

**IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, MUMBAI
BEFORE SHRI R.C.SHARMA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. Nos.1040 & 1041/Mum/2017
(निर्धारण वर्ष / Assessment Year: (2007-08 & 2008-09)

M/s. Vaman International Pvt. Ltd. 119, 1 st Floor, Durian Industrial Estate, Goregaon Mulund Link Road, Goregaon East, Mumbai-400063.	बनाम/ Vs.	Dy. Commissioner of Income Tax-13(3)(2), Mumbai.
स्थायीलेखासं./जीआइआरसं./	PAN/GIR No.	AABCV5464F
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. No.1506/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2007-08

ACIT-13(3)(2), Room No. 229 2 nd Floor, Aayakar Bhavan M.K. Road, Mumbai-20	बनाम/ Vs.	Vaman International Pvt. Ltd. 119/120, 1 st Floor, Durian Industrial Estate, Goregaon Mulund Link Road, Goregaon East, Mumbai-400063.
स्थायीलेखासं./जीआइआरसं./	PAN/GIR No.	AABCV5464F
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. No.1042/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2007-08

M/s. Tangent Furniture Pvt. Ltd. 119, 1 st Floor, Durian Industrial Estate, Goregaon Mulund Link Road, Goregaon East, Mumbai-400063.	बनाम/ Vs.	Dy. Commissioner of Income Tax-13(3)(2), Mumbai.
स्थायीलेखासं./जीआइआरसं./	PAN/GIR No.	AABCT6999B

(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
-------------------------------	----------	----------------------------------

अपीलार्थी की ओर से/ Assessee by	:	Shri Vijay Mehta & Shri Anuj Kisnadwala, A.Rs
प्रत्यर्थी की ओर से/ Revenue by	:	Shri Rajat Mittal, D.R.

सुनवाई की तारीख/ en set Date of Hearing	:	12/09/2017
घोषणा की तारीख / Date of Pronouncement	:	27/09/2017

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER:

The present set of appeals are directed against the respective orders passed by the CIT(A)-21, Mumbai, in the case of the aforementioned assesses, viz. M/s Vaman International Pvt. Ltd for A.Y. 2007-08 and A.Y. 2008-09, each dated. 20.12.2016, which in itself arises from the respective assessment orders passed u/s 143(3) r.w.s 147, dated. 27.03.2015 and 26.11.2015, respectively AND the order passed by the CIT(A)-21, Mumbai, in the case of M/s Tangent Furniture Pvt. Ltd. for A.Y. 2007-08, dated.20.12.2016, which in itself arises from the assessment order passed u/s 143(3) r.w.s 147, dated 20.03.2015. That as certain common issues are involved, therefore, the said respective appeals are taken up together and disposed of by way of a consolidate order. We first advert to the appeal filed by the assessee for A.Y. 2007-08, wherein assailing the order passed by the CIT(A) the following grounds of appeal had been raised before us:

“The following grounds of appeal are without prejudice to one another:

1. As regards the notice of Reassessment u/s. 147/148 of Income-Tax Act.

- 1.1. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening u/s 148 of the Income Tax Act of the assessment which was completed u/s. 143(3) of the Income Tax Act, 1961.*
- 1.2. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in reopening the case u/s 148 of the IT Act on the basis of the statement of third party, without considering the facts and circumstances of the case.*
- 1.3. *The Learned CIT(A) has erred in confirming the action of Assessing Officer in issuing notice u/s 148 beyond the limitation period of 4 years from the end of the relevant assessment year as there is a no failure on a part of the appellant firm to disclose fully and truly all material facts necessary for the purpose of assessment.*
- 1.4. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in not appreciating the fact as well as law that the proceedings under sec.148 is itself bad in law, void ab-initio, illegal and liable to be quashed.*

2. As regard disallowance of Rs. 33,73,126 as unexplained expenditure in respect of 5% of Rs. 6,74,62,523/- of purchases made by the appellant company.

- 2.1. *The learned CIT(A) erred in law and on facts in confirming addition to the extent of Rs.33,73,126 being 5% of Rs 6,74,62,523, out of the total addition of Rs. 94,86,917 on account of unexplained expenditure in respect of purchases made by the appellant company.*
- 2.2. *The Learned CIT(A) has erred in confirming the action of Assessing Officer in treating the alleged purchases of Rs.7,58,95,339 made by the appellant company as unexplained expenditure merely on the basis of the suspicious and surmises without any independent inquiry and verification.*
- 2.3. *The Learned CIT(A) has erred in confirming the action of Assessing Officer in relying on the statement of Pravin Kumar Jain with respect to M/s, Ostwal Trading (I) P. Ltd., M/s JPK Trading (I) P. Ltd. and M/s Newplanet Trading Co. P. Ltd as recorded by the Investigate Agency without giving any reasonable opportunity of cross examination to the appellant company.*
- 2.4. *The Learned CIT(A) failed to appreciate that the material purchased during the year are duly accounted in the book of the Appellant and the same are supported by proper stock ledgers. The said material was subsequently sold by the*

Appellant and the profit earned thereon is offered for tax. Hence, the estimated addition at the rate 5% that is amounting to Rs. 33,73,126/- on alleged purchases is unjustified and the same may be deleted.

2.5. *The Learned CIT(A), further, failed to appreciate that the Ld. AC, has neither rejected the books of accounts of the Appellant nor pointed any discrepancies in the same. The Ld. AC. also accepted the sales made during the year. Hence, the estimated addition in the said circumstances is unjustified and the same may be deleted.*

3. *Appellant prays that,*

- a. *Set aside the reassessment order passed u/s 143(3) r.w.s 147 of the Income Tax act.*
- b. *Delete the addition of Rs. 33,73,126 on account of unexplained expenditure in respect alleged purchased from suspicious dealer being 5% of Rs. 6,74,62,523.*
- c. *Any other relief your honor may deem it.*

4. *Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of trading of all kinds of Furniture & Arteffects etc. had e-filed its 'Return of income' for A.Y. 2007-08 on 27.10.2007, declaring total income of Rs. 1,16,52,069/-. That regular assessment was framed in the hands of the assessee vide order passed u/s 143(3)(ii) of the 'Act', dated. 31.12.2008. The A.O was in receipt of information from the Investigation wing of the department that the assessee as a beneficiary had taken accommodation entries and booked bogus purchases through various companies and firms which were controlled, managed and operated by one Sh. Praveen Jain and his associates during the year under consideration, viz. A.Y. 2007-08, as under:

S.No.	Name of the Party	Amount Involved
1.	Ostwal Trading (I) P. Ltd.	Rs. 2,98,29,406/-

