आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1024/JP/2013
निर्धारण वर्ष/Assessment Year : 2001-02

Shri Ramesh Chand Soni HUF, M/s M/s Tirupati Automobiles, Village- Santera, NH-08, Kotputli, Jaiapur 303108.	बनाम Vs.	The ITO, Ward Behror, Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHHR9332K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 1025/JP/2013
निर्धारण वर्ष/Assessment Year : 2002-03

Shri Ramesh Chand Soni HUF M/s M/s Tirupati Automobiles, Village- Santera, NH-08, Kotputli, Jaiapur 303108.	बनाम Vs.	The ITO, Ward Behror, Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHHR9332K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Shri P.P. Meena (J.CIT)

सुनवाई की तारीख/ Date of Hearing : 03/11/2017
उदघोषणा की तारीख/Date of Pronouncement: 08/12/2017

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of ld. CIT(A), Alwar dated 15.11.2013 & 20.11.2013 for the A.Ys. 2001-02 & 2002-03 respectively. The assessee has raised common grounds in these appeals except the variation in quantum of addition U/s 69 of the Act. The grounds raised for the A.Y. 2001-02 are as under:-

> *"1. The Learned A.O. has erred in initiating the reassessment proceedings under section 147/148 of the IT Act 1961 and CIT (appeal) has erred in confirming the same.*
> *2. The Learned A.O. has erred in making addition u/s 69 of IT Act of Rs. 290213/- on account unexplained difference in cash book and CIT (appeal) has erred in confirming the same."*

2. Ground No. 1 is regarding the validity of reopening. The assessee is an HUF and proprietor of M/s Tirupati Automobiles. The assessee filed its return of income declaring income of Rs. 1,88,040/- on 31.03.2003 which was processed U/s 143(1). Subsequently the case was reopened U/s 147/148 and assessment was completed U/s 143(3) r.w.s. 147 vide order dated 20.03.2003 on total income of Rs. 4,16,370. A survey U/s 133A of the Act was carried out in the business premises of M/s Tirupati Automobiles Pvt. Ltd. in which the Karta of the assessee HUF was a director. During the survey, a printout of cash book of M/s Tirupati Automobiles Pvt. Ltd. for the period 01.04.2001 to 28.06.2001

was found. As per the said print out the AO of the said company found that there was an excess payment of Rs. 11,44,658/- and accordingly, the addition of the said amount was made in the hands of the company for want of satisfactory explanation. The said addition was confirmed by the ld. CIT(A) vide his order dated 15.07.2009. The Company carried the matter to this Tribunal and vide its order dated 26.03.2010 in ITA No. 603 & 637/JP/07 the Tribunal deleted the said addition in the hands of Tirupati Authomobiles Pvt. Ltd. by holding that the said document belongs to M/s Tirupati Automobiles proprietorship of the assessee HUF in the present case and the income if any arising from such transactions was held to be assessed in the hands of M/s Tirupati Automobiles instead of Tirupati Automobiles Pvt. Ltd. The Tribunal further observed that the opening cash balance as on 01.04.2001 is Rs. 5,61,872/- which shows that it has carried forward from the earlier years. Hence, the Tribunal held that the discrepancies in respect of opening balance is required to be taxed in the assessment year 2001-02 as no exact cash was found at the time of survey. Accordingly, the Tribunal given finding that the difference in the cash was required to be substantively taxed in the hands of the M/s Tirupati Automobiles/ HUF in the assessment year 2001-02. Based on the findings of this Tribunal in the case of M/s

Tirupati Automobiles Pvt. Ltd. vide order dated 26.03.2010 the AO initiated proceedings U/s 147 and issued a notice U/s 148 on 30.07.2010. In response to the said notice issued U/s 148 the assessee filed a letter dated 10.08.2010 and submitted that the return filed originally by it to be treated as filed in compliance thereof. Thus, it was second reopening by the AO. The assessee filed objections against the initiation of the proceedings U/s 148 vide letter dated 04.05.2011 which was rejected by the AO vide order dated 11.05.2011. Thereafter, the AO completed the assessment u/s 143(3) r.w.s. 147 on 01.12.2011. The assessee challenged the action of the AO including the validity of reopening before the ld. CIT(A) but could not succeed.

