries which is the proprietorship of Dev Krishan Jindal. The sums received from M/s. Kiran Industries has were actually the loan repaid by M/s. Kiran Industries to Dev Kumar Jindal. To further substantiate we are enclosing in the paper book, the confirmed copies of account of Dev Krishan Jindal

and Sons (Hindu undivided family) evidencing the transfer of the said amount on page 36. We are also filing before your goodself the return of income in the paper book at page 38 and the confirmed copy of account of Dev Krishan Jindal Hindu undivided family to further substantiate the genuineness of the transaction.

• *From Smiti Jindal - Rs. 20,00,000*

During the year under consideration the assessee-Hindu undivided family received Rs. 20 lakhs as unsecured loan from Mrs. Smiti Jindal. Mrs. Smiti Jindal is the wife of the karta of the assessee-Hindu undivided family. The said amount has actually been paid by M/s. Euro Steels on behalf of Smiti Jindal and the same is evident from the collective perusal of the copy of account of Mrs. Smiti Jindal in the books of M/s. R. D. Steels enclosed in the paper book at page 42 and the copy of the bank statement enclosed at pages 44-45. It is also for your information that Mrs. Smiti Jindal is the sister of Rohit Jain partner in M/s. Euro Steels. We are also filing before your goodself the return of income in the paper book at page 43 and the confirmed copy of account of Smiti Jindal to further substantiate the genuineness of the transaction.

• *From Ramesh Jain-Rs. 54,31,000*

For the addition amounting to Rs. 54,31,000, it is submitted before your goodself that the said amount was lent by Sh. Ramesh Jain who is the father-in-law of the karta of the assessee-Hindu undivided family. We are enclosing herewith the bank statement of Ramesh Jain for the relevant assessment year which makes it amply clear that not only the sources of the loan are very much verifiable but are from genuine sources. Further, from a perusal of the bank statement of Sh. Ramesh Jain it can be seen that Rs. 34,34,213 has been brought forward from the earlier years. Further, as evident from the bank statement the lender had availed of loan from Punjab National Bank at pages 48-49 amounting to Rs. 33.60 lakhs out of which funds has been advanced to the assessee. It is also for your information here that the lender had passed away on September 24, 2014 and we are enclosing herewith the death certificate of the lender to evidence the same. Therefore, the unsecured loan received from Ramesh Jain have been made through verifiable and genuine sources and the same should be accepted.

• *From Rohit Jain-Rs. 85,00,000*

Sh. Rohit Jain is the brother-in-law of the karta of the assessee-Hindu undivided family. The said amount has been transferred from

M/s. Euro Steels in which Rohit Jain is a partner and the said transfers are through the proper banking channels as being reflected in the bank account of the assessee-Hindu undivided family and M/s. Euro Steels respectively. The same is evident from the copy of the bank statement of M/s. Euro Steels enclosed in the paper book at pages 52-56. We are also filing before your goodself the return of income in the paper book at page 51 and the confirmed copy of account of Sh. Rohit Jain to further substantiate the genuineness of the transaction.

Therefore, there cannot be any doubt upon the creditworthiness as well as on the genuineness of the transaction. Hence, the addition made in this respect is not called for and needs to be deleted.

• *From Superna Jindal—Rs. 26,55,000*

During the year under consideration, the assessee availed of unsecured loans amounting to Rs. 26,55,000 from Mrs. Superna Jindal. Mrs. Superna Jindal is the sister of the karta of the assessee-Hindu undivided family. The said amount has actually been paid by M/s. Euro Steels on behalf of Superna Jindal and the same is evident from the collective perusal of the copy of account of Mrs. Superna Jindal in the books of M/s. R. D Steels enclosed in the paper book at page 62 and the copy of the bank statement of M/s. Euro Steels enclosed in the paper book at pages 64-66. The said amount has been accumulated by the firm in the regular course of business and the same is evident from the bank statement attached herewith. Further, the copy of income-tax return along with the confirmed copy of account is duly attached herewith at page 63 of the paper book.

• *From Rohit Kumar Jindal – Rs. 13,90,000*

Regarding the unsecured loan of Rs. 13,90,000, it is submitted that the said amount has been lent by Sh. Rohit Kumar Jindal himself, i. e., the karta of the Hindu undivided family. Out of the said amount, Rs. 11,00,000 has been paid by M/s. Euro Steels on behalf of Rohit Jindal which is evident from the bank statement of M/s. Euro Steels attached on page 59 of the paper book. The said amount has been earned in the regular course of business of M/s. Euro Steels. Further, the remaining amount of Rs. 2,90,000 has been lent from the personal savings bank account of the karta of the assessee-Hindu undivided family. The said amount of Rs. 2,90,000 was received by the assessee from his father, namely, Sh. Dev Krishan Jindal. The same is being duly reflected in the attached bank statements at pages 60-61 to the paper book. In addition to the above, the income-tax return along

with confirmed copy of account is attached herewith at pages . . . . . to. . . . of the paper book.

5.5 It is for your information here that the transfer of funds made from M/s. Euro Steels has been reflected as unsecured loans from Mrs. Superna Jindal and not in its own name due to the fact that the assessee-Hindu undivided family required funds in order to avail of additional loans from the bank. In order to submit the documents to the bank, the assessee required funds in its balance-sheet and that too to increase the current ratio of the assessee. Had the assessee shown the unsecured loan from a single person, namely, M/s. Euro Steels, then the bank would have suspected the fact that the transfer of funds has been made merely to get some financial assistance from the bank and thus, the bank would not have lent any amount and/or provided any kind of financial assistance. Hence, the assessee had no choice but to resort to classify the money received from M/s. Euro Steels under different heads. Your goodself would appreciate the fact that the assessee-Hindu undivided family only classified the funds in the name of family members only and not in the name of any outsiders so that the sources of the funds is not at all doubted upon. Moreover, we have explained the identity and genuineness of the lenders with documentary evidences and also explained the source as well as the source of source of the transactions of unsecured loans received by the appellant and thus even the creditworthiness of the lenders and sources of lenders stands proved."

The assessee further submitted that since the necessary documents such **14**
as copies of the bank accounts, confirmations, etc., of the respective parties have been duly furnished, hence, the identity and creditworthiness of the creditors and genuineness of the transactions was duly proved. However, the Assessing Officer in the remand report has made the following observations in this respect.

"(a) During the year under consideration, the assessee has raised loans of Rs. 85 lakhs from Sh. Rohit Jain, who is a partner of M/s. Euro Steels. On a perusal of the capital account of Sh. Rohit Jain, partner, it has been found that the partner's capital as on April 1, 2012 was only Rs. 72,11,236 which was raised in the assessment year 2013-14 at Rs. 1,31,08,241, i. e., as on March 31, 2013. It is pertinent to mention here that during the year, Sh. Rohit Jain, partner has withdrawn only Rs. 23,20,000 from his capital, whereas as per the assessee's books of account, Rs. 85 lakhs have been received from Sh. Rohit Jain from his capital account. In view of these facts, the

unsecured loans raised from Sh. Rohit Jain, partner of M/s. Euro Steels are not genuine.

(c) Further, the assessee has furnished documents with regard to unsecured loans raised of Rs. 54,31,000 from Sh. Ramesh Jain, who has since been expired and copy of income-tax return has not been supplied. In this regard, it is submitted that Sh. Ramesh Jain having PAN ADVPJ2567M is also the assessee of this ward, who has not filed any income-tax return for the assessment year 2013-14. Hence the person who is not an assessee has given a loan of Rs. 54,31,000 cannot be accepted. Hence, the source of giving loan, i. e., creditworthiness of Sh. Ramesh Jain has also not been proved by the assessee and deserves to be rejected.

(d) Further, the assessee has submitted in his written submissions that Sh. Dev Krishan Jindal Hindu undivided family has given unsecured loans of Rs. 19,95,000, which were raised from M/s. Kiran Industries, which is the proprietorship of Sh. Dev Krishan Jindal. But on checking the permanent account number of M/s. Kiran Industries (AAQPR1921D), it has been found that the proprietor of the concern is Smt. Santosh Rani. But the assessee has not produced the documentary evidence with regard to the source of the concern M/s. Kiran Industries, who has given such loans of Rs. l9,95,000. Hence, the creditworthiness has not been proved by the assessee.

8. In view the above facts, it is clear that the assessee has knitted a concocted story to justify the capital formation and unsecured loans raised by him from M/s. Euro Steels, Sh. Rohit Jain, partner of M/s. Euro Steels, Sh. Ramesh Jain (PAN:ADVPJ2567M). However, documents supplied by the assessee and the documents called for from the Income-tax Officer, Ward-1, Patiala, are submitted herewith for verification. Hence, the additional evidence produced by the assessee at time of appellate proceedings deserves to be rejected."

15 Against the said remand report, the assessee filed the following counters objections :

(a) The learned Assessing Officer in point a. has alleged that the capital withdrawal made by the Rohit Jain (partner of Euro Steels) from Euro Steels is not enough to justify the unsecured loans recorded by the assessee at Rs. 85 lakhs in the name of Rohit Jain in his personal capacity. With regard to the same, it is submitted that the Assessing Officer has not appreciated the submissions and documentary evidence filed in the correct perspective. The clear fact that emerges from the evidence in the form of bank statement of M/s.

Euro Steels is that the total amount of Rs. 85 lakhs has been debited from the said firm's bank accounts and received by the assessee. The Assessing Officer has already called for the income-tax return and balance-sheet of the said firm from the Assessing Officer of M/s. Euro Steel. The reason as to why the said amount has been recorded in the name of Rohit Jain is because he was the concerned person who arranged the said loan for the assessee and he has duly confirmed the same by way of his confirmation. Accordingly, once the source of funds and the identity is clear, the onus of the appellant is discharged and how the entries are treated/reflected in the books of the lender is not under the control of the assessee and the same cannot be a ground for making addition in the hands of the assessee.

(c) In point c the learned Assessing Officer has alleged that Ramesh Jain who is also one of the unsecured loan creditors has not filed the return of income for the relevant assessment year, with regard to the same at the outset it is submitted that Ramesh Jain had passed away on September 24, 2014 and it is also for your information that till the date of the lender's death there was still time left to file the belated return and due to the unfortunate death of the lender the same could not have been filed. Thus, the same cannot be any way said to be the assessee's fault. Moreover, from a perusal of the bank statement of Sh. Ramesh Jain it can be seen that Rs. 34,34,213 has been brought forward from the earlier years. Further, as evident from the bank statement the lender had availed of loan from Punjab National Bank on pages 48-49 amounting to Rs. 33.60 lakhs out of which funds has been advanced to the assessee. The learned Assessing Officer in her remand proceedings have not given any adverse remarks against the same and, therefore, merely because the return of income has not been filed of a dead person, it cannot be held that the creditworthiness of the said lender cannot be proved when the sources of the loan are genuine and bona fide.

(d) In point d, the learned Assessing Officer with regard to the loan received from Dev Krishan Jindal has alleged that the source of the source of the said loan, which was from M/s. Kiran Industries is not the proprietorship concern of Dev Krishan Jindal (as stated by the assessee in the detailed submissions) but of Santosh Rani (wife of Dev Krishan Jindal). In this regard, it is stated that although due to some miscommunication it has been inadvertently written as prop. concern of Dev Krishan Jindal while it is correct that it is a prop. concern of Santosh Rani, but it is also a fact here that it does not make

much of a difference because the sources of the funds have never been disputed and no adverse remarks against the same has even been provided by the learned Assessing Officer in the remand report. Moreover, it is also for information here that the income as declared by Santosh Rani is also sufficient enough to justify her creditworthiness. Thus, the contention raised by the learned Assessing Officer that the creditworthiness of Krian Industries is not proved, is frivolous and wrong and the explanation given by the assessee deserves to be accepted.

Therefore, on the basis of the above explanation, in view of the fact that no adverse remarks has actually been made by the learned Assessing Officer in the remand report with regard to the documentary evidence filed by the assessee in the paper book and considering the remand report by the learned Assessing Officer it is clear that the sources from which the advances/capital contribution have been made have not been disputed, therefore, it is humbly requested before your goodself that addition made by the learned Assessing Officer may please be deleted and oblige."

16 The learned Commissioner of Income-tax (Appeals) after considering the rival submissions has given the following findings in relation to the issue of unsecured loans :

"7.7.5 On a careful consideration of the rival contentions, it has been noticed that although the learned authorised representative of the assessee-Hindu undivided family has tried to explain the source of unsecured loans from various sources as mentioned above, but I do not find any force in his contentions in respect of majority of the unsecured loans, the source of which is either M/s. Euro Steels or M/s. Kiran Industries. As regards the transfer of funds to the extent of Rs. 1,42,55,000 indirectly from the bank account of M/s. Euro Steels is concerned, it has been noticed that there are numerous deposits in the bank account of M/s. Euro Steels during the year, under consideration, the sources of which could not be explained and remained unexplained even during appellate proceedings. The confirmations filed by M/s. Euro Steels of family members or relatives of the karta of the assessee-Hindu undivided family will have no evidentiary value unless and until the sources of various deposits in the bank account of M/s. Euro Steels are explained. The contention of the learned authorised representative of the assessee-Hindu undivided family that the source in the hands of the assessee-Hindu undivided family stand explained and action if any may be taken in the hands of M/s. Euro

Steels cannot be accepted as the onus cast upon the assessee-Hindu undivided family to explain the source of deposits in the bank account of M/s. Euro Steels has not been discharged. As the deposits in the bank account of M/s. Euro Steels have not been explained and as the onus lies upon the assessee-Hindu undivided family has not been discharged, the source of unsecured loans in the name of different family members and relatives to the extent of Rs. 1,42,55,000 in the books of the assessee-Hindu undivided family cannot be treated as explained. So the addition to the extent of Rs. 1,42,55,000 made by the Assessing Officer on account of unexplained unsecured loans out of total addition of Rs. 2,19,71,000 is, therefore, upheld.

7.7.6 As regards the transfer of funds to the extent of Rs. 2,90,000 from the bank account of Sh. Rohit Kumar Jindal, karta of the assessee-Hindu undivided family, is concerned, it has been noticed that the amount has been transferred from receipts on account of EPF transfer. It means, the source of Rs. 2,90,000 taken by way of unsecured loan to the extent of Rs. 2,90,000 (out of total loan amount of Rs. 13,90,000) from Sh. Rohit Kumar Jindal is fully explained. As the unsecured loan to the extent of Rs. 2,90,000 (out of the total loan amount of Rs. 13,90,000) is fully explained, the addition to the extent of Rs. 2,90,000 made by the Assessing Officer on account of unexplained unsecured loan from Sh. Rohit Jindal cannot be said to be justified. So the addition to the extent of Rs. 2,90,000 (out of the total loan amount of Rs. 13,90,000) made by the Assessing Officer on account of unexplained unsecured loan out of total addition of Rs. 2,19,71,000 is, therefore, directed to be deleted.

7.7.7 As regards the unsecured loan of Rs. 54,31,000 from Sh. Ramesh Jain is concerned, it has been noticed that the amount has been transferred from opening balance lying in the same bank account as well as from the amount of loan raised by Sh. Ramesh Jain. It means, the source of Rs. 54,31,000 raised by way of unsecured loan of Rs. 54,31,000 from Sh. Ramesh Jain is also fully explained. As the unsecured loan to the extent of Rs. 54,31,000 from Sh. Ramesh Jain is also fully explained, the addition to the extent of Rs. 54,31,000 made by the Assessing Officer in this case on account of unexplained unsecured loan from Sh. Ramesh Jain cannot be said to be justified. So, the addition to the extent of Rs. 54,31,000 made by the Assessing Officer in this case on account of unexplained unsecured loan out of total addition of Rs. 2,19,71,000 is, therefore, also directed to be deleted.

7.7.8 As regards the unsecured loan to the extent of Rs. 19,95,000 from M/s. Dev Krishan Jindal and Sons (Hindu undivided family) is concerned, it has been noticed that there are transfers entries of equal amount of Rs. 19,95,000 in the same bank account, the sources of which are transfers from the bank account of M/s. Kiran Industries, a proprietary concern of the mother of the karta of the assessee-Hindu undivided family. As the sources of deposits in the bank account of M/s. Kiran Industries remained unexplained even during appellate proceedings, it cannot be said that the assessee-Hindu undivided family has discharged its onus to explain the source of unsecured loan from M/s. Dev Krishan Jindal and Sons (Hindu undivided family). As the deposits in the bank account of M/s. Krishna Industries from where the funds have been transferred to the bank account of M/s. Dev Krishan Jindal and Sons (Hindu undivided family) have remained unexplained even during the appellate proceedings and as the onus lies upon the assessee-Hindu undivided family has not been discharged, the source of unsecured loan to the extent of Rs. 19,95,000 from M/s. Dev Krishan Jindal and Sons (Hindu undivided family) cannot be treated from explained sources. So, the addition to the extent of Rs. 19,95,000 made by the Assessing Officer in this case on account of unexplained unsecured loan from M/s. Dev Krishan Jindal and Sons out of the total addition of Rs. 2,19,71,000 is also upheld. It has also been noticed that the amount shown in the balance-sheet of M/s. Euro Steels in the name of M/s. R. D. Steels, a proprietary concern of the assessee-Hindu undivided family, is only at Rs. 1,18,63,037. Apart from this an amount of Rs. 5,00,000 has been shown as recoverable from Sh. Rohit Kumar Jindal (Hindu undivided family) but no amount has been shown as recoverable from any other person of the assessee-Hindu undivided family group. This also gives indication that the amount received by the assessee-Hindu undivided family from M/s. Euro Steels is unexplained as the source of receipts in the bank account of this concern remained unexplained even during appellate proceedings.

7.7.9 In a nutshell, the addition of Rs. 1,62,50,000 (Rs. 1,42,55,000 + Rs. 19,95,000) made by the Assessing Officer on account of unexplained unsecured loans out of total addition of Rs. 2,19,70,000 is upheld whereas the balance addition of Rs. 57,21,000 (Rs. 2,90,000 + Rs. 54,31,000) out of total addition of Rs. 2,19,70,000 is deleted. The assessee-Hindu undivided family will thus get a relief of Rs. 57,21,000 out of total addition of Rs. 2,19,70,000 made by the Assessing Officer on account of unexplained unsecured loans."

We have heard the rival contentions on this issue and have also gone 17
through the record. So far as the observation of the Assessing Officer on the remand report that Shri Rohit Jain, partner had withdrawn only Rs. 23,20,000 from his capital account, whereas, as per the assessee's books of account, Rs. 85 lakhs has been received from Shri Rohit Jain from his capital account is concerned, the same has been duly explained by the assessee that the amount in fact was transferred from the account of M/s. Euro Steels. The Assessing Officer had already called for income-tax return and balance-sheet of the said firm and duly verified the said transaction. The learned Commissioner of Income-tax (Appeals) has not doubted genuineness of the above transaction. The only reason for which the learned Commissioner of Income-tax (Appeals) upheld the addition made by the Assessing Officer was that the assessee has not proved the source of numerous deposits into the bank account of M/s. Euro Steels. We have already discussed about this observation made by the Commissioner of Income-tax (Appeals) while adjudicating the earlier ground No. 2 relating to the amount received by the assessee from M/s. Euro Steels. It is to be observed here that unsecured loan to the extent of Rs. 1,42,55,000, i. e., Rs. 20,00,000 through Smt. Smriti Jindal, Rs. 85,00,000 through Shri Rohit Jain (as discussed above), Rs. 26,55,000 through Smt. Superna Jindal, Rs. 11,00,000 through Shri Rohit Jindal has been claimed to have been received from M/s. Euro Steels. The learned Assessing Officer and the learned Commissioner of Income-tax (Appeals) have rejected the above transactions on the basis of identical reason, as discussed above. However, in view of our observations made above regarding the issue of creditworthiness of M/s. Euro Steels, the addition made by the lower authorities in respect of the loans from the above stated parties amounting to Rs. 1,42,55,000 is ordered to be deleted. The transaction relating to the remaining amount of Rs. 2,90,000 from Shri Rohit Kumar Jindal stands accepted by the Commissioner of Income-tax (Appeals).