2.	JPK Trading (I) Ltd.	Rs.1,91,92,659/-
3.	Newplanet Trading Co. P. Ltd.	Rs. 2,68,73,274/-
	Total	Rs.7,58,95,339/-

3. The A.O observed that Shri. Praveen Jain who controlled, managed and operated the aforesaid companies had admitted in his statement recorded on oath under Sec. 132(4) that he had indulged in providing accommodation entries and that the aforesaid companies were paper companies with no real business transactions. It was further observed by the A.O that the directors of the aforesaid companies had also admitted in their respective statements given on oath that they were merely dummy directors and used to sign different papers for nominal consideration given by Sh. Praveen Jain and were unaware of the place of operation, books of accounts and the business carried out by the concerns of which they were directors/proprietors. However, the A.O after perusing the stock records and the copies of the sale bills placed on record by the assessee during the course of the assessment proceedings, observed that the items under consideration which were stated to be purchased from the aforesaid companies were as a matter of fact sold by the assessee company. The A.O in the backdrop of the aforesaid facts concluded that now when the sales of the goods claimed by the assessee to have been purchased from the aforesaid parties were found to be recorded in the 'books of accounts' of the assessee, therefore, it could safely be concluded that the assessee had as a matter of fact purchased the goods under consideration from the open/grey market. The A.O deliberating on the *modus operandi* and the chain of events involved in making of purchases by an assessee from the open/grey market, therein concluded that the assessee by making such purchases of the goods from the unregistered dealers operating in the unorganized sector in

the open/grey market would generate an additional profit margin by procuring the goods at a lower price as in comparison to the price at which it would have purchased the said goods from the registered dealers working in the organized sector. That as per the A.O such additional profit margin that would be generated by an assessee from purchasing the goods from the open/grey market at a lower price, and booking the same in its books of accounts at a higher value on the basis of the bogus bills of the aforementioned supplier companies, could safely be taken at 12.5% of the value for which such purchases had been booked in the books of accounts. The A.O on the basis of his aforesaid deliberations, thus concluded that the profit margin generated by the assessee from making of the aforementioned bogus purchases of Rs. 7,58,95,339/- could safely be taken at Rs. 94,86,917/- (i.e. 12.5% of Rs. 7,58,95,339/-).

4. The assessee being aggrieved with the order of the A.O therein assailed the same in appeal before the CIT(A). The assessee assailed before the CIT(A) the very assumption of jurisdiction by the A.O in respect of the reassessment proceedings initiated by him under Sec. 147 of the 'Act'. However, the CIT(A) not finding favor with the claim of the assessee that the A.O had wrongly assumed jurisdiction u/s 147/148 on the basis of the statement of a third party, rejected the same. The CIT(A) was also not impressed by the contention of the assessee that the notice u/s 148 having been issued beyond the period of 4 years from the end of the relevant assessment year, without there being any failure on the part of the assessee company to disclose fully and truly all material facts necessary for the purpose of assessment, therefore, also declined to accept the same.

5. The CIT(A) further deliberating on the addition of Rs. 94,86,917/- sustained by the A.O, observed that it remained as a matter of fact that the assessee despite being afforded sufficient opportunity by the A.O had however failed to substantiate the genuineness and veracity of the purchases which were claimed by the assessee to have been made from the aforesaid supplier parties. The CIT(A) further observed that during the course of the assessment proceedings, the A.O in order to verify the genuineness of the purchase transactions had issued notices u/s 133(6) to the aforementioned supplier parties and had deputed his inspector to serve the same on them, however, as neither of the parties were found at the respective addresses mentioned in the bills, therefore, the said notices remained unserved. That during the course of the appellate proceedings it was averred by the assessee that as the statement of Sh. Praveen Jain which was heavily relied upon by the A.O was subsequently retracted by him on Oath, therefore, no cognizance of the same could be taken for drawing of adverse inferences in its hands. It was further submitted by the assessee that the A.O had during the course of the assessment proceedings not afforded any opportunity to the assessee to cross examine the aforementioned supplier parties, as a result whereof there was no occasion for the assessee to rebut the allegations raised by him and the adverse inferences drawn by the A.O by relying on the same. The assessee also assailed the estimation of 12.5% of the aggregate of the purchases under consideration by the A.O without rejecting its books of accounts. That during the course of the appellate proceedings the assessee moved an application for admission of additional evidence comprising of the affidavit of Sh. Manish Jain, director of M/s New Planet Trading Company Pvt. Ltd. confirming the transaction with the assessee company with regard to purchases of Rs. 2,68,73,274/-;

affidavit dated 06.06.2016 of Sh. Jitendra Tater, director of JPK Trading (I) Pvt. Ltd. confirming the transaction with the assessee company with regard to purchases of Rs 1,91,92,660/- ; and affidavit dated 06.06.2016 of Sh. Jitendra Tater, Director of Ostwal Trading (I) Pvt. Ltd. confirming the transaction with the assessee company with regard to purchases of Rs. 2,98,29,408/-. It was submitted by the assessee that as the respective confirmations along with affidavits from the aforementioned parties could only be obtained from the supplier parties after lots of persuasion, therefore, the same not being available prior to culmination of the assessment proceedings, thus, could not be filed before the A.O. The CIT(A) called for the report from the A.O on the additional evidence, wherein the latter submitted his comments on merits and stated that as the respective affidavits filed by the aforesaid parties only affirmed the form of the impugned transaction, therefore, the same thus did not have any bearing on the disallowance of Rs. 94,86,917/- which was made by the A.O. after thorough deliberations on the substance of the transactions. The CIT(A) after deliberating on the reply filed by the A.O, therein being of the view that the documentary evidence submitted by the assessee to support the genuineness of the purchases claimed to have been made from the aforementioned supplier parties along with the bank statements of the said respective parties were not filed before the A.O during the course of the assessment proceedings, therefore, held that the same could not be admitted as additional evidence. The CIT(A) observed that the description of the products mentioned in the sale bills were quite general and could not be irrebutably identified as the same item which was shown by the assessee to have been ultimately sold. That it was further observed by the CIT(A) that the aforementioned parties were found to be operating from the premises of certain entities which were controlled by Sh. Praveen Jain. The

CIT(A) finding lapses in the conduct of the assessee to prove the genuineness and veracity of the purchase transactions under consideration, observed that neither the assessee had placed on record documents showing transport of goods, nor had produced the respective parties for examination before the A.O. The CIT(A) in the backdrop of the aforesaid facts was persuaded to be in agreement with the view of the A.O that the assessee had not made any genuine purchases from the aforementioned parties, and as a matter of fact, had only taken bogus purchase bills from them in order to facilitate routing of the purchases made from the open/grey market, through its regular books of accounts. The CIT(A) further observed that now when it was a conceded fact borne from the records, viz. stock records and sale bills produced before the A.O, that the goods claimed by the assessee to have been purchased from the aforementioned supplier parties were actually sold and accounted for in the books of accounts of the assessee, therefore, the A.O had rightly observed that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit margin involved in making of such purchases by the assessee from the open/grey market. The assessee during the course of the appellate proceedings submitted before the CIT(A) that though the total purchases (including sale tax) made by the assessee from the aforementioned parties aggregated to Rs. 7,58,95,339/-, however, as the MVAT of Rs. 84,32,816/- paid by the assessee was treated as a balance sheet item and not claimed as a revenue expenditure, therefore, the net purchases of Rs. 6,74,62,523/- [i.e Rs. 7,58,95,339/-(minus) Rs. 84,32,816/-] only stood debited in the 'Profit & Loss A/c' of the assessee.