3. Before us, the ld. AR of the assessee has submitted that the notice issued u/s 148 on 30.07.2010 is barred by limitation as provided U/s 149 r.w.s. 150. He has further contented that the AO while rejecting the objections of the assessee has applied Section 150(1) without considering the provisions of Sub-section (2) of Section 150 of the Act. The ld. AR has contended that in the present case the notice U/s 148 was issued on 30.07.2010 and as per restrictions provided U/s 150(2) of the Act the time limit prescribed u/s 149 had already expired on 31.03.2009. Thus, reassessment proceedings are illegal void and the

Assessing Officer has completely ignored or over looked the provisions of Section 150(2) of the Income Tax Act. The compliance of conditions as provided U/s 150(2) is mandatory on the part of the AO before issuing the time barred for initiation of reassessment proceeding. Sub-section (2) of Section 150 lays down the exception that no appellate or revisional authority can give a direction to make assessment or reassessment which would have been time barred as on the date of direction by the reason of any other provisions limit the time within which any action for assessment or reassessment may be taken. The Assessing Officer has acted upon the order of this Tribunal dated 26.03.2010 whereas the time limit for issuing notice u/s 148 had already expired on 31.03.2009. He has relied upon the decision of Haiderabad Benches of this Tribunal in case of S. Sankara Reddy v/s AO (2005) 92 TTJ 223 (Hyd). He has also relied upon the following decisions:-

- ACIT vs. G. Viswanatham 73 CTR 123 (AP)
- Sunil Malik Vs ACIT (2009) 123 TTJ 208 (Del)
- Col. Sir Harinder Singh Brar vs. ITO (2006) 282 ITR 371 (P &H)

Thus, the ld. AR has reiterated that the relaxation provided U/s 150(1) was not available to the AO because of the restriction provided U/s

150(2) and in the case where the reassessment relates to assessment year which has already become barred by limitation on the day when the directions were given pursuant to which, the reassessment are being initiated then the benefit of the provisions of Section 150(1) is not available to the AO. Thus, the ld. AR has asserted that the AO initiated the reassessment proceeding on the basis of the order passed by this Tribunal on 26.03.2010 whereas the limitation for issuing the notice U/s 148 had already expired on 31.03.2009 hence, reopening of the reassessment is barred by limitation as held by the Hon'ble Supreme Court in case of K.M. Sharma v/s ITO 254 ITR 772. He has further contended that even otherwise the appellate or revisional authority cannot give such a direction which goes to the extent of conferring jurisdiction upon the AO which he was not having lawfully. Alternatively the ld. AR of the assessee has submitted that once the assessment order is merged with the order of the ld. CIT(A) passed on 15.07.2009 then even on the said date the time limit for both these assessment years would already stood expired. In support of his contention he has relied upon the decision of Hon'ble Kerala High Court in case of CIT vs. Vaikundam rubber Co. Ltd. 249 ITR 19 (Ker HC). Thus, the ld. AR has pleaded that the notice issued u/s 148 on 30.07.2010 for both

assessment years are barred by limitation and consequently reassessment order passed by the AO are invalid and liable to be quashed.

4. On the other hand, ld. DR has submitted that the limitation for initiation of proceedings u/s 148/147 of the Act as per the directions of the Tribunal has to be seen on the date when the assessment order was passed by the AO in case of M/s Tirupati Automobiles Pvt. Ltd. and wrongly assessed the income in the hands of the said company instead of in the hands of the assessee HUF. As per the order dated 26.03.2010 of this Tribunal in case of M/s Tirupati Automobiles Pvt. Ltd. it was held that the documents found during the survey belongs to the assessee HUF and further, the addition could not have been made in the hands of M/s Tirupati Automobiles Pvt. Ltd. and the income if any arising from such transaction was to be assessed in the hands of the assessee. Thus, the reopening in this case is based on the directions of the Tribunal would fall under the provisions of Section 150 of the Act and the limitation for issuing the notice U/s 148 is not covered under the provisions of Section 149 of the Act. Section 150 of the Act has an overriding effect on Section 149 and therefore, the notice U/s 148 may be issued any time for the purpose of making assessment or

reassessment. He has relied upon the orders of the authorities below. The ld. DR has also relied upon the decision of Honble Calcutta High Court in case of CIT vs. Glass Equipment (India) Ltd. 366 ITR 59 as well as decision of Hon'ble Delhi High Court in case of PP Engineering work 369 ITR 433.

5. We have considered the rival submissions as well as relevant material on record. The AO proposed to reopen the assessment of these two assessment years i.e. 2001-02 & 2002-03 vide notice U/s 148 dated 30.07.2010. Thus, it is apparent that the notice issued U/s 148 for initiation of reassessment proceedings is beyond the limitation provided U/s 149 as exist at the relevant point of time. For reading reference we quote the provisions of Section 149 as under:-

"149. Time limit for notice.- *(1) No notice under section 148 shall be issue for the relevant assessment year,—*

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause(b);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year."

It is clear that no notice U/s 148 shall be issued in any case after the expiry of 6 years, however, the limitation provided U/s 149 is applicable in a situation where the AO on its own on the basis of fresh material or information forms an opinion that the income assessable to tax as escaped assessment. Section 150 of the I.T Act provides the assessment or reassessment in pursuant to an order of appeal, revision or reference and therefore, the limitation provided U/s 149 for reopening of the assessment is not per se applicable when the reopening is based on the directions of the appellate or revisional authority or as per the directions of the Court. Section 150 of the IT Act is reproduced as under:-

"150. Provision for cases where assessment is in pursuance of an order on appeal, etc.

(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or

recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any

1. The words" more than" omitted by the Direct Tax Laws (Second Amendment) Act, 1989, w. e. f. 1- 4- 1989.

authority in any proceeding under this Act by way of appeal, reference or revision [1]or by a court in any proceeding under any other law].

(2) The provisions of sub- section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub- section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject- matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.”

Thus, as per Sub-section (1) of Section 150 the limitation provided Under section 149 is not applicable if notice U/s 148 is issued in consequence or to give effect to any findings or directions contained in an order passed by any authority in the proceedings under this Act by way of appeal, reference or revision or by a court in any proceeding in other law. This enlargement of time period for issuing the notice U/s 148 as contemplated U/s 150(1) is also not absolute and unlimited but subject to the conditions and restrictions as provided Under sub-section (2) of section 150 of the Act. Therefore, even as per directions of the appellate or revisional authority or court the time limit available is not

unlimited for making assessment, reassessment or re-computation of income of the assessee but the same is subject to the conditions as prescribed Sub-section (2) of Section 150 of the Act. Sub-section (2) puts a condition that unlimited time period provided Under sub-section (1) shall not apply in a case where such assessment, reassessment or re-computation relates to an assessment year in respect of which assessment, reassessment or re-computation could not have been made at the time of the order which was subject matter of appeal, reference or revision as the case may be due to the other provisions of prescribing the limitation within which such assessment, reassessment or re-computation may be made. In other words as per Sub-section (2) of Section 150 the assessment, reassessment or re-computation in consequence of the directions of the appellate, revisional authority or the directions of the court can be made if such assessment, reassessment or re-computation could have been made at the time the order which was subject matter of appeal revision or reference and not hit by the limitation provided U/s 149 of the Act at that point of time. Now, the question arises whether in case of directions of second appellate authority the order which was subject matter of appeal would be 'assessment order' or the order of the ld. CIT(A) for the purpose of

considering the point of time when the limitation period for reassessment has to be counted. Sub-section (2) relaxes the limitation period as provided u/s 149 to be counted from the end of the assessment year till the date of the order which was the subject matter of appeal instead of the date of the notice issued under section 148 of the Act. Hence, for the purpose of limitation for reassessment as prescribed Sub-section (2) of Section 150 the limitation provided u/s 149 has to be counted from the end of the assessment year till the date of the order which is subject matter of appeal wherein the directions were passed instead of the date of the notice issued U/s 148. The ld. AR of the assessee has submitted that the date of the order of the Tribunal passing the directions is the relevant date for computing the limitation whereas the ld. Dr has submitted that Sub-section (1) of Section 150 is applicable and there is no restrictions as far as limitation for reassessment of the income of the assessee in pursuant to the directions of the Tribunal. He has further contended that even if the limitation is considered on the date of the order which is subject matter of appeal then the assessment order dated 29.12.2005 in case of M/s Tirupati Automobiles Pvt. Ltd. is the relevant order for counting the limitation and as such notice issued U/s 148 on 30.07.2010 is within the

period of limitation as provided U/s 149 (1)(b) r.w.s. 150(2) of the Act. As far as the contention of the ld. AR that the limitation as per Sub-section (2) of Section 150 has to be counted as on the date of the Tribunal order. We find that this is not true intent of the legislature as per Sub-section (2) of Section 150 as it is meant for providing a chech on the Assessing Authority against the misuse of power for assessment, reassessment or re-computation as provided U/s 150(1) of the Act. For example if the Assessing Officer instead of assessing the income in the hands of the correct assessee assessed the same in the hands of the wrong assessee then, the Assessing Officer is not permit for misuse the provisions of law for assessment or reassessment of the said income for unlimited period. Therefore, to put a chech on this unlimited power of AO Sub-section (2) is inserted in the statute which stipulates the time limit for such assessment or reassessment by considering the hypothetical situation that if at the time of framing the assessment at the wrong hand and subsequently the appellate or revisional authority passed the direction to assess in the right hand then the limitation for such reassessment has to be considered on the date when such order of assessment in the wrong hand is passed instead of the assessment in the right hand. If the AO was having the power and jurisdiction to

assess the said income in the right hand instead of wrong hand as per the limitation provided U/s 149 then the time taken in the proceedings before the appellate or revisional authority which passed the directions will not take away the jurisdiction and power of the Assessing Officer which was very much available with the AO on the date when the assessment was made in the wrong hand. In other words if the Assessing Officer could have assessed the same income in the hands of the assessee instead of assessing the same in wrong hand then the limitation for reassessment of the said income is still available with the AO irrespective of the time consumed in the appeal proceedings and date of the directions passed by the appellate or revisional authority. In nut shell Sub-section (2) of Section 150 excludes the time consumed in the proceeding before appellate or revisional authority wherein such directions are passed from the limitation prescribed U/s 149 of the Act.

6. As regards the date of order on which the limitation has to be considered whether it is assessment order or the order of first appellate authority in case the directions are passed by the Tribunal we are of the considered opinion that it makes no difference whether the directions are passed by the first appellate authority or in the second appellate proceedings by this Tribunal as the time consumed in the proceedings

in the appeal cannot be attributed to any party either the AO or the assessee for the purpose of limitation as per Sub-section (2) of Section 150 of the Income Tax Act. However, we find that the Hon'ble Kerala High Court in case of CIT vs. Vaikundam rubber Co. Ltd. (supra) while dealing with this issue has held in para 4 to 6 as under:-

> *"4. The two questions to be decided in this case are whether the reassessment was under s. 147(a) or s. 147(b) ? The counsel for the Department tried to argue that it comes under s. 147(a). According to them, the assessee has not disclosed about the pendency of the appeal in the Madras High Court for enhanced compensation. This is a circumstance which could be made use of for reopening the assessment. According to us, this submission cannot be accepted. It is an admitted case that the earlier view was that as per the judgment in Jayaram vs. CIT (supra), interest on the compensation amount is liable to be assessed in the year in which it is received. It was only by a later decision in Peter John's case (supra) a Full Bench of this Court held that interest is liable to be spread over. Hence, we agree with the Tribunal that it cannot be said that the assessee failed to disclose all materials before the AO. If that be so, the assessment cannot be under s. 147(a). Then it can be only under s. 147(b). Here, it was by virtue of the decision of the Tribunal on 19th Feb., 1988, that information was received by the AO that interest can be spread over. There was a contention as to actually whether there is any such direction or finding in the Tribunal's order. According to us, when the Tribunal hold that only interest that accrued for the year 1980-81 can be assessed for that year, it becomes clear that rest of the interest is spread over to various years and this gives a right to the AO under s. 147(b) to start proceedings for escaped assessment read with s. 150(1) of the Act. Sec. 150(1) says that,*

notwithstanding anything contained in s. 149, the notice under s. 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision. Thus, the limitation under s. 149 does not apply to s. 150(1). But sub-s. (2) of s. 150 says that the provisions of sub-s. (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of appeal, reference or revision as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken. The question is what is the meaning of subject-matter of appeal. While the Department contends that subject-matter of appeal refers to order or assessment passed for the year 1980-81, i.e., 27th Jan., 1983; the assessee would contend that assessment order passed on 27th Jan., 1983, was subjected to appeal before the CIT(A) and that appeal was dismissed and against that order, an appeal before the Tribunal was filed. It is the Tribunal which passed the order on 19th Feb., 1988. So, according to the assessee, it is the order of the CIT(A) which was subject-matter of appeal, before the Tribunal which is relevant. That date is 1st March, 1984.

5. Here, so far as the asst. yrs. 1975-76, 1976-77 and 1977-78 is concerned, it has been found by the Tribunal that even if the date is reckoned from 27th Jan., 1983, as pointed out by the Revenue, reassessment cannot be had for these three years viz., 1975-76 to 1977-78. As a matter of fact, the Department can rescue only if the contention under s. 147(a) is accepted. Since that is rejected, we agree with the Tribunal and hold that reassessment for the years 1975-76, 1976-77 and 1977-78 is barred. So, the

next two years are 1978-79 and 1979-80. The Department has found that so far as these two years are concerned, there is no bar of limitation if the date is taken from 27th Jan., 1983. But, the assessee contends that if 1st March, 1984, is taken, the reassessment, for 1978-79 and 1979-80 would have been barred. So, the question to be considered is the meaning of the words, "at the time the order which was the subject-matter of appeal, reference or revision". Learned counsel for the assessee would rely on the decision of the Andhra Pradesh High Court in CIT vs. G. Viswanatham (1988) 73 CTR (AP) 123: (1988) 172 ITR 401(AP) : TC 51R.2015. Even though in that case, the Court observed as follows :

"The judgment of the Tribunal in second appeal is dt. 9th Sept., 1974. According to sub-s. (2) of s. 150, the initiation of reassessment proceedings would be bad, even when they are initiated in consequence of or to give effect to any finding or direction contained in the appellate order, if such initiation of reassessment proceedings is barred by any other provision of the Act on the date of the order which was the subject-matter of appeal. In this case, the second appeal in which the finding was recorded arose from the order of the AAC dt. 6th Oct., 1972. The question is, whether on that date the initiation of reassessment proceedings is barred by any provision of law ? According to s. 149(1)(b) reassessment proceedings cannot be initiated after the expiry of four years from the end of the relevant assessment year. Four years therefrom would expire on 31st March,1971. Thus, the impugned initiation of proceedings under s. 147 by a notice issued on a date subsequent to 9th Sept., 1974, would be clearly barred."

But in that case, the Court found that even if the date is construed as referring to the original order of assessment, the proceedings will be barred. Another decision relied on by the Department is ITO vs. Eastern Coal Co. Ltd. (1975) 101 ITR

477(Cal) : TC 51R.947. In that case, there is no discussion regarding this aspect. But, it is assumed there that, date mentioned is the date of the original order. According to us, the words "at the time the order which was the subject-matter of appeal, reference or revision, as the case may be, was made......." in s. 150(2) are significant. It is because of the word "appeal" that, it is contended that the subject-matter should be construed as the original order. There are two tiers of appeals from the assessment order; one to the CIT(A) and another to the Tribunal. But, the next word is reference. Reference is made under s. 256(1) of the Act. What is referred is the subject-matter of the order of the Tribunal. Can we say that when the Tribunal refers the matter to the High Court, the order that was considered by the Tribunal is the order of the AO?. No. It is the order of the Tribunal that is being referred. For example, in this case, where there is a reference to the High Court against the order of the Tribunal, it will be order of the Tribunal that will be material. Further according to us, when an order is passed by the original authority and an appeal is filed, the order passed by the original authority merges with that of the order of the appellate authority. When a second appeal is filed, the subject-matter is the order of the appellate authority. So also, when the order of the Tribunal is challenged, what is the subject-matter, is the order of the Tribunal. If that be so, there is no difficulty in construing s. 150(2). Then, in this case, the order which was subject-matter of appeal is to be construed as the order passed by the CIT(A), on 1st March, 1984. If so, the reassessment for 1978-79 will also be barred.

6. In the result, the question of law raised at the instance of the Revenue for the years 1975-76 to 1977-78 are answered in the affirmative, in favour of the assessee and against the Revenue. With regard to the question of law raised at the instance of the assessee, we answer the question in the negative, in favour of the assessee and against the Department."

The Hon'ble High Court has clearly held that when the directions were passed by the Tribunal then the order of ld. CIT(A) was the subject matter of appeal before the Tribunal and therefore, the order of ld. CIT(A) is relevant for the purpose of Section 150(2) of the Act and not the assessment order. Since, no contrary decision has been brought to our notice on this point, therefore, we are bound to follow the decision of Hon'ble kerala High Court in case of CIT Vs. Vaikundam rubber Co. Ltd. (supra) and accordingly hold that the limitation for reassessment has to be considered on the date when the ld. CIT (A) passed the order in case of M/s Tirupati Automobiles Pvt. Ltd. which was subject matter of appeal before the Tribunal in which the Tribunal passed the directions on 26.03.2010. There is no dispute that the ld. CIT(A) in case of M/s Tirupati Automobiles Pvt. Ltd. passed the order on 15.07.2009 and on that date the limitation for reassessment for the assessment years 2001-02 & 2002-03 already expired as 6 years from the end of the relevant assessment years expired on 31.03.2008 and 31.03.2009 respectively. Therefore, the limitation as on the date of the order passed by the ld. CIT(A) dated 15.07.2009 was not available for reassessment of this income for these two assessment years. Accordingly, the reopening of the assessment is barred by limitation as

provided u/s 149 r.w.s. 150(2) of the Act. Since the reopening is barred by limitation, therefore, the consequent reassessed is not sustainable and the same are quashed. When the reassessments itself are quash being void and barred by limitation then the ground No. 2 raised by the assessee on the merits of the addition becomes infructuous. Therefore, we do not propose to go into the said ground of the assessee's appeal.

In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 08/12/2017

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल राव)
(Vikram Singh Yadav)	(Vijay Pal Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 08/12/2017.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Ramesh Chand Soni HUF, M/s M/s Tirupati Automobiles, Village- Santera, NH-08, Kotputli, Jaiapur.
2. प्रत्यर्थी/ The Respondent- The ITO, Ward Behror, Behror.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 1024 &1025/JP/2013}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar