IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.300/Del/2001 & 5449/Del/2004
Assessment Year : 1997-98

Shri Awanindra Singh, 208-209, 2nd Floor, Madhuban Building, 55, Nehru Place, New Delhi.	Vs.	Deputy Commissioner of Income Tax, Central Circle-11, New Delhi.
(Appellant)		(Respondent)

ITA Nos.405/Del/2001 & 5615/Del/2004
Assessment Year : 1997-98

Deputy Commissioner of Income Tax, Central Circle-11, New Delhi.	Vs.	Shri Awanindra Singh, 208-209, 2nd Floor, Madhuban Building, 55, Nehru Place, New Delhi.
(Appellant)		(Respondent)

ITA Nos.5452/Del/2004 & 5453/Del/2004
Assessment Years : 1996-97 & 1997-98

M/s Computerland Integrators (India) Ltd., E-18, Pushpanjali Farm, Bijwasan, New Delhi – 110 061.	Vs.	Deputy Commissioner of Income Tax, Central Circle-20, New Delhi.
(Appellant)		(Respondent)

Assessees by	:	Shri C.S. Aggarwal, Senior Advocate & Shri R.P. Mall, Advocate.
Revenue by	:	Smt. Naina Soin Kapil, Senior DR.
Date of hearing	:	16.01.2019
Date of pronouncement	:	08.02.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

These appeals by the assessees and the Department for assessment years 1996-97 and 1997-98 are directed against the order of learned CIT(A)-XIX, New Delhi dated 27th November, 2000 and of learned CIT(A)-I, New Delhi dated 14th October, 2004 and 18th October, 2004

2. All these appeals are interrelated. The facts in all these group of appeals are that a search and seizure operation was conducted by the CBI authorities on 26.09.1996, 27.09.1996 and 28.09.1996 at various residential/business premises of the assessee Shri Awanindra Singh as well as his bank lockers/private vaults. Information gathered from CBI authorities revealed that following assets were found during the course of searches:-

A) Cash :

1.	NDMC Collection Centre, Nirman Bhawan :		
	i) In carry bag	3,45,000/-	
	ii) In brief case	1,91,785/-	
	iii) In office	1,77,212/-	
	iv) In Car No.DL-4C-B7242	28,000/-	7,41,997/-
2.	Farm House at E-8, Pushpanjali Bagh, Bijwasan		11,60,000/-
3.	A-2/177, Safdarjung Enclave, New Delhi		50,000/-
4.	Locker No.3017, New Delhi Vaults Ltd. D-70, Defence Colony.		75,00,000/-
5.	Locker No.1830L, M/s U and I Vaults, South Extention, Part-I, New Delhi		56,00,000/-
6.	Locker No.109, Bank of Baroda, Bharat Nagar, New Delhi.		31,93,500/-
7.	Premises at no.A-585, Sector 3, R.K. Puram, New Delhi.		6,15,000/-

B)	FDRs :			
	i)	FDRs/TDRs with Bank of Baroda, NIT, Faridabad		67,59,396/-
	ii)	FDRs with Bank of Baroda, New Friends Colony, New Delhi.		5,00,000/-
	iii)	Wells Fargo Bank, Sanjose, California, USA	$	2,00,000/-
	iv)	DIME Bank, New York	$	3,256/-
C)	Vikas Patra/Units :			
	i)	Indira Vikas Patra		3,06,000/-
	ii)	Investment in UTI		30,000/-

3. During the course of assessment proceedings in the case of Shri Awanindra Singh, the Assessing Officer asked the assessee to explain the cash and other assets. With regard to cash, it was explained that the sum amounting to ₹1,75,03,500/- belonged to M/s Computerland Integrators (India) Ltd. (*hereinafter referred to as 'CIL'*), ₹3,20,882/- belonged to M/s Software Consultants (P) Ltd. (*hereinafter referred to as 'SCPL'*) and ₹3,93,115/- belonged to NDMC. With regard to FDRs, it was explained that the same belonged to SCPL. FDRs in foreign banks were claimed to be belonging to three foreign nationals. Vikas Patra, units and cars were claimed to be belonging to SCPL. The Assessing Officer did not accept the explanation of the assessee and completed the assessment in the case of Shri Awanindra Singh for assessment year 1997-98 at ₹3,20,48,670/- as against the returned income of ₹2,45,790/-. The assessee challenged the assessment before the learned CIT(A) who, vide order dated 27th November, 2000, deleted some of the additions and set aside some of the additions. The assessee as well as Revenue both, aggrieved with the above order of learned CIT(A) dated 27th November, 2000, are in appeal before us vide ITA No.405/Del/2001 (Revenue's appeal) and ITA No.300/Del/2001 (assessee's appeal). The Assessing Officer completed the assessment as per the direction of the learned CIT(A) vide his order dated 31st

March, 2003 at an income of ₹3,14,07,624/-. Aggrieved, the assessee again filed appeal before the learned CIT(A). Learned CIT(A) decided the same vide order dated 18th October, 2004 in which he allowed the assessee's appeal partly. The Revenue, aggrieved with the relief given by the learned CIT(A), is in appeal vide ITA No.5615/Del/2004 and the assessee, aggrieved with addition sustained, is in appeal vide ITA No.5449/Del/2004.

4. The company CIL had filed the return for assessment year 1996 and 1997. The details with regard to income returned and income assessed in these two years are as under :-

A.Y.	Date of filing return	Income returned	Income assessed
1996-97	24.09.1996	Loss of ₹10,457/-	98,39,543/-
1997-98	28.11.1997	20,620/-	78,70,620/-

5. On appeal, learned CIT(A) passed a consolidated order for these two years on 14th October, 2004 wherein he sustained the addition made by the Assessing Officer. The assessee, aggrieved with the order of learned CIT(A), is in appeal before us vide ITA No.5452/Del/2004 and 5453/Del/2004.

6. At the time of hearing before us, both the parties argued at length and also filed written submissions. Now, with this factual background, we take up each appeal separately for adjudication.

ITA No.405/Del/2001:-

7. This appeal by the Revenue for the assessment year 1997-98 is directed against the order of learned CIT(A)-XIX, New Delhi dated 27th November, 2000.

8. Ground Nos.1 to 3 of the Revenue's appeal read as under :-

> *"1. On the facts and in the circumstances of the case, the ld.CIT(A) has erred in restoring back the addition of Rs.1,75,03,500/- to the file of the A.O. for fresh determination while observing that the claim of the assessee that the amount represented share application money received from several parties was quite unusual and that the company had not made any public issue for receipt of share application money.*
>
> *2. In the above context, the ld.CIT(A) failed to appreciate the significance of the fact that books of accounts of the company, which allegedly had collected the money were not produced in the course of the assessment proceedings for verification though specifically asked for.*
>
> *3. The ld.CIT(A) erred in admitting additional evidence at the appellate stage. In contravention of Rule 46A of the I.T. Rule, 1962."*

9. Learned DR argued at length and claimed that the learned CIT(A) was not at all justified in setting aside the issue of unexplained cash to the file of the Assessing Officer. Her arguments can be summarized as below:-

(i) Adequate opportunities were allowed by the Assessing Officer during the course of assessment proceedings and therefore, there was no justification for the learned CIT(A) to admit the additional evidence and also to set aside the matter to the file of the Assessing Officer for readjudication.

(ii) The claim that the cash seized belonged to the company CIL was a concocted story created by the assessee to explain the cash found in a search by the CBI. That the cash was found from the lockers which

were in the name of the assessee and his wife. That if there was any cash belonging to the company, it would have been in the bank account of the company. By no stretch of imagination, the same can be in a different bank locker of Shri Awanindra Singh.

(iii) That the company CIL neither filed the return of income before the Assessing Officer nor necessary returns were filed with the Registrar of Companies. Therefore, the claim that the company CIL is a genuine company and has received huge sums by way of share application money is unbelievable and is to be rejected.

(iv) That Shri Awanindra Singh has pleaded guilty before the Court of Metropolitan Magistrate and has agreed for the confiscation of the sum of ₹3.03 crores seized by the CBI. Thus, the assessee is taking contradictory stand before the ITAT than the plea before the Metropolitan Magistrate. The assessee cannot be permitted to take a different stand before different authorities with regard to ownership of the same money. The assessee's claim before the ITAT that the money belonged to the company SCPL and CIL is gross misrepresentation of facts and deserves to be rejected.

10. Learned counsel for the assessee, on the other hand, relied upon the order of the learned CIT(A). He stated that CIL had filed the return of income before the Assessing Officer much before the order of the learned CIT(A). This fact is evident from the assessment order itself. The CIL had filed the return for assessment year 1996-97 on 24.09.1996 and for assessment year 1997-98 on 28.11.1997. These dates are noted in the respective assessment orders. Therefore, the allegation of the Revenue that the company CIL did not file the return of income is absolutely incorrect and contrary to the facts on record.

He further stated that whether CIL has filed proper returns as per Company Law with the ROC is the matter between the ROC and CIL and it will have no relevance so far as the income tax assessment of Shri Awanindra Singh is concerned. He further stated that learned CIT(A) set aside the matter in the year 2000 while Shri Awanindra Singh pleaded guilty before the Metropolitan Magistrate in the year 2012. Therefore, the question of pleading guilty was not relevant at the time when learned CIT(A) passed the order. In any case, if the issue of pleading guilty by Shri Awanindra Singh is taken to the logical conclusion, then the cash found and seized was belonging to NDMC which the Court has directed to confiscate and deposited with NDMC. If the cash was belonging to NDMC, then also it cannot be treated as unexplained cash in the hands of the assessee. He further stated that the prevalent fact before the learned CIT(A) when he passed the order was that before the Assessing Officer, the assessee has claimed that the cash found amounting to ₹1,75,03,500/- belonged to CIL. The Assessing Officer did not care to make any verification from the Assessing Officer of CIL even though CIL was a regular income tax assessee. He stated that assessment proceedings were seriously taken up only in February, 2000 and assessment was completed on 29th March, 2000. Therefore, the contention of the learned DR that adequate opportunities were allowed by the Assessing Officer is factually incorrect. The assessee always appeared before the Assessing Officer and filed various written submissions dated 03.10.1999, 15.02.2000, 25.02.2000, 14.03.2000, 23.03.2000 and 27.03.2000. These written submissions were not properly considered by the Assessing Officer. He, therefore, submitted that learned CIT(A) was fully justified in setting aside the matter to the file of the Assessing Officer.

11. We have carefully considered the submissions of both the sides and perused the material placed before us. We find that the Assessing Officer made the addition of ₹1,88,60,497/- as unexplained cash with the following finding in the assessment order :-

> "3. Cash:-
>
> As stated earlier the assessee has been allowed sufficient opportunity vide Notice lT's 142(1) dated 3.2.2000 and order-sheet entries dated 15.2.2000, 21.2.2000 and 7.3.2000 to furnish explanation regarding source of acquisition of aforesaid cash found from various premises owned / occupied by the assessee. The assessee has merely stated in his reply dated 15.02.2000 that the cash of Rs 1,75.03.500 - belongs to M s Computer Land Intergators (I) Ltd. Rs. 3 20.882 - belongs to M s Software Consultants (P) Ltd. and Rs. 3.93,115/- belongs to the NDMC. lnspite of sufficient opportunity allowed in this regard, no documentary evidence such as books of account of the aforesaid concerns or any letter from NDMC in support of his claim, have been produced furnished. Besides above cash amounting to Rs. 6.1 5.000 - was recovered from a close associate of the assessee, namely Sh. P R. Singh, who at the time of search by CBI authorities admitted that the cash belonged to the assessee. Further cash amounting to Rs. 28.000 - was also recovered by the C.B.I. authorities from the Maruti 800 Car no. DL 4C B-7242 which was parked in the assessee's residential premises. In the absence of any satisfactory explanation about the nature and source of acquisition of the aforesaid cash totaling to Rs. 1,88,60,497/- the sum of Rs. 1,88,60,497/- is being added to the Income of the assessee."

12. Learned CIT(A) set aside the matter to the file of the Assessing Officer for fresh determination with the following direction :-

> *"This leaves the major amount of cash of Rs. 1,75,03,500/- claimed as belonging to M/s. Computer Land Integrators (1) Ltd. I find that the above company had filed return for The AY96-97 and 97-98 and evidence for the same was filed.*

The AO has disbelieved the claim merely on the ground that the records were not produced before the department. The returns were filed with ACIT, Company Circle 1(5), New Delhi. However, the company has shown share application money of Rs. 1.77 crores as receipt on various dates in 1996 which falls partly in AY 96-.97 and partly in AY97-98. The evidence filed cannot be ignored merely on the ground that the cash was found in the lockers of the appellant. When the company owned up this cash, it cannot be said that the evidence has to be completely ignored. However, as discussed above, the source of the cash found has been claimed to be share application money received from various parties which is quite unusual. They had not made public issue for receipt of share application money and it cannot be said that the appellant will be unaware of the parties who had given the money. However, it is necessary that the source of cash is examined in case of the company and if it is not explained by the company, then the onus will be on the appellant to explain the money since the cash was found in its possession. As per the AR it could produce the parties and get the share application money verified in case of the company. In my opinion, it-will be fair that the department examines the issue of share application money received in case of the company and then decide the matter of ownership if cash in the hands of the appellant matter is therefore being sent back to die AO for fresh determination."

13. After considering the facts of the case and submissions of both the sides, we do not find any infirmity in the above direction of the learned CIT(A) in setting aside the matter to the file of the Assessing Officer. The major thrust of the Revenue was that Shri Awanindra Singh himself has pleaded guilty before the Metropolitan Magistrate, meaning thereby, he admitted that the cash was of NDMC which was siphoned off by him. It would not be out of place to mention here that SCPL was appointed as an agent by NDMC to collect the tax on its behalf. In the year 2012, Shri Awanindra Singh pleaded guilty before the Metropolitan Magistrate by admitting that he siphoned off the tax collected on behalf of NDMC. However, this admission is in the year

2012 and cannot be considered as a basis for holding the order of the learned CIT(A) to be wrong which was passed in the year 2000. Moreover, if this admission by Shri Awanindra Singh before the Metropolitan Magistrate is to be taken into account, then also the cash found from him which was seized by the CBI authorities and has been directed by the Metropolitan Magistrate to be confiscated and deposited with NDMC cannot be considered as unexplained cash of the assessee because SCPL were the collecting agent for the taxes on behalf of NDMC and now, it is established and admitted by Shri Awanindra Singh that it was NDMC's tax collection which was siphoned off and kept in his lockers. Thus, it cannot be treated as unexplained cash for the purpose of income tax in his hands.

14. The Department has also pleaded that CIL neither filed the return of income nor the relevant forms and documents with the Registrar of Companies. So far as filing of the return of income is concerned, from the assessment order of CIL, we find that the return for assessment year 1996-97 was filed on 24.09.1996 and for assessment year 1997-98 on 28.11.1997. Thus, the said company has filed regular returns of income tax with the concerned Assessing Officer. Therefore, the allegation that the said company did not file the return of income is factually incorrect. If there is any non-compliance under the Companies Act, it is for the Registrar of Companies to take appropriate action but it will have no bearing so far as income tax assessment is concerned. In view of the totality of facts, we are of the opinion that the order of the learned CIT(A) wherein he set aside the addition of ₹1,75,03,500/- for fresh consideration to the Assessing Officer cannot be faulted with. The same is sustained and ground Nos.1 to 3 of the Revenue's appeal are rejected.