So far as the unsecured loan raised of Rs. 54,31,000 from Shri Ramesh Jain is concerned, the learned Commissioner of Income-tax (Appeals) has already deleted the addition in this respect. Since the parties are not in appeal in respect of the above transaction, hence, no adjudication is required in this respect.

So far as the unsecured loans received from Shri Dev Krishan Jindal (Hindu undivided family) of Rs. 19,95,000 is concerned, the Assessing Officer in his remand report has observed that the said amount was received by the said concern from M/s. Kiran Industries and that the assessee had failed to prove the source of the said concern M/s. Kiran Industries.

However, the assessee in his counter-objections has submitted that the said M/s. Kiran Industries was the proprietorship concern of Smt. Santosh Rani and that even the income declared by Smt. Santosh Rani was sufficient enough to justify her creditworthiness. The learned Commissioner of Income-tax (Appeals) in this respect has observed that there were some transfer entries of equal amount of Rs 19,95,000 in the bank account of M/s. Kiran Industries.

That since the source of deposit in the bank account of M/s. Kiran Industries remained unexplained, he, therefore, held that the genuineness of the transaction is not proved. However, in our view, the fact that there was sufficient income declared by Smt. Santosh Rani to prove her creditworthiness of the amount advanced to M/s. Dev Krishan Jindal and Sons Hindu undivided family, is enough evidence so far as the onus on the assessee to prove the creditworthiness of the creditor is concerned. The assessee, in fact, has proved the source of source. The observation of the Commissioner of Income-tax (Appeals) that there were other entries of the equal amount in the bank account of M/s. Kiran Industries, in our view, is not relevant so far as the genuineness of the transaction and creditworthiness of the creditor in respect of the funds received by the assessee is concerned.

In view of the above discussion made, these grounds are allowed in favour of the assessee.

18 *Ground No. 5* : This ground is not pressed by the learned counsel for the assessee, hence, the same is dismissed as "not pressed".

19 *Ground No. 6* : This ground is general in nature and does not require any specific adjudication.

20 In the result, the appeal of the assessee stands partly allowed.

21 Order could not be pronounced earlier due to non-functioning of the Bench on account of curfew/lockdown in the wake of Covid-19 Pandemic.

22 Order pronounced on July 6, 2020.

[2020] 81 ITR (Trib) 493 (Chandigarh)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHANDIGARH "A" BENCH]

INDO GLOBAL TECHNO TRADE LTD.

v.

INCOME-TAX OFFICER

N. K. SAINI *(Vice-President)* and
SANJAY GARG *(Judicial Member)*

June 15, 2020.

SS ▸ ITA 1961, ss 147, 148
AY ▸ 2010-11
HF ▸ Assessee

REASSESSMENT—NOTICE—INFORMATION THAT ASSESSEE RECEIVED HIGH PREMIUM WITH SHARE APPLICATION MONEY—NOT TANGIBLE MATERIAL OR INCRIMINATING MATERIAL TO FORM BELIEF THAT SHARE APPLICATION MONEY RECEIVED UNACCOUNTED MONEY—NO INFORMATION OF RECEIPT OF ANY BOGUS TRANSACTIONS UNDERTAKEN BY ASSESSEE—NAMES OF COMPANIES FROM WHOM SHARE PREMIUM RECEIVED NOT MENTIONED NOR ANY ALLEGATION THAT SHARE APPLICANTS NOT TRACEABLE OR WERE BOGUS COMPANIES—REOPENING UNSUSTAINABLE—INCOME-TAX ACT, 1961, SS. 147, 148.

Held, *that the return was processed under section 143(1) but the return had attained finality due to the expiry of limitation period of twelve months from the end of the month in which the return was filed. Hence, the assessment was deemed to be completed. The Assessing Officer had received the only information that the assessee had received a high premium along with share application money. However, this information alone did not constitute any tangible material or incriminating material to form a belief that the income of the assessee had escaped assessment or that the share application money received by the assessee was unaccounted money of the assessee. The Assessing Officer had not recorded that he had received any information that the assessee had received the share application money from bogus or paper companies. No information had been pointed out in the reasons recorded of receipt of any bogus transactions undertaken by the assessee. Even the names of the companies from whom the share premium received had not been mentioned nor was there any allegation that those share applicants were not traceable or they were bogus or paper companies indulging in sham transactions. The Assessing Officer raised a suspicion regarding the source of the capital being not genuine or that it may be a modus operandi by the assessee to*

introduce its undisclosed income by way of share premium, but this was a mere suspicion of the Assessing Officer without any incriminating tangible material against the assessee or even otherwise. The information received by the Assessing Officer was general and vague, that could be used to some extent by an Assessing Officer to make further enquiries to ascertain the true facts in a case of an ongoing assessment proceedings ; however, in a concluded case of assessment, this general information without pointing out any incriminating information against the assessee could not be said to be a tangible information sufficient to form belief that the income of the assessee has escaped assessment. The suspicion of the Assessing Officer was not based on any reliable information or tangible material coming to his possession in this respect. In the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices under section 148 was not valid. The Assessing Officer had wrongly and illegally assumed jurisdiction in this case to reopen the assessment. The reasons pointed out by the Assessing Officer could not be said to be reasons "to form the belief" that income of the assessee had escaped assessment. The assessment order framed by the Assessing Officer was not sustainable.

D. D. Agro Industries Ltd. *v.* Asst. CIT (I. T. A. Nos. 349 and 350/Chd/2017 dated September 7, 2017) *followed*.

Reason to believe must have a material bearing on the question of escapement of income. It did not mean a purely subjective satisfaction of the assessing authority, such reason should be held in good faith and could not merely be a pretence. Furthermore, the reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of the Assessing Officer to reopen an assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied did not exist or is not material or relevant to the belief required by the section.

Cases referred to :

CIT *v.* A. Raman and Co. [1968] 67 ITR 11 (SC) (para 8)

CIT *v.* Durga Prasad More [1971] 82 ITR 540 (SC) (para 8)

CIT *v.* Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) (para 7)

CIT *v.* Orient Craft Ltd. [2013] 354 ITR 536 (Delhi) (para 7)

CIT *v.* Paramjit Kaur (Smt.) [2009] 311 ITR 38 (P&H) (para 9)

CIT (Asst.) *v.* Rajesh Jhaveri Stock Brokers Pvt. Ltd. [2007] 291 ITR 500 (SC) (para 8)

CIT (Asst.) *v.* Som Nath Maini [2006] 100 TTJ 917 (Chand) (para 8)

CIT *v.* Zaveri (A. J.) [1968] 68 ITR 594 (Bom) (para 8)

D. D. Agro Industries Ltd. *v.* Asst. CIT (I. T. A. Nos. 349 and 350/Chd/2017 dated September 7, 2017) (para 10)

ITO *v.* Lakhmani Mewal Das [1976] 103 ITR 437 (SC) (para 9)

Lark Chemicals P. Ltd. *v.* Asst. CIT (I. T. A. No. 2636/Mum/2013 dated February 6, 2015) (para 6)

Maharaj Kumar Kamal Singh *v.* CIT [1959] 35 ITR 1 (SC) (para 8)

R. B. Bansilal Abirchand Firm *v.* CIT [1968] 70 ITR 74 (SC) (para 8)

Som Nath Maini *v.* CIT [2008] 306 ITR 414 (P&H) (para 8)

Sumati Dayal *v.* CIT [1995] 214 ITR 801 (SC) (para 8)

I. T. A. No. 1616/Chd/2018 (assessment year 2010-11).

Sudhir Sehgal, Advocate, for the assessee.

Smt. C. Chandrakanta, Commissioner of Income-tax -Departmental representative, for the Department.

ORDER

The order of the Bench was pronounced by

SANJAY GARG ***(Judicial Member)***.—The present appeal has been preferred by the assessee against the order dated October 4, 2018 of the Commissioner of Income-tax (Appeals)-1, Ludhiana (hereinafter referred to as, "CIT(A)"). 1

The assessee in this appeal has taken the following grounds of appeal : 2

1. That the learned Commissioner of Income-tax (Appeals) has erred in confirming the order of the Assessing Officer with regard to reopening of the assessment under section 148 and, thereby, the assessment is illegal and void.

2. That the learned Commissioner of Income-tax (Appeals) has also erred in holding that there was reason to believe with the Assessing Officer for issuance of notice under section 148 and further there was tangible material for the purpose of reopening of the case under section 148.

3. That the learned Commissioner of Income-tax (Appeals) has also erred in holding that there was independent satisfaction with the Assessing Officer of forming the belief for reopening of the assessment.

4. Notwithstanding the abovesaid ground of appeal, the learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs. 3,48,00,000 in respect of the share application money received from the investors, who had confirmed the contribution of share capital in the company.

5. That the learned Commissioner of Income-tax (Appeals) has failed to take into consideration the detailed submissions as submitted to him during the course of the appellate proceedings.

6. Without prejudice to the above ground of appeal, even otherwise the Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer in making the addition of opening balance of share application money amounting to Rs. 25 lakhs.

7. That the addition as confirmed by the Commissioner of Income-tax (Appeals) is against the facts and circumstances of the case.

8. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of.

3 A perusal of the above grounds of appeal reveal that the assessee inter alia has taken the legal ground regarding the validity of the notice issued under section 148 of the of the Income-tax Act, 1961 (in short, "the Act") and thereby of the assessment order passed by the Assessing Officer under section 147 of the Act.

Since the legal ground taken by the assessee is regarding the validity of assumption of jurisdiction by the Assessing Officer to reopen the assessment and frame the assessment in question, hence, at the request of the parties, the legal ground is taken first for adjudication.

4 The learned counsel for the assessee has submitted that there was no valid reason for the Assessing Officer to believe that the income of the assessee had escaped assessment. That the Assessing Officer has reopened the assessment without any tangible material coming to his knowledge or any other relevant evidence which may be sufficient to form the belief that the income of the assessee has escaped assessment. He has further submitted that the Assessing Officer has reopened the assessment on the basis of mere suspicion which could not be said to be the reason to believe of the escapement of income from assessment, which is sine qua non for issue of

notice under section 148 of the Act for reopening of the assessment. The learned counsel in this respect has invited our attention to the reasons recorded by the Assessing Officer for reopening of the assessment. A copy of the same has been placed in the paper book, which we will discuss in the later part of this order. The learned counsel has further submitted that the assessee had filed objections to the aforesaid reasons recorded/issue of notice under section 148 of the Act, however the same were dismissed by the Assessing Officer and thereafter the Assessing Officer framed the impugned assessment order dated December 22, 2017, whereby, she made the impugned additions.

The learned Departmental representative, on the other hand, has **5** pointed out that earlier in the original assessment framed under section 143(1) of the Act, the Assessing Officer does not apply his mind, therefore, the Assessing Officer was justified to reopen the assessment.

We have considered the rival submissions and have also gone through **6** the records. So far so, the question as to the processing of return under section 143(1) vis-a-vis assessment made under section 143(3) is concerned, it may be observed that after processing of return under section 143(1) the same can be assessed under section 143(3) by issue of notice under section 143(2) subject to its issuance within the limitation period of 12 months from the end of the month in which return is furnished as per the proviso to clause (ii) of section 143(2) (as was existing at the time of relevant assessment year). Once the limitation period as prescribed vide proviso to clause (ii) of sub-section (2) of section 143 is expired, it is not open to the Assessing Officer to assess the income under section 143(3) of the Act and the return filed by the assessee under section 139 is deemed to be accepted, which however, can be reopened under section 147 of the Act subject to the fulfilment of ingredients of section 147 and within the time period as prescribed under section 149 of the Act. So under such circumstances if the return is processed under section 143(1) and not under section 143(3) and after the prescribed period of limitation, the same cannot be assessed under section 143(3) though it may be interpreted as mere intimation of assessment or otherwise, but the same shall be deemed to be accepted by the Assessing Officer. Admittedly, in the case in hand, the return was processed under section 143(1) of the Act but the same had attained finality due to the expiry of limitation period of twelve months from the end of the month in which the return was filed. Hence, the assessment is deemed to be completed. Reliance in this respect can be placed on the decision of the co-ordinate Mumbai Bench of the Tribunal order dated February 6, 2015 passed in the case of *Lark Chemicals P. Ltd.*

v. *Asst. CIT*, Income-tax Appellate Tribunal in I. T. A. No. 2636/Mum/2013.

7 Now, coming to the contention of the learned Departmental representative that intimation issued under section 143(1) cannot be equated to an "assessment". We are very much aware of the position but merely because assessment was framed under section 143(1), it will not lead to the conclusion that the requirement of section 147 with regard to "reasons to believe" can be dispensed with when the finality of intimation under section 143(1) is sought to be disturbed as held by the hon'ble Delhi High Court in the case of *CIT* v. *Orient Craft Ltd.* [2013] 354 ITR 536 (Delhi) and the hon'ble Supreme Court in the case of *CIT* v. *Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC).

8 Now coming to the issue of reopening, as per the provisions of section 147 of the Act, the Assessing Officer is authorised to reopen the assessment proceedings, if he has reason to believe that any income chargeable to tax has escaped assessment. The courts of law have time and again held that such a reason to believe that the income of the assessee has escaped assessment should be based on some tangible material which comes to the knowledge of the Assessing Officer. An assessment cannot be reopened under section 147 of the Act on the basis of mere suspicion. The learned counsel for the assessee, as discussed in earlier paras of this order, has placed reliance on the reasons recorded by the Assessing Officer for formation of belief that the income of the assessee has escaped assessment to submit that the same are not valid reasons. The reasons recorded by the Assessing Officer for the sake of convenience and ready reference are reproduced as under :

"Reasons for issue of notice under section 148 of the Act in the case of M/s. Indo Global Techno Trade Limited (Assessment year 2010-11)

Information has been received from the Directorate of Income-tax (Intelligence and Criminal Investigation), Chandigarh. The Directorate has provided the detail of companies which have received share premium at very unreasonable rate. The company has issued 29,00,000 shares of face value of Rs. 10 premium at 90 per share has been received to the extent of Rs. 2,61,00,000.

As per the information received from the Directorate of Income-tax (Intelligence and Criminal Investigation), Chandigarh, details of authorised capital, share capital and share premium received are as under :

A.Y.	*Authorised capital*	*Paid up capital*	*No. of shares issued*	*Share premium*
2010-11	Rs. 2,00,00,000	Rs. 1,95,77,500	2,90,000	Rs. 2,61,00,000

2. The assessee has filed its return of income electronically on April 1, 2011 declaring Rs. 10,55,280 income for the assessment year 2010-11. The return was processed under section 143(1).

3. From the return of income filed by the assessee, it has been observed that the company has nothing to justify the receipt of share premium at a higher rate. The company has received share application money at Rs. 3,48,00,000. The book value of the shares of the company is just Rs. 10. There is nothing on record that could justify such a large premium. The assessee has adopted a modus operandi to introduce its own undisclosed income by way of issuing shares at a high premium. Also the source of capital becomes suspicious.

4. The hon'ble courts have frowne upon such modus operandi. In the case of *Asst. CIT* v. *Som Nath Maini* [2006] 100 TTJ 917 (Chand) the hon'ble Income-tax Appellate Tribunal has observed that a worthless company cannot fetch a high price of Rs. 55 share even though the payments are through banking channel and also the transaction is through a stock exchange. The hon'ble Income-tax Appellate Tribunal, Chandigarh followed the decision of the hon'ble Supreme Court in the case of *CIT* v. *Durga Prasad More* [1971] 82 ITR 540 (SC). It may be noted that the decision of the hon'ble Income-tax Appellate Tribunal has been upheld by the hon'ble Punjab and Haryana High Court in the case of *Som Nath Maini* v. *CIT* [2008] 306 ITR 414 (P&H). The gist of the decisions is given below :

Asst. CIT v. *Som Nath Maini* [2006] 100 TTJ 917 (Chand).

1. After hearing the rival submissions, going through the orders of the authorities below and paper book, we find that M/s. Ankur International Ltd., although it is a quoted company, its shares were not being transacted at Ludhiana Stock Exchange at the relevant time. Shares have been purchased and sold through the brokers and payments have been received in cheque on different dates as per the statement of account of M/s. S. K. Sharma and Co. Factual matrix of the case from start of the purchase of shares at the rate of Rs. 3 to the sale of shares at Rs. 55 in a short span of time and shares being not quoted at Ludhiana Stock Exchange and the way in which different instalment payments have been received from the brokers and non-availability of the records of the brokers and the shares remaining in the name of the assessee even long after the sale of the shares does

not stand the test of probabilities. As rightly pointed out by the learned Departmental representative, these types of companies function in the capital market whose sale price is manipulated to astronomical height only to create the artificial transaction in the form of capital gain. Surrounding circumstances differ from the normal share market transactions in which they are ordinarily carried out. Taking all the steps together, final conclusion does not accord with the human probabilities. The hon'ble Supreme Court in the case of *CIT* v. *Durga Prasad More* [1971] 82 ITR 540 (SC) ; [1973] CTR 500 (SC) held as under (page 546) :

'It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to be unbelievable as the Tribunal has found, and in our opinion, rightly, that the position remains that the consideration for the sale proceeded from the assessee and therefore, it must be assumed to be his money.

It is surprising that the High Court has found fault with the Income-tax Officer for not examining the wife and the father-in-law of the assessee for proving the Department's case. All that we can say is that the High Court has ignored the facts of life. It is unfortunate that the High Court has taken a superficial view of the onus that lay on the Department.'

7. The learned Commissioner of Income-tax (Appeals) only got swayed by the issuance of notice by the Assessing Officer under section 131 to both the brokers from whom shares were purchased and sold and came to the conclusion that share transactions were genuine overlooking the material gathered by the Assessing Officer from the statements recorded of the broker M/s. S. K. Sharma and Co. and the other facts and circumstances that volume of transactions of Jaipur Stock Exchange is only 600 shares and 1,000 shares. Payments have been received from the brokers only in instalments over a period of six-seven months. It is true that when transactions are through cheques, it looks like real transaction but the authorities are permitted to look behind the transactions and find out the motive behind transactions.

Generally, it is expected that the apparent is real but it is not sacrosanct. If the facts and circumstances so warrant that it does not accord with the test of human probabilities, transactions have been held to be non-genuine.

It is highly improbable that share price of a worthless company can go from Rs. 3 to Rs. 55 in a short span of time, mere payment by cheque and receipt by cheque does not render a transaction genuine. Capital gain tax was created to operate in a real world and not that of make belief facts of the case only lead to the inference that these transactions are not genuine and make believe only to make offset the loss incurred on the sale of jewellery declared under VDIS. In the totality of facts and circumstances of this case and material on record, we are of the considered view that the Commissioner of Income-tax (Appeals) was not justified in deleting the impugned addition. We, accordingly set aside the order of the Commissioner of Income-tax (Appeals) and restore that of the Assessing Officer.

Som Nath Maini v. *CIT* [2008] 306 ITR 414 (P&H)

The assessee incurred capital loss on account of sale of gold jewellery and also had short-term capital gain of almost equal amount. The Assessing Officer observed that short-term gain was not genuine inasmuch as the assessee had purchased 45,000 shares of M/s. Ankur International Limited at varying rates from Rs. 2.06 to Rs. 3.1 per share and sold them within a short span of six-seven months at the rate varying from Rs. 47.75 paise to Rs. 55. These shares were purchased through a broker Munish Arora and Co. and sold through another broker M/s. S. K. Sharma and Co. The Assessing Officer took by surprise the astronomical rise in share price of a company from Rs. 3 to Rs. 55 and started further enquiry.

We are unable to accept the submission made. The burden of proving that income is subject to tax is on the Revenue but on the facts, to show that the transaction is genuine, burden is primarily on the assessee. The Assessing Officer is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of evidence that the transaction was genuine, cannot be conclusive. Such evidence is required to be assessed by the Assessing Officer in a reasonable way. Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trustworthy, even if the Department does not lead any evidence on such an issue.

5. Upon analysing the facts and circumstances of the case there is no basis of issuing the shares at such a high rate. Based on these facts and also the judicial opinion of the jurisdictional High Court it gives a strong reason to believe that the assessee has introduced its own

undisclosed income under the guise of issuance of share at premium at such high rate.

6. Receipt of such a high premium is against the human probability and just contrary to very nature of human conduct as held by the hon'ble Supreme Court in the case of *CIT* v. *Durga Prasad More* [1971] 82 ITR 540 (SC). In the said decision the hon'ble Supreme Court has categorically held that the Revenue is entitled to lock into surrounding circumstances to find out the reality of recitals made in the documents. In the case of *Sumati Dayal* v. *CIT* [1995] 214 ITR 801 (SC), the hon'ble Supreme Court has also held that the matter has to be considered in the light of the human probabilities. The assessment has not been framed under scrutiny. Only processing was done under section 143(1).

7. It is further to be noted that the hon'ble Supreme Court has also discussed about the meaning of information. In the case of *CIT* v. *A. Raman and Co.* [1968] 67 ITR 11 (SC) the Supreme Court held (head note) :

'The expression "information" in the context in which it occurs must, in our judgment, mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. . .

That information must, it is true, have come into the possession of the Income-tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income-tax Officer is not affected.'

In *Maharaj Kumar Kamal Singh* v. *CIT* [1959] 35 ITR 1 (SC) it was held that the word 'information' in section 34(1)(b) included information as to the true and correct state of law, and so would cover information as to the relevant judicial decisions. The following observations may be reproduced with advantage :

'If the word "information" used in any other provision of the Act denotes information as to facts or particulars, that would not necessarily determine the meaning of the said word in section 34(1)(b). The denotation of the said word would naturally depend on the context of the particular provisions in which it is used. It is then contended that sections 33B and 35 confer ample powers on the specified authorities to revise the Income-tax Officer's orders and to rectify mistakes

respectively and so it would be legitimate to construe the word "information" in section 34(1)(b) strictly and to confine it to information in regard to facts or particulars. This argument also is not valid. If the word "information" in its plain grammatical meaning includes information as to facts as well as information as to the state of the law. it would be unreasonable to limit it to information as to the facts on the extraneous consideration that some cases of assessment which need to be revised or rectified on the ground of mistake of law may conceivably be covered by sections 33B and 35.'

In *CIT* v. *A. Raman and Co.* it was said that the expression "information" in the context of section 147(b) of the Income-tax Act, 1961, must mean instruction or knowledge derived from extraneous sources concerning facts or particulars or as to law relating to a matter bearing on the assessment. The Bombay High Court, in a recent decision, *CIT* v. *A. J. Zaveri* [1968] 68 ITR 594 (Bom) after a discussion of the relevant case law, came to the conclusion that 'information' within the meaning of section 34(1)(b) of the Indian Income-tax Act, 1922, may consist of a different view taken of the facts on the record by a higher Tribunal on appeal from the Income-tax Officer's decision. In that case, it was held that the decision of the Income-tax Appellate Tribunal constituted 'information' to the Income-tax Officer as to which of the assessable parties was chargeable for a particular item of income. In the latest decision of this court in *R. B. Bansilal Abirchand Firm* v. *CIT* [1968] 70 ITR 74 (SC), when the first assessment of the assessee's income was made by the Income-tax Officer the latter's information was that the assessee was a partner in another concern known as Bisesar House and that the interest had been received from that concern in the capacity of a partner. It was only after the Tribunal and the High Court gave their decision in the proceedings for assessment to tax of Bisesar House that the Income-tax Officer came to know that the interest was not being received by the assessee-firm in the capacity of a partner but in its capacity of a financier advancing monies to Bisesar House as a banker. It was held that the Income-tax Officer had not acted on his own initiative or on the change of his own opinion when he took proceedings under section 34(1)(b). The correct position had been brought to his notice by the decision of the Tribunal and the High Court and that must be held to be "information" as a consequence of which he came to believe that the provisions of section 34(1)(b) were attracted.'

Reliance is also placed on the decision of the hon'ble Supreme Court in the case of *Asst. CIT* v. *Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [2007] 291 ITR 500 (SC).

I am in possession of the information based on the analysis of facts and figures of assessment records from the assessment year 2010-11. The decision of the hon'ble Income-tax Appellate Tribunal, Chandigarh and the hon'ble Punjab and Haryana High Court is applicable on the facts of the case. Income chargeable to tax has escaped assessment because of the failure on the part of the assessee to disclose its income fully and truly. Hence, I have reasons to believe that income chargeable to tax at Rs. 2,61,00,000 has escaped assessment within the meaning of the provisions of section 147 of the Income-tax Act for the assessment year 2010-11.

Issue notice under section 148.

Sd/-
(Paramjit Kaur)
Income-tax Officer,
Ward I(5), Ludhiana."

9 A perusal of the above reproduced "reasons to believe" for reopening of the assessment reveal that the Assessing Officer had received details of companies which had received share premium at a high rate. The name of the assessee also figures in that list. The Assessing Officer on the basis of the said information formed the belief that the assessee had introduced its unaccounted income in the form of share application/share premium. The Assessing Officer thereafter proceeded to discuss/mention various case law running into four-five pages, wherein, in the facts and circumstances of those case it was held that the share premium shown to be received in those cases was result of bogus transactions. However, how those decisions were applicable to the facts and circumstances of the present case has not been pointed out by the Assessing Officer in the reasons recorded. The Assessing Officer in this case had received the only information that the assessee had received a high premium along with share application money. However, this information alone, in our view, does not constitute any tangible material or to say any incriminating material to form a belief by the Assessing Officer that the income of the assessee had escaped assessment or to say in other words that the share application money received by the assessee was an unaccounted money of the assessee. The Assessing Officer has not recorded that he had received any information that the assessee had received share application money from some bogus/paper companies.

No information has been pointed out in the reasons recorded or receipt of any bogus transactions undertaken by the assessee. Even the name of the companies from whom the share premium received has not been mentioned nor is there any allegation that those share applicants were not traceable or they were bogus/paper companies indulged in sham transactions. Mere information that the assessee had received a high premium, in our view, cannot be said to be a reason to form the belief that the income of the assessee had escaped assessment. The learned Assessing Officer raised a suspicion, as mentioned in the reasons itself, regarding the source of the capital being not genuine or that it may be a modus operandi by the assessee to introduce its undisclosed income by way of share premium, however, this was a mere suspicion of the Assessing Officer without even an iota of any incriminating tangible material against the assessee or even otherwise. The information received by the Assessing Officer was general and vague information, that of course, can be used to some extent by an Assessing Officer to make further enquiries to ascertain the true facts in a case of an ongoing assessment proceedings ; however, in a concluded case of assessment, this general information without pointing out any incriminating information against the assessee, cannot be said to be a tangible information sufficient to form belief that the income of the assessee has escaped assessment. The suspicion of the Assessing Officer, thus, was not based on any reliable information or tangible material coming to his possession in this respect. There is no dispute to the well settled proposition that reason to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority, such reason should be held in good faith and cannot merely be a pretense. Furthermore, the reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of the Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can

always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court. The entire law as to what would constitute "reason to believe" had summed up by the Supreme Court in *ITO* v. *Lakhmani Mewal Das* [1976] 103 ITR 437 (SC). Reliance in this respect can also be placed on the decision of the hon'ble Punjab and Haryana High Court in the case of *CIT* v. *Smt. Paramjit Kaur* [2009] 311 ITR 38 (P&H), wherein, making identical observations the hon'ble High Court held that the in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices under section 148 of the Act was not valid.

10 The learned counsel for the assessee at this stage has also invited our attention to the decision of the co-ordinate Chandigarh Bench of the Tribunal in the case of *D. D. Agro Industries Ltd.* v. *Asst. CIT* (I. T. A. Nos. 349 and 350/Chd/2017 order dated September 7, 2017), wherein, on identical facts and circumstances, the Assessing Officer has recorded identical reasons to form belief for reopening of the assessment. The co-ordinate Chandigarh Bench of the Tribunal has held that the Assessing Officer assumed jurisdiction relying upon the non-specific routine information blindly without caring to first independently consider the specific facts and circumstances of the case and that the assumption of jurisdiction by the Assessing Officer under the circumstances was wrong. The relevant part of the observations made by the Tribunal (supra) in the identical facts and circumstances of the case or to say in identical set of reasons recorded is reproduced as under :

> "In our considered view, considering the facts of the present case, we hold that the Assessing Officer has assumed jurisdiction relying upon non-specific routine information blindly without caring to first independently consider the specific facts of the assessee's case. The Assessing Officer in his wisdom, instead of caring to refer to the facts of the case at hand which he ought to have first considered, has instead considering the facts as considered by the Income-tax Appellate Tribunal in the case of *Som Nath Maini* and that too without first caring to establish that the facts are identical which we note in fact are entirely distinguishable has further compounded the mistake by meandering through the case law and decisions in entirely different set of facts and circumstances and instead attempted to write a thesis on what would constitute 'information'. Instead of referring in the reasons recorded to the specific facts of the assessee's case for justifying the assumption of jurisdiction, the Assessing Officer addresses the legal position on what would constitute information."

In view of the above discussion, in our view, the Assessing Officer has wrongly and illegally assumed jurisdiction in this case to reopen the assessment. The reasons pointed out by the Assessing Officer cannot be said to be the reasons "to form the belief" that income of the assessee had escaped assessment. In view of this, since the assessment order framed by the Assessing Officer is not sustainable in the eyes of law, the same is accordingly quashed. 11

Since we have decided the legal issue in favour of the assessee, whereby, we have quashed the assessment order, hence, at this stage, we do not deem it appropriate to go into the merits of the case which have been rendered academic in nature. 12

In view of the discussion made above, the appeal of the assessee stands allowed. 13

Order could not be pronounced earlier due to non-functioning of the Bench on account of curfew/lockdown in the wake of Covid-19 Pandemic. 14

Order pronounced on June 15, 2020. 15

[2020] 81 ITR (Trib) 507 (Chandigarh)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHANDIGARH "B" BENCH]

DEPUTY COMMISSIONER OF INCOME-TAX

v.

1. VASU KALIA

(I. T. A. No. 1118/Chd/2017)

2. BALMUKHI TEXTILES P. LTD.

(I. T. A. No. 245/Chd/2018)

3. SHIVA SPINFAB P. LTD.

(I. T. A. No. 387/Chd/2018)

4. RAJINDER KUMAR

(I. T. A. Nos. 1200/Chd/2017 and 1506/Chd/2018)

SANJAY GARG ***(Judicial Member)*** and
MS. ANNAPURNA GUPTA ***(Accountant Member)***

June 10, 2020.

SS ▸ ITA 1961, ss 68, 145(3)
AY ▸ 2013-14, 2014-15
HF ▸ Assessee

ACCOUNTING—REJECTION OF BOOKS OF ACCOUNT—INCOME FROM UNDISCLOSED SOURCES—COMMISSION INCOME—ASSESSEE IN ACTUAL BUSINESS—MERELY BECAUSE ASSESSEE SHOWING SMALL MARGING NO PRESUMPTION CAN BE RAISED THAT ASSESSEE WAS MERELY ENTRY PROVIDER—IN THE ABSENCE OF CONVINCING EVIDENCE ASSESSING AT HIGHER RATE NOT JUSTIFIED—INCOME-TAX ACT, 1961, S. 145(3).

UNEXPLAINED INCOME—MISMATCH IN FIGURES BETWEEN BALANCE-SHEET OF ASSESSEE AND BALANCE-SHEET OF OTHER PARTIES—DIFFERENCE CANNOT BE ASSUMED UNEXPLAINED INCOME OF ASSESSEE—ASSESSING OFFICER NEITHER DOUBTING NOR MAKING ANY INQUIRIES REGARDING SOURCE OF FUNDS OF PAYMENTS RECEIVED BY ASSESSEE NOR OF OTHER PARTIES FROM WHOM ASSESSEE RECEIVED PAYMENT—NO UNEXPLAINED INCOME OF ASSESSEE—INCOME-TAX ACT, 1961, S. 68.

The assessee, an individual, was in the business of trading in knitted cloth and fabric. The Assessing Officer noted that the assessee had shown low net profit as compared to large gross receipts. He doubted the transactions of sales and purchases made by the assessee observing that the assessee was merely an entry provider. He rejected the books of account of the assessee as not reliable and estimated the commission income of the assessee from the business of entry providing at 0.50 per cent. of the gross receipts. The Commissioner (Appeals) deleted the addition observing that the Assessing Officer had failed to bring any evidence to corroborate the theory of bogus sales to certain parties. All the creditors and debtors were verifiable and the Assessing Officer had verified all such parties and no defects were found or pointed out to the assessee. The transactions done by the assessee were on principal to principal basis and not on principal to agent basis. All the transactions had been done through banking channels. All the vendors with whom the assessee had sales and purchase transactions were regular income-tax assessees and had paid the tax on their income after duly accounting for the income earned from the assessee. On appeal :

Held, *that no adverse material had been found against the assessee to hold that the assessee was not in the actual business. The commission income had been assessed at a higher rate merely on the basis of presumption because the assessee had shown a very small margin. Otherwise, there was no convincing evidence before the Assessing Officer to hold so.*

The Assessing Officer observed that the assessee had paid huge amounts to various parties under the head "loans and advances" but there were discrepancies in the amounts when compared with the balance-sheet of the other

parties. The balance of loans and advances in the assessee's books of account did not match the balance shown as payable to the assessee by the parties in their balance-sheet. The Assessing Officer treated the difference as undisclosed income of the assessee. The Commissioner (Appeals) after going through the accounts of the assessee and those of the other parties was satisfied that there was no mismatch. Further, the assessee had filed evidence proving the source of the funds. The assessee also explained that some of the balances appearing in the balance-sheet were of earlier years and that all the transactions carried out during the previous year relevant to the assessment year were through banking channels. The concerned parties were assessed to income-tax. Assessments in their cases had been completed and their capacity to make the advances or investment had not been doubted in their cases. The Commissioner (Appeals) considered the submissions and after verifying the evidence furnished by the assessee deleted the additions made by the Assessing Officer. On appeal :

Held, *that the assessee had duly explained and reconciled the alleged mismatch of figures before the Commissioner (Appeals) and even a remand report was also called upon by him from the Assessing Officer but the Assessing Officer could not point out any specific discrepancy in the submission or explanation given by the assessee. Mismatch, if any, in figures in the balance-sheet when compared with the balance-sheet of other parties, could not automatically be assumed as unexplained income of the assessee. The Assessing Officer had neither doubted nor made any inquiries regarding the source of funds of the payments received by the assessee nor of other parties from whom the assessee received payments. No basis had been given by the Assessing Officer as to how the difference, if any, appearing in the balance-sheets of the respective parties could be treated as unaccounted income of the assessee. Moreover, the assessee had duly reconciled the figures and explained that in the books of the assessee, the amounts relating to share application money and loan and advances received were booked under one head "payables" and similarly the amounts given as loan and advances and share application money were accounted under the head "loan and advances" whereas, the other parties had entered the transactions under the separate heads. The source of the payments being from bank accounts of the respective parties had been duly proved. Thus, the addition was unsustainable.*

The Assessing Officer during the assessment proceedings observed that under the head "sundry payable" the assessee had shown an amount of Rs. 12,99,48,100 in the name of M. M was merely an entry provider and had

no worth of its own and hence he added amount to the income of the assessee as undisclosed income under section 68. The Commissioner (Appeals) deleted the addition. On appeal :

Held, *that the additions had been made by the Assessing Officer on mere suspicion. Continuous and regular balances outstanding since the assessment year 2010-11 onwards and reflected in the relevant balance-sheets could not be treated as unaccounted income of the assessee for the instant year. Even in the assessment carried out in the case of the creditor, no doubt as to the source of the amount had been made by the Assessing Officer. Without bringing any adverse evidence or pointing any discrepancy in the explanations submitted by the assessee, the Assessing Officer was not justified in making the additions.*

The Assessing Officer, during the assessment proceedings, observed that under the head "share application money" the assessee had shown receipt of Rs. 5,83,00,000 from V through cheques from bank. He observed that V was merely an entry provider and had no worth of its own and its creditworthiness stood disproved. He added the amount of Rs. 5,83,00, 000 to the income of the assessee as undisclosed income under section 68. The Commissioner (Appeals) deleted the addition. On appeal :

Held, *that V was an old existing shareholder of the assessee and no adverse inference had been drawn in the past when it acquired the shares of the assessee in the preceding years. V was a regular income-tax assessee and the assessment for the assessment year 2012-13 was completed under scrutiny where no such adverse view was taken. Moreover, the Assessing Officer did not call upon the assessee or V to prove the source of the funds. The addition made by him was only on the basis of mere doubt or suspicion and was not sustainable as per law.*

The Assessing Officer observed that from the facts it was clear that the assessee was merely an entry provider. According to him the books of account of the assessee were not reliable and hence he rejected the books. He estimated the commission income from business of entry providing at 0.50 per cent. of the gross receipts of Rs. 41,18,400 and computed the commission income at Rs. 20,592. The Commissioner (Appeals) deleted the addition observing that the Assessing Officer did not point out specific mistake warranting application of the provisions of section 145(3) and while rejecting the books of account of the assessee, no reason or cogent material had been brought on record. The Assessing Officer was having doubt in mind but never issued any notice or summons to any of the parties. Further it was not a case where any

confessional statement had been recorded from any entry provider of accommodation entry. It was a case of doubt raised by the Assessing Officer but such doubt had not been converted into any evidence or material so as to substantiate the addition. On appeal :

Held, *that the Assessing Officer could not find any discrepancy in the accounts of the assessee warranting rejection of the books. The addition had been made by the Assessing Officer merely on the basis of suspicion without any evidence on the file that the assessee was an entry provider only. He did not make any effort to verify the veracity of the business transactions by summoning the concerned parties, whereas the assessee duly explained the nature and manner of its business and this had been accepted in the earlier years by the Assessing Officer. Therefore the addition was unsustainable.*

The Assessing Officer observed that under the head "current liabilities", the assessee had shown an amount of Rs. 37,57,13,800 in the name of M. M was merely an entry provider and had no worth of its own. Therefore, he added the amount shown as payable as undisclosed income of the assessee under section 68. The Commissioner (Appeals) deleted the addition observing that no adverse inference was drawn by the same Assessing Officer while completing the assessment in the case of M for the assessment year 2013-14 in respect of the outstanding balances in the name of the assessee and hence no addition in respect of the outstanding amount in the name of M should be made while completing the assessment of the assessee. The outstanding balances were continuing from the assessment year 2010-11 onwards and reflected in the relevant balance-sheets. On appeal :

Held, *that additions of payables were made by the Assessing Officer only on assumption without any convincing adverse material coming to his knowledge. No adverse inference was drawn by the same Assessing Officer while completing the assessment in the case of M for the assessment year 2013-14 in respect of the outstanding balances in the name of the assessee. The books of account of the assessee were duly audited and that the assessee was regular income-tax payee. No enquiry was made by the Assessing Officer as to the source of M. Thus, the addition was deleted.*

I. T. A. Nos. 1118 and 1200/Chd/2017 and 245, 387 and 1506/Chd/2018 (assessment years 2013-14, 2014-15).

Dr. G. S. Phani Kishore for the Department.