6. The CIT(A) after accepting the aforesaid observations of the A.O, however, took strong cognizance of three material aspects, viz (i) the

statement of Sh. Praveen Jain was a third party statement and no opportunity was afforded to the assessee to cross examine the said party; (ii) the statement of Sh. Praveen Jain stood retracted; and (iii) that no cash trail was established by the A.O to support his conclusion. The CIT(A) on cumulative deliberations of the aforesaid facts, thus, restricted the addition in the hands of the assessee to 5% of the total purchases of Rs. 6,74,62,523/- (net of sales tax) which were claimed by the assessee to have been made from the aforementioned parties and 'debited' in its profit and loss account. The CIT(A) on the basis of his aforesaid observations restricted the addition in the hands of the assessee to Rs. 33,73,126/-.

7. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The Ld. Authorized Representative (for short 'A.R') for the assessee at the very outset assailed the validity of the assumption of jurisdiction by the A.O u/s 147 of the 'Act'. The Ld. A.R. took us through the 'Reasons to believe' on the basis of which the reassessment proceedings for the year under consideration had been initiated (Page 3 of 'APB'). It was submitted by the Ld. A.R. that a bare perusal of the 'Reasons to believe' revealed that the A.O had merely referred to the information received from the Investigation wing of the income tax department, and dispensing with the statutory requirement of independent application of mind to the 'material' as was there before him, had initiated the *impugned* reassessment proceedings in the hands of the assessee. It was submitted by the Ld. A.R. that it was a clear case of assumption of jurisdiction by the A.O u/s 147 of the 'Act' on the basis of 'borrowed satisfaction', which was not sustainable in the eyes of law. The Ld. A.R. in order to drive home his aforesaid contention relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **Signature Hotels**

P. Ltd. Vs. ITO and Anr. (2011) 338 ITR 51 (Del). The Ld. A.R. further assailed the validity of the reassessment framed by the A.O on the ground that as in the case of the assessee company an assessment u/s 143(3) for the year under consideration, viz. A.Y. 2007-08 had already been framed on 31.12.2008, therefore, as per the mandate of law contemplated in the *proviso* to Sec. 151(1) (as was then so available on the statute), in a case where a period of 4 years had already expired from the end of the relevant assessment year, no notice u/s 148 could be issued by the A.O, unless the Pr. Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax was satisfied on the reasons recorded by the A.O, that it was a fit case for the issue of such notice. It was submitted by the Ld. A.R that though as per the aforesaid mandate of law the satisfaction of either of the aforesaid authorities alone could lead to valid assumption of jurisdiction on the part of the A.O while issuing the notice u/s 148, however, in the present case the impugned notice had been issued by the A.O after obtaining the approval of Additional Commissioner of Income Tax, Range-9, Mumbai, who in the backdrop of the facts involved in the case of the present assessee was not vested with any jurisdiction to grant such approval/sanction. It was submitted by the Ld. A.R that now when the very assumption of jurisdiction by the A.O was bereft and devoid of any force of law, therefore, on the said count itself the entire reassessment proceedings initiated by the A.O were liable to be quashed. The Ld. A.R in support of his aforesaid contention relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **Ghanshyam K. Khabrani Vs. ACIT and Ors. (2012) 346 ITR 443 (Bom)**. The Ld. A.R while relying on the aforesaid judgment submitted that in the case before the Hon'ble High Court, the A.O as per the mandate of law was required to get sanction for issuing the notice under Sec. 148 from the Joint Commissioner of

Income Tax, however, the same despite having been obtained from a superior authority, viz. Commissioner of Income Tax, was however quashed by the Hon'ble High Court for the reason that the said power could not be exercised by any authority except for that contemplated in the statute. In the backdrop of the aforesaid facts which were there before the Hon'ble High Court, it was submitted by the Ld. A.R. that the facts of the present case stood on a better footing, for the reason that unlike the facts as were there in the case before the Hon'ble High Court, in the case of the present assessee the sanction which as per the mandate of law was to be issued by the Commissioner of Income Tax, was however obtained from a lower authority, viz. Additional Commissioner of Income Tax. The Ld. A.R. in order to fortify his aforesaid contention that the sanction of the appropriate authority before issuing the notice u/s 148 was an indispensable statutory requirement, therein relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. SPL'S Siddhartha Ltd' (2012) 345 ITR 223 (Del)**. The Ld. A.R. further to buttress his aforesaid contention, also placed reliance on the order of the **Hon'ble High Court of Bombay** in the case of **DSJ Communication Ltd. Vs. DCIT, Circle 2(1) and Anr. (CWP No. 722 of 2011, dt 13.09.2012)**.

8. The Ld. A.R. adverting to the merits of the case submitted that both of the lower authorities had proceeded with on the premises that the assessee had not made purchases of the goods under consideration from the aforementioned parties, but had procured the same from the open/grey market. The Ld. A.R. in the backdrop of the aforesaid facts as had weighed in the mind of the lower authorities, submitted, that while for the A.O. had worked out the profit margin in respect of the purchases under consideration @ 12.5% of the aggregate value of the purchases claimed by the assessee to have been

made from the aforesaid supplier parties, which thereafter was scaled down by the CIT(A) to 5%, and that too in respect of the purchase value (net of sales tax). The Ld. A.R. submitted that the assessee during the course of the proceedings before the lower authorities had carried out a one to one correlation of the purchases and sales of the goods under consideration. The Ld. A.R submitted that the affidavits of the respective parties from whom purchases under consideration were made during the year under consideration could only be obtained from the respective supplier parties after lots of persuasion, by which time, the assessment proceedings already stood culminated, therefore, the same could only be furnished with the CIT(A) by way of Additional evidence U/Rule 46A of the Income Tax Rules, 1963. It was submitted by the Ld. A.R that the CIT(A) after perusing the additional evidence, called for a remand report from the A.O and finally after deliberating on the reply of the A.O who had addressed the said material on merits, therein concluded that as the said documents had not been filed by the assessee before the A.O during the course of the assessment proceedings, therefore, the same could not be admitted by way of additional evidence. The Ld. A.R. vehemently assailed the declining on the part of the CIT(A) to admit the additional evidence after the same had been commented upon on merits by the A.O. It was submitted by the Ld. A.R that now when the A.O after deliberating on the documents filed by the assessee as additional evidence had commented on the same on merits and not raised any technical objection on the admission of the same, but merely assailed the purpose which the assessee sought to achieve by filing the same, therefore, the CIT(A) was not right in law in declining to admit the additional evidence for the reason that the assessee had failed to file the same before the A.O during the course of the assessment proceedings. That it was further submitted by the Ld. A.R that the CIT(A) though took strong

cognizance of three material aspects, viz (i) that the statement recorded of Sh. Praveen Jain was a third party statement and no opportunity was afforded to the assessee to cross examine the said party; (ii) the statement of Sh. Praveen Jain stood retracted; and (iii) that no cash trail was established by the A.O to support his conclusion, however, in the backdrop of the aforesaid material facts, he instead of fairly concluding that no addition was liable to be sustained in respect of the purchases which were made by the assessee from the aforementioned parties, viz. (i) M/s Ostwal Trading (I) P. Ltd.; (ii) M/s JPK Trading (I) P. Ltd.; and (iii) M/s Newplanet Trading Co. P. Ltd., had however most arbitrarily sustained the addition to the extent of 5% of the aggregate value of such purchases in the hands of the assessee. It was submitted by the Ld. A.R that now when the assessee had duly discharged the Onus in respect of proving the genuineness and veracity of the purchases made from the aforementioned parties, therefore, no addition was liable to be sustained in the hands of the assessee. Alternatively, it was submitted by the Ld. A.R that even if it was to be presumed, though not admitted, that the assessee had failed to discharge the Onus in respect of the veracity of the purchase transactions under consideration, then also the addition in its hands in all fairness was liable to be restricted to 2% of the aggregate value of the purchases made from the aforementioned parties. The Ld. A.R in order to buttress his primary contention that no addition was called for in the hands of the assessee, submitted that under similar circumstances which though involved different supplier parties, the entire additions made by the A.O while framing the assessment in the case of the assessee for A.Y. 2010-11 were deleted by the CIT(A), which order of the first appellate authority was thereafter upheld by the Tribunal. Per contra, the Ld. Departmental Representative (for short 'D.R.)

submitted that no infirmity did emerge from the approval/sanction taken by the A.O from the Additional Commissioner of Income Tax while issuing the notice u/s 148 of the 'Act'. That in respect of the assailing of the validity of the reassessment proceedings by the assessee on the ground of 'borrowed satisfaction', it was submitted by the Ld. D.R that as the A.O had acted on the information which he had received from the investigation wing of the department in respect of the purchases made by the assessee during the year under consideration, therefore, only after being duly satisfied that the income of the assessee chargeable to tax had escaped assessment, that the A.O had validly initiated reassessment proceedings in the hands of the assessee. The Ld. D.R in order to support his contention relied on the judgment of the **Hon'ble High Court of Gujarat** in the case of **Peass Industrial Engineers (P) Ltd. Vs. DCIT (2016) 73 Taxmann.com 185 Guj.** That on merits of the case the Ld. D.R relied on the observations recorded by the A.O in the assessment order.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall first advert to the validity of the reassessment proceedings which had been assailed by the assessee before us. We have perused the 'Reasons to believe' recorded by the A.O for the year under consideration, viz. A.Y. 2007-08, which reads as under :-

"ANNEXURE

M/s VAMAN INTERNATIONAL PVT LTD

A.Y. 2007-08

1. *The assessee has e-filed the return of income on 27.10.2007 declaring income of Rs. 1,16,52,069/-. The return of income was processed u/s 143(1) of the I.T. act.*

2. As per the Information available on record, the assessee company has obtained accommodation entries in the form of bogus purchases during F.Y. 2006-07 relevant to A.Y. 2007-08 from Shri Pravin Kumar Jain and his group companies as mentioned below :

Sr.	Name of the Party	Amount of investment (in Rs.)
1.	Ostwal Trading (I) P. Ltd.	Rs. 2,98,29,406/-
2.	JPK Trading (I) Ltd.	Rs. 1,91,92,659/-
3.	Newplanet Trading Co. P. Ltd.	Rs. 2,68,73,274/-
	Total	Rs. 7,58,95,339/-

3. In view of the above facts, I have a reason to believe that the income to the tune of Rs. 7,58,95,339/- has escaped assessment.

4. The case is required to be reopened under Section 147 of the Income Tax Act, 1961. Sanction may kindly be accorded u/s 151 for issue of notice u/s 148.

Sd/-
(Jitendra Pawar)
Income Tax Officer-9(3)(3),
Mumbai

Encl: Case records of A.Y. 2007-08

Note: The Addl. CIT, Range 9(3), Mumbai vide letter No. Addl.CIT/RG.9(3)/Reopening Approval/05 cases of ITO 9(3)(3)/2013-14 Dated 21.03.2014 accorded the approval u/s 151(2) of the I.T. Act for reopening assessment for A.Y. 2007-08".

We have given a thoughtful consideration to the *impugned* 'Reasons to believe' recorded by the A.O and find that the same merely refers to the information available on record, as per which, the assessee company is stated to have obtained accommodation entries in the form of bogus purchase bills during the year under consideration from Sh. Praveen Kumar Jain and his group companies. We find that the A.O except for making a reference to the aforesaid information available on his record, had however dispensed with the statutory requirement of independent application of mind to the 'material', on the basis of which it could safely be concluded that he had failed to arrive at a *bonafide* belief that the income of the assessee chargeable

to tax had escaped assessment. We are afraid to say that mere reference to the 'material' in the 'Reasons to believe' cannot be equated or suffice the requirement of recording of a *bonafide* belief by the A.O that the income of the assessee chargeable to tax had escaped assessment. We would not hesitate to observe that if a mere reference to the 'material' forming the basis for initiating the reassessment proceedings is to be construed as the recording of satisfaction, then it would in a way lead to transposing the satisfaction/belief of the authority from whom the 'material'/ 'information' had been obtained, as against that of the A.O, which would seriously jeopardize and frustrate the very working of the statutory provisions regulating the framing of the reassessment proceedings contemplated in Sec. 147 of the 'Act'. We are not oblivious of the settled position of law that for valid assumption of jurisdiction under Sec. 147, the recording of satisfaction remains within the exclusive domain of the A.O and no authority howsoever superior can be allowed to either intervene or dictate the formation of *belief* on the part of the A.O, much the less usurp upon themselves the said powers of the A.O, which we would reiterate remains within the exclusive realm of the A.O alone. The legislative intent in respect of the exclusive vesting of the jurisdiction with the A.O as regards the formation of a *belief* to facilitate initiation of the reassessment proceedings also remains beyond scrutiny of the appellate authorities on the qualitative grounds, who can to the most verify the existence of the nexus between the 'material' available on record and the formation of the *belief* by the A.O. We are of the considered view that in the present case the satisfaction of the A.O in the *impugned* 'Reasons to believe' is found to be glaringly absent, pursuant where to we are unable to uphold the validity of the very initiation of the reassessment proceedings on the said count itself. We would not hesitate to observe that 'borrowed satisfaction' of an

authority making available the material/information, which is merely referred to by the A.O without independent application of mind, can by no means be substituted by the satisfaction of the A.O himself. We find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Signature Hotels P. Ltd. Vs. ITO and Anr. (2011) 338 ITR 51 (Del)**, wherein the Hon'ble High Court observing that as the A.O had while recording the reasons merely referred to the information received from the Director of Income Tax that credit entry in accounts of the assessee was an accommodation entry, therefore, quashed the reassessment proceedings by observing that the same did not suffice the requirement of independent application of mind by the A.O to the information before him for forming a *bonafide* belief that the income of the assessee had escaped assessment.

10. We now advert to the assailing of the validity of the reassessment proceedings by the Ld. A.R on the ground that the sanction of either of the the appropriate authority, viz. the Pr. Chief Commissioner of Income Tax, Chief Commissioner of Income Tax, Pr. Commissioner of Income Tax or Commissioner of Income Tax as contemplated in the *proviso* of Sec. 151(1) had not been obtained by the A.O at the time of issuing the notice u/s 148. We have given a thoughtful consideration to the facts of the case and find that as submitted by the Ld. A.R, it remains as a matter of fact that assessment in the case of the assessee for the year under consideration, viz. A.Y. 2007-08 earlier stood framed u/s 143(3)(ii) as on 31.12.2008. The contention raised before us that an assessment had earlier been framed u/s 143(3) in the hands of the assessee was not controverted by the Ld. D.R. We thus proceeding on the basis of the aforesaid factual matrix, thus, find substantial force in the contention of the Ld. A.R that now when a

period of four years from the end of the relevant assessment year, viz. A.Y. 2007-08 had already expired on 31.03.2012, therefore, the A.O while issuing the notice u/s 148, dated 21.03.2014 remained under a statutory obligation to have obtained the sanction of either of the authorities contemplated under the *proviso* of Sec. 151(1) of the 'Act'. We find that a perusal of the 'Reasons to believe' clearly reveals that the A.O had obtained the approval of the Additional CIT, Range-9(3), Mumbai u/s 151(2) of the 'Act', which had been granted by the latter authority, vide letter No. Addl.CIT/RG.9(3)/Reopening Approval/05 cases of ITO 9(3)(3)/2013-14. That on deliberation on the aforesaid facts as stands gathered from the copy of the 'Reasons to believe' (footnote), reveals that the A.O was absolutely aware that it was a case of reopening and not as that of a fresh assessment u/s 147. We further find that the lower authorities had most callously provided wholesale approvals in respect of certain cases, as can be safely gathered from the term '*....Reopening Approval/05 cases of ITO 9 (3)(3)/2013-14, dated 21.03.2014....*', and as such had absolutely lost sight of the fact that in discharge of the statutory obligation of obtaining the sanction, a wrong authority who was not vested with the jurisdiction to grant the approval in the case of the present assessee was being approached. Be that as it may, it remains as a matter of fact that the approval as contemplated per the mandate of *proviso* of Sec. 151(1) had not been obtained from the appropriate authority, failing which the very issuance of the notice u/s 148 and the framing of the reassessment u/s 147 r.w.s. 143(3) cannot be sustained and is liable to be quashed. We find that our aforesaid view stands fortified by the judgments of the **Hon'ble High Court of Bombay** in the case of **Ghanshyam K. Khabrani Vs. ACIT and Ors. (2012) 346 ITR 443 (Bom)** and **DSJ Communication Ltd. Vs. DCIT, Circle 2(1) and Anr. (CWP No. 722 of 2011, dt 13.09.2012)**. Still further, we find that a

similar view had also been arrived at by the **Hon'ble High Court of Delhi** in the case of **CIT Vs. SPL'S Siddhartha Ltd' (2012) 345 ITR 223 (Del)**. We thus in the backdrop of the facts of the case read with the settled position of law as had been deliberated upon by us hereinabove, therefore, quash the reassessment proceedings initiated by the A.O in the hands of the present assessee on the said count also. The **Ground of Appeal No. 1** wherein the validity of the reassessment proceedings had been assailed by the assessee before us is allowed in terms of our aforesaid observations.

11. We would now advert to the merits of the case, wherein the assessee had assailed before us the sustaining of the addition by the CIT(A) to the extent of 5% of the aggregate of the value of purchases made by the assessee from the aforementioned concerns, viz. (i) M/s Ostwal Trading (I) P. Ltd.; (ii) M/s JPK Trading (I) P. Ltd.; and (iii) M/s Newplanet Trading Co. P. Ltd., as a result whereof addition to the extent of Rs. 33,73,126/- had been sustained. We have given a thoughtful consideration to the facts of the case and find that it remains as a matter of an undisputed that the assessee had duly established a one to one correlation between the purchases of the goods under consideration claimed to have been made from the aforementioned parties, as against their corresponding sales which are found to be duly accounted for in the books of accounts of the assessee. We are of the considered view that the lower authorities before rushing to the view that the purchases of the goods under consideration claimed by the assessee to have been made from the aforementioned parties, were purchased by the assessee from unregistered sellers operating in the open/grey market, before so concluding, should have duly weighed the relevant facts which were established by the assessee in the course of the discharging of the

Onus as regards proving the genuineness and veracity of the purchase transactions under consideration. We though are not oblivious of the fact that now when the assessee had claimed purchases from certain parties as an expense in its books of accounts, therefore, it was obligatory on his part to produce the respective parties for examination before the A.O, in order to substantiate the genuineness and veracity of the purchases made from them. We are also well conversant of the fact that the Inspector of Income tax deputed by the A.O to serve the notices issued to them u/s 133(6) could not find the said parties at the addresses mentioned in their respective sale bills and the notices issued to them u/s 133(6) could not be served upon them. However, we are of the considered view that not finding of the said supplier parties by the Inspector of Income tax on 26.02.2015, i.e. about 8 years after the expiry of the year in which the purchases were made by the assessee, cannot in isolation form a basis for dislodging the purchases claimed by the assessee to have been made from them. We are further of the view that in the backdrop of the circumstances attending to the facts of the case, viz. information received from the investigation wing, Mumbai, that the assessee was a beneficiary of the accommodation entries provided by Sh. Praveen Jain through various companies and firms controlled, managed and operated by him and his associates, which included the aforesaid supplier parties, would undoubtedly raise serious doubts as regards the genuineness and veracity of the purchases made by the assessee from the said respective concerns. However, now when the CIT(A) had observed that Sh. Praveen Jain had subsequently under oath retracted from his earlier statement, which observation of the CIT(A) had neither been specifically assailed before us by the revenue, nor demonstrated to be an incorrect or a perverse observation by the Id. D.R during the course of hearing of the appeal before us, therefore, we

are of the strong conviction that such retraction of Sh. Praveen Jain which is not in challenge before us, would thus nullify the adverse findings arrived at by the A.O on the basis of the statement of Sh. Praveen Jain earlier recorded u/s 132(4). Be that as it may, we find that the assessee had filed before the CIT(A) additional evidence comprising of the respective affidavits of the supplier parties, wherein they had deposed that they had sold the goods under consideration to the assessee company during the year under consideration, viz. (i). affidavit of Sh. Manish Jain, director of M/s New Planet Trading Company Pvt. Ltd. confirming the transaction with the assessee company with regard to purchases of Rs. 2,68,73,274/-; (ii). affidavit dated 06.06.2016 of Sh. Jitendra Tater, director of JPK Trading (I) Pvt. Ltd. confirming the transaction with the assessee company with regard to purchases of Rs 1,91,92,660/-; and (iii). affidavit dated 06.06.2016 of Sh. Jitendra Tater, director of Ostwal Trading (I) Pvt. Ltd. confirming the transaction with the assessee company with regard to purchase of Rs. 2,98,29,408/-. We are of the considered view that in the backdrop of the fact that the documentary evidences furnished by the assessee as additional evidence could not be obtained by the assessee from the respective suppliers despite persistent requests, therefore, there was a justifiable cause on the part of the assessee to have tendered the said documents for the very first time by way of additional evidence before the CIT(A). We are unable to persuade ourselves to accept the reasoning of the CIT(A) that the documents furnished by the assessee by way of additional evidence were not liable to be admitted because they had not been submitted before the A.O, and are of the considered view that such a finding of the CIT(A) is seriously falling short of a justifiable reason for rejecting the admission of the additional evidence which was tendered before him, specifically when the A.O himself had deliberated and

commented on the same on merits. We though are not oblivious of the settled position of law that it is the satisfaction of the CIT(A) for allowing admission of additional evidence during the course of hearing of the appeal before him, or not, however, the exercise of such powers by him are circumscribed by a set of circumstances contemplated in Rule 46A, which needless to say, has to be exercised by him in a judicious manner. We are of the considered view that the affidavits of the supplier parties which the assessee had submitted before the CIT(A) by way of additional evidence goes to the very root of the issue under consideration and only supports the authenticity of the purchases made by the assessee from the said supplier parties. We have given a thoughtful consideration to the issue under consideration and are of the considered view that as the assessee could not obtain the confirmations of the supplier parties till the culmination of the assessment proceedings, therefore, it can safely be concluded that the assessee was prevented by a sufficient cause for producing the said documentary evidence by way of additional evidence before the CIT(A). We thus being of the considered view that the additional evidence furnished by the assessee with the CIT(A), in all fairness should have been admitted by him, therefore, set aside the declining on the part of the CIT(A) to consider the affirmations of the genuineness and veracity of purchase transactions by the respective supplier parties on the basis of the affidavits which were placed on his record.

12. We have deliberated on the issue under consideration and find that the genuineness of the purchases claimed by the assessee to have been made from the aforesaid supplier parties, viz. (i) M/s Ostwal Trading (I) P. Ltd.; (ii) M/s JPK Trading (I) P. Ltd.; and (iii) M/s Newplanet Trading Co. P. Ltd. can safely be gathered from a perusal of

the various facets pertaining to the said purchase transactions, viz, (i) the one to one correlation between the purchases claimed by the assessee to have been made from the aforementioned supplier parties, as against the respective item wise sales was established by the assessee before the lower authorities; (ii) the statement of Sh. Praveen Jain wherein it was alleged that the aforementioned supplier companies were paper companies was retracted by him on Oath, which retraction had neither been held by the lower authorities to be incorrect, nor the findings of the CIT(A) arrived at by referring to the said retraction had been specifically assailed by the revenue before us, nor the findings/observations of the CIT(A) had been demonstrated to be perverse by the Ld. D.R. before us; (iii) that without prejudice to the fact that the statement of Sh. Praveen Jain had subsequently been retracted, even otherwise, no cross examination of the said person was facilitated to the assessee by the A.O, as a result whereof the assessee failed to dislodge the allegations raised against it by the aforesaid person, nor could rebut the adverse inferences drawn by the A.O by placing reliance on the same; (iv) that the confirmations along with the affidavits of the respective supplier parties furnished by the assessee before the CIT(A) substantially proved the genuineness and veracity of the purchase transactions; (v) that as observed by the CIT(A), the A.O had failed to establish any cash trail which could go to evidence purchase of the goods under consideration by the assessee from the open/grey market; (vi) that substantial documentary evidence in support of the genuineness of the purchases made by the assessee from the aforementioned supplier parties had been furnished during the course of the assessment proceedings; and (vii) the failure on the part of the assessee to produce the supplier parties after the lapse of a substantial time period of more than 8 years from the end of the year in which it had made purchases from the said respective parties, in

the backdrop of the cumulative perusal of the documentary evidence placed on record by the assessee, thus, cannot conclusively prove that the assessee had not made any genuine purchases from the said respective parties. We thus are of the considered view that now when the assessee had substantially discharged the Onus as was cast upon it to prove the genuineness and veracity of the purchases made from the aforesaid supplier parties, therefore, no part of such purchases were liable to be disallowed in the hands of the assessee. We thus not being persuaded to accept the scaling down of the addition by the CIT(A) from 12.5% to 5% of the aggregate value of such purchases, which to our considered view is not supported by any rhyme or reason, thus, set aside the order of the CIT(A) and hold that no addition/disallowance of any part of the purchases claimed by the assessee to have been made from the aforementioned supplier parties was called for in the hands of the assessee. The **Ground of Appeal No. 2** wherein the additions made by the A.O had been assailed before us by the assessee on merits, is allowed in terms of our aforesaid observations

13. The **Ground of Appeal No. 3** is disposed of in terms of our observations recorded hereinabove. The **Ground of Appeal No. 4** being general in nature is dismissed.

14. We thus in the backdrop of our aforesaid observations quash the reassessment proceedings on both the legal issues raised before us by the assessee, as well as allow the appeal on merits

15. The appeal of the assessee is allowed in terms of our aforesaid observations

ITA No. 1506/Mum/2017

AY: 2007-08

16. We shall now take up the appeal of the revenue for A.Y 2007-08. The revenue assailing of the order of the CIT(A) on the ground that the latter had erred in restricting the disallowance of purchases made by the assessee from the aforementioned supplier parties to 5% of the impugned purchases of Rs. 6,74,62,523/-, which resultantly had led to sustaining of the addition only to the extent of Rs. 33,73,126/- as against the addition of Rs. 94,86,917/- made by the A.O, had raised before us the following grounds of appeal :

- “1. Whether on the facts and the circumstances of the case and in law, the Id. CIT (A) erred in restricting the disallowance to 5% of the impugned purchase of Rs. 6,74,62,523/- i.e. Rs. 33,73,126 without any material basis instead of 12% of the impugned purchase of Rs. 6.74,62,523/- i.e. Rs. 94,86.917/-.
2. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.
3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

17. We find that the issue involved in the present appeal stands squarely covered by our adjudication of the appeal of the assessee for the year under consideration, viz. A.Y. 2007-08, marked as ITA No. 1040/Mum/2017. That as we have already allowed the appeal of the assessee both on the grounds as regards the validity of assumption of jurisdiction by the A.O u/s 147, as well as on merits, therefore, in the backdrop of our aforesaid observations, the appeal of the revenue stands dismissed.

18. The appeal of the revenue is dismissed.

ITA No. 1041/Mum/2017

AY: 2008-09

19 We now take up the appeal of the assessee for A.Y. 2008-09, wherein the latter assailing the order of the CIT(A) had raised before us the following grounds of appeal :

“The following grounds of appeal are without prejudice to one another:

1. As regards the notice of Reassessment u/s. 147/148 of Income-Tax Act.

- a. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening u/s 148 of the Income Tax Act of the assessment which was completed u/s. 143(3) of the Income Tax Act, 1961.*
 - b. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in reopening the case u/s 148 of the IT Act on the basis of the statement of third party, without considering the facts and circumstances of the case.*
 - c. *The Learned CIT(A) has erred in confirming the action of Assessing Officer in issuing notice u/s 148 beyond the limitation period of 4 years from the end of the relevant assessment year as there is a no failure on a part of the appellant firm to disclose fully and truly all material facts necessary for the purpose of assessment. A notice dated 30.03.2015 was received by assessee on 06.04.2015, which is beyond the time stipulated under the provision of income tax act.*
- 1.4 *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in not appreciating the fact as well as law that the proceedings under sec.148 is itself bad in law, void ab-initio, illegal and liable to be quashed.*
- 1.5. *The Learned CIT(A) has erred in not deciding on ground no 1.4 of the appeals.*

2. As regard disallowance of Rs. 1,68,656 as unexplained expenditure in respect of 5% of Rs. 33,08,518/- of purchases made by the appellant company.

- 2.1. *The learned CIT(A) erred in law and on facts in confirming addition to the extent of Rs.1,68,656 being 5% of Rs 33,08,518, out of the total addition of Rs. 4,65,260 on account of unexplained expenditure in respect of purchases made by the appellant company.*
- 2.2 *The Learned CIT(A) has erred in confirming the action of Assessing Officer in treating the alleged purchases of Rs.37,22,083 made by the appellant company as unexplained expenditure merely on the basis of the suspicious and surmises without any independent inquiry and verification.*
- 2.3. *The Learned CIT(A) has erred in confirming the action of Assessing Officer in relying on the statement of Pravin Kumar Jain with respect to M/s, Ostwal Trading (I) P. Ltd. as recorded by*

- the Investigate Agency without giving any reasonable opportunity of cross examination to the appellant company.*
- 2.4. *The Learned CIT(A) failed to appreciate that the material purchased during the year are duly accounted in the book of the Appellant and the same are supported by proper stock ledgers. The said material was subsequently sold by the Appellant and the profit earned thereon is offered for tax. Hence, the estimated addition at the rate 5% that is amounting to Rs. 1,68,656/- on alleged purchases is unjustified and the same may be deleted.*
- 2.5. *The Learned CIT(A), further, failed to appreciate that the Ld. AC, has neither rejected the books of accounts of the Appellant nor pointed any discrepancies in the same. The Ld. AC. also accepted the sales made during the year. Hence, the estimated addition in the said circumstances is unjustified and the same may be deleted.*
3. *Appellant prays that,*
- a. *Set aside the reassessment order passed u/s 143(3) r.w.s 147 of the Income Tax act.*
 - b. *Delete the addition of Rs. 1,68,656 on account of unexplained expenditure in respect alleged purchased from suspicious dealer being 5% of Rs. 33,08,518.*
 - c. *Any other relief your honor may deem it.*
4. *Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal”.*

20. Briefly stated, the facts of the case are that the assessee company had e-filed its ‘Return of income’ for A.Y. 2008-09 on 30.09.2008, declaring total income of Rs. 52,66,780/-. The return of income filed by the assessee was processed as such u/s 143(1) of the ‘Act’. The A.O was in receipt of information from the Investigation wing of the department that the assessee as a beneficiary had taken accommodation entries and booked bogus purchases through various companies and firms which were controlled, managed and operated by one Sh. Praveen Jain and his associates during the year under consideration, viz. A.Y. 2007-08, as under:

S.No.	Name of the Party	Amount Involved
1.	Casper Enterprises Pvt. Ltd. (Earlier known as Ostwal Trading (I) P. Ltd.)	Rs. 37,22,083/-

	Total	Rs.37,22,083/-
--	--------------	-----------------------

21. That during the course of the assessment proceedings it was observed by the A.O that the assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforesaid supplier party during the year under consideration. However, the A.O observed that the sales of the goods under consideration which were claimed by the assessee to have been purchased from the aforesaid party were found to be duly recorded in the books of accounts of the assessee. The A.O in backdrop of the aforesaid facts thus concluded that the assessee had as a matter of fact purchased the goods under consideration from the open/grey market. The A.O on the basis of his aforesaid conviction thus computed the profit margin of the assessee for making the aforesaid purchases from the open/grey market @ 12.5% of the aggregate value of purchases aggregating to Rs. 37,22,083/-, and made an addition of Rs. 4,65,260/- in the hands of the assessee.

22. The assessee being aggrieved with the order of the A.O therein carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, restricted the disallowance to 5% of the aggregate value of the purchases claimed by the assessee to have been made from the aforesaid supplier parties, i.e. 5% of Rs. 33,08,518/- (net of sales tax), and thus scaled down the addition in the hands of the assessee to an amount of Rs. 1,68,656/-.

23. We find that as the facts and issue involved in the present appeal of the assessee in respect of the addition made by the A.O on merits are the same as were involved in the appeal of the assessee for A.Y 2007-08, marked as ITA No. 1040/Mum/2017, therefore, our

order passed while disposing of the said appeal of the assessee for A.Y. 2007-08 on merits shall apply *mutatis mutandis* for adjudicating the assailing of the addition by the assessee on merits before us in the present appeal for A.Y. 2008-09. The Ground of appeal no. 2 raised by the assessee before us is allowed in terms of our observations recorded while disposing of the Ground of appeal No. 2 in the appeal of the assessee for A.Y. 207-08, marked as ITA No. 1040/Mum/2017. The **Ground of Appeal No. 2** raised by assessee is allowed in terms of our aforesaid observations.

24. The assessee had not raised any contention in respect of the validity of the reassessment proceedings as had been assailed before us by way of Ground of appeal No. 1. We thus dismiss the **Ground of Appeal No. 1** as not pressed.

25. The **Ground of Appeal No. 3** is disposed of in terms of our observations recorded hereinabove. The **Ground of Appeal No. 4** being general in nature is dismissed.

26. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

ITA No. 1042/Mum/2017
AY: 2007-08

27. We shall now take up the appeal of M/s Tangent Furniture Pvt. Ltd. for A.Y. 2007-08. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal :

“1. *The following grounds of appeal are without prejudice to one another:*

1. As regards the notice of Reassessment u/s. 147/148 of Income-Tax Act.

1.1. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening u/s 148 of*

the Income Tax Act of the assessment which was completed u/s. 143(3) of the Income Tax Act, 1961.

- 1.2. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in reopening the case u/s 148 of the IT Act on the basis of the statement of third party, without considering the facts and circumstances of the case.
- 1.3. The Learned CIT(A) has erred in confirming the action of Assessing Officer in issuing notice u/s 148 beyond the limitation period of 4 years from the end of the relevant assessment year as there is a no failure on a part of the appellant firm to disclose fully and truly all material facts necessary for the purpose of assessment.
- 1.4. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in not appreciating the fact as well as law that the proceedings under sec.148 is itself bad in law, void ab-initio, illegal and liable to be quashed.

2. As regard disallowance of Rs. 12,52,331 as unexplained expenditure in respect of 5% of Rs. 2,50,46,633/- of purchases made by the appellant company.

- 2.1. The learned CIT(A) erred in law and on facts in confirming addition to the extent of Rs.12,52,331 being 5% of Rs 2,50,46,633, out of the total addition of Rs. 37,86,241 on account of unexplained expenditure in respect of purchases made by the appellant company.
- 2.2. The Learned CIT(A) has erred in confirming the action of Assessing Officer in treating the alleged purchases of Rs.2,81,77,464 made by the appellant company as unexplained expenditure merely on the basis of the suspicious and surmises without any independent inquiry and verification.
- 2.3. The Learned CIT(A) has erred in confirming the action of Assessing Officer in relying on the statement of Pravin Kumar jain with respect to M/s JPK Trading (I) P. Ltd. and M/s Ostwal Trading (I) P. Ltd. as recorded by the Investigate Agency without giving any reasonable opportunity of cross examination to the appellant company.
- 2.4. The Learned CIT(A) failed to appreciate that the material purchased during the year are duly accounted in the book of the Appellant and the same are supported by proper stock ledgers. The said material was subsequently sold by the Appellant and the profit earned thereon is offered for tax. Hence, the estimated addition at the rate 5% that is amounting to Rs. 12,52,331/- on alleged purchases is unjustified and the same may be deleted.
- 2.5. The Learned CIT(A), further, failed to appreciate that the Ld. A.O. has neither rejected the books of accounts of the Appellant nor pointed any discrepancies in the same. The Ld. A.O. also accepted the sales made during the year. Hence,

the estimated addition in the said circumstances is unjustified and the same may be deleted.

3. *Appellant prays that,*
- a. *Set aside the reassessment order passed u/s 143(3) r.w.s 147 of the Income Tax act.*
 - b. *Delete the addition of Rs. 12,52,331 on account of unexplained expenditure in respect alleged purchased from suspicious dealer being 5% of Rs. 2,50,46,633.*
 - c. *Any other relief your honor may deem it.*
4. *Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal*

28. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of retail trading of furniture items had e-filed its 'Return of income' for A.Y. 2007-08 on 27.10.2007, declaring total income of Rs. 65,79,279/-. The return of income filed by the assessee was processed as such u/s 143(1) of the 'Act'. The case of the assessee was thereafter selected for scrutiny assessment and the assessment was framed vide order passed u/s 143(3), dated 31.12.2008, assessing the income of the assessee company at Rs. 66,46,790/-. The A.O was in receipt of information from the Investigation wing of the department that the assessee as a beneficiary had taken accommodation entries and booked bogus purchases through various companies and firms which were controlled, managed and operated by one Sh. Praveen Jain and his associates during the year under consideration, viz. A.Y. 2007-08, as under:

S.No.	Name of the Party	Amount Involved
1.	Ostwal Trading (I) P. Ltd.	Rs. 2,15,42,463/-
2.	JPK Trading (I) Ltd.	Rs. 66,35,001/-
3.	Faststone Trading Co. P. Ltd	Rs. 50,90,927/-

	Total	Rs.3,32,68,391/-
--	--------------	-------------------------

29. That during the course of the assessment proceedings it was observed by the A.O that the assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforesaid supplier parties during the year under consideration. However, the A.O observed that the sales of the goods under consideration which were claimed by the assessee to have been purchased from the aforesaid party were found to be duly recorded in the books of accounts in the assessee. It was further submitted by the assessee before the A.O that out of the three parties, one party, i.e. M/s Faststone Trading Co. P. Ltd was a sale party and no purchases were made by the assessee from it. The A.O in backdrop of the aforesaid facts thus concluded that the assessee had as a matter of fact purchased the goods under consideration from the open/grey market. The A.O on the basis of his aforesaid conviction thus worked out the average GP rate of the assessee for the last five years, which worked out to 50.24%. The A.O being of the view that as the declared GP rate of the year under consideration was 48.74%, which was 1.5% lower than the average GP rate of last five years, therefore, to plug the possible revenue leakage and to meet the interest of justice made an addition of 1.5% of total turnover of Rs. 25,24,16,070/- of the assessee for the year under consideration, leading to a consequential addition of Rs. 37,86,241/- in the hands of the assessee.

30. The CIT(A) after deliberating on the contention of the assessee in the backdrop of the facts of the case observed that out of the three parties, purchases were claimed by the assessee to have been made from two parties, while for there was a sale transaction in respect of the third party. The CIT(A) though restricted the addition in respect of

the purchases in respect of the aforementioned two parties, viz, (i) M/s JPK Trading (I) P. Ltd; and (ii) M/s Ostwal Trading (I) P. Ltd, and thus worked out the impugned purchase transactions at an amount of Rs. 2,50,46,633/- (net of sales tax). The CIT(A) being of the considered view that profit margin of 5% of the aforesaid purchase transactions aggregating to Rs. 2,50,46,633/- would be justified in the case of the present assessee, therefore, restricted the addition/disallowance to an amount of Rs. 12,52,331/-.

31. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. We find that as the facts and issue involved in the present appeal of the assessee, viz M/s Tangent Furniture Pvt. Ltd. in respect of the addition made by the A.O on merits are the same as were involved in the appeal of its sister concern, viz. M/s Vaman International Pvt. Ltd. for A.Y 2007-08, marked as ITA No. 1040/Mum/2017, therefore, our order passed while disposing of the appeal of the sister concern, viz. M/s Vaman International Pvt. Ltd. for A.Y 2007-08, marked as ITA No. 1040/Mum/2017 on merits shall apply *mutatis mutandis* for adjudicating the assailing of the addition by the assessee on merits before us. We thus in the backdrop of our reasoning and observations recorded while disposing of the appeal of the sister concern of the assessee, viz. M/s Vaman International Pvt. Ltd. for A.Y. 2007-08, marked as ITA No. 1040/Mum/2017, thus, delete the addition of Rs. 12,52,331/- sustained by the CIT(A). The Ground of appeal no. 2 raised by the present assessee before us is allowed in terms of our observations recorded while disposing of the Ground of appeal No. 2 in the appeal of the sister concern, viz. M/s Vaman International Pvt. Ltd. for A.Y 2007-08, marked as ITA No. 1040/Mum/2017. The

Ground of Appeal No. 2 raised by assessee is allowed in terms of our aforesaid observations.

32. The assessee had not raised any contention in respect of the validity of the reassessment proceedings as had been assailed before us by way of Ground of appeal No. 1. We thus dismiss the **Ground of Appeal No. 1** as not pressed.

33. The **Ground of Appeal No. 3** is disposed of in terms of our observations recorded hereinabove. The **Ground of Appeal No. 4** being general in nature is dismissed.

34. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

35. That the appeal of the assessee, viz M/s Vaman International Pvt. Ltd. for A.Y. 2007-08 and A.Y. 2008-09, marked as ITA No. 1040/Mum/2017 and ITA No. 1041/Mum/2017, respectively, are partly allowed in terms of our aforesaid observations. The appeal of the revenue for A.Y. 2007-08, marked as ITA No. 1506/Mum/2017 is dismissed. The appeal of the assessee, viz. M/s Tangent Furniture Pvt. Ltd. for A.Y. 2007-08, marked as ITA No. 1042/Mum/2017 is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 27/09/2017

Sd/-

(R.C.SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 27.09.2017

Sd/-

(RAVISH SOOD)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT,**
Mumbai