15. Ground No.4 of the Revenue's appeal reads as under :-

> *"Ld.CIT(A) has erred in deleting the addition of Rs.1,91,785/- found in a carry bag at NDMC Collection Centre at Nirman Bhawan by holding that the same belongs to the Company M/s Software Consultants (P) Ltd."*

16. This ground would be adjudicated along with ground No.1 & 2 of the Revenue's appeal in ITA No.300/Del/2001.

17. Ground Nos.5 & 6 of the Revenue's appeal read as under :-

> *"5. The Ld.CIT(A) erred in deleting addition of Rs.5,39,530/- made on A/c of interest on FDRs by holding that the FDRs belonged to the company, M/s Software Consultants Pvt.Ltd. ignoring the fact that all these FDRs in question were in the name of the assessee and his minor children and not in the name of the company.*
>
> *6. In the above context, once again the Ld.CIT(A) has failed to appreciate that the books of accounts of this company M/s Software Consultants Pvt.Ltd. were never produced during the assessment proceedings for verification of the claim of the assessee."*

18. We have heard both the sides and perused the material placed before us. The learned CIT(A), in paragraph 6.1 of his order, has mentioned the details of FDRs shown in the balance sheet of SCPL in various years. He has also mentioned that the balance sheet also contained the note that the company's FDRs stood in the name of the directors and their relatives. The above details are reproduced below for ready reference :-

> *"The copies of audited balance sheet of the company showed FDRs as well as interest income from FDRs as under:-*

	Value of FDRs as Per balance Sheet	*Interest Income as per Profit & Loss A/c*
31.3.90	*3,10,023*	*10,023*
31.3.91	*3,44,391*	*34,368*
31.3.92	*3,78,759*	*34,368*
31.3.93	*61,07,652*	*2,12,693*
31.3.94	*6,06,652*	*5,32,561*
31.3.95	*67,74,727*	*7,05,320*
31.3.96	*80,78,605*	*7,17,378*
31.3.97	*89,55,580*	*9,43,841*

All the balance sheets also contained note that the company's FDRs stood in the name of directors and their relatives."

19. After considering this fact and submissions of both the sides, learned CIT(A) decided this issue in favour of the assessee by the following finding :-

"6.2 I have considered the arguments raised on behalf of the appellant and the submissions made by the AO from time to time. In regard to the interest of Rs.49,500/- it is found that TDRs were taken by- depositing Rs.5 lacs on 29.1.96. As pointed out by the AR there was withdrawal of Rs.5 lacs on 29.1.96 from the bank account of M/s. Software Consultants Pvt. lid. The appellant filed copy of ledger account of M/s. Software Consultants Pvt Ltd. The AO has merely commented that this evidence should not be accepted The AO had not found anything against the claim of the appellant except that books of account were not reliable and were not written in the normal course of business. As discussed above, computerized books were produced. The company had filed returns with the Department and the entire evidence cannot be wished away by claiming that it was not produced during the course of assessment The evidences were produced during the course of appellate proceedings and the AO had been given opportunity to rebut the evidences filed. In my opinion, the evidences filed cannot be rejected and the

explanation of the appellant has to be accepted. As pointed out by the AR, there is narration in the balance sheet of the appellant that FDRs were held in the name of directors and their family members and since the funds have come from the company, the evidence filed cannot be rejected. Similar is the position in regard to deposit of Rs.30 lacs for purchase of 3 FDRs of Rs.5 lacs each in the name of children of the appellant. The AO has verified that the money was withdrawn from the bank and cash was taken out. On the same date FDRs have been made and it cannot be said that this cannot be considered as the linkage between the source of fund and the deposit. The company has been showing the FDRs in their hands and also disclosing income from FDR in their P&L account and it will not be correct to assess the income again in the hands of the appellant. The FDRs belong to the company M/s. Software Consultants Pvt. Ltd. and interest was also duly accounted for by them. In my opinion, therefore there could be no addition of accrued interest on TDR/FDR in the hands of the appellant, the additions made of Rs.49,500/- and Rs.4,90,030/- are hereby deleted."

20. After considering the facts of the case and submissions of both the sides, we do not find any justification to interfere with the order of the learned CIT(A). The main contention of the Revenue was that the FDRs were in the name of the wife and children of the assessee and moreover, the books of account of SCPL were never produced before the Assessing Officer for verification. On the contrary, learned counsel for the assessee stated that SCPL is a separate assessee and in its assessment u/s 143(3), the issue of FDRs is duly considered. In the said assessment order also, there is a mention that the FDRs were in the name of Smt. Poonam Rani Singh wife of Shri Awanindra Singh. Copy of such assessment order for assessment year 1990-91 and 1993-94 is produced before us. When SCPL is a separate assessee whose assessments were completed u/s 143(3) and in whose balance sheet, FDRs were duly disclosed, then in our opinion, there would hardly be any justification to treat them as unexplained investment of

the assessee merely because books of SCPL were not produced during the assessment proceedings of the assessee. If the Assessing Officer had any doubt, he could have got verified the same through the Assessing Officer of SCPL. Thus, when the FDRs belonged to SCPL, the interest, if any, can be considered in their hands only and not in the case of the assessee. In view of the above, we uphold the order of learned CIT(A) deleting the addition for interest on FDRs. Accordingly, ground Nos.5 & 6 of the Revenue's appeal are rejected.

21. Ground Nos.7 to 9 of the Revenue's appeal read as under :-

> *"7. The ld.CIT(A) erred in deleting the addition of Rs.50,96,735/- made on a/c of unexplained investment in property observing that the investment did not relate to the year under appeal.*
>
> *8. The ld.CIT(A) has made this observation by relying upon the assessee's submission that these lands were acquired by two trusts in earlier years and have been duly assessed by the Department, and has completely ignored the fact that the source of investment of the properties in question have never been examined by the Department.*
>
> *9. The ld.CIT(A) has also ignored the fact that the flats in Bombay and agricultural land at Vaishali had allegedly been acquired in A.Y. 94-95 and 93-94 respectively when the trusts had no source of income nor returns had been filed as had been stated by the trustee in her affidavit."*

22. We have heard the submissions of both the sides and perused the material placed before us. Learned CIT(A) has recorded the finding that all the assets were acquired by the assessee in the preceding years and no asset was acquired during the year under consideration. The relevant finding of the learned CIT(A) reads as under :-

> *"8. Ground No. 7 is in regard to addition made of Rs. 58,56,735/- on account of unexplained investment in*

immovable properties. It was found by the AO that as per the list of assets furnished by CBI authorities the appellant had acquired following properties:-

Agricultural land in Bihar	*17,31,735*
Agricultural land at Najafgarh, Delhi	*14,65,000*
Flats No. 3 7 4, Mumbai	*19,00,000*
Flat No. 603, Skipper Bhawan, New Delhi	*7,60,000*
	58,56,735

During the course of hearing it was claimed that the agricultural land in Bihar was owned by M/s Digvijay Singh Welfare Trust and M/s Inderjeet Welfare Trust of which the appellant's wife Mrs. Poonam Rani Singh was the trustee. Both the trusts were assessed to Income-tax. It was also claimed that the land at Najafgarh was purchased in F.Y. 95-96. In the absence of documentary evidence and assessment order of the trust the claim was rejected. Similarly Flat No.3 was claimed to have been acquired by Inderjeet Welfare Trust and Flat No.4 by Digvijav Singh Welfare Trust during financial year 93-94. In regard to Flat No.603, Skipper Bhawan. New Delhi, the appellant denied ownership. The AO however rejected the claim and added the investments as estimated by CBI authorities during the year under appeal as above.

8.1 During fine course of hearing the appellant, vide letter dated 15.11.2000 explained that the assets were not acquired during the year under appeal. The agricultural land in Bihar was acquired in AY93-94 by the two trusts and it was being shown in the returns of the trust which have been duly assessed by the department. Similarly agricultural land at Najafgarh, New Delhi, was purchased by the trust in AY96-97 and even a copy of sale deed was filed. In regard to flat at Mumbai the appellant filed payment receipts which showed that the payments were made by the two trusts in AY94-95. I find that the investments did not relate to the year under appeal and hence were wrongly added in this year. The AO has merely stated that die documents were not filed during die course of assessment proceedings but die fact remains dial the investments were not made in regard to agricultural land in

Bihar, land at Najafgarh and the two flats at Mumbai in the year under appeal. The addition made of Rs. 17,31,735 + Rs. 14,65,000 + Rs. 19,00,000 = Rs. 50,96,735 is hereby deleted as the investment did not relate to the year under appeal."