Sudhir Sehgal, Advocate, for the assessee.

ORDER

The order of the Bench was pronounced by

1 SANJAY GARG ***(Judicial Member)***.—The captioned are the appeals preferred by the Revenue for the assessment years 2013-14 and 2014-15 against the respective orders of the Commissioner of Income-tax (Appeals), Ludhiana (hereinafter referred to as "the CIT(A)"). Since the facts and issue involved in all these appeals are interconnected, hence, these appeals were heard together and are being disposed of with this common order.

I. T. A. No. 1118/Chd/2017 (assessment year 2013-14) :

2 First, we take up I. T. A. No. 1118/Chd/2017, wherein, the following grounds have been raised by the Revenue :

> "1. The learned Commissioner of Income-tax (Appeals) Ludhiana has erred in law to delete the addition of Rs. 1,09,35,518 on account of commission income despite considering the fact that the Assessing Officer has proved that the assessee is merely an entry provider and the assessee's books are not reliable, hence the Assessing Officer has rejected the assessee's books of account.
>
> 2. The learned Commissioner of Income-ax (Appeals) has erred in law to rely on the order of the Commissioner of Income-tax (Appeals) for the assessment year 2012-13 in the case of the assessee ignoring the fact that in the assessment year 2013-14, the books of account were rejected for detailed reasons given in the assessment order and only income assessed in the case of the assessee in the assessment year 2013-14 was commission income for providing entries, vis-a-vis the assessment year 2012-13 when the Assessing Officer added commission income over and above the returned income. Without prejudice the Department is in appeal in the assessment year 2012-13 before the hon'ble Income-tax Appellate Tribunal.
>
> 3. The learned Commissioner of Income-ax (Appeals), Ludhiana has erred in law to delete the addition of Rs. 38,06,50,000 on account of differences of balances in the parties accounts despite the fact that the assessee had failed to file any details before the Assessing Officer in spite of repeated opportunities. The accounts of the assessee wherein differences were noticed were duly audited and signed by the auditors. The Commissioner of Income-tax (Appeals) has accepted the reconciliation without confronting the same to the Assessing Officer in violation of rule 46A. Without prejudice no

independent enquiry was made through banks to reconcile the accounts of the parties.

4. The appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed of."

Ground Nos. 1 and 2 3

The Revenue through ground No.1 of the appeal has agitated the action of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 1,09,35,518 made by the Assessing Officer as commission income.

The assessee, an individual, has been engaged in the business of trading of knitted cloth and fabric in the name of M/s. Vasu Trading Co. The Assessing Officer noted that the assessee had shown low net profit as compared to large gross receipts. The Assessing Officer doubted the transactions of sale and purchases made by the assessee. The Assessing Officer observed that the assessee was not engaged in the actual sale and purchase of goods and that it was merely an entry provider. That the books of account of the assessee were not reliable. He therefore, rejected the books of account of the assessee and estimated the commission income of the assessee from business of entry providing at 0.50 per cent. of the gross receipts of Rs. 2,18,71,03,674 calculated at Rs. 1,09,35,518.

The learned Commissioner of Income-tax (Appeals), however, deleted 4
the addition so made by the Assessing Officer, observing as under :

"The facts of the case, the basis of addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that full details were provided in response to the letter issued by the Assessing Officer. The authorised representative further argued that the same issue arose during the assessment of the preceding assessment year 2012-13 and the addition made has been deleted by the Commissioner of Income-tax (Appeals)-3, Ludhiana in appeal No. 1007/IT/CIT(A)-3/LDH/2014-15 vide order dated September 27, 2016 a copy of the order passed by the Commissioner of Income-tax (Appeals) for the assessment year 2012-13 has been filed where the addition made on the issue of commission has been deleted by holding as under :

'3.5 I have carefully considered rival submissions. After carefully considering all the facts and detailed submission of the appellant along with the case law relied upon by the appellant, I am inclined to agree with the contention of the appellant. It is observed that as per the claim of the appellant the Assessing Officer has failed to bring any

evidence to corroborate its theory of bogus sale to certain parties. It is also important fact that a survey had been carried out at the premises of the appellant and during survey, no adverse material/evidence has been found by the Assessing Officer to support his contentions. It is also observed that the books of account of the appellant has not been rejected by the Assessing Officer, whereas on the other hand, the Assessing Officer is claiming addition of commission income of the assessee on the basis of the same sales and purchase transaction. The Assessing Officer has made addition after applying the rate of commission at the rate of 0.50 per cent. after accepting book results of the appellant. After this is well supported by the fact that while making the assessment order, addition of commission income has been made on the returned income declared by the assessee. On one hand, the Assessing Officer is accepting purchase and sales as bogus and on other hand, he is applying the rate of commission at 0.50 per cent. on the bogus sales. I have found considerable force in the claim of the appellant that all the creditors and debtors are verifiable and the Assessing Officer has got it verified from all such parties and no defects found or pointed out to the assessee. Therefore, going by the facts of the case there is considerable force in the claim of the appellant that the transactions done by the appellant are on principal basis and not on principal to agent basis. All the transactions for sale and purchase have been done through banking channels. All the vendors with whom the assessee has done sales/purchase transaction are regular income-tax assessees and have already paid the tax on their income after duly accounting for the income earned from the assessee. The addition made by the Assessing Officer has been made solely relying on the assessee's statement of small margin ignoring the factual evidence placed on records and without proper application of his mind.

3.6 In view of all the facts it is apparent beyond any doubt that the appellant has produced sufficient material justifying its claim and as it has repelled the contentions advanced by the Assessing Officer with cogent material and evidence, I am of the considered view that on the facts and in the circumstances of the case, the Assessing Officer was not justified in making the addition of Rs. 1,09,63,992 on account of commission income. The addition to the extent of Rs. 1,09,63,992 is, therefore, directed to be deleted.

4. In the result the appeal of the appellant is allowed.'

4. The facts of the case under consideration are similar to the facts of the immediately preceding year, decided by the learned Commissioner of Income-ax (Appeals)-3, Ludhiana, therefore, respectfully following the order mentioned above, and for the reasons mentioned therein, the addition made by the Assessing Officer for the assessment year 2013-14 is also deleted."

We have heard the rival contentions of the learned representatives of 5
the parties. The learned counsel for the assessee has submitted that the assessee has been engaged in the business of trading of knitted cloth and fabric since long. The assessee has been filing its return of income regularly as per the audited books of account. The books of account have been duly supported by bills/vouchers and other relevant details like sale book, purchase book, cash book, bank accounts and journal books, etc. The entire transactions of sale and purchase have been done through banking channel. The book results of the assessee have been accepted by the Department in the past years even in the scrutiny assessment proceedings carried out under section 143(3) of the Act. That the Assessing Officer has made the impugned addition merely on the basis of assumptions and presumptions observing that the net profit shown by the assessee were very low. That the assessee had duly explained during the assessment proceedings that the assessee was working on a very low margin. All the requisite details and explanations were furnished before the Assessing Officer. That the Assessing Officer without pointing any discrepancy in the books of account, rejected the books of account merely on assumption and presumption basis. No specific mistake was pointed out warranting rejection of books of account. That even during the survey proceedings, nothing adverse was found which could prove that the assessee had been working on commission basis only. That the Assessing Officer during the assessment proceedings for the assessment year 2012-13 not only recorded the statement of the assessee but also recorded the statement of many parties with whom purchase and sale transactions have been made by the assessee. The said parties duly confirmed that they were carrying the trading transactions with the assessee. The learned counsel in this respect has relied upon the copy of the statement of Shri Akhil Malhotra, director of M/s. Shiva Tax Fab Ltd. and copy of statement of Shri Ajay Gupta, director M/s. Supreme Taxmart Ltd. The learned counsel has further while relying upon the assessment order passed in the case of other parties had submitted that even no adverse inference has been taken in any of the companies with whom the assessee had made sale and purchase transactions. He, in this respect has relied upon the assessment orders/appellate orders

in the case of M/s. Shiv Speciality Yarns Ltd., M/s. Metro Synthetics, M/s. Shiva Spin and Knit Ltd. and M/s. Yogindra Worsted Ltd. It was duly explained to the Assessing Officer that the assessee was working on a very less margin which was added in the sale bill. The assessee duly explained the modus operandi of its business. That it was duly explained that the reason for non-availability of the stock in the premises of the assessee at the time of survey proceedings was because that the stock was directly sent from the premises of the supplier and the same was not kept in the premises of the assessee. The learned counsel for the assessee has further submitted that the Assessing Officer has not brought any adverse material either in the form of statement of any party or in the shape of any documentary evidence to show that the assessee was not doing actual business or that it was a mere entry provider. That all the case has been built by the Assessing Officer merely on the basis of assumptions.

6 The learned Departmental representative on the other hand, has relied upon the assessment order.

7 We find that the contentions made by the assessee have been duly examined and verified by the Commissioner of Income-tax (Appeals) during the appellate proceedings. No adverse material has been found against the assessee to hold that the assessee was not in the actual business. The learned Commissioner of Income-ax (Appeals) has observed that the commission income has been assessed at a higher rate merely on the basis of presumption because the assessee had shown a very small margin, otherwise, there was no convincing evidence before the Assessing Officer to hold so. The learned Commissioner of Income-tax (Appeals), in our view, has duly applied his mind to the facts and evidence presented before him and has passed a well-reasoned order on this issue. We do not find any infirmity in the order of the Commissioner of Income-tax (Appeals) in this respect. Ground Nos. 1 and 2 of the appeal of the Revenue are, therefore, dismissed.

8 Ground No. 3. The Revenue through ground No. 3 has contested the action of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 38,06,50,000 made by the Assessing Officer on account of difference in balances. The Assessing Officer observed that the assessee had paid huge amounts to various parties under the head "loans and advances", however, there were discrepancies in the amounts when compared with the balance-sheet of the other parties. The Assessing Officer observed that the balance of loans and advances in the assessee's books of account did not match with the balance shown as payable to the assessee by the parties/concerns in their balance-sheet. The differences have been

calculated and tabulated by the Assessing Officer which are summarised as under :

Party name	*Amount of loans and advances shown in the assessee's books of account (Rs.)*	*Amount shown in the books of account of the parties (Rs,)*	*Difference (Rs.)*
Balmukhi Textiles Pvt. Ltd.	18,24,91,000	7,91,71,500	10,33,19,500
Brijeshwari Textiles P. Ltd.	35,90,74,200	9,57,54,700	26,33,19,500
Shiva Spin Fab Pvt. Ltd	31,13,05,000	29,72,94,000	1,40,11,000
Total			38,06,50,000

The Assessing Officer mentioned that since there were differences in the amounts shown in the balance-sheet of the respective parties in the name of the assessee and the amounts shown by the assessee in his balance-sheet in the name of the these parties, hence, the difference was taken as undisclosed income of the assessee. The Assessing Officer accordingly made addition of Rs. 38,06,50,000 (Rs. 10,33,19,500 + Rs. 26,33,19,500 + Rs. 1,40,11,000) to the returned income of the assessee.

Being aggrieved by the above action of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and pleaded that there were no differences or mismatch of figures as alleged by the Assessing Officer. The assessee reconciled the accounts/ figures before the Commissioner of Income-tax (Appeals). The learned Commissioner of Income-ax (Appeals) after going through the accounts of the assessee and that of the other parties got satisfied that there was no mismatch. Further, the assessee also filed evidence proving the source of the funds. The assessee also explained that some of the balances appearing in the balance-sheet were of earlier years and that all the transactions carried during the relevant assessment year were done through banking channel. The concerned parties were assessed to income-tax. Assessment in their case carried under section 143(3) of the Act and their capacity to make the advances/investment not doubted in their case. The learned Commissioner of Income-tax (Appeals) considering the above submissions and after verifying the evidence furnished by the assessee deleted the additions so made by the Assessing Officer observing as under : 9

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that there is no difference in the balances and the factual position is that in the books of the assessee the

whole amount has been shown under the head 'loans and advances' instead of showing the amount as 'shares held in the companies' and 'share application money' as investment, etc., and the consolidated amount has been mistakenly shown under the head 'loans and advances'. As per the authorised representative it is not the case where the amounts of debit balance and credit balance are different, rather it is a case where the amount of investment held in the companies have been portrayed under some other heads. The authorised representative argued that there has been change in only sub-head of the balance-sheet and not the main head of the balance-sheet, i. e., the amount of investments held and the amount of loans and advances given by the assessee, both are assets for the assessee. The authorised representative further contended that this does not have any effect on the computation of income. The copy of account of the assessee in the books of the said concerns/parties along with the confirmation from the said parties that the assessee hold balances in their concerns as per the reconciled statement have been enclosed. The authorised representative argued that complete books of account were produced before the Assessing Officer and audited balance-sheet with enclosure were also placed on the assessment record during the assessment proceedings, however, the Assessing Officer ignored the evidence placed on record. As per the authorised representative, the Assessing Officer neither gave reasonable opportunity asking for such difference nor made any enquiry from the parties about the balances appearing in their books in the name of Shri Vasu Kalia the assessee. Thus, as per the authorised representative the principles of natural justice have been violated. On the merits the authorised representative submitted that the amounts were duly reflected in the balance-sheet of the assessee and some of them are old balances appearing in the balance-sheets of the preceding years. Regarding the current year investment it was submitted that these were made out of the bank account of the assessee. The submission filed by the authorised representative was sent to the Assessing Officer for comments and the Assessing Officer has given his report without specifically pointing out any discrepancy in the submission. Thereafter, to verify the source of the payments during the current year as well as during the preceding years, the authorised representative was requested to file the bank account statement from which the payments were made as well as the balance-sheet of the preceding year of the assessee to verify the balances appearing in the

preceding years. The balance-sheets of the three concerns/parties have also been called for to verify the balances appearing in the balance-sheet in the preceding year. The party-wise position discussed below :

'(a) Balances with M/s. Balmukhi Textiles Pvt. Ltd.

The authorised representative submitted that in the books of account of the assessee Shri Kalia an amount of Rs. 18,24,91,000 has been shown as loans and advances to M/s. Balmukhi Textiles Pvt. Ltd. which in the books of M/s. Balmukhi Textiles Pvt. Ltd. is shown under three different heads as 22500 shares allotted, share application money received and sundry payable amounting to Rs. 4,50,00,000 Rs. 5,83,00,000 and Rs. 7,91,71,500 respectively. As per the authorised representative the Assessing Officer has considered only Rs. 7,91,71,500 shown as sundry payable and ignored the share application money Rs. 5,83,19,500 given to M/s. Balmukhi Textiles Pvt. Ltd. and the 22500 shares allotted valuing Rs. 4,50,00,000. The authorised representative has argued that the shares numbering 22500 were allotted to the assessee in the year 2010-11 and were appearing in the balance-sheet of the assessee as on March 31, 2011 and March 31, 2012. The payment was made out of the Allahabad Bank of the assessee. The authorised representative has further mentioned that these shares are also appearing in the balance-sheet of M/s. Balmukhi Textiles Pvt. Ltd. also as on March 31, 2011 and March 31, 2012 in the name of Shri Vasu Kalia. As per the authorised representative since the amounts are outstanding balances and nothing was paid during the year, therefore no addition can be made by the Assessing Officer during the assessment for the assessment year 2013-14. Regarding the share application money of Rs. 5,83,19,500 the authorised representative submitted that this amount was given during the financial year under consideration out of the bank account of the assessee with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of M/s. Balmukhi Textiles Pvt. Ltd. for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheet and bank accounts statement of the assessee have been called and placed on file. A perusal of the same shows that 22500 shares were allotted by M/s. Balmukhi Textiles Pvt. Ltd. to Shri Vasu Kalia during the financial year 2010-11 and were appearing in the

balance-sheet of both the assessee and M/s. Balmukhi Textiles Pvt. Ltd. as on March 31, 2011 and March 31, 2012. The bank account statement of the assessee has also been examined showing payment of this amount. As no amount was paid during the year and these are the old balances, hence no addition can be made during the year. As regards the share application money of Rs. 5,83,19,500, the amount has been given during the year out of the bank account of the assessee with Allahabad Bank which is regularly appearing in the balance-sheet of the assessee. The amount is duly appearing in the balance-sheet of M/s. Balmukhi Textiles Pvt. Ltd. also under the head 'share application money' received during the year. A perusal of the documents filed shows that no addition of this amount is called for.

(b) Balances with M/s. Brijeshwari Textiles Pvt. Ltd.

The authorised representative submitted that in the books of account of the assessee Shri Vasu Kalia an amount of Rs. 35,90,74,200 has been shown as loan and advances to M/s. Brijeshwari Textiles Pvt. Ltd. which in the books of M/s. Brijweshwari Textiles Pvt. Ltd. is shown under three heads as 107500 share allotted, share application money received and sundry payable amounting to Rs. 21,50,00,000, Rs. 4,83,19,500 and Rs. 9,57,54,700 respectively. As per the authorised representative, the Assessing Officer has considered only Rs. 9,57,54,700 shown as sundry payable and ignored the share application money Rs. 4,83,19,500 given to M/s. Brijeshwari Textiles Pvt. Ltd. and the 107500 shares allotted valuing Rs. 21,50,00,000. The authorised representative has argued that the shares numbering 107500 were allotted to the assessee in the year 2010-11 and were appearing in the balance-sheets of the assessee as on March 31, 2011 and March 31, 2012. The payment was made out of the Allahabad Bank of the assessee. The authorised representative has further mentioned that these shares are also appearing in the balance-sheets of M/s. Brijeshwari Textiles Pvt. Ltd. also as on March 31, 2011 and March 31, 2012 in the name of Shri Vasu Kalia. As per the authorised representative since the amounts are outstanding balances and nothing was paid during the year, therefore no addition can be made by the Assessing Officer during the assessment for the assessment year 2013-14. Regarding the share application money of Rs. 4,83,19,500 the authorised representative submitted that this amount was given during the financial year under consideration out of the bank account of the assessee with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It

has also been argued that the share application money is appearing in the balance-sheet of M/s. Brijeshwari Textiles Pvt. Ltd. for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheets and bank account statement of the assessee have been called and placed on file. A perusal of the same shows that 107500 shares were allotted by M/s. Brijeshwari Textiles Pvt. Ltd. to Shri Vasu Kalia during the financial year 2010-11 and were appearing in the balance-sheets of both the assessee and M/s. Brijeshwari Textiles Pvt. Ltd. on March 31, 2011 and March 31, 2012. The bank account statement of the assessee has also been examined showing payment of this amount. As no amount was paid during the year and these are the old balances, hence no addition can be made during the year under consideration. As regards the share application money of Rs. 4,83,19,500 the amount has been given during the year out of the bank account of the assessee with Allahabad Bank which is regularly appearing in the balance-sheet of the assessee. The amount is duly appearing in the balance-sheet of M/s. Brijeshwari Textiles Pvt. Ltd. also under the head 'share application money' received during the year. A perusal of the documents filed shows that no addition of this account is called for.

(c) Balances with M/s. Shiva Spinfab Pvt. Ltd.

The authorised representative submitted that in the books of account of the assessee Shri Vasu Kalia an amount of Rs. 31,13,05,000 has been shown as loan and advances to M/s. Shiva Spinfab Pvt. Ltd. which in the books of M/s. Shiva Spinfab Pvt. Ltd. is shown under two heads as share application money received and sundry payable amounting to Rs. 1,40,11,000 and Rs. 29,72,94,000 respectively. (The authorised representative submitted that in the written submission the figures have been crossed and the share application money is mentioned as Rs. 29,72,94,000 and current liability mentioned as Rs. 1,40,11,000 and the correct figures are that as mentioned in the assessment order that the sundry payable is Rs. 29,72,94,000 and the balance Rs. 1,40,11,000 is share application money) As per the authorised representative, the Assessing Officer has considered only Rs. 29,72,94,000 shown as sundry payable and ignored the share application money Rs. 1,40,11,000 given to M/s. Shiva Spinfab Pvt. Ltd. The authorised representative has argued that the share application money of Rs. 1,40,11,000 given during the financial year under consideration was out of the bank account of the assessee with

Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of M/s. Shiva Spinfab Pvt. Ltd. also for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheet and bank account statement of the assessee have been called and placed on file. The share application money of Rs. 1,40,11,000 has been given during the year out of the bank account of the assessee with the Allahabad Bank which is regularly appearing in the balance-sheet of the assessee. The amount is duly appearing in the balance-sheet of M/s. Shiva Spinfab Pvt. Ltd. under the head 'share application money' received during the year. A perusal of the documents filed shows that no addition of this account is called for.'

Under the facts and the circumstances of the case, no addition on account of difference of balances is called for as all the amounts are duly reflected in the balance-sheet of the assessee as well as the concerned parties/companies. The arguments of the authorised representative are found acceptable and the addition made by the Assessing Officer is deleted."

10 The assessee has duly explained and reconciled the alleged mismatch of figures before the Commissioner of Income-tax (Appeals) and even a remand report was also called upon by the Commissioner of Income-tax (Appeals) from the Assessing Officer but the Assessing Officer could not point out any specific discrepancy in the submission/explanation given by the assessee. Even, we could not understand how the mismatch, if any, in figures in the balance-sheet when compared with the balance-sheet of other parties, can automatically be assumed as unexplained income of the assessee. The Assessing Officer has neither doubted nor made any inquiries regarding the source of funds of the payments received by the assessee nor of other parties from whom the assessee received payments. After considering the rival submissions and going through the detailed order of the Commissioner of Income-tax (Appeals) on this issue, we do not find any reason to interfere with the findings of the Commissioner of Income-tax (Appeals) on this issue. This ground of the appeal is accordingly dismissed.

11 *Ground No. 4* : This ground is general in nature and does not require any specific adjudication. In the result, this appeal of the Revenue is hereby dismissed.

I. T. A. No. 245/Chd/2018 (assessment year 2013-14)

Now, we take up I. T. A. No. 245/Chd/2018, wherein, the following **12**
grounds have been raised by the Revenue :

> "1. Whether on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) is correct in deleting the addition of Rs. 37,52,94,000 on account of 'differences in balance' under the head of sundry payables and loan and advances received from M/s. Brijeshwari Textiles Pvt. Ltd., M/s. Metro Synthetics, M/s. Balmukhi Textiles Pvt. Ltd. and M/s. Vasu Trading Co. not appearing in their audited balance-sheets.
>
> 2. Whether on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) is correct in deleting the addition of Rs. 12,99,48,100 on account of sundry payables to M/s. Metro Synthetics.
>
> 3. Whether on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) is correct in deleting the addition of Rs. 5,83,00,000 on account of share applications money received by the assessee-company from M/s. Vasu Trading Co.
>
> 4. Whether on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) is correct in deleting the addition of Rs. 20,592 on account of commission income despite the fact that the assessee is an entry provider and the assessee's books are not reliable resulting in rejection of its books of account.
>
> 5. The appellant craves plead to add or amend the grounds of appeal on or before is heard and disposed of."

Ground No. 1 : The Revenue through ground No. 1 of the appeal has con- **13**
tested the action of the Commissioner of Income-tax (Appeals) in deleting the addition made by the Assessing Officer (AO) of Rs. 37,52,94,000 (Rs. 10,33,19,500 + Rs. 27,19,74,500) and Rs. 2,12,00,000 on account of "difference in balances". The Assessing Officer, during the assessment proceedings, observed that the assessee received huge amounts from the various parties shown under the head "sundry payables" and paid huge amounts to various parties shown under the head "loans and advances". when these figures appearing in the balance-sheet of the assessee were compared with the balance-sheets of those parties, there were discrepancies noticed in the amounts. As per the Assessing Officer, the balances in the assessee's books of account did not match with the balance shown as payable/receivable to the assessee by those parties/concerns in their

balance-sheets. The differences have been calculated and tabulated by the Assessing Officer which are summarised as under :

Party name	*Amount shown in the books of the assessee (Rs.)*	*Amount shown in the books of the party (Rs.)*	*Difference (Rs.)*
Under sundry payables			
M/s. Vasu Trading Co.	7,91,71,500	18,24,91,000	10,33,19,500
M/s. Metro Synthetics	12,99,48,100	40,19,22,600	27,19,74,500
Under loans and advances			
M/s. Brijeshwari Textiles Pvt. Ltd.	2,12,00,000	Nil	2,12,00,000

The Assessing Officer mentioned that since there were differences in the amounts shown in the balance-sheet of the respective parties in the name of the assessee and the amounts shown by the assessee in its balance-sheet in the name of the these parties, hence the difference was taken as undisclosed income of the assessee. The Assessing Officer accordingly made addition of Rs. 10,33,19,500 + Rs. 27,19,74,500 and Rs. 2,12,00,000 to the returned income of the assessee as undisclosed income under section 68 being part of overall addition of Rs. 58,47,42,100.

14 Being aggrieved by the above action of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and pleaded that there were no differences or mismatch in the figures as alleged by the Assessing Officer. The assessee reconciled the accounts/figures before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) after going through the accounts of the assessee and that of the other parties got satisfied that there was no mismatch. Further, the assessee also filed evidence proving the source of the funds. The assessee also explained that some of the balances appearing in the balance-sheet were of earlier years and that all the transaction carried during the relevant assessment year were done through banking channel. The concerned parties were assessed to income-tax. Assessment in their case carried under section 143(3) of the Act and their capacity to make the advances/investment not doubted in their case. The learned Commissioner of Income-tax (Appeals) considering the above submissions and after verifying the evidence furnished by the assessee deleted the additions so made by the Assessing Officer observing as under :

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised

representative has argued that there is no difference in the balances and the factual position is that in the books of the assessee, the whole amount has been shown under different heads whereas the amount has been shown in the books of the other concerns under one head. As per the authorised representative, it is not the case where the amounts of debit balance and credit balance are different, rather it is a case where the amount of investment held in the company have been portrayed under some other heads. The authorised representative argued that there has been change in only sub-head of the balance-sheet and not the debit or credit side of the balance-sheet, i. e., the amount of payables, share application money or share capital are liabilities for the assessee. The authorised representative further contended that this does not have any effect on the computation of income. The copy of account of the assessee in the books of the said concerns/parties along with the confirmation from the said parties that the assessee hold balances in their concerns as per the reconciled statement have been enclosed. The authorised representative further argued that complete books of account were produced before the Assessing Officer and audited balance-sheet with enclosures were also placed on the assessment record during the assessment proceedings ; however, the Assessing Officer ignored the evidence placed on record. As per the authorised representative, the Assessing Officer neither gave reasonable opportunity asking for reconciliation of such difference nor made any enquiry from the parties about the balances appearing in their books in the name of the assessee. Thus, as per the authorised representative the principles of natural justice has been violated. On the merits, the authorised representative submitted that the amounts were duly reflected in the balance-sheet of the assessee and some of these are old balances appearing in the balance-sheets of the preceding years. Regarding the current year investment (as share application money), it was submitted that these were received in the regular bank account of the assessee and made out of the regular bank accounts of the parties. The submission filed by the authorised representative was sent to the Assessing Officer for comments and the Assessing Officer has given his report without specifically pointing out any discrepancy in the submission. Thereafter to verify the source of the payments during the current year as well as during the preceding years, the authorised representative was requested to file the bank account statement from which the payments were made as well as the balance-sheet of the preceding year of the assessee to

verify the balances appearing in the preceding years. The balance-sheets of the concerns/parties have also been called for to verify the balances appearing in their balance-sheet in the preceding year in the name of the assessee. The party-wise position is discussed below :

'(a) Balances with M/s. Vasu Trading Co.

The authorised representative submitted that in the books of account of the assessee, an amount of Rs. 7,91,71,500 has been shown as payables to M/s. Vasu Trading Co. whereas in the books of M/s. Vasu Trading Co. an amount of Rs. 18,24,91,000 is shown under the head 'loan and advances'. It is submitted that in the books of the assessee the amount received from M/s. Vasu Trading Co. is reflected under three different heads as share allotted (22500), share application money received and sundry payable amounting to Rs. 4,50,00,000, Rs. 5,83,19,500 and Rs. 7,91,71,500, respectively. As per the authorised representative, the Assessing Officer has considered only Rs. 7,91,71,500 shown as sundry payable and ignored the share application money of Rs. 5,83,19,500 given to the assessee and the 22500 shares already allotted valuing Rs. 4,50,00,000. The authorised representative has argued that the shares numbering 22500 were allotted by the assessee in the year 2010-11 to M/s. Vasu Trading Co. and were appearing in the balance-sheet of the assessee as on March 31, 2011 and March 31, 2012. The payment was made out of the Allahabad Bank of M/s. Vasu Trading Co. As per the authorised representative, since the amounts are outstanding balances and nothing was paid during the year, therefore no addition can be made by the Assessing Officer during the assessment for the assessment year 2013-14 for this amount. Regarding the share application money of Rs. 5,83,19,500 the authorised representative submitted that this amount was received during the financial year under consideration in the bank account of the assessee with Allahabad Bank and given out of the bank account of M/s. Vasu Trading Co. also with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of the assessee M/s. Balmukhi Textiles Pvt. Ltd. for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheet and bank accounts statement of M/s. Vasu Trading Co. and the assessee have been called and placed on file. A perusal of the same shows that 22500 shares were allotted by M/s. Balmukhi

Textiles Pvt. Ltd. to Shri Vasu Kalia during the financial year 2010-11 and the amount was appearing in the balance-sheet of both the assessee M/s. Balmukhi Textiles Pvt. Ltd. and the party M/s. Vasu Trading Co. as on March 31, 2011 and March 31, 2012. The bank account statement of the assessee has also been examined showing receipts of this amount. As no amount was paid during the year and these are old balances, hence no addition can be made during the year. As regards the share application money of Rs. 5,83,19,500, the amount has been given during the year out of the bank account of M/s. Vasu Trading Co. with Allahabad Bank which is regularly appearing in the balance-sheet of that concern. The amount is duly appearing in the balance-sheet of the assessee also under the head 'share application money' received during the year and also in the balance-sheet of the party M/s. Vasu Trading Co. under the head 'loan and advances'. A perusal of the documents filed shows that no addition on this account is called for.

(b) Balances with M/s. Metro Synthetics

The authorised representative submitted that in the books of account of the assessee an amount of Rs. 12,99,48,100 has been shown as sundry payables in the name of M/s. Metro Synthetics. In the books of account of M/s. Metro Synthetics the amount appearing is Rs. 40,19,22,600. This amount of Rs. 40,19,22,600 is shown in the books of the assessee M/s. Balmukhi Textiles Pvt. Ltd. under three different heads as share allotted (125477), share application money received and sundry payables amounting to Rs. 25,09,54,000, Rs. 2,10,20,500 and Rs. 12,99,48,100 respectively. As per the authorised representative, the Assessing Officer has considered only Rs. 12,99,48,100 shown as sundry payables but ignored the share application money of Rs. 2,10,20,500 received by the assessee from M/s. Metro Synthetics and the 125477 shares already allotted, valuing Rs. 25,09,54,000. The authorised representative has argued that the shares numbering 125477 were allotted by the assessee to M/s. Metro Synthetics Prop. Rajinder Kumar in the year 2010-11 and the amount was appearing in the balance-sheet of that party as on March 31, 2011 and March 31, 2012 also. The payment was made by M/s. Metro Synthetics out of its regular account with Allahabad Bank. The authorised representative has further mentioned that these shares are appearing in the balance-sheet of the assessee as on March 31, 2011 and March 31, 2012 also in the name of Shri Rajinder Kumar Prop. M/s. Metro Synthetics. As per the authorised representative, since the

amounts are outstanding balances and nothing was paid during the year, therefore no addition can be made by the Assessing Officer during the assessment for the assessment year 2013-14. Regarding the share application money of Rs. 2,10,20,500, the authorised representative submitted that this amount was received during the financial year 2011-12 out of the bank account of M/s. Metro Synthetics with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of the assessee for the year ending March 31, 2012 and since the amounts are outstanding balances and nothing was paid during the year, therefore no addition can be made by the Assessing Officer during the assessment for the assessment year 2013-14.

To verify the above contention raised by the authorised representative, the balance-sheet and bank accounts statement of the assessee have been called and placed on file. A perusal of the same shows that 125477 shares were allotted by the assessee-company M/s. Balmukhi Textiles Pvt. Ltd. to Shri Rajinder Kumar during the financial year 2010-11 and were appearing in the balance-sheet of both the assessee and M/s. Metro Synthetics as on March 31, 2011 and March 31, 2012. The bank account statement of the assessee has also been examined showing receipts of this amount. As no amount was paid during the year and these are old balances, hence no addition can be made during the year. As regards the share application money of Rs. 2,10,20,500, the amount was received during the financial year 2011-12 out of the bank account of M/s. Metro Synthetics with Allahabad Bank which is regularly appearing in its balance-sheet. The amount is duly appearing in the balance-sheet of the assessee M/s. Balmukhi Textiles Pvt. Ltd. also under the head 'share application money'. A perusal of the documents filed shows that no addition of this account is called for as this amount is also an old balance given out of the regular sources and appearing in the balance-sheet of the preceding year.

(c) Balances with M/s. Brijeshwari Textiles Pvt. Ltd.

The authorised representative submitted that in the books of account of the assessee-company, an amount of Rs. 2,12,00,000 has been shown under the head 'loan and advances' given to M/s. Brijeshwari Textiles Pvt. Ltd. whereas in the books of M/s. Brijeshwari Textiles Pvt. Ltd. this amount of Rs. 2,12,00,000 is shown under the head 'share application money'. As per the authorised representative,

the Assessing Officer has considered the amount of Rs. 2,12,00,000 shown as loans and advances appearing in the books of the assessee outstanding in the name of M/s. Brijeshwari Textiles Pvt. Ltd. but did not consider the share application money of Rs. 10,01,77,000 appearing in the books of M/s. Brijeshwar Textiles Pvt. Ltd. which includes Rs. 2,12,00,000 received from the assessee M/s. Balmukhi Textiles Pvt. Ltd. The authorised representative has argued that the share application money of Rs. 2,12,00,000 was given during the financial year 2011-12 by the assessee out of its the bank account with Allahabad Bank and credited in the bank account of M/s. Brijeshwari Textiles Pvt. Ltd. also with the Allahabad Bank. The authorised representative has filed the copy of the bank statements to substantiate the same. It has been argued that the share application money was appearing in the balance-sheet of M/s. Brijeshwari Textiles Pvt. Ltd. for the year ending March 31, 2012 also. It was also argued that since the transactions relate to the financial year 2011-12, no adverse inference can be drawn during the assessment year 2013-14.

To verify the above contention raised by the authorised representative, the balance-sheet and bank account statement of the assessee as well as of M/s. Brijeshwari Textiles Pvt. Ltd. have been called and placed on file. The share application money of Rs. 2,12,00,000 has been given during the financial year 2011-12 out of the bank account of the assessee and credited in the bank account of M/s. Brijeshwari Textiles Pvt. Ltd. with Allahabad Bank which is regularly appearing in the balance-sheet of the assessee. The amount is duly appearing in the balance-sheet of the assessee under the head 'loans and advances' for the year ending March 31, 2012 also. A perusal of the documents filed shows that no addition of this account is called for, as this amount is also an old balance given out of the regular sources and appearing in the balance-sheet of the preceding year.

Under the facts and in the circumstances of the case, no addition on account of differences of balances is called for, as all the amounts are duly reflected in the balance-sheet of the assessee as well as the balance-sheets of the concerned party. The amounts were paid out of the bank accounts of the parties regularly reflected in their balance-sheet. The arguments of the authorised representative are thus found acceptable and the addition made by the Assessing Officer is deleted. Accordingly, these grounds of appeal are allowed."

We have heard the rival contentions of the parties. No basis has been **15** given by the Assessing Officer as to how the difference, if any, appearing in

the balance-sheets of the respective parties can be treated as unaccounted income of the assessee. Moreover, the assessee has duly reconciled the figures and explained that in the books of the assessee, the amounts relating to share application money and loan and advances received were booked under one head "payables" and similarly the amounts given as loan and advances and share application money was accounted under the head "loan and advances" whereas, the other parties have entered the transactions under the separate heads. The learned Commissioner of Income-ax (Appeals) has duly examined and reconciled the accounts. The source of the payments being from bank accounts of the respective parties has been duly proved. The learned Commissioner of Income-ax (Appeals) has duly and elaborately discussed the details of the entries as noted above and has also found that in the case of first two parties, there were old balances outstanding and that the addition to that extent cannot be made in the assessment carried in the subsequent year and further that the share application money received during the year was transferred from the bank accounts of the respective parties. In the case of the third party, no amount was advanced during the year and that the same was an old balance given out of the regular sources and appearing in the balance-sheet of the preceding years. The learned Departmental representative could not point out any distinguishing fact justifying our interference in the above well-reasoned order of the Commissioner of Income-tax (Appeals). We, therefore, do not find any infirmity in the order of the Commissioner of Income-tax (Appeals) on this issue. This ground of appeal is, therefore, dismissed.

16 *Ground No. 2* : Vide ground No. 2 of the appeal, the Revenue has agitated the action of the Commissioner of Income-tax (Appeals) in deleting the addition made by the Assessing Officer of Rs. 12,99,48,100 on account of this sum shown as payable in the name of M/s. Metro Synthetics. The Assessing Officer during the assessment proceedings observed that under the head "sundry payable", the assessee has shown an amount of Rs. 12,99,48,100 in the name of M/s. Metro Synthetics. The Assessing Officer further observed that the concern M/s. Metro Synthetics was merely an entry provider and had no worth of its own and hence this amount was added to the income of the assessee as undisclosed income under section 68 of the Income-tax Act.

The learned Commissioner of Income-ax (Appeals), however, deleted the addition made by the Assessing Officer, observing as under :

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised

representative has argued that the concern M/s. Metro Synthetics Prop. Shri Rajinder Kumar is a regular income-tax assessee from the last many years and has filed the copies of income-tax returns for the assessment year 2010-11 onwards. The authorised representative further submitted that it is carrying on the same business since so many years and the returned income has been accepted by the Department in all these previous years. The authorised representative argued that the assessment of M/s. Metro Synthetics, proprietor, Shri Rajinder Kumar for the assessment L3 was completed under section 143(3) by the Deputy Commissioner of Income-tax, CC-III, Ludhiana vide order dated January 30, 2015 where the income of the concern M/s. Metro Synthetics has been assessed at Rs. 10,37,675 after making an agreed addition of Rs. 4,00,000 to the net profit Rs. 6,37,665 declared on gross receipts of Rs. 4,79,19,36,840. Based upon the documents filed by the authorised representative and looking to the past history of the concern where assessments were made under section 143(3) by the same Assessing Officer, (viz., the Deputy Commissioner of Income-tax, CCIII, Ludhiana), it cannot be said that it is merely an entry provider. There is further merit in the argument of the authorised representative that no adverse inference was drawn by the same Assessing Officer while completing the assessment in the case of Shri Rajinder Kumar Prop. M/s. Metro Synthetics for the assessment year 2013-14 in respect of the outstanding balances in the name of M/s. Balmukhi Textiles Pvt. Ltd. and hence no addition in respect of outstanding amount in the name of M/s. Metro Synthetics should be made while completing the assessment of the assessee (M/s. Balmukhi Textiles Pvt. Ltd.). It is further argued that the outstanding balances are continuing from the assessment year 2010-11 onwards and reflected in the relevant balance-sheets. Under the facts and the circumstances of the case, the arguments of the authorised representative appear acceptable and the addition of Rs. 12,99,48,100 as sundry payable to M/s. Metro Synthetics, is not found sustainable and hence deleted."

We have heard the rival contentions of both the representatives of the **17** parties. As discussed by the learned Commissioner of Income-ax (Appeals), the impugned additions had been made by the Assessing Officer on mere suspicion without bringing on file as how the continuous and regular balances outstanding since the assessment year 2010-11 onwards and reflected in the relevant balance-sheets can be treated as unaccounted income of the assessee for the year under consideration. Even

in the assessment carried out in the case of the creditor, no doubt as to the source of the amount has been made by the Assessing Officer. Without bringing any adverse evidence on the file or pointing any discrepancy in the explanations submitted by the assessee, the Assessing Officer was not justified in making the impugned additions. We therefore do not find any infirmity in the order of the Assessing Officer on this issue also. This ground of the appeal is accordingly dismissed.

18 *Ground No. 3* : Vide ground No. 3 of the appeal, the Revenue has assailed the action of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 5,83,00,000 made by the Assessing Officer into the income of the assessee under section 68 of the Income-tax Act, 1961 on account of share application money received from M/s. Vasu Trading Co. The Assessing Officer, during the assessment proceedings, observed that under the head "share application money" the assessee had shown receipt of Rs. 5,83,00,000 from M/s. Vasu Trading Co. through cheques from Allahabad Bank. The Assessing Officer observed that M/s. Vasu Trading Co. was merely an entry provider and had no worth of its own and its creditworthiness stood disproved. The amount of Rs. 5,83,00,000 was added to the income of the assessee as undisclosed income under section 68 of the Income-tax Act, 1961.

19 The learned Commissioner of Income-ax (Appeals), however, deleted the addition so made by the Assessing Officer, observing as under :

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that the concern M/s. Vasu Trading Co. Prop. Shri Vasu Kalia is a regular income-tax assessee from the last many years and has filed the copies of income-tax returns for the assessment year 2010-11 onwards. The authorised representative further submitted that it is carrying on the same business since so many years and the returned income has been accepted by the Department in all these previous years. The authorised representative has argued that the assessment of Shri Vasu Kalia for the assessment year 2012-13 was completed under section 143(3) by the Income-tax Officer Ward-6(3), Ludhiana at an income of Rs. 1,14,90,962 against the returned income of Rs. 5,27,670 by making an addition of Rs. 1,09,63,292 in the proprietary concern M/s. Vasu Trading Co., however, in appeal, the Commissioner of Income-tax (Appeals)-3, Ludhiana vide order dated September 27, 2016 deleted the addition of Rs. 1,09,63,292 by holding that the transactions were done by the appellant (M/s. Vasu Trading

Co.) on principal-to-principal basis, all transactions for sale and purchases have been done through banking channel and all the vendors with whom the assessee (M/s. Vasu Trading Co.) has done sale/purchases are regular income-tax assessees and already paid tax on their income after duly accounting for the income earned from the assessee (M/s. Vasu Trading Co.). Based upon the documents filed by the authorised representative and looking to the past history of the concern where the assessment was made under section 143(3) in the case of Shri Vasu Kalia Prop. M/s. Vasu Trading Co. by the Income-tax Officer Ward-6(3), Ludhiana, it cannot be said that it is merely entry provider because in the case of Shri Vasu Kalia Prop. M/s. Vasu Trading Co., the Commissioner of Income-tax (Appeals)-3, Ludhiana decided the appeal in favour of the appellant (M/s. Vasu Trading Co.) and the addition made by the Assessing Officer was deleted.

It was also submitted by the authorised representative that the addition has been made without any conclusive evidence with the Assessing Officer. As per the authorised representative, the accommodation entry provider is the person who provides money to the taxpayer through cheque against receipt of cash but there is no such instance in this case. It is also submitted that the share applicant is regularly income-tax assessee and assessed to tax with the same Assessing Officer. Moreover, M/s. Vasu Trading Co. is an old shareholder of the assessee-company and during the year applied for more shares in the assessee-company by providing 'share application money'. Regarding the fresh share application money of Rs. 5,83,00,000 from M/s. Vasu Trading Co., it was submitted by the authorised representative that the amounts have been received through cheques only and addition on account of these amounts have again been made by the Assessing Officer under the head 'difference of balances'. The authorised representative has filed the copies of the relevant bank accounts. A perusal of the assessment order shows that the Assessing Officer has herself also mentioned that the amounts were received through cheques and in the assessment order the cheque number, date and name of the bank are mentioned. The concern M/s. Vasu Trading Co. is an old existing shareholder of the assessee and the addition has been made only on the ground that it is merely entry provider whereas no adverse inference has been drawn in past when it acquired the shares of the assessee in the preceding years. As already mentioned, Shri Vasu Kalia Prop. M/s. Vasu Trading Co. is regular income-tax assessees and the assessment for the

assessment year 2012-13 was completed under scrutiny under section 143(3) where no such adverse view was taken. Accordingly, the addition of Rs. 5,83,00,000 is not found sustainable and hence deleted."

20 We have heard the rival contentions of both the representatives of the parties. The learned Commissioner of Income-ax (Appeals) after verifying the accounts of the assessee as well of the creditor has made a categorical observation that M/s. Vasu Trading Co. was an old shareholder of the assessee-company. It, however, during the year applied for more shares in the assessee-company by providing share application money of Rs. 5,83,00,000 from through cheques/banking channel out of its bank account only. The Assessing Officer did not doubt the source of the funds but made addition into the income under the head 'difference of balances'' also. The learned Commissioner of Income-ax (Appeals) has noted that the Assessing Officer has also mentioned that the amounts were received through cheques and in the assessment order the cheque number, date and name of the bank have been mentioned. The concern M/s. Vasu Trading Co. was an old existing shareholder of the assessee and the addition had been made only on the ground that it was merely entry provider whereas no adverse inference has been drawn in past when it acquired the shares of the assessee in the preceding years. That Sh. Vasu Kalia Prop. M/s. Vasu Trading Co. was a regular income-tax assessees and assessment for the assessment year 2012-13 was completed under scrutiny under section 143(3) where no such adverse view was taken. Moreover, the Assessing Officer did not call upon the assessee or Shri Vasu Kalia to prove the source of the funds. The addition made by the Assessing Officer was only on the basis of mere doubt or suspicion which was not sustainable as per law. The learned Commissioner of Income-ax (Appeals) has, therefore, rightly deleted the addition made by the Assessing Officer on this issue. This ground of the Revenue is, therefore, dismissed.

21 *Ground No. 4* : Vide ground No. 4 of the appeal, the Revenue has contested the action of the Commissioner of Income-tax (Appeals) in deleting the addition made by the Assessing Officer of Rs. 20,592 on account of commission income. The Assessing Officer observed that from the facts it was clear that the assessee was merely an entry provider. As per the Assessing Officer the books of account of the assessee were not reliable and hence rejected the same. The Assessing Officer then estimated the commission income from business of entry providing at 0.50 per cent. of the gross receipts of Rs. 41,18,400 and computed the commission income at Rs. 20,592.

The learned Commissioner of Income-ax (Appeals), however, deleted **22**
the addition so made by the Assessing Officer, observing as under :

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that full details were provided in response to the letters issued by the Assessing Officer. The authorised representative argued that the assessee is in the business of trading of goods and no godown has been maintained by the assessee as the goods purchased from the supplier are directly delivered to the parties without bringing the goods to the assessee's premises. The authorised representative further submitted that the assessee is carrying the same business since so many years and is a regular income-tax assessee and the returned income has been accepted by the Department in all these previous years. As per the authorised representative all the parties with whom the assessee has transaction of sales and purchases have duly paid taxes on their income, after accounting for the sales and the purchases, to and from the assessee. As per the authorised representative, the Assessing Officer failed to point out any defect or omission in the books of account which would indicate that the assessee has done only debit/credit entries with a view to earn commission on the same. As per the authorised representative, all the transactions are through banking channel, duly verifiable and the parties are existing assessees. It has been argued that the assessee has been carrying on the transactions on the principal-to-principal basis and is the legal owner of goods and is liable for any loss/damage done to the goods. Under the facts and the circumstances of the case, the arguments of the authorised representative appear acceptable. The Assessing Officer did not point out specific mistake warranting application of the provisions of section 145(3) and while rejecting the books of account of the assessee, no reason or cogent material has been brought on record. There is merit in the argument of the authorised representative that the Assessing Officer was having doubt in mind but never issued any notice or summon to any of the parties. Further it is not a case where any confessional statement has been recorded from any entry provider of accommodation entry. It is a case of doubt raised by the Assessing Officer but such doubt has not been converted into any evidence or material so as to substantiate the addition.

The authorised representative has also argued that a similar issue arose during the assessment of Shri Vasu Kalia for the assessment year 2012-13 and the addition made has been deleted by the Commissioner of Income-tax (Appeals)-3, Ludhiana in appeal No. 1007/IT/CIT(A)- 3/LDH/2014-15 vide order dated September 27, 2016. The facts of the case under consideration are similar to the facts of the case, decided by the learned Commissioner of Income-tax (Appeals)-3, Ludhiana vide order dated September 27, 2016 in Appeal No. 1007/IT/CIT(A)-3/LDH/2014-15. Thus, for the reasons mentioned in the above order and the fact that for the assessment year 2012-13 in the case of the assessee himself the nature of business of the assessee has been accepted, the Assessing Officer was not justified in holding during the year that the assessee was an entry provider since the nature of business has remained the same and no new facts have been brought on record. The Assessing Officer was therefore, not justified in making the addition of Rs. 20,592 on account of commission income without bringing any adverse material on record. The addition of Rs. 20,592 is therefore, not found sustainable and hence directed to be deleted."

The learned Commissioner of Income-ax (Appeals) has given a categorical observation that the Assessing Officer could not find any such discrepancy in the accounts of the assessee warranting rejection of the same. The addition has been made by the Assessing Officer merely on the basis of suspicion only without any evidence on the file that the assessee was an entry provider only. The Assessing Officer did not make any effort to verify the veracity of the business transactions by summoning the concerned parties, whereas, the assessee duly explained its nature and manner of business and the same being accepted in the earlier years by the Assessing Officer. We, therefore, do not find any infirmity in the order of the Commissioner of Income-tax (Appeals) on this issue also. This ground is, therefore, also dismissed.

23 *Ground No. 5* : This ground is general in nature and does not require any specific adjudication.

This appeal of the Revenue is, therefore, dismissed.

I. T. A. No. 387/Chd/2018 (assessment year 2013-14)

24 In I. T A No. 387/Chd/2018, the following grounds have been raised by the Revenue :

"1. Whether, on the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) is correct in deleting

the addition of Rs. 37,57,13,800 on account of sundry payables to M/s. Metro Synthetics ?

2. Whether, on the facts and in the circumstances of the case, the learned Commissioner of Income-ax (Appeals) is correct in deleting the addition of Rs. 29,72,94,000 on account of sundry payables to M/s. Vasu Trading Co. ?

3. Whether, on the facts and in the circumstances of the case, the learned Commissioner of Income-ax (Appeals) is correct in deleting the addition of Rs. 2,40,11,000 on account of 'differences in balance' under the head 'sundry payables and loan and advances' received from M/s. Vasu Trading Co. and M/s. Metro Synthetics not appearing in their audited balance-sheet ?

4. Whether, on the facts and in the circumstances of the case, the learned Commissioner of Income-ax (Appeals) is correct in deleting the addition of Rs. 23,591 on account of commission income despite the fact that the assessee is an entry provider and the assessee's books are not reliable, resulting in rejection of its books of account ?

5. The appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed of."

Ground No. 1 : Vide ground No. 1 of the appeal, the Revenue has agi- **25**
tated the action of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 37,57,13,800 made by the Assessing Officer on account of the sum shown as payable in the name of M/s. Metro Synthetics.

The assessee is a private limited company and has been engaged in the business of trading of yarn, fiber and knitted cloth. During the assessment proceedings, the Assessing Officer observed that under the head "current liabilities", the assessee had shown an amount of Rs. 37,57,13,800 in the name of M/s. Metro Synthetics. The Assessing Officer further observed that the concern M/s. Metro Synthetics was merely an entry provider and had no worth of its own. He, therefore, added the amount shown as payable as undisclosed income of the assessee under section 68 of the Income-tax Act.

In appeal, the learned Commissioner of Income-tax (Appeals), however, **26**
deleted the addition so made by the Assessing Officer observing as under :

"The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that the concern M/s. Metro Synthetics Prop. Shri Rajinder Kumar is a regular income-tax assessee from

the last many years and has filed the copies of income-tax returns for the assessment year 2010-11 onwards. The authorised representative further submitted that it is carrying on the same business since so many years and the returned income has been accepted by the Department in all these previous years. The authorised representative argued that the assessment of M/s. Metro Synthetics Prop. Shri Rajinder Kumar for the assessment year 2012-13 was completed under section 143(3) by the Deputy Commissioner of Income-tax, CC-III, Ludhiana vide order dated January 30, 2015 where the income of the concern M/s. Metro Synthetics has been assessed at Rs. 10,37,675 after making an agreed addition of Rs. 4,00,000 to the net profit Rs. 6,37,665 declared on gross receipts of Rs. 4,79,19,36,840. Based upon the documents filed by the authorised representative and looking to the past history of the concern where the assessments were made under section 143(3) by the same Assessing Officer, (viz., the Deputy Commissioner of Income-tax CC-I II, Ludhiana) it cannot be said that it is merely an entry provider. There is further merit in the argument of the authorised representative that no adverse inference was drawn by the same Assessing Officer while completing the assessment in the case of Shri Rajinder Kumar Prop. M/s. Metro Synthetics for the assessment year 2013-14 in respect of the outstanding balances in the name of M/s. Shiva Spinfab Pvt. Ltd. and hence no addition in respect of outstanding amount in the name of M/s. Metro Synthetics should be made while completing the assessment of the assessee (M/s. Shiva Spinfab Pvt. Ltd). It is further argued that the outstanding balances are continuing from the assessment year 2010-11 onwards and reflected in the relevant balance-sheets. Under the facts and the circumstances of the case, the arguments of the authorised representative appear acceptable and the addition of Rs. 37,57,13,800 as other current liabilities to M/s. Metro Synthetics, is not found sustainable and hence deleted."

27 We have heard the rival contentions. As noted by the learned Commissioner of Income-tax (Appeals), additions of payable has been made by the Assessing Officer only on assumption basis without any convincing adverse material coming to his knowledge. The learned Commissioner of Income-tax (Appeals) has duly verified the accounts of the assessee and other concerns. The learned Commissioner of Income-tax (Appeals) has noted that no adverse inference was drawn by the same Assessing Officer while completing the assessment in the case of Shri Rajinder Kumar Prop. M/s. Metro Synthetics for the assessment year 2013-14 in respect of the

outstanding balances in the name of the assessee. The books of account of the assessee were duly audited and that the assessee was regular income-tax payee. No enquiry was made by the Assessing Officer as to the source of M/s. Metro Synthetic. In view of the above, the learned Commissioner of Income-tax (Appeals) was justified in deleting the impugned additions. We do not find any merit in this ground of appeal and the same is accordingly dismissed.

Ground No. 2 : Vide ground No. 2 the Revenue has agitated the action **28** of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 29,72,94,000 made by the Assessing Officer on account of this sum shown as payable in the name of M/s. Vasu Trading Co. The Assessing Officer observed that under the head "current liabilities", the assessee has shown an amount of Rs. 29,72,94,000 in the name of M/s. Vasu Trading Co. The Assessing Officer held that the concern M/s. Vasu Trading Co. was merely an entry provider and has no worth of its own. He, therefore, added this amount to the income of the assessee as undisclosed income under section 68 of the Income-tax Act.

The learned Commissioner of Income-tax (Appeals), however, deleted **29** the addition so made by the Assessing Officer observing as under :

> "The facts of the case, the basis of the addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that the concern M/s. Vasu Trading Co. Prop. Shri Vasu Kalia is a regular income-tax assessee from the last many years and has filed the copies of income-tax returns for the assessment year 2010-11 onwards. The authorised representative further submitted that it is carrying the same business since so many years and the returned income has been accepted by the Department in all these previous years. The authorised representative has argued that assessment of Shri Vasu Kalia for the assessment year 2012-13 was completed under section 143(3) by the Income-tax Officer Ward-6(3), Ludhiana at an income of Rs. 1,14,90,962 against the returned income of Rs. 5,27,670 by making an addition of Rs. 1,09,63,292 in the proprietary concern M/s. Vasu Trading Co., however in appeal, the Commissioner of Income-tax (Appeals)-3, Ludhiana vide order dated September 27, 2016 deleted the addition of Rs. 1,09,63,292 by holding that transaction were done by the appellant (M/s. Vasu Trading Co.) on principal-to-principal basis, all transactions for sale and purchases have been done through banking channel and all the vendors with whom the assessee (M/s. Vasu Trading Co.) has done sale/purchases

are regular income-tax assessee's and already paid tax on their income after duly accounting for the income earned from the assessee (M/s. Vasu Trading Co.). Based upon the documents filed by the authorised representative and looking to the past history of the concern where assessment was made under section 143(3) in the case of Shri Vasu Kalia Prop. M/s. Vasu Trading Co. by the Income-tax Officer Ward-6(3), Ludhiana, it cannot be said that it is merely entry provider because in the case of Shri Vasu Kalia Prop. M/s. Vasu Trading Co., the Commissioner of Income-tax (Appeals)-3, Ludhiana decided the appeal in favour of the appellant (M/s. Vasu Trading Co.) and the addition made by the Assessing Officer was deleted.

It was also submitted by the authorised representative that the addition has been made without any conclusive evidence with the Assessing Officer. The concern M/s. Vasu Trading Co. is an old existing assessee and the addition has been made only on the ground that it is merely entry provider, whereas no adverse inference has been drawn in past where balances were appearing in the name of M/s. Vasu Trading Co. in the preceding years also. As already mentioned, Shri Vasu Kalia Prop. M/s. Vasu Trading Co. is regular income-tax assessee and assessment for the assessment year 2012-13 were completed under scrutiny under section 143(3) where no such adverse view was taken regarding the balances. Accordingly, the addition of Rs. 29,72,94,000 is not found sustainable and hence deleted."

30 We have heard the rival contentions. The fact and issue involved is identical to the issue as discussed in the case of Vasu Kalia as well as in the case of the assessee vide ground No. 1, as discussed above. The additions made by the Assessing Officer merely on the assumptions and presumptions are no sustainable in the eyes of law. The learned Commissioner of Income-tax (Appeals) after duly verifying the accounts of the respective concerns, source of funds and the differences being reconciled has rightly deleted the additions so made by the Assessing Officer. We do not find any infirmity of the Commissioner of Income-tax (Appeals) on this issue and the same is upheld.

31 *Ground No. 3* : The Revenue through this ground has contested the act ion of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 2,40,11,000 (Rs. 1,00,00,000 + Rs. 1,40,11,000) made by the Assessing Officer on account of "difference in balances". The Assessing Officer has mentioned that the assessee received huge amount from the various parties shown under the head "current liabilities". As per the Assessing Officer, when compared with the balance-sheets of those parties, there

were discrepancies noticed in the amounts. As per the Assessing Officer, the balances in the assessee's books of account did not match with the balance shown as payable/receivable to the assessee by those parties/concerns in their balance-sheets. The Assessing Officer mentioned that since there were differences in the amounts shown in the balance-sheet of the respective parties in the name of the assessee vis-a-vis the amounts shown by the assessee in its balance-sheet in the name of the these parties, hence the difference was taken as undisclosed income of the assessee. The Assessing Officer accordingly made addition of Rs. 2,40,11,000 (Rs. 1,00,00,000 + Rs. 1,40,11,000) to the returned income of the assessee as undisclosed income under section 68 being part of overall addition of Rs. 69,70,18,800.

The learned Commissioner of Income-tax (Appeals), however, deleted **32** the additions so made by the Assessing Officer observing as under :

> "The facts of the case, the basis of addition made by the Assessing Officer and the arguments of the authorised representative during the appellate proceedings have been considered. The authorised representative has argued that there is no difference in the balances and the factual position is that in the books of the assessee the whole amount has been shown under different heads whereas the amount has been shown in the books of the other concerns under one head. As per the authorised representative it is not the case where the amounts of debit balance and credit balance are different, rather it is a case where the amount of investment held in the company have been portrayed under some other heads. The authorised representative argued that there has been change in only sub-head of the balance-sheet and not the debit or credit side of the balance-sheet, i. e., the amount of payables, share application money or share capital are all liabilities for the assessee. The authorised representative further contended that this does not have any effect on the computation of income. The copy of account of the assessee in the books of the said concerns/parties along with the confirmation from the said parties that the assessee hold balances in their concerns as per the reconciled statement have been enclosed. The authorised representative further argued that complete books of account were produced before the Assessing Officer and audited balance-sheet with enclosure were also placed on the assessment record during the assessment proceedings ; however, the Assessing Officer ignored the evidence placed on record. As per authorised representative, the Assessing Officer neither gave reasonable opportunity asking for reconciliation of such difference nor made any enquiry from the parties about the balances

appearing in their books in the name of the assessee. Thus, as per the authorised representative the principles of natural justice has been violated. On the merits, the authorised representative submitted that the amounts were duly reflected in the balance-sheet of the assessee and some of these are old balances appearing in the balance-sheets of the preceding years. Regarding the current year investment (as share application money) it was submitted that these were received in the regular bank account of the assessee and made out of the regular bank accounts of the parties. The submission filed by the authorised representative was sent to the Assessing Officer for comments and the Assessing Officer has given his report without specifically pointing out any discrepancy in the submission. Thereafter, to verify the source of the payments during the current year as well as during the preceding years, the authorised representative was requested to file the bank account statement from which the payments were made as well as the balance-sheet of the preceding year of the assessee to verify the balances appearing in the preceding years. The balance-sheets of the concerns/parties have also been called for to verify the balances appearing in their balance-sheet in the preceding year in the name of the assessee. The party-wise position is discussed below :

'(a) *Balances with M/s. Vasu Trading Co.*

The authorised representative submitted that in the books of account of the Shri Vasu Kalia an amount of Rs. 31,13,05,000 has been shown as loan and advances to M/s. Shiva Spinfab Pvt. Ltd. which in the books of the assessee M/s. Shiva Spinfab Pvt. Ltd. is shown under two heads as 'share application money received' and 'sundry payable' amounting to Rs. 1,40,11,000 and Rs. 29,72,94,000 respectively. As per the authorised representative, the Assessing Officer has considered only Rs. 29,72,94,000 shown as sundry payable and ignored the share application money of Rs. 1,40,11,000 receipt by the assessee M/s. Shiva Spinfab Pvt. Ltd. from Shri Vasu Kalia. The authorised representative has argued that the share application money of Rs. 1,40,11,000 given during the financial year under consideration was out of the bank account of Shri Vasu Kalia with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of the assessee M/s. Shiva Spinfab Pvt. Ltd. for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheet and bank account statement of the assessee have been called and placed on file. The share application money of Rs. 1,40,11,000 has been received during the year in the bank account of the assessee with Allahabad Bank which is regularly appearing in the balance-sheet of the assessee from the Allahabad Bank of Shri Vasu Kalia. The amount is duly appearing in the balance-sheet of the assessee under the head 'share application money' received during the year. A perusal of the documents filed shows that no addition on this account is called for.

(b) *Balances with M/s. Metro Synthetics*

The authorised representative submitted that in the books of account of the Shri Rajinder Kumar Prop. M/s. Metro Synthetics an amount of Rs. 38,57,13,800 has been shown under sundry debtors in the name of the assessee M/s. Shiva Spinfab Pvt. Ltd. which in the books of M/s. Shiva Spinfab Pvt . Ltd. is shown under two heads as 'share application money received' and 'sundry payable/current liabilities' to M/s. Metro Synthetics amounting to Rs. 1,00,00,000 and Rs. 37,57,13,800 respectively. As per the authorised representative, the Assessing Officer has considered only Rs. 37,57,13,800 shown as sundry payable under current liability and ignored the share application money Rs. 1,00,00,000 received by the assessee M/s. Shiva Spinfab Pvt. Ltd. The authorised representative has argued that the share application money of Rs. 1,00,00,000 received during the financial year under consideration in the bank account of the assessee with Allahabad Bank was given out of the bank account of M/s. Metro Synthetics also with Allahabad Bank. The authorised representative has filed the copy of the bank statement to substantiate the same. It has also been argued that the share application money is appearing in the balance-sheet of the assessee M/s. Shiva Spinfab Pvt. Ltd. for the year ending March 31, 2013.

To verify the above contention raised by the assessee, the balance-sheet and bank account statement of the assessee and M/s. Metro Synthetics have been called and placed on file. The share application money of Rs. 1,00,00,000 has been received during the year in the bank account of the assessee with Allahabad Bank which is regularly appearing in the balance-sheet of the assessee. The amount is duly appearing in the balance-sheet of the assessee M/s. Shiva Spinfab Pvt. Ltd. under the head 'share application money

received' during the year. A perusal of the documents filed shows that no addition on this account is therefore called for.'

Hence, under the facts and the circumstances of the case, no addition on account of difference of balances is called for as all the amounts are duly reflected in the balance-sheet of the assessee as well as the balance-sheets of the concerned party. The amounts were paid out of the bank accounts of the parties regularly reflected in their balance-sheet under different heads. The arguments of the authorised representative that the Assessing Officer failed to reconcile the same, is found acceptable and the addition made by the Assessing Officer is deleted."

33 We have heard the rival contentions and have also gone through the record. The facts and issue involved are identical as discussed above in the case of Vasu Kalia vide ground No. 3 of I. T. A. No. 1118/Chd/2017. Since the differences in figures duly explained and reconciled the source of funds proved and some of the balances being old balances, the learned Commissioner of Income-tax (Appeals) after duly verifying the accounts of the assessee and other concerns was justified in deleting the impugned additions made by the Assessing Officer on assumptions and presumptions. We do not find any merit in this ground and the same is accordingly dismissed.

34 *Ground No. 4* : Vide ground No. 4, the Revenue has agitated the action of the Commissioner of Income-tax (Appeals) in deleting the addition of Rs. 23,591 made by the Assessing Officer as commission income. The facts and issue involved are identical to that have been discussed vide ground Nos. 1 and 2 in the case of Vasu Kalia in I. T. A. No. 1118/Chd/2017. Our findings given above will mutatis mutandis apply on this issue. This ground of the appeal of the Revenue is accordingly dismissed.

35 *Ground No. 5* : This ground is general in nature. This appeal of the Revenue is hereby dismissed.

I. T. A. No. 1200/Chd/2017 (assessment year 2013-14)

36 The Revenue in I. T. A. No. 1200/Chd/2017 appeal has taken the following grounds :

"1. The learned Commissioner of Income-tax (Appeals), Ludhiana has erred in law to delete the addition of Rs. 4,41,47,622 on account of commission income ignoring the fact that the Assessing Officer has proved that the assessee is merely an entry provider and the assessee's books are not reliable, hence the Assessing Officer has rejected the assessee's books of account.

Rs. 30,41,124 after making the three additions. The Commissioner (Appeals) dismissed the appeal filed by the assessee ex parte. On appeal :

Held, *that the Commissioner (Appeals) in terms of the provisions of subsection (6) of section 250 was required to dispose of the appeal of the assessee by an order in writing stating the points for determination, the decision thereon and the reasons for the decision. The order passed by the Commissioner (Appeals) did not comply with these requirements. Therefore the matter was remanded to him for disposing of the appeal of the assessee afresh on the merits in accordance with law after giving proper and sufficient opportunity of being heard to the assessee. The assessee was directed to make due compliance before the Commissioner (Appeals) and extend all the possible cooperation in order to enable the Commissioner (Appeals) to dispose of the appeal afresh expeditiously*

I. T. A. No. 12/Kolkata/2020 (assessment year 2013-14).

None appeared for the assessee.

Jayanta Khanra, Joint Commissioner of Income-tax-Senior Depart mental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 81 ITR (Trib) (S. N.) 65 (Jaipur)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — JAIPUR "A" BENCH]

SMT. SARLA MUNDRA

v.

DEPUTY COMMISSIONER OF INCOME-TAX

VIJAY PAL RAO *(Judicial Member)* and
VIKRAM SINGH YADAV *(Accountant Member)*

July 27, 2020.

SS ▸ ITA 1961, s 271(1)(c)
AY ▸ 2012-13
HF ▸ Department

PENALTY—CONCEALMENT OF INCOME—FURNISHING INACCURATE PARTICULARS OF INCOME—INITIATION OF PENALTY PROCEEDINGS ON BOTH CHARGES BUT PENALTY LEVIED ON A SPECIFIC CHARGE OF CONCEALING PARTICULARS OF INCOME—NOT A CASE WHERE PENALTY INITIATED FOR A PARTICULAR CHARGE AND THEREAFTER PENALTY FINALLY LEVIED ON A DIFFERENT CHARGE—NOT A CASE OF LACK OF OPPORTUNITY TO ASSESSEE OR LACK OF APPLICATION OF MIND ON PART OF ASSESSING OFFICER—NO

CASE THAT CHARGE OF CONCEALMENT OF PARTICULARS OF INCOME NOT ATTRACTED IN THE FACTS—LEVY OF PENALTY JUSTIFIED—INCOME-TAX ACT, 1961, s. 271(1)(c).

Held, *that the Assessing Officer in the show-cause notice had initiated the penalty proceedings for concealment of the particulars of income or furnishing inaccurate particulars of income but while passing the penalty order, he had levied penalty for concealment of the particulars of income. Though the Assessing Officer had initiated the penalty proceedings on both the charges, while levying the penalty, he had levied the penalty on a specific and clear-cut charge of concealing the particulars of income. This was not a case where the penalty had been initiated for a particular charge and penalty had been finally levied on a different charge. The assessee was made aware of both the charges at the time of initiation of penalty proceedings and while finally levying the penalty, the Assessing Officer had given a specific finding that it was a case of concealment of particulars of income. This was not a case of lack of opportunity to the assessee or lack of application of mind on the part of the Assessing Officer. It was not the case of the assessee that the charge of concealment of particulars of income was not attracted in the facts of the present case. The Assessing Officer had invoked the provisions of* Explanation 5A *to section 271(1)(c) of the Income-tax Act, 1961 and this had been confirmed by the Commissioner (Appeals). The Commissioner (Appeals) had dismissed the assessee's contention that it had suo motu filed the revised return disclosing unexplained investment in jewellery found during the course of search, on the ground that such return had been filed subsequent to the date of search. The penalty levied by the Assessing Officer was confirmed.*

B. D. MUNDRA AND SONS *v.* DY. CIT I. T. A. No. 826/Jaipur/2019 dated October 25, 2019) *and* SHEVETA CONSTRUCTION CO. PVT. LTD. *v.* ITO (D. B. I. T. Appeal No. 534 of 2008 dated December 6, 2016 (Raj)) *distinguished*.

I. T. A. No. 1102/Jaipur/2019 (assessment year 2012-13).

C. M. Birla, Chartered Accountant, for the assessee.

Ms. Chanchal Meena, Additional Commissioner of Income-tax, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 81 ITR (Trib) (S. N.) 67 (Cuttack)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CUTTACK BENCH]

JAIDURGA MINERALS

v.

PRINCIPAL COMMISSIONER OF INCOME-TAX

C. M. GARG *(Judicial Member)* and
L. P. SAHU *(Accountant Member)*

August 10, 2020.

SS ▸ ITA 1961, s 263
AY ▸ 2010-11
HF ▸ Department/Assessee

REVISION—LIMITATION—SERVICE OF ORDER NOT MENTIONED IN PROVISION—ORDER PASSED WITHIN TWO YEARS FROM RELEVANT DATE—WITHIN LIMITATION—INCOME-TAX ACT, 1961, S. 263.

REVISION—NATURAL JUSTICE—ASSESSEE NOT AFFORDED SUFFICIENT OPPORTUNITY TO GIVE REPLY TO SHOW-CAUSE NOTICE—LIABLE TO BE QUASHED—INCOME-TAX ACT, 1961, S. 263.

For the assessment year 2010-11, the Principal Commissioner pursuant to notice dated March 20, 2015 under section 263 of the Income-tax Act, 1961 passed an order of revision dated March 30, 2015. On appeal contending that the order of revision should be served up to the end of the financial year, i. e., March 31, 2015 but the order had been received by the assessee on April 4, 2015, which was illegal.

Held, *(i) that the assessment order was passed on March 22, 2013 and the Principal Commissioner had passed his order on March 30, 2015. Therefore, the order was within two years from the relevant date. According to the provisions of section 263(2) there was no mention about "service" of the order but only that the order shall be "made".*

(ii) That it is mandatory to apply the principles of natural justice irrespective of whether there is any statutory provision. The assessee had not been afforded opportunity, much less sufficient opportunity to reply to the show-cause notice. The Principal Commissioner, hurriedly and without affording opportunity of hearing to the assessee, had passed the order in violation of the principle of audi alteram partem. He had committed a gross error in not providing any effective and reasonable opportunity of being heard to the assessee before passing the order. Accordingly, the revisional proceedings framed under section 263 by the Principal Commissioner were liable to be quashed.

I. T. A. No. 276/Cuttack/2015 (assessment year 2010-11).

S. N. Sahu, Advocate, for the assessee.

M. K. Gautam, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 81 ITR (Trib) (S. N.) 68 (Pune)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — PUNE VIRTUAL COURT "A" BENCH]

1. ARJUN DADA KHARATE

(I. T. A. No. 1594/Pune/2017)

2. BHIMA DADA KHARATE

(I. T. A. No. 1599/Pune/2017)

v.

DEPUTY COMMISSIONER OF INCOME-TAX

R. S. SYAL *(Vice-President)* and
S. S. VISWANETHRA RAVI *(Judicial Member)*

August 10, 2020.

SS ▸ ITA 1961, ss 139(1), 271F
AY ▸ 2011-12
HF ▸ Assessee

PENALTY—FAILURE TO FILE RETURN WITHIN PRESCRIBED TIME—ASSESSEE AN AGRICULTURIST AND ILLITERATE AND FACING FINANCIAL AND FAMILY PROBLEMS—UNDER IMPRESSION THAT GAIN ARISING FROM SALE OF ANY AGRICULTURAL LAND NOT CHARGEABLE TO TAX—REASONABLE CAUSE—PENALTY NOT IMPOSABLE—INCOME-TAX ACT, 1961, SS. 139(1), 271F.

The assessee and his co-owners sold certain land. The assessee's share in the transaction was Rs. 96,66,666. He declared a total income at Rs. 43,93,199. Since the return filed by the assessee was beyond the time stipulated under section 139(1) of the Income-tax Act, 1961 the assessee was served with a notice under section 148. The Assessing Officer assessed the total income at Rs. 42,24,116. He imposed penalty of Rs. 5,000 under section 271F on the ground that the assessee had failed to file his return within the time prescribed under section 139(1). The Commissioner (Appeals) confirmed the penalty. On appeal :

Held, *that the assessee stated the reasons before the Commissioner (Appeals) for not furnishing the return under section 139(1). The reasons referred to the assessee being an agriculturist and illiterate ; facing financial and family problems ; and being under the impression that gains arising from sale of any agricultural land were not chargeable to tax. There was reasonable cause on the part of the assessee in not filing return under section 139(1) against which the penalty had been imposed and confirmed under section 271F. Section 273B provides that no penalty shall be imposed, inter alia, under section 271F where the assessee establishes reasonable cause for the failure referred to in the section. Thus there was a reasonable cause with the assessee and the penalty was deleted.*

I. T. A. Nos. 1594 and 1599/Pune/2017 (assessment year 2011-12).

None appeared for the assessees.

Prathamesh J. Lawand for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 81 ITR (Trib) (S. N.) 69 (Chennai)

[Before the Income-tax Appellate Tribunal — Chennai "A" Bench]

DR. D. JOHN PONNUDURAI EDUCATIONAL TRUST

v.

ADDITIONAL DIRECTOR OF INCOME-TAX

Duvvuru RL Reddy *(Judicial Member)* and
S. Jayaraman *(Accountant Member)*

August 7, 2020.

SS ▸ ITA 1961, ss 11, 13(1)(c)
AY ▸ 2009-10
HF ▸ Remanded

Charitable purpose—Exemption—Disqualification—Failure by assessee to show use of cash withdrawals by trustee for purpose of trust—Not clear from orders of authorities whether assessee submitted all evidence in support of its claim of exemption and such material properly appreciated—Assessee to place all evidence in support of its claim before Assessing Officer—Assessing Officer after due verification and appropriate enquiry and after affording assessee adequate opportunity to pass a speaking order—Income-tax Act, 1961, ss. 11, 13(1)(c).

The assessee for the assessment year 2009-10 claimed exemption under section 11 of the Income-tax Act, 1961. During the assessment proceedings, the Assessing Officer noticed that several cash withdrawals were made from the bank by the trustee who was also the correspondent of the school. The Assessing Officer required the assessee to produce vouchers and bills. Since the assessee could not produce them, and evidence for the application was not produced, the Assessing Officer treated the cash withdrawals as violation under section 13(1)(c) and denied the exemption. Though the assessee incurred capital expenditure, in view of denial of exemption under section 11, the Assessing Officer treated it as non-application of income, and assessed the entire income in the status of association of persons at the maximum marginal rate. The Commissioner (Appeals) called for a remand report and shared it with the assessee and after considering the assessee's reply, he upheld the Assessing Officer's action on the ground of violation under section 13(1)(c) and hence denied the exemption under section 11(3). On appeal :

Held, *that it was not clear from the orders of the authorities whether or not the assessee had submitted all the evidence in support of its claim of exemption and such material was properly appreciated. In the facts and circumstances and in the interests of justice, the entire issues were remitted to the Assessing Officer for a fresh examination. Since the right to exemption must be established by those who seek it, the onus therefore, lay on the assessee. In order to claim the exemption from payment of income-tax, the assessee had to put before the income-tax authorities proper materials which would enable them to come to conclusion. The assessee shall place all contemporaneous primary as well as secondary evidence in support of its claim before the Assessing Officer. The Assessing Officer shall after due verification and after appropriate enquiry, as deemed fit, and after affording adequate opportunity to the assessee, pass a speaking order.*

I. T. A. No. 367/Chennai/2020 (assessment year 2009-10).

S. Sridhar, Advocate, for the assessee.

AR. V. Sreenivasan, Additional Commissioner of Income-tax, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2020] 81 ITR (Trib) (S. N.) 71 (Bangalore)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — BANGALORE "C" BENCH]

REGUNATHAN VENKATA RAJENDRAN

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. V. VASUDEVAN *(Vice-President)* and
B. R. BASKARAN *(Accountant Member)*

August 7, 2020.

SS ▸ ITA 1961, s 57
AY ▸ 2016-17
HF ▸ Assessee

APPEAL TO COMMISSIONER (APPEALS)—ASSESSEE CHALLENGING ENTIRE ADDITIONS BUT COMMISSIONER (APPEALS) CONSIDERING ONLY TWO OUT OF SEVEN ITEMS—COMMISSIONER (APPEALS) TO DECIDE ISSUE AFRESH AFTER TAKING A HOLISTIC VIEW OF EXPENSES—INCOME-TAX ACT, 1961, S. 57.

The assessee, an individual, declared an income for the assessment year 2016-17 of Rs. 45,94,340 from salary, income from house property, business and other sources. The case of the assessee was selected for limited scrutiny for the reason that a large deduction was claimed under section 57 of the Income-tax Act, 1961. Against the interest income of Rs. 91, 78,313, he had claimed the expenses of Rs. 70,28,281. Out of the expenses claimed, a sum of Rs. 50,69,372 was interest payment towards bank loans and funds borrowed from others. With regard to the remaining sum of Rs. 19,58,909 he had given the break-up of the expenses. The Assessing Officer held that the expenses could not be considered as expenses incurred for the purpose of earning interest income and disallowed a sum of Rs. 18,37,004 out of the expenses allowing only travelling expenses. The Commissioner (Appeals) held that 50 per cent. of the credit card expenses and expenses on O bar and kitchen should be disallowed. On appeal :

Held, *that the entire addition of Rs. 19,58,909 made by the Assessing Officer was challenged by the assessee before the Commissioner (Appeals). The Commissioner (Appeals) had considered only 2 out of 7 items of expenditure listed by the Assessing Officer in the order of assessment. He did not consider the submissions with regard to the remaining items of expenditure. The entire issue of disallowance had to be considered afresh by the Commissioner (Appeals), after taking a holistic view of the basis of the disallowances*

made by the Assessing Officer and the claim of assessee that the expenses were incurred for the purpose of earning interest income. Accordingly the order of Commissioner (Appeals) was set aside and the Commissioner Appeals) was directed to decide the issue of disallowance of expenses afresh in accordance with the law

I. T. A. No. 2169/Bang/2019 (assessment year 2016-17).

None appeared for the assessee.

H. Ananda, Additional Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 81 ITR (Trib) (S. N.) 72 (Jaipur)

[Before the Income-tax Appellate Tribunal — Jaipur "A" Bench]

DEPUTY COMMISSIONER OF INCOME-TAX

v.

JAIPUR VIDYUT VITARAN NIGAM LTD.

Ramesh C. Sharma *(Accountant Member)* and
Vijay Pal Rao *(Judicial Member)*

August 5, 2020.

SS ▸ ITA 1961, s 43B
AY ▸ 2007-08
HF ▸ Assessee

Business expenditure—Deduction only on actual payment—Delay in depositing provident fund and employees' State insurance contribution—Tribunal in assessee's case for earlier years allowing deduction and deduction confirmed by High Court—Assessee making contribution before due date for filing return—Deductible—Income-tax Act, 1961, s. 43B.

The assessee, a State Government undertaking was in the business of distribution and sale of electricity. The Assessing Officer made an addition on account of delay in deposit of employees' contribution towards provident fund and employees' State insurance under section 36(1)(va) of the Income-tax Act, 1961 on the ground that there was a delay in depositing of the employees' contribution to provident fund and employees' State insurance after the due date mentioned in the relevant Acts or Rules. The Commissioner (Appeals) deleted the addition. On appeal :

Held, *that the Tribunal in the assessee's case for the assessment year 2006-07 had held that the issue pertaining to contribution towards provident fund and employees' State insurance was decided against the Department in* CIT *v.* State Bank of Bikaner and Jaipur [2014] 363 ITR 70 (Raj). *The Department had preferred a special leave petition against the decision before the Supreme Court. Therefore the appeals were to be disposed of making them subject to that final judgment of the Supreme Court on the question in the pending special leave petition. Relying on the order of the Tribunal in the assessee's case there was no interference.*

I. T. A. No. 225/Jaipur/2020 (assessment year 2007-08).

Amrish Bedi, Commissioner of Income-tax, for the Department.

P. C. Parwal, Chartered Accountant, for the assessee.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 81 ITR (Trib) (S. N.) 73 (Delhi)

[Before the Income-tax Appellate Tribunal — Delhi "I-1" Bench]

BUREAU VERITAS CONSUMER PRODUCTS SERVICES (INDIA) P. LTD.

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. K. Billaiya *(Accountant Member)* and
Ms. Suchitra Kamble *(Judicial Member)*

August 5, 2020.

AY ▸ 2013-14
HF ▸ Assessee

International transactions—Transfer pricing—Arm's length price—Transactional net marging method—Benchmarking of transactions—Transfer Pricing Officer should have examined calculation provided by assessee thereafter should have rejected contention of assessee—Transfer Pricing Officer to examine arithmetical accuracy of computation of related party transaction and if found correct comparables should be excluded from final set of comparables—No reason given to demonstrate dissimilarity in functions—Transfer Pricing Officer should not have rejected comparable merely by stating that comparable in health care segment and functionally dissimilar—Income-tax Act, 1961.

INTERNATIONAL TRANSACTION—TRANSFER PRICING—ARM'S LENGTH PRICE—ASSESSEE PAYING DISCOUNT TO ITS OVERSEAS ASSOCIATED ENTERPRISES—DISCOUNTS AND REBATES PROVIDED AT A GLOBAL LEVEL AND NOT DIRECTLY BY COMPANY RENDERING SERVICES—TRANSACTIONS NOT DEMONSTRATED TO BE SHAM—ASSESSING OFFICER SHOULD HAVE EXAMINED TRANSACTIONS IN THE LIGHT OF AGREEMENTS, MEMORANDUM OF UNDERSTANDINGS AND RELATED DOCUMENTARY EVIDENCES BEFORE COMING TO ANY CONCLUSION—ASSESSEE TO DEMONSTRATE THAT DISCOUNTS AND REBATES ULTIMATELY PASSED ON TO CUSTOMERS—INCOME-TAX ACT, 1961.

The assessee was a wholly owned subsidiary of B of France and was incorporated in India in April 2003. It provided testing, inspection and audit services to clients for consumer products,. During the year 2013-14 it undertook certain international transactions. The arm's length price of the international transactions representing software development provided to the associated enterprises was determined applying the transactional net margin method which was stated to be the most appropriate method in the facts and circumstances of the case. The operating profit to the total cost ratio was taken as the profit level indicator in the transactional net margin method analysis. The profit level indicator of the assessee was arrived at 10 per cent. on cost whereas the average profit level indicator of the comparables was arrived at 9.64 per cent. and hence, the international transaction was taken to be at the arm's length price. The assessee challenged the inclusion of TCS, e-Serve and TM on the ground that both these companies failed the related party transactions filter adopted by the Transfer Pricing Officer. On appeal :

Held, *(i) that the Transfer Pricing Officer and the Commissioner (Appeals) should have examined the calculation provided by the assessee. Thereafter, they could have rejected the contention of the assessee. Therefore, in the interest of justice and fair play, the issued was remitted to the Assessing Officer/Transfer Pricing Officer with a direction to examine the arithmetical accuracy of computation of the related party transactions and, if found correct, both these companies should be excluded from the final set of comparables. Otherwise, the Assessing Officer/Transfer Pricing Officer shall demonstrate how these two companies passed the related party transaction filter.*

(ii) That the Transfer Pricing Officer had rejected the inclusion of A on the ground that A was functionally dissimilar. No reason had been given to demonstrate the dissimilarity in the functions. The annual report of A showed that under schedule "types of principal products or services", it had

been mentioned that A was engaged in business process outsourcing services though in the health care segment. Nevertheless since A was engaged in business process outsourcing services, the Transfer Pricing Officer should not have rejected A merely by stating that A was in the health care segment and was functionally dissimilar.

Hyundai Motor India Engineering Pvt. Ltd. *v.* Dy. CIT (I. T. A. No. 1807/Hyd/2017 dated August 9, 2018) *followed*.

During the year 2013-14 the assessee provided testing services to various customers and raised invoices on such companies on which the assessee received service fee which was credited to the profit and loss account of the assessee. The assessee incurred an expenditure of Rs. 3,50,08,872 towards rebate and discounts on sale of services rendered to various parties. Complete details of discount paid to its associated enterprises vis-a-vis sales of services to various customers along with percentage of discount offered during the year 2013-14 were furnished. The Assessing Officer was of the opinion that the assessee had not been in a position to justify the payment of discount to the holding company in place of repayment of the same to customer on its own. Accordingly, he disallowed the entire claim, on the ground that the expenditure was not wholly and exclusively for business purposes and was a device to transfer the profit to the holding company. This was confirmed by the Commissioner (Appeals). On appeal :

Held, *that the assessee had paid discount to its overseas associated enterprises. The arrangement had been done through master service agreements with various overseas companies for providing testing and inspection services. Under such master service agreements, BV overseas entities had agreed to provide a volume rebate and discount at a pre-decided percentage to the overseas customers in relation to worldwide sale of services made to the entire group of overseas customers. The discounts and rebates had to be provided at a global level and not directly by the company rendering the services. The rebate and discount payments were recovered by the BV overseas entities from their affiliates which included the assessee, as per allocated percentages based upon their respective sales proportion on the global sales. The assessee provided services as required, from time to time and BV overseas entities computed the global sale of services made to the overseas customers and accordingly computed the volume discount payable to them. Such discount percentage was allocated amongst the affiliates of the BV overseas entities which also included the assessee based upon their proportionate sales vis-a-vis global sale and such discounts were recovered from its affiliates which also included the assessee and finally, rebate was passed upon to third party*

vendor. These agreements and memorandum of understandings were before the authorities and the Assessing Officer had nowhere demonstrated that these were sham transactions. All the documents were not furnished before the Assessing Officer as the documents had been placed before the Tribunal in the form of additional evidence to demonstrate that the discounts/rebates have ultimately been passed on to the customers. This issue was remitted to the Assessing Officer. The assessee was directed to demonstrate that discounts and rebates had ultimately been passed on to customers and the Assessing Officer was directed to verify the documents in the light of the agreements and the memorandum of understandings.

I. T. A. No. 5582/Delhi/2019 (assessment year 2013-14).

Ravi Sharma, Advocate, for the assessee.

M. Baranwal, Senior Departmental representative, for the Department.

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[2020] 81 ITR (Trib) (S. N.) 76 (Cochin)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — COCHIN "SMC" BENCH]

N. S. JOHN

v.

INCOME-TAX OFFICER

GEORGE GEORGE K. ***(Judicial Member)***

August 5, 2020.

AY ▸ 2006-07
HF ▸ Department

INCOME—ASSESSEE MANAGING DIRECTOR IN A COMPANY AND SUM INVESTED IN THAT COMPANY—COMPANY ENGAGING A PERSON FOR ARRANGING LOAN FROM FOREIGN SOURCES—COMPANY PAYING CERTAIN AMOUNT TO THAT PERSON AS WELL PAYING SUM TO ASSESSEE'S RELATIVE—LOAN TRANSACTION FAILING AND SETTLEMENT OUT OF COURT—REIMBURSEMENT OF EXPENSES INCURRED ON BEHALF OF COMPANY—ASSESSEE NOT PRODUCING CRIMINAL COMPLAINT TO PROVE THAT SUM GIVEN BY WAY OF LOAN BY HIS RELATIVE NOR THAT SUM GIVEN TO THAT PERSON ARRANGING LOAN—ASSESSEE FAILING TO FURNISH DOCUMENTS RELATING TO CRIMINAL PROCEEDINGS NEITHER BEFORE INCOME-TAX

AUTHORITIES NOR BEFORE TRIBUNAL—ADDITIONS SUSTAINED—INCOME-TAX ACT, 1961.

The assessee was the managing director in a company. The Assessing Officer received information that the assessee had invested a sum of Rs. 18 lakhs in the company. Hence, he reopened the assessment of the year 2006-07 by issuing notice under section 148 of the Income-tax Act, 1961 and called for explanations with regard to the investment. The assessee explained that the company had engaged P for arranging loan from foreign sources. In that connection, the company paid a sum of Rs. 6.25 lakhs to P and further a sum of Rs. 5.75 lakhs was paid by R who was the son-in-law of the assessee. Thus, P was paid a sum of Rs. 12 lakhs in aggregate. It was further submitted that P failed to arrange foreign funds and hence the company demanded back the amount of Rs. 12 lakhs paid to him. Criminal proceedings were also initiated against P and finally the dispute was settled out of court. In accordance with the settlement, the assessee received a sum of Rs. 18 lakhs from P in full and final settlement of amount due from him. Before the Assessing Officer, the assessee could not furnish any evidence in support of the receipt of loan from R. It was further claimed that the excess amount of Rs. 6 lakhs received from P represented reimbursement of expenses incurred by the assessee on behalf of the company and R for pursuing the matter of recovery of amount. However, the assessee could not produce any evidence in support of his submission. Hence, the Assessing Officer accepted the credit to the extent of Rs. 6.75 lakhs, i. e., the amount paid by the company and accordingly assessed the balance amount of Rs. 11.75 lakhs as income of the assessee. The Commissioner (Appeals) granted relief of Rs. 3 lakhs, being the assessee's share of reimbursement of expenses and confirmed the balance addition of Rs. 8.75 lakhs. The Tribunal remanded the issue of addition of Rs. 8.75 lakhs to the Assessing Officer. Pursuant to the remand by the Tribunal the Assessing Officer added the sum of Rs. 8.75 lakhs to the returned income. The Commissioner (Appeals) confirmed the view taken by the Assessing Officer. On appeal :

Held, *that the Tribunal in the earlier round of litigation stated that the addition relating to Rs. 5.75 lakhs shall stand confirmed if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs. 5.75 lakhs by way of loan from the son-in-law of the assessee. The Tribunal also stated that the litigation expenditure of Rs. 3 lakhs being reimbursement claimed to be given to R was connected with the loan of Rs. 5.75 lakhs. The finding of the Tribunal had attained finality since neither the Department nor the assessee had taken the matter in further proceedings. The assessee had not produced the criminal complaint to prove that a sum of*

Rs. 5.75 lakhs was given by way of loan by the son-in-law of the assessee nor had the assessee proved the amount of sum of Rs. 5.75 lakh was given to P in the year 2001. Since the Tribunal clearly stated that the sum of Rs. 5.75 lakhs was to be sustained if the documents relating to criminal proceedings did not contain anything about the claim of receipt of Rs. 5.75 lakhs by way of loan from the son-in-law of the assessee, the addition was sustained because the assessee had failed to furnish the documents relating to the criminal proceedings neither before the income-tax authorities nor before the Tribunal.

I. T. A. No. 270/Cochin/2020 (assessment year 2006-07).

K. M. V. Pandalai, Advocate, for the assessee.

Mritunjaya Sharma, Senior Departmental representative, for the Department.

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[2020] 81 ITR (Trib) (S. N.) 78 (Mumbai)

[Before the Income-tax Appellate Tribunal — Mumbai "H" Bench]

KARMIC LABS P. LTD.

v.

INCOME-TAX OFFICER

Rajesh Kumar *(Accountant Member)* and
Amarjit Singh *(Judicial Member)*

July 28, 2020.

SS ▶ ITA 1961, s 56(2)(viib)
AY ▶ 2014-15
HF ▶ Assessee

Income from other sources—Receipt of shares at value above face value—Determination of fair market value—Discounted cash flow method—Choice of assessee to choose a prescribed method for ascertaining market value of shares transferred—No power of Assessing Officer to change method adopted by assessee from one method to another method provided under rule 11UA—Income-tax Act, 1961, s. 56(2)(viib)—Income-tax Rules, 1962, r. 11UA.

The assessee issued shares at a premium. In order to ascertain the fair market value of the shares, it adopted the discount cash flow method. According to the Assessing Officer the valuation report furnished by the assessee was

not realistic as the projections shown by it in the valuation report were not realistic and were not achieved in actuality in the subsequent years. He added the share premium received of Rs. 3,96,54,531 to the total income of the assessee under section 56(2)(viib) of the Income-tax Act, 1961. This was confirmed by the Commissioner (Appeals). On appeal :

Held, *that the Assessing Officer could not change the method adopted by the assessee for valuing the market value of the shares from discounted cash flow method which was a violation of rule 11UA of the Income-tax Rules, 1962. He could not change the method of valuation adopted by the assessee merely relying on the actual results in the subsequent years and arbitrarily coming to the conclusion that projections were not achieved.*

DY. CIT v. OZONELAND AGRO PVT. LTD. [2018] 64 ITR (Trib) (S.N.) 6 (Mumbai) *and* VODAFONE M-PESA LTD *v.* DY. CIT [2020] 114 taxmann.com 323 (Mumbai-Trib) *followed*.

I. T. A. No. 3955/Mumbai/2018 (assessment year 2014-15).

Ketan Ved for the assessee.

R. Bhupathi for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2020] 81 ITR (Trib) (S. N.) 79 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI VIRTUAL COURT "I-2" BENCH]

PERFETTI VAN MELLE (INDIA) PVT. LTD.

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. K. BILLAIYA *(Accountant Member)* and
MS. SUCHITRA KAMBLE *(Judicial Member)*

August 11, 2020.

SS ▸ ITA 1961, s 144C
AY ▸ 2015-16
HF ▸ Assessee

DRAFT ASSESSMENT ORDER—VALIDITY—ASSESSING OFFICER QUANTIFYING TAXABLE INCOME AND DETERMINING TAX PAYABLE AND ISSUING AND SERVING DEMAND NOTICE—EFFECT—PROCEEDINGS CONCLUDED—SUBSEQUENT PROCEEDINGS AND ORDERS NON EST—SUBSEQUENT PARTICIPATION OF ASSESSEE WOULD NOT DEBAR ASSESSEE TO RAISE VALIDITY BEFORE APPELLATE AUTHORITY—INCOME-TAX ACT, 1961, S. 144C.

The assessee challenged the validity of the draft assessment order, the order of the Dispute Resolution Panel and the resulting final assessment order. The assessee contended that the assessment proceedings had concluded on December 27, 2018 and therefore, any orders passed thereafter were non est, to which the Department rebutted stating that the assessee having participated in the subsequent proceedings, it could not be said that the proceedings culminated on December 27, 2018. The Assessing Officer had only framed a draft assessment order and final assessment order was framed after receiving order of the Dispute Resolution Panel.

Held, *that on December 27, 2018, the Assessing Officer had quantified the taxable income and determined tax payable and had issued and served the demand notice. This action of the Assessing Officer had brought the proceedings to an end and the proceedings initiated under section 144C of the Income-tax Act, 1961 stood concluded. There is no provision in the Act for a proposed draft notice of demand and secondly, whether the demand had been entered in the demand and collection register or the order uploaded in the Department was an internal matter of the Department and could not be taken into consideration to decide whether the demand notice issued along with the order dated December 27, 2018 completed the proceedings. The Assessing Officer had bypassed sub-sections (3) and (13) of section 144C. The proceedings culminated on December 27, 2018 when the demand notice was issued and served upon the assessee along with the penalty notice under section 274 and, therefore, all the subsequent proceedings and orders become non est.*

I. T. A. No. 9116/Delhi/2019 (assessment year 2015-16).

Nageshwar Rao, Advocate, and *Ms. Deepika Aggarwal*, Advocate, for the assessee.

Anupam Kant Garg, Commissioner of Income-tax-Departmental representative, for the Department.

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