23. Thus, we find that learned CIT(A) has given the year of acquisition of all assets. The agricultural land in Bihar was acquired during the financial year relevant to assessment year 1993-94, agricultural land at Najafgarh was acquired during the financial year relevant to assessment year 1996-97 and flat at Mumbai during the financial year relevant to assessment year 1994-95. When no asset was acquired during the financial year relevant to the assessment year under consideration, there cannot be any question of unexplained investment in acquisition of such asset.

ITA No.300/Del/2001:-

24. This appeal by the assessee for the assessment year 1997-98 is directed against the order of learned CIT(A)-XIX, New Delhi dated 27th November, 2000.

25. In this appeal by the assessee, following two grounds are raised:-

"1. Ld.CIT(A) is not justified in upholding addition of Rs.393115/- being cash belonging to NDMC found by CBI during search at NDMC collection centre.

2. Ld.CIT(A) is not justified in upholding addition of Rs.129097/- being cash belonging partly to M/s Software Consultants (India) Pvt.Ltd. and partly to NDMC."

26. Ground No.4 of the Revenue's appeal in ITA No.405/Del/2001 is also interrelated and reads as under :-

"Ld.CIT(A) has erred in deleting the addition of Rs.1,91,785/- found in a carry bag at NDMC Collection Centre at Nirman Bhawan by holding that the same belongs to the Company M/s Software Consultants (P) Ltd."

27. The above two grounds of the assessee and ground No.4 of the Revenue's appeal are being adjudicated together.

28. The facts of the case are that SCPL had been authorized by NDMC to collect electricity and water charges from the consumers residing in area within the jurisdiction of NDMC. On the basis of information received by the CBI ACB, it formed an opinion that SCPL was remitting less amount to NDMC by resorting to fraud in their collection statement. Based on the above information, a search was conducted by the CBI at NDMC Collection Centre at Nirman Bhawan on 27.09.1996, in which, cash of ₹7,41,997/- was found, the details of which is given at page 2 of the assessment order, which are reproduced below for ready reference :-

"A) Cash:

1.	*NDMC Collection Centre, Nirman Bhawan:*		
	i)	*In Carry Bag*	*3,45,000/-*
	ii)	*In brief case*	*1,91,785/-*
	iii)	*In Office*	*1,77,212/-*
	iv)	*In Car No. DL-4C-B 7242*	*28,000/-*
			7,41,997/-"

29. After the explanation of the assessee, the Assessing Officer recorded the finding at page 5 of the assessment order as under :-

"Detail of cash relating to Software Consultants Pvt. Ltd., & NDMC is as under:-

a) M/s Software Consultants Pvt. Ltd.

In brief case	*- 1,91,785/-*
In carry bag	*- 1,29,097/-*
(out of Rs. 3,45,000)	*----------*
	3,20,882/-

b) NDMC

In carry bag	*- Rs. 2,15,903/-*
(out of Rs. 3,45,000/-)	
In Office	*-Rs. 1,77,212/-*

	3,93,115/-
	.....”

30. He made the addition of all the above cash in the hands of the assessee. Learned CIT(A) deleted the addition of ₹1,91,785/- but sustained the addition of ₹3,93,115/- and ₹1,29,097/-. The Revenue is in appeal against the relief of ₹1,91,785/- allowed by the learned CIT(A) while the assessee is in appeal against the addition sustained.

31. At the time of hearing before us, the learned counsel for the assessee stated that SCPL was the collection agent for NDMC. Admittedly, the entire cash found from the NDMC Collection Centre was out of the collections made by SCPL from the customers and therefore, the same cannot be treated to be unexplained cash of the assessee. He further stated that in the charge sheet of the CBI, the CBI has given the working of actual tax collected, amount deposited by SCPL with the NDMC and the amount misappropriated. The total misappropriation in the CBI’s report was more than ₹3 crores and which is admitted by Shri Awanindra Singh (the assessee) who is also director of SCPL.

32. Learned DR, on the other hand, has relied upon the order of the Assessing Officer and she stated that during assessment proceedings, the assessee never claimed that it is the cash which is of collection on behalf of NDMC and it is at the very late stage, as late as in the year 2014, Shri Awanindra Singh pleaded guilty before the Metropolitan Magistrate.

33. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that in the charge sheet furnished by the CBI ACB, New Delhi, complete month-wise details of the collection of electricity and water charges, amount deposited with the NDMC and amount of misappropriation is given. The relevant finding is reproduced below :-

> *"During the course of investigation, on the basis of the figures of day-wise misappropriation on the basis of the actual cash collection statement and cash deposit statements, the month-wise figures as revealed are mentioned herein under:-*

Month	*Amount collected from consumers*	*Amount deposited with the NDMC*	*Amount misappropriated*
March, 96	*Rs. 1,07,33,772/-*	*Rs. 63,94,052/-*	*Rs. 43,39,720/-*
April, 96	*Rs. 82,52,029*	*Rs. 50,83,238/-*	*Rs. 34,95,616/-*
May, 96	*Rs. 97,31,001/-*	*Rs. 62,35,385/-*	*Rs. 42,50,578/-*
June, 96	*Rs. 1,12,07,000/-*	*Rs. 09,56,422/-*	*Rs. 42,50,578/-*
July, 96	*Rs. 1,27,79,876/-*	*Rs. 75,88,146/-*	*Rs. 48,12,623/-*
Aug, 96	*Rs. 1,34,83,963/-*	*Rs. 81,93,334/-*	*Rs. 52,90,629/-*
Sept., 96	*Rs. 7,86,90,301/-*	*Rs. 4,84,18,630/-*	*Rs. 3,02,71,671/-*

> *During the course of investigation, a large number of actual cash collection sheets and counterfoils were recovered from the residence of Sh. P.R. Singh, (A-2) and it was found that the amounts on these collections sheets for the various dates tallied with the collection sheets (CC) retrieved from the computers and these amounts also tallied with the counterfoils."*

34. Shri Awanindra Singh has pleaded guilty and thus accepted the above charge of CBI. The same is recorded in the order of the Metropolitan Magistrate. The same is also reproduced below for ready reference :-

"01.06.2012
Present Sh. Ratan Deep Singh, Ld. APP for CBI.
IO/SI VIJAY YADAV.

Sh. Anil Kumar, Advocate with accused Awanindra Singh and Priya Ranjan Singh.

Both the accused persons have moved separate applications to plead guilty to offences U/s 420/406/467/468/471/474/477A/120B IPC.

Heard

I have examined both the accused persons.

Accused Awanindra Singh is an Electronic Engineer from IIT. Accused Priya Ranjan Singh has done B.Sc (Non-Medical). Both the accused persons are well educated and having capacity to understand implication of pleading guilty. I am satisfied that both the accused persons are pleading their guilty voluntarily and without any force and coercion. They are also ready to face legal consequences of pleading their guilt and therefore, their plea of guilt is separately recorded.

In view of plea of guilt, accused Awanindra Singh and accused Priya Ranjan Singh are hereby held guilty and for committing offences U/s 420/406/467/468/471/474/477A/120B IPC.

Arguments heard on the point of sentences.

Sh. Ratan Deep Singh, Ld APP for CBI has requested that maximum sentence be passed in view the quantum of misappropriation and further consequent loss to the exchequer.

Ld. Defence Counsel has prayed for lenient view since the accused persons have already deposited the misappropriated amount with the CBI at initial stages of the investigation and further, both the accused persons have already remained in judicial custody for 90 days and further, they are facing trial for the last 16 years.

I have carefully examined the matter. Both the accused persons have already spent 89 days in judicial custody. They are facing trial for the last 16 years They have already deposited the misappropriated amount with the CBI at initial stage of investigation. Accordingly, they are sentenced to the period already] undergone and further, both the accused persons are sentenced to pay fine "o Rs.7 lacs. An amount of Rs.3,03,13,951/- (misappropriated amount) attached by the court is confiscated and ordered to be deposited with the NDMC. CBI shall file proof of deposit of the said amount with the NDMC.

Fine paid.

Receipt issued.

As requested, CBI shall handover FDRs of Rs.67,00,000/- and Rs. 5,00,000/- furnished by the accused Awnindera Singh and FDRs/Indira Vikas Patras of Rs.2,07,534/-, Rs.3,06,000/- and UTI bond of Rs.30,000/- to the accused Priya Ranjan Singh on payment of the principal amount of the FDRs/TDR/Indira Vikas Patras/UTI bond.

Bail bond stand discharged. Any condition imposed by this court at the time grant of bail stands cancelled. FDR of Rs.10,000/- furnished by the accused Awnindera Singh as a condition to travel abroad be returned to him. Original documents furnished by the surety, if any, be returned to the concerned person against the acknowledgment.

Copy of order be given dasti to CBI.

File be consigned to Record Room."

35. Thus, admittedly, SCPL was the collection agent for NDMC in respect of electricity and water charges. All the above sums were

found during the course of search by the CBI at the collection centre of NDMC at Nirman Bhawan. Therefore, the entire cash was out of the collection of electricity and water charges made by SCPL. Therefore, the same cannot be considered as unexplained money of the assessee. Accordingly, we do not find any justification for sustaining any addition in this regard. The additions of ₹3,93,115/- and ₹1,29,097/- sustained by learned CIT(A) are deleted and assessee's appeal is allowed while ground No.4 of the Revenue's appeal is rejected.

ITA No.5449/Del/2004:-

36. This appeal by the assessee for the assessment year 1997-98 is directed against the order of learned CIT(A)-I, New Delhi dated 18th October, 2004.

37. The first ground of the assessee's appeal reads as under :-

> *"1. That the learned Commissioner of Income Tax (Appeals)-1, New Delhi has erred both on facts and in law in failing to appreciate that the assessment made by the learned DCIT by an order dated 31st March, 2003 was barred by limitation and the assessment made was thus untenable in law.*
>
> *1.1 That the learned Commissioner of Income Tax (Appeals) has erred in upholding the validity of the assessment made and failing to appreciate that even otherwise, the assessee had not been provided a fair and proper opportunity of being heard."*

38. At the time of hearing before us, it is stated by the learned counsel that learned CIT(A) set aside the order of the Assessing Officer dated 29th March, 2000 vide his order dated 27th November, 2000. That the set aside assessment was completed u/s 250/143(3) on 31st March, 2003. That the period of limitation is governed by Section

153(2A). That prior to amendment in Section 153(2A), the set aside assessment was to be completed within the period of two years from the end of the financial year in which the relevant order was received. However, Section 153(2A) was amended by the Finance Act, 2001 and, as per the amended provision, the set aside assessment is to be completed within one year from the end of the financial year in which the order of set aside was passed. He submitted that in the amended provision itself and on the notes of clauses, it is clarified by the Government that the period of two years would continue to be applicable for the orders passed before 1st day of April, 2000 and, in such cases, order of fresh assessment may be made at any time up to 31st March, 2002. Thus, the intention of the legislature is very clear that where the order of set aside is after the 1st day of April, 2000, the new provision would be applicable and assessment is to be completed within one year from the end of the financial year in which order of set aside was passed. He stated that the order of set aside was passed on 27th November, 2000 i.e., within the financial year ending on 31st March, 2001, so the one year from the end of the financial year would expire on 31st March, 2002 while the assessment order is passed on 31st March, 2003, which is clearly barred by limitation by one year. He, therefore, submitted that the fresh assessment order should be declared as barred by limitation. In support of this contention, he relied upon the Circular No.14 of 2001 dated 27th November, 2001 issued by the CBDT and the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Bhan Textile P.Ltd. – [2008] 300 ITR 176 (Delhi).

39. Learned DR, on the other hand, stated that the amendment in Section 153(2A) was made by the Finance Act, 2001 with effect from 1st June, 2001 and therefore, the amended provision would be

applicable only in respect of the order of the CIT(A) passed after 1st June, 2001. Since in this case, the order of the CIT(A) was passed on 27th November, 2000, and as per the relevant provision at that time, the assessment was to be completed within two years from the end of the financial year in which the order of set aside was passed/received by CCIT/CIT. The order of the CIT(A) was passed/received in the financial year 2000-01. Two years from the end of this financial year would expire on 31st March, 2003. The assessment order has already been passed on 31st March, 2003 i.e., well within the period of limitation. She further stated that the provision of Section 153(2A) cannot be made applicable retrospectively, especially when, in the Act, it has been provided that the amended provision is applicable with effect from 1st June, 2001.

40. We have carefully considered the submissions of both the sides and perused the material placed before us. Section 153(2A), as it stood prior to amendment by the Finance Act, 2001, reads as under :-

> *"[(2A) Notwithstanding anything contained in sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment under section 146 or in pursuance of an order, under section 250, section 254, section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 146 cancelling the assessment is passed by the Assessing Officer or the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner.]"*

41. From the above, it is evident that an order of fresh assessment in pursuance of an order u/s 250 setting aside or cancelling an assessment may be made at any time before the expiry of two years from the end of the financial year in which order of setting aside was passed/received by CCIT or CIT.

42. Section 153(2A) was amended by the Finance Act, 2001 with effect from 1st June, 2001 and the amended Section reads as under :-

> *"[(2A) Notwithstanding anything contained in sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner.*
>
> ***Provided*** *that where the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002.]"*

43. Thus, as per amended provision, an order of fresh assessment in pursuance to an order under Section 250 setting aside or cancelling an assessment is to be made within one year from the expiry of the end of the financial year in which the order under Section 250 is received by the Chief Commissioner or the Commissioner, as the case may be. In the proviso, it is provided that where the order under Section 250 is

passed by the Commissioner on or after 1st April, 1999 but before 1st April, 2000, such an order of fresh assessment may be made at any time up to 31st March, 2002. The CBDT has issued a Circular No.14 of 2001 explaining the provisions of Finance Act, 2001 relating to direct taxes. Paragraph 68.3 of the Circular reads as under :-

> *"Sub-section (2) of section 153 of the Income-tax Act provided for a time-limit of two years for completion of an assessment, reassessment or recomputation of income under section 147. Similarly, sub-section (2A) of the section provided for a time limit of two years for making of fresh assessment in cases where the original assessment had been set aside or cancelled in appeal or revision. The period of two years provided for making such assessments or reassessments is more than necessary considering that the scope of such assessment or reassessment is generally limited to a few specific issues. With a view to bringing about an early finalization of such proceedings, the Act has amended sub-sections (2) and (2A) of section 153 to reduce the time-limit for making such orders of assessment, reassessment or recomputation to one year. However, where the notice under section 148 has been served, or the appellate or revisionary order mentioned in section 153(2A) has been received or passed, as the case may be, on or after 1st April, 1999, but before 1st April, 2000, the existing time limits will continue and such assessment, reassessment or recomputation may be made at any time up to 31st March, 2002."*

44. In the light of the above amended provision, the question before us is whether in respect of the order of the learned CIT(A) dated 27th November, 2000, the old provisions of Section 153(2A) would be applicable or the new provision as amended by the Finance Act, 2001 would be applicable. It is the claim of the Revenue that the amended provision would be applicable where the order of set aside is received by the Chief Commissioner or Commissioner after 1st June, 2001 i.e., the date from which the amended provision of Finance Act, 2001 would be effective. While the claim of the learned counsel is that the

amended provision would be applicable to all the orders of set aside received by the Chief Commissioner or Commissioner after the 1st day of April, 2000 as provided in proviso to Section 153(2A). We would like to reproduce the proviso to Section 153(2A) again at the cost of repetition :-

> *"**Provided** that where the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002."*

45. In the above proviso, the legislature has provided that where the order under Section 250 is received by the Chief Commissioner or the Commissioner on or before the 1st day of April, 1999 but before 1st day of April, 2000, in those cases, order of fresh assessment can be made at any time up to 31st March, 2002. Meaning thereby, the old provision of Section 153(2A) would be applicable in respect of cases where the order of set aside is received by the Commissioner before the 1st day of April, 2000. By necessary implication, it has to be held that when the order of set aside under Section 250 by the CIT(A) is received by the Commissioner or the Chief Commissioner after the 1st day of April, 2000, the new provision would be applicable. In the CBDT's Circular which is the explanatory notes on the provisions relating to direct taxes in Finance Act, 2001, again, the CBDT has clarified that where the appellate or revisionary order mentioned in Section 153(2A) has been received or passed, as the case may be, on or after 1st day of April, 1999 but before the 1st day of April, 2000, the existing time limit will continue. Therefore, in our opinion, the existing time limit i.e., the period of limitation of two years would be applicable only where the

appellate or revisionary order setting aside an assessment is received or passed before 1st April, 2000. If the contention of the Revenue that the amended provision of Section 153(2A) would be applicable in respect of the cases where the appellate or revisionary order is received or passed after 1st June, 2001, there was no necessity of proviso to Section 153(2A) and the said proviso would become redundant. It cannot be presumed that the legislature would provide a proviso which is redundant. That in the CBDT's Circular No.14 of 2001 paragraph 68.3, it has been clearly provided "*The period of two years provided for making such assessments or reassessments is more than necessary considering that the scope of such assessment or reassessment is generally limited to a few specific issues. With a view to bringing about an early finalization of such proceedings, the Act has amended sub-sections (2) and (2A) of section 153 to reduce the time-limit for making such orders of assessment, reassessment or recomputation to one year*." Thus, the legislature has taken a conscious decision to reduce the period of two years for making reassessment of set aside matters to one year. They have also consciously provided that the old provisions of two years would be applicable where such order of set aside was passed or received on or before 1st April, 2000. Thus, to our mind, there is no doubt that where the order of set aside is passed by the CIT(A) under Section 250 after 1st day of April, 2000, the new provision of Section 153(2A) providing the time limit of one year would be applicable.

46. We find that Hon'ble Jurisdictional High Court has also considered the applicability of limitation under Section 153(2A) in the case of Bhan Textile P.Ltd. (supra). The facts of the said case are that the assessment in respect of the assessee was completed under Section 144 on 31st March, 1999. The assessee, aggrieved by the assessment

order, preferred an appeal before the CIT(A) who passed an order dated 12th May, 2000 wherein the CIT(A) passed the following order :-

> *"It was also the case of learned counsel that the additions were made without any basis and there was no history of case which could justify such an assessment. I have considered this argument also. It is true that there is no history of case in respect of the additions made in the assessment order. At least nothing is mentioned in the order in this respect. It is also felt that the learned Assessing Officer could have specifically granted one more opportunity to the appellant to state his case in respect of the matters covered in the questionnaire. This is so because the appellant could have thought that the proceedings may be dropped after hearing the preliminary objection. Though it is mentioned in the note that the authorised representative did not agree to file any detail. Yet the Assessing Officer could have granted one more opportunity, particularly when the matter had remained pending up to March 31, 1999. It is also seen that the assessment was taken up on March 5, 1999, while the initial notice had been issued on November 27, 1997, and there was no follow up of the case in the interregnum. In view of this, I am of the view that the learned Assessing Officer should have granted one more opportunity to the appellant on proposed additions. Therefore, it is held that it will be the interest of the justice to restore the matter to the file of the Assessing Officer, so that one more opportunity may be given to the appellant to file evidence and state his case in respect of the matters covered in the show-cause notice dated March 5, 1999. Thereafter, the learned Assessing Officer may pass order under section 144 taking the explanation into account. Therefore, this matter is restored to the file of the Assessing Officer. Thus, ground No.2 of the appeal is treated as allowed."*

47. When the matter was taken up by the Assessing Officer, he issued a notice under Section 143(2) of the Act on 24th February, 2003. The assessee claimed the notice to be barred by limitation in view of provisions of Section 153(2A). Since the assessee did not cooperate with the Assessing Officer, he completed the assessment once again as

originally framed. On appeal, learned CIT(A) upheld the assessment order. The assessee preferred an appeal to the ITAT which held the assessment to be barred by limitation under Section 153(2A). Hon'ble Jurisdictional High Court upheld the order of the ITAT.

48. We find that the precise dispute before the Hon'ble Jurisdictional High Court was whether in respect of such an order of set aside, Section 153(2A) was applicable or Section 153(3)(iii) was applicable and Hon'ble Jurisdictional High Court held that Section 153(2A) was applicable. However, the facts are identical. That in the said case also, the order of set aside was received on 12th May, 2000 i.e., after the 1st day of April, 2000 but before 1st June, 2001 and notice under Section 143(2) issued on 24th February, 2003 which was held to be barred by limitation. Thus, this decision also supports the case of the assessee. In any case, after considering the proviso to Section 153(2A) as well as the memorandum explaining the provisions of Finance Act, 2001, we are clearly of the opinion that the amended provisions would be applicable where the appellate order is passed or received after 1st April, 2000. As per amended provision, the set aside assessment is to be completed within one year from the end of the financial year in which appellate order setting aside the assessment was received. In this case, order of learned CIT(A) is dated 27th November, 2000 though the exact date of receipt of such order by the CIT is not given before us but it can be reasonably presumed that it was received within the financial year ended on 31st March, 2001, especially when no contrary claim is made by the Revenue. In such circumstances, the set aside assessment was to be completed before 31st March, 2002 while the set aside assessment is completed on 31st March, 2003 which is clearly barred by limitation. In view of the above, we quash the assessment order dated 31st March, 2003. Once the impugned assessment order is

quashed, the other grounds raised in the assessee's appeal do not require any adjudication.

ITA No.5615/Del/2004 :-

49. This appeal before the CIT(A) was against the assessment order dated 31st March, 2003. While deciding the assessee's appeal in ITA No.5449/Del/2004, we have already quashed the assessment order. Once the assessment order itself has been quashed, the Revenue's appeal does not survive for adjudication. Accordingly, the same is dismissed.

ITA Nos.5452/Del/2004 & 5453/Del/2004 :-

50. These appeals by the assessee M/s Computerland Integrators (India) Ltd. for the assessment years 1996-97 and 1997-98 are filed against the order of learned CIT(A)-I, New Delhi dated 14th October, 2004.

51. In these two appeals, common grounds have been raised and therefore, they are being considered together. In these appeals, though large number of grounds have been raised, basically two issues are under challenge – (i) initiation of proceedings under Section 147 and (ii) upholding of the addition by the CIT(A) in respect of amount claimed to have been received as share subscription money. By way of ground Nos.1 to 6, the assessee has challenged the validity of reopening of assessment and by ground No.7 onwards, the assessee has challenged the addition of ₹98.50 lakhs for assessment year 1996-97 and ₹76.50 lakhs for assessment year 1997-98 in respect of share subscription money. The facts of the case are that SCPL had been authorized by NDMC to collect electricity and water charges from the consumers residing in the areas within the jurisdiction of NDMC. On

the basis of information, it was found by the CBI that they were collecting the actual charges of water and electricity bills from the consumers but remitting less amount to NDMC by resorting to fraud in their collection statement. Based on above information, a search was conducted by CBI at the NDMC collection centre at Nirman Bhawan on 27th September, 1996 and also at the residence and the bank lockers of Shri Awanindra Singh. In the said search, apart from various other assets, substantial cash was found. It was explained by Shri Awanindra Singh that the cash amounting to ₹1,75,03,500/- belonged to CIL i.e., the assessee. However, the Revenue did not accept the claim of Shri Awanindra Singh and, in his assessment, the above sum was added as unexplained cash. In the first round of appeal, CIT(A), vide his order dated 27th November, 2000 set aside the matter to the file of the Assessing Officer. The Assessing Officer, in the order of reassessment, repeated the addition. In the second round, the CIT(A), vide order dated 18th October, 2004, accepted the assessee's claim that the cash belonged to CIL i.e., the assessee. However, the Revenue did not accept the order of the learned CIT(A) and challenged the deletion of the addition by the CIT(A) before the ITAT vide ITA No.405/Del/2001.

52. That after the order of the CIT(A) dated 27th November, 2000, the Assessing Officer issued notice u/s 148 on 31st July, 2002 to the assessee and the assessment for both the assessment years under consideration was completed u/s 143(3)/148 on 29th March, 2004 wherein the amount of share subscription has been added on protective basis. The CIT(A) upheld the reopening of assessment u/s 147 and he further held that the amount of share subscription is to be added on substantive basis in the hands of the assessee. The assessee, aggrieved with the order of the learned CIT(A), is in appeal before us.

53. At the time of hearing before us, the learned counsel argued at length to challenge the validity of reopening of assessment. He referred to the reasons recorded for reopening of assessment and stated that from the reasons recorded, it is evident that the Assessing Officer has mentioned that no returns were filed for these years. That this finding recorded in the reasons for reopening of assessment is palpably wrong because the assessee filed the return for assessment year 1996-97 on 24th September, 1996 and for assessment year 1997-98 on 28th November, 1997. That in the assessment order, the Assessing Officer himself has mentioned this fact of filing of the return. Therefore, when the reopening of assessment is based upon the premise that no return of income has been filed, which is admittedly incorrect, the reopening of assessment is invalid and void ab-initio. He further stated that from the reasons recorded, it is evident that the reopening is proposed for examination of the share application money claimed to have been received by the assessee. He stated that along with the return of income, the assessee duly submitted the audited accounts which clearly reflect the share subscription money received by the assessee. If the Revenue wanted to examine the genuineness of such share subscription money, it could have issued the notice u/s 143(2). When the Assessing Officer failed to issue notice u/s 143(2), Section 148 cannot be resorted for the purpose of examination of the correctness of the share subscription money. He further stated that the Assessing Officer has also mentioned that learned CIT(A) gave direction that the source of cash be examined in the case of the company CIL i.e., the assessee. It is submitted by the learned counsel that reopening of assessment cannot be based upon the directive of the higher authorities. As per Section 147, the satisfaction of the Assessing Officer for escapement of income is a *sine qua non*. In this

case, there is no satisfaction by the Assessing Officer that there was any escapement of income in the case of CIL. In fact, since beginning till today i.e., at the time of hearing of this appeal by the ITAT, the stand of the Revenue is always that the money belonged to Shri Awanindra Singh and it should be assessed in his hands as unexplained money. It is not in dispute that the dispute is only with regard to cash found by the CBI in the search of Shri Awanindra Singh at his residence and his bank lockers. With regard to such cash, the contention of Shri Awanindra Singh was that it belonged to CIL while, as per Revenue, it is the unexplained money of Shri Awanindra Singh. Thus, when the Revenue never accepted that this money belonged to CIL, where is the question of holding it to be unexplained money of CIL and resultantly, escapement of income in the hands of CIL. He, therefore, submitted that the reopening of assessment is bad in law because – (a) it is based upon wrong facts, (b) it is only for examination of share subscription money, (c) it is at the directive of other authorities and (d) there is no satisfaction of the Assessing Officer of escapement of income. In support of his contention, he relied upon the following decisions :-

(i) Sheo Narain Jaiswal and others Vs. ITO and others – [1989] 176 ITR 352 (Patna).

(ii) Chhugamal Rajpal Vs. S.P. Chaliha and others – [1971] 79 ITR 603 (SC).

(iii) Madhya Pradesh Industries Ltd. Vs. ITO – [1965] 56 ITR 637 (SC).

(iv) CIT Vs. Kelvinator of India Ltd. – [2010] 320 ITR 561 (SC).

(v) Nivi Trading Ltd. Vs. Union of India and Another – [2015] 375 ITR 308 (Bom).

(vi) Krupesh Ghanshyambhai Thakkar Vs. DCIT – [2017] 77 taxmann.com 293 (Gujarat).

(vii) Ranbaxy Laboratories Ltd. Vs. CIT – [2011] 336 ITR 136 (Delhi).

(viii) Vipan Khanna Vs. CIT and others – [2002] 255 ITR 220 (P&H).

(ix) CIT Vs. Sahil Knit Fab – [2012] 21 taxmann.com 258 (HP).

(x) CIT Vs. Ved and Co. – [2008] 302 ITR 328 (Delhi).

(xi) ITO Vs. Lakhmani Mewal Das – [1976] 103 ITR 437 (SC).

(xii) CIT Vs. Narinder Nath Parveen Chand – [1975] 101 ITR 7 (P&H).

(xiii) N.D. Bhatt, Inspecting Assistant Commissioner of Income-tax and Another Vs. I.B.M. World Trade Corporation – [1995] 216 ITR 811 (Bombay).

54. With regard to merits of the addition, he stated that admittedly the addition has been made in respect of sum of ₹1,75,03,500/- which was found during the course of search by the CBI at the premises/bank lockers of Shri Awanindra Singh. Shri Awanindra Singh claimed before the tax authorities that this money belonged to CIL. However, subsequently, Shri Awanindra Singh, by pleading guilty before the Metropolitan Magistrate, has admitted that this money was the misappropriated amount of the electricity and water charges collection by SCPL. The Metropolitan Magistrate has held him guilty for misappropriation and also directed confiscation of misappropriated amount of ₹3,03,13,951/-. Admittedly, it included the sum of ₹1,75,03,500/- which Shri Awanindra Singh claimed as belonging to CIL and which CIL claimed to have been received from share applicants. Admittedly, now, it is evident that this money did not belong to CIL but it was the collection charges of electricity and water bills by SCPL which was tried to be misappropriated by Shri Awanindra Singh. Therefore, when the alleged money did not belong to the assessee, the same cannot be treated as unexplained income of the assessee. He made a statement at the Bar that in the assessee's balance sheet, this money has been shown as seized by the CBI authorities and neither

this money has been deposited in the bank account nor has been utilized for any other purpose.

55. Learned DR, on the other hand, relied upon the orders of lower authorities. She stated that learned CIT(A) has considered the assessee's contention in respect of reopening of assessment as well as claimed that it is the share application money in detail and has rejected the same with adequate reasons. She heavily relied upon the same. She further stated that it is the assessee who was claiming that it was the share subscription money claimed to have been received from large number of persons in cash. The Assessing Officer examined those persons and found the claim of the assessee to be wrong. Therefore, in these circumstances, the addition for share subscription money being unexplained is fully justified. She further stated that proper reasons have been recorded for reopening of assessment and the assessment has been validly reopened after obtaining the approval of the competent authority. She, therefore, stated that the order of learned CIT(A) should be sustained and assessee's appeals should be dismissed.

56. We have carefully considered the arguments of both the sides and perused the material placed before us. First, we shall take up the issue of validity of reopening of assessment. The reasons recorded for reopening of assessment read as under :-

> *"During the course of search and seizure operations conducted by the CBI on 26.9.96, 27.9.96 & 28.9.96 at various residential/business premises of Mr. Awanindra Singh and his family members and the office premises of the company where Mr. Awanindra Singh was a director, a seizure included cash amounting to Rs.1,88,60,497/- found at various premises/lockers hired. An addition of Rs.1,88,60,497/- were made in the case of Mr. Awanindra*

Singh for AY 1996-97 and 1997-98 as the assessee was not able to explain the sources of cash thus found by CBI authorities on the said search operation. During the appeal, the assessee explained that out of total cash seized worth Rs.1,88,60,497/-, cash worth Rs.1,75,03,500/- belonged to M/s Computerland Integrators (India) Ltd. wherein he is a director and the money was received from various persons towards share application money.

Ld.CIT(A)-19, New Delhi in his order dated 27.11.2000 gave directions that the source of cash be examined in case of the company i.e. M/s Computerland Integrators (India) Ltd.

From the documents/details furnished by Mr. Awanindra Singh during the appeal proceedings in his case for AY 96-97 & AY 97-98 copies of which were also sent to the undersigned by ld.CIT(A)-19, New Delhi, it is noticed that such share application money worth Rs.98.50 lacs and Rs.76.50 lacs were received from various persons during AY 96-97 & 97-98 respectively which needs to be examined.

In view of this, I am satisfied that income worth Rs.98.50 lacs for AY 96-97 and Rs.78.50 lacs for AY 97-98 has escaped assessment which needs to be examined within the meaning of section 147 of the I.T. Act.

Kind approval is sought in these cases to issue notices u/s 148 of I.T. Act as no return of income has been filed for these years and also time limit for issue of notice u/s 148 will get barred by limitation on 31.3.2003 for both the years". (Emphasis supplied)."

57. From a perusal of the above reasons, we find that at the end of the reasons when the Assessing Officer has sought the approval of the competent authority, it has been mentioned "Kind approval is sought in these cases to issue notices u/s 148 of I.T. Act as no return of income has been filed for these years". (*emphasis by underlining supplied by us*). From a perusal of the assessment order, we find that the Assessing Officer on the first page first paragraph of the

assessment order for assessment year 1996-97 has mentioned "The assessee filed return of income on 24.09.1996 declaring total loss of Rs.10,457/-". Similarly, in assessment year 1997-98, in the first page first paragraph, the Assessing Officer has recorded "The assessee filed return of income on 28.11.1997 declaring total income of Rs.20,620/-". Thus, the assessee had filed the returns for assessment year 1996-97 and 1997-98 much before the recording of reasons for reopening of assessment. The reasons for reopening of assessment were recorded on 31st July, 2002 while the return for assessment year 1996-97 was filed on 24th September, 1996 and for assessment year 1997-98 on 28th November, 1997. Therefore, the main premise on the basis of which the Assessing Officer sought the approval of the competent authority for issue of notice u/s 148 is found to be incorrect.

58. From a perusal of other paragraphs of the reasons recorded for reopening of assessment, we find that it is mainly for the purpose of examination of share subscription money. In the third paragraph, the Assessing Officer has mentioned "it is noticed that such share application money worth Rs.98.50 lacs and Rs.76.50 lacs were received from various persons during AY 96-97 & 97-98 respectively which needs to be examined". Even in paragraph 4, the Assessing Officer has recorded the finding "I am satisfied that income worth Rs.98.50 lacs for AY 96-97 and Rs.78.50 lacs for AY 97-98 has escaped assessment which needs to be examined". From the above finding in paragraphs 3 & 4, it is seen that the Assessing Officer is not clear whether the income has escaped assessment or whether the share subscription money needs to be examined. In paragraph 3, he has clearly recorded the finding that share application money needs to be examined. While in paragraph 4, he first recorded the finding of escapement of income but which is immediately qualified with the

words “which needs to be examined”. It means his satisfaction for escapement of income is doubtful. From the combined reading of paragraph 3, 4 and 5 of above reasons recorded, we are of the opinion that the logical reading of the above reasons is that the Assessing Officer wanted to examine the share application money because, in his opinion, originally no return was filed and therefore, the issue of share application money could not be examined earlier. We have already recorded the finding that the assessee had already filed the return of income for respective years. Therefore, now the question remains whether the notice could be issued under Section 148 for the purpose of certain examination.

59. We find that Hon'ble Jurisdictional High Court has considered this issue in the case of Ved and Co. (supra). In the said case, the assessee had filed its return of income on 29th September, 1994. On 11th June, 1996, noticed under Section 148 was issued. The reason recorded for issuing notice to the assessee for reassessment was that the assessee had wrongly claimed excessive deduction u/s 80-O of the Income-tax Act. The ITAT has quashed the reopening of assessment and the Revenue was in appeal before the Hon’ble High Court. During the course of hearing before the High Court, it was submitted by the learned counsel for the Revenue that since the period for issuing notice to the assessee u/s 143(2) of the Act had already elapsed, the Assessing Officer was of the view that income had escaped assessment, the Assessing Officer had no option but to resort to Section 147. The Hon’ble High Court did not agree with the above contention of the learned counsel for the Revenue and held :-

> *“We are of the opinion that in view of the decisions that we have mentioned above, for the purposes of initiating reassessment proceedings, the Assessing Officer could not*

have made up his mind that the income of the assessee has escaped assessment while a valid return was still pending before him. If the Assessing Officer had allowed the time to elapse for taking action under section 143(2) of the Act, it was entirely his own doing. What the Assessing Officer is now trying to do in an indirect (and incorrect) manner is what he could not have done directly."

60. That the above decision would be squarely applicable to the facts of the assessee's case, as, in this case also, the time limit for issuing notice u/s 143(2) has elapsed and therefore, for examination of share capital, the notice under Section 148 was issued. Therefore, the above decision of Hon'ble Jurisdictional High Court would be squarely applicable to the facts of the assessee's case.

61. In the case of Nivi Trading Ltd. (supra), the Assessing Officer invoked the provisions of Section 147 for verification. It would be evident from the reasons recorded in the said case for reopening of assessment, which are reproduced below for ready reference :-

"Reasons for reopening under section 147 in the case of M/s Nivi Trading Ltd. assessment year 2010-11

It is verified from the return of income filed by the assessee for the assessment year 2009-10 that it had shown LTCG from investments in shares amounting to Rs.1,54,81,620 and had shown dividend of Rs.9,74,420. During the assessment year 2010-11, the assessee had shown LTCG of Rs.33,48,191 and dividend income of Rs.14,44,763 and shown Rs.1,21,33,429 as gift. Hence, it is seen that the assessee had gifted these shares without any consideration. This fact needs to be verified as per section 47(iii) of the Income-tax Act. Also it has to be verified whether the value of these shares have been computed on the market rate as on the date of such transfer.

Hence, I have reason to believe that income chargeable to tax amounting to Rs.1,21,33,429 as per provision under

section 147 of the Act has escaped assessment in this case for assessment year 2010-11.

Issue notice under section 148 of the Income-tax Act.
Dated : 24-1-2014

Tanvi S. Savant,
Income-tax Officer 7(1)(1), Mumbai."

62. Hon'ble Jurisdictional High Court did not approve the same and held as under :-

"All that is required from the assessee is a verification and in terms of section 47(iii) of the Income-tax Act and for enabling it, the assessee was called upon to appear before the Assessing Officer. Thus, it is for verification of the value of these shares and whether the computation is on the market rate on the date of such transfer. This, to our mind, would not in any manner enable the Revenue-respondents to resort to section 147 of the Income-tax Act. In the view that we have taken above, it is not necessary to refer to other judgments relied upon by Mr. Pardiwalla and which also reiterate the settled principle that the reasons ought to be recorded on the date of the issuance of the notice and which must disclose the requisite satisfaction. The reasons as recorded cannot then be substituted or supplemented by filing an affidavit in the court. Thus, additional reasons cannot be supplied and on affidavit. We are of the view that it is not necessary to refer to this principle any further in the facts and circumstances of the present case."

63. That the ratio of the above decision would also be squarely applicable to the assessee's case because in the case of the assessee also, the assessment is purported to be reopened for verification of share capital.

64. That even after reopening, the Assessing Officer was of the opinion that the sum of ₹1,75,03,500/- actually belonged to Shri

Awanindra Singh and not the assessee, therefore, the addition for the same was made on substantive basis in the case of Shri Awanindra Singh and in the case of the assessee only, protective addition was made. Therefore, when the Revenue is of the opinion that the cash which assessee claimed to have received from issue of shares never belonged to it, he could not have formed an opinion that there is escapement of income in the hands of the assessee. Considering the totality of above facts viz., (a) the notice under Section 148 has been issued on wrong premise that the assessee did not file the return of income while, in fact, the returns were actually filed, (b) the proceedings have been initiated for examination of share capital which is not permissible in law and (c) the Assessing Officer never formed an opinion that there was escapement of income in the hands of the assessee, we are of the opinion that reopening of assessment was not valid. Accordingly, the same is quashed and consequently, the impugned assessment orders are also quashed. Since we have already quashed the assessment order, we are not expressing any opinion on the merits of the addition.

65. In the result, both the appeals of the Revenue are dismissed and all the appeals of the assessees are allowed.

Decision pronounced in the open Court on 08.02.2019.

Sd/-	Sd/-
(SUDHANSHU SRIVASTAVA) JUDICIAL MEMBER	(G.D. AGRAWAL) VICE PRESIDENT

VK.

Copy forwarded to: -

1. Assessees : **Shri Awanindra Singh, 208-209, 2nd Floor, Madhuban Building, 55, Nehru Place, New Delhi and M/s Computerland Integrators (India) Ltd., E-18, Pushpanjali Farm, Bijwasan, New Delhi – 110 061.**
2. Revenue : **Deputy Commissioner of Income Tax, Central Circle-11 & 20, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar