

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM]

I.T.A No. 2241/Kol/2018

Assessment Year : 2010-11

Smt. Laxmi Devi Chindalia
PAN: ACOPC8728P
(Appellant)

Vs.

I.T.O, Ward 34(2)
Kolkata
(Respondent)

I.T.A No. 2242/Kol/2018

Assessment Year : 2010-11

Shri Aditya Chindalia
PAN: AFKPC6363F
(Appellant)

Vs.

I.T.O, Ward 34(2)
Kolkata
(Respondent)

For the Appellant : Shri S.S. Surana, FCA, Id. AR

For the Respondent : Shri C.J. Singh, JCIT, Id. Sr.DR

Date of Hearing : 27-02-2019

Date of Pronouncement : 28 -02-2019

ORDER

1. These two assesses have filed their instant separate appeals against the CIT(A)-10, Kolkata’s separate orders, both dated 18-09-2018 passed in case nos. 299/CIT(A)-10/W-35(3)/10-11 & 221/CIT(A)-10/W 34(2)/10-11 involving proceedings u/s 143(3) r.w.s 147 of the I.T Act, 1961 (in short ‘Act’).

Heard both the parties. Case file perused.

2. It emerges at the outset that both the lower authorities have invoked section 69 of the Act for treating the assessee's diamond purchase of Rs.510748/- and Rs. 602302 to be unexplained investments based on search action in question conducted in case of M/s. Bhagwan Lal Jain Group in Mumbai. Both the lower authorities' cases is that these assesseees had availed diamond purchase entry only. The Id. CIT(A) identical detailed discussion to this effect reads as under:-

"06 FINDINGS & DECISION

1. I have carefully examined the action of the Ld.AO in making the impugned addition of Rs.5,10,748/-, being purchases from an unaccounted source. The Ld. AO has very clearly delineated the modus operandi of the assessee in procuring accommodation entries for alleged purchase of diamonds. The Ld. AO was in receipt of information from the Investigation Wing at Mumbai that the assessee-appellant had during the financial year 2009-10, availed of entries of bogus purchases amounting to Rs.5,10,748/- from one M/s Naman Exports (PAN:AGWPC1001D), benami concern of Bhanwarlal Jain Group, Mumbai. The pertinent facts in the matter are that a search and seizure operation was conducted on the Group on the 3rd of October, 2013 and it came to the light that the said Group was indulging in providing accommodation entries in the nature of bogus sales in lieu of commission.

2. The Ld. AO has also described the modus operandi of the Group in providing accommodation entries in that the real importers of rough diamonds import part of their diamonds through benami concerns operated by Praveen Jain Group with a view to suppress their turnover and profits. Thereafter, on receipt of consignments by these benami concerns, the diamond is handed over to the real importer thereby creating a bogus stock in the books of the benami concerns; thereafter, the payments are settled through a process of adjustment and understanding between the supplier and the real importers. The payments for the imports are shown as outstanding creditors in the books of the benami concerns as there is understanding with the "facilitating brokers"/ "middlemen" that payments can be sent to supplier through cheque as per the convenience. Against the bogus stock, bogus sales bills are issued to parties who want accommodation entries for the purchase of diamonds in their books. The payments received from the party for the accommodation entry of bogus

purchase is used to give entries of unsecured loans and investments to builders, jewelers, businessmen and other bodies corporate. Thereafter, the cash is received back from the builders/real estate company who takes accommodation entry for bogus loan/advance. The cash received from the builder/real estate company is paid to the party whom the bogus sale of diamonds is made to square off the transaction. The Ld. AO has recorded that such aforementioned information, prima facie, indicated that the assessee had entered into accommodation entries through fraudulent bills for the purpose of suppression of true and real income chargeable to tax and the said benami concern was a name lender only in respect of the bogus transaction recorded in the accounts of the assessee.

3. Having carefully examined the rival contentions, I find that the following factual points emerge for consideration and adjudication:

*a. There is the clear information and factual finding that certain information was received by the Ld. AO, and this was absolutely authentic based on statements recorded by the Investigation Wing during search and seizure operation of the **Bhanwari Lal Jain Group**.*

*b. The appellant has not been able to counter in any manner the observations of the Ld. AO regarding the bank statement furnished by the assessee, and the fact that from such statement it emerges that the impugned payment was made in favor of the Seller nearly after **one month from the date on which the assessee has claimed to have made the purchase**. I agree with the Ld. AO that such a happening is very unlikely because no seller would sell goods to an unknown buyer on credit, and therefore it militates against basic tenets of commercial transactions that M/s Naman International waited for one several months for payment from an unknown buyer (the appellant- assessee) from Kolkata.*

*c. The appellant-assessee was unable to **provide any evidence of the transportation of the diamonds from the seller to Kolkata, or the movement of the buyer from Kolkata to Mumbai**. In any business, it is quite expected that even if the goods are handed over by hand, there has to be confirmation of handing over / taking over of goods as a part of the record of transactions. These are vital documents, and are a sine quanon even if there may not be any evidence of freight or transport. In the instant case, such vital evidence is **conspicuous by its absence**.*

d. There is not much merit in the argument of the Ld. A.R that payments were made by account payee cheques, as these indicate documents for transfer of money, and remain mere documents without the corresponding documents relating to transfer of goods. In my considered view of the matter, the evidentiary value of payments by bank therefore is enormously diminished for the case at hand.

e. I also find that there is no merit in the claim of the appellant that the Ld. AO did not conduct any independent enquiry from his side. It is to be observed that at any rate the onus was cast upon the appellant to clearly bring on record that the purchases were made from the alleged parties, especially as the transactions were suspicious in nature. For the case at hand, the appellant has failed to discharge such basic onus of proof of delivery.

f. It is relevant that in this matter, in the case of ACIT Vs Shri Shanti Swarup Jain [2015] SS taxmann.com 378 (Allahabad) , the Hon'ble High Court of Allahabad in order dated 01.09.2014 have observed in IT APPEAL NOS. 133 OF 2013 & 19 OF 2014 (as head noted) as follows:

IT: Where assessee-firm, engaged in business of zips for shoes etc, showed certain purchases made from 'G' Enterprises, in view of fact that proprietor of 'G' Enterprises admitted that he was running a dummy business, Assessing Officer was justified in making addition under section 69C in respect of bogus purchases.

Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus Purchases) - Assessment years 2008-09 and 2009-10 - Assessee-firm was engaged in business of zips for shoes etc. - During assessment proceedings, Assessing Officer noted that assessee had made purchases from 'G' Enterprises - Proprietor of 'G' Enterprises admitted that he was running a dummy business and firm had not been functioning for last one year - Assessing Officer relying upon said statement, made addition to assessee's income under section 69C in respect of bogus purchases - Whether on facts, impugned addition made by Assessing Officer was to be confirmed- Held, yes [para 8] [In favour of revenue.

g. It must also be stated here that in Commissioner of Income Tax vs NR Portfolio Pvt Ltd on 22 November, 2013, the Hon'ble Delhi High court has held "The Assessing Officer is both an investigator and an adjudicator. When a fact is alleged and stated before the Assessing Officer by an assessee, he must and should examine and verify, when in doubt or when the assertion is debatable. Normally a factual assertion made should

be accepted by the Assessing Officer unless for justification and reasons the assessing officer feels that he needs/requires a deeper and detailed verification of the facts alleged. The assessee in such circumstances should cooperate and furnish papers, details and particulars, This may entail issue of notices to third parties to furnish and supply information or confirm facts or even attend as witnesses. The Assessing Officer can also refer to incriminating material or evidence available with him and call upon the assessee to file their response. We cannot lay down or a general or universal procedure or method which should be adopted by the assessing officer when verification of facts is required. The manner and mode of conducting assessment proceedings has to be left to the discretion of the assessing officer, and the same should be just, fair and should not cause any harassment to the assessee or third persons from whom confirmation or verification is required. The verification and investigation should be one with the least amount of intrusion, inconvenience or harassment especially to third parties, who may have entered into transactions with the assessee. The ultimate finding of the assessing officer should reflect due application of mind on the relevant facts and the decision should take into consideration the entire material, which is germane and which should not be ignored and exclude that which is irrelevant. Certain facts or aspects may be neutral and should be noted. These should not be ignored but they cannot become the bedrock or substratum of the conclusion. The provisions of Evidence Act are not applicable, but the assessing officer being a quasi judicial authority, must take care and caution to ensure that the decision is reasonable and satisfies the canons of equity, fairness and justice. The evidence should be impartially and objectively analyzed to ensure that the adverse findings against the assessee when recorded are adequately and duly supported by material and evidence and can withstand the challenge in appellate proceedings. Principle of preponderance of probabilities applies. What is stated and the said standard, equally apply to the Tribunal and indeed this Court. The reasoning and the grounds given in any decision or pronouncement while dealing with the contentions and issues should reflect application of mind on the relevant aspects. When an assessee does not produce evidence or tries to avoid appearance before the Assessing Officer, it necessarily creates difficulties and prevents ascertainment of true and correct facts as the Assessing Officer is denied advantage of the contention or factual assertion by the assessee before him. In case an assessee deliberately and intentionally fails to produce evidence before the Assessing Officer with the desire to prevent inquiry or investigation, an adverse view should be taken".

h. In this connection, I would also wish to refer to the decision of the Hon'ble ITAT Bombay Bench 'B' (ITA No.614/Bom/87 A.Y. 1983-84) in the case of M/s. Mont Blane Properties and Industries Pvt. Ltd., which was upheld by the Hon'ble Supreme Court. The Hon'ble Tribunal held that the word 'evidence' as used in sec. 143(3) covered circumstantial evidence also. The word 'evidence' as used in sec.143 (3) obviously could not be confined to direct evidence. The word 'evidence' was comprehensive enough to cover the circumstantial evidence also. Under the tax jurisprudence, the word 'evidence' had much wider connotations. While the word 'evidence' might recall the oral and documentary evidence as may be admissible under the Indian Evidence Act the use of word 'material' in Sec.143(3) showed that the assessing officer, not being a court could rely upon material, which might not strictly be evidence admissible under the Indian Evidence Act for the purpose of making an order of assessment. Court often took judicial notice of certain facts which need not be proved before them. The plain reading of section 142 and 143 clearly suggests that the assessing officer may also act on the material gathered by him. The word 'material' clearly shows that the assessing officer is not fettered by the technical rules of evidence and the like, and that he may act on material which may not strictly speaking be accepted evidence in court of law.

4. The Hon'ble Supreme Court in CIT v. Durga Prasad More[1971] 82 ITR 540 at pages 545-547 made a reference to the test of human probabilities in the following fact situation :-

“.....It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals. Otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favor then the door will be left wide-open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents..... .

5. *It is a well settled principle of law as declared by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT" (214 ITR 801)(SC) that the true nature of transaction have to be ascertained in the light of surrounding circumstances. It needs to be emphasized that standard of proof beyond reasonable doubt has no applicability in determination of matters under taxing statutes. In the present case, it is clear that apparent is not the real as evidenced from the investigation report. Further, the Hon'ble Supreme Court, in the case of Chuhar Mal V CIT (1988) 172 ITR 250, highlighted the fact that the principle of evidence law are not to be ignored by the authorities, but at the same time, human probability has to be the guiding principle, since the AO is not fettered, by technical rules of evidence, as held by the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills v CIT (1954) 261 TR 775. The Hon'ble Supreme Court, in the case of Chuhar Mal V CIT (supra) held that what was meant by saying that evidence Act did not apply to the proceedings under Income-tax Act, 1961, was that the rigors of Rules of evidence, contained in the Evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of invoking the principles of Evidence Act, in proceedings before them, they were prevented from doing so. It was further held by the Hon'ble Apex Court that all that Section 110 of the Evidence Act, 1872 did, was to embody a salutary principle of common law, jurisprudence viz, where a person was found in possessing of anything, the onus of proving that he was not its owner, was on that person. Thus, this principle could be attracted to a set of circumstances that satisfies its conditions and was applicable to taxing proceedings.*

6. *I am in agreement with the Ld. AO that the transactions relating to the claim of LTCG as made by the Ld. AO come within the ambit of "suspicious transactions", and therefore the rules of suspicious transactions would apply to the case. Payment through Banks, performance through stock exchange and other such features are only apparent features. The real features are the manipulated and abnormal price of off load and the sudden dip thereafter.*

7. *Therefore, I have to reach the inevitable conclusion that the transactions as discussed by the Ld. AO fall in the realm of "suspicious" and "dubious" transactions. The Ld. AO has therefore necessarily to consider the surrounding circumstances, which he indeed has done in a very meticulous and careful manner. In the case of Win Chadha Vs CIT (International Taxation) in ITA No.3088 & 3107/Del/200S, the Hon'ble Delhi ITAT "B"-Bench has observed, on 31.12.2010 as under:*

"SUSPICIOUS AND DIBIOUS TRASANCTION HOW TO BE DEALT WITH:

6.11. The tax liability in the cases of suspicious transactions, is to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/ evidence available with AO.

6.12. In the case of SumatiDaya/ V. CIT (1995) 80 Taxman 89 (SC), the Hon'ble Supreme Court has dealt with the relevance of human conduct, preponderance of probabilities and surrounding circumstance, burden of proof and its shifting on the Department in cases of suspicious circumstances, by following observations:

" It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being un rebutted, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.

..... Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence. "

CIRCUMSTANTIAL EVIDENCE HOW TO BE USED

6.13. *It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. In the appreciation of circumstantial evidence, the relevant aspects, as laid down from time to time are -*

(1) the circumstances alleged must be established by such evidence, as in the case of other evidence

(2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence.

(3) although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced ; some of these links may have to be inferred from the proved facts;

(4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case.

(5)The circumstantial evidence can, with equal facility, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth. "

6.14. *It will also be worthwhile to consider the nature of burden of proof on the AO for proving a fact or circumstance in the income' tax proceedings. The questions raised about the tax liability by the AO are to be answered by the assessee by furnishing reasonable and plausible explanations. If*

assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable. Courts generally will not interfere with such estimate of facts, unless the inferences or estimates are perverse or capricious.

6.15. The Assessee's technical contentions about admissibility and reliance on material available on the AO's record are in the nature of contentions challenging criminal or civil liabilities in a court of law. We are dealing with a process of adjudication of assessee's tax liability i.e. assessment under Income Tax Act rather than conducting criminal or civil court proceedings. As held by the Hon'ble Supreme Court in the case of S.S. Gadgil (supra) no 'lis' is involved in adjudication of tax liability. The Assessee's contention that there was no new material before the AO after the CIT(A)'s setting aside order cannot be accepted. New information and material did indeed come on record. In our view, in a sensitive matter like this, even a single clue or revelation can be of great importance. To reverse the order of the AO on this technical plea will amount to taking a lopsided view of the proceedings. Besides, the JPC has underlined the importance of Reports of investigation agencies like CBI, DRI, ED whose were in the offing, as the relevant investigations were in process. In view of these observations, we do not accede to the assessee's pleas in this behalf. The Assessee's contentions and objections in this behalf that the material available on record was not admissible as evidence and that it cannot be relied on by the AO. Are devoid of any merit and are rejected outright.....”

Overall from the facts and circumstances emanating in the case, I find myself entirely in agreement with the Id.AO that the impugned purchases were made from an entirely unexplained source, and therefore sustain the action of addition of Rs.5,10,748/- under the head of "unexplained expenditure", and accordingly the ground taken by the assessee-appellant stands dismissed.”

It transpires during the course of hearing that the very issue had arisen before the Coordinate Bench, ITAT, 'C' Bench, Kolkata in ITA No. 634/Kol/2017 for the A.Y 2012-13 in the case of Sanju Jalan Vs. ITO, Ward 36(2), Kolkata vide order dated 10-01-

2018 has narrated the application of section 69 of the Act. In such circumstances the same as follows:-

“10. First we will take up for consideration ground no.5 with regard to the addition on account of bogus purchases of diamonds. On the above issue the ld. Counsel for the assessee reiterated the submissions as were made before the revenue authorities. The ld DR relied on the order of the revenue authorities.

11. The undisputed facts of the case are that the assessee purchased jewellery worth Rs.14,55,472/- from Nice Diamonds, Mumbai on 17.3.2012. The Assessee paid Nice Diamonds the purchase value of the jewellery by two cheques for Rs.10,02,472 and Rs.4,53,000 respectively dated 27.3.2012 and 28.3.2012 respectively. In the Balance Sheet as on 31.3.2013 the Assessee has shown the value of the jewellery as addition to his capital. The documentary evidence like bills, invoices, bank statements etc., were furnished by the Assessee and there is no dispute on this aspect.

12. The return of income filed by the Assessee for AY 2012-13 was accepted and an intimation was issued u/s.143(1) of the Act.

13. It appears that there was information received by the AO of the Assessee from D.I.T. (Investigation)-II, Mumbai. The information received was that there was a search and seizure operation conducted in the case of Bhawarlal Jain Group of cases on 03.10.2013. Consequent to the said search and investigation conducted, it came to light that Bhawarlal Jain group was providing bogus/accommodation entries to several persons and entities and these entries were bogus entries. Nice Diamonds is one of the entities belonging to Bhawarlal Jain Group of cases. Since the assessee claimed to have made purchases from Nice Diamonds, the assessment in the case the assessee was reopened u/s 147 of the [Income Tax Act, 1961](#) (Act.).

14. In the assessments concluded, the AO after making reference to all the evidences filed by the assessee to prove the source of funds as well as evidence of payments and came to the conclusion that the purchases in question were not genuine. Ultimately the AO made an addition in the case of the Assessee by observing that since the assessee in the balance sheet has shown increase in jewelry there is no evidence on record to doubt that he didn't make any purchase in the FY-2011-12 but the

purchases were made by the Assessee from some other party in earlier year but the assessee has not furnished the details of the same. Accordingly, expenditure incurred towards purchase of diamonds shown as jewelry in the Balance Sheet is considered as unexplained investment u/s 69 of the Act and deemed to be the income of the assessee for the financial year 2009-10. On appeal by the assessee the CIT(A) confirmed the orders of the AO.

15. We have heard the submissions of the ld. Counsel for the assessee and the ld. DR. The ld. Counsel for the assessee pointed out that the jewellery in question has been purchased by the assessee which was confirmed by Nice Diamonds and the payment has been made by cheques. More important it was pointed out that the investments has been shown in the books of accounts and the source had been duly explained as from the disclosed bank accounts of the assessee. It was submitted that in the circumstances the addition made u/s 69 of the Act cannot be sustained. The ld. DR relied on the orders of CIT(A).

16. We have given a very careful consideration to the rival submissions. It is an undisputed position that addition in case of the assessee has been made u/s 69 of the Act. [Section 69](#) of the Act reads as follows :-

Unexplained investments

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

17. In the present case investments of jewellery is duly reflected in the books of accounts of the assessee. Therefore there is no scope of applying the provision of [section 69](#) of the Act. Apart from the above source of funds is evidenced by the payments from disclosed bank accounts. Therefore the source of investments is also properly and satisfactorily explained by the assessee. In the circumstances, We are of the view that the additions made by the AO and confirmed by CIT(A) cannot be sustained and the same is directed to be deleted. Ground No.5 raised by the assessee is accordingly allowed.

18. The ld. Counsel for the assessee submitted that on the other grounds of appeal vi., Gr.No.6 to 8, it is the plea of the assessee before us that when an assessment is reopened for one reason but no addition is made in the reassessment proceedings in respect of that reason or when the said addition is deleted, then, no further addition can be made in the reassessment proceedings. In this regard ld. Counsel for the assessee placed reliance on the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Jet Airways India Ltd.*, 331 ITR 326 (Bom), wherein the Hon'ble Bombay High Court held that if AO does not assess income for which reasons were recorded u/s 147 of the Act, he cannot assess other income u/s 147 of the Act. The Hon'ble Court observed that (i) S. 147 provides that the AO may assess the income which has escaped assessment "and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section". Explanation 3 to s. 147 inserted by F (No. 2) Act, 2009 w.r.e.f 1.4.1989 provides that the AO "may assess or reassess the income in respect of any issue ... notwithstanding the reasons for such issue have not been included in the reasons recorded ..."

(ii) The words "and also" indicate that reassessment must be with respect to the income for which the AO has formed an opinion and also in respect of any other income which comes to his notice subsequently. However, if the AO accepts the objection of the assessee and does not assess the income which was the basis of the notice, it is not open to him to assessee income under some other issue independently;

(iii) Explanation 3 to s. 147 was inserted to supersede the judgments in *Vipin Khanna* 255 ITR 220 (P&H) & *Travancore Cements* 305 ITR 170 (Ker) where it was held that the AO could not assess income in respect of issues unconnected with the issue for which the notice was issued. However, Explanation 3 does not affect the judgments in *Shri. Ram Singh* 306 ITR 343 (Raj) & *Atlas Cycle Industries* 180 ITR 319 (P&H) where it was held that if the AO accepted that the reasons for which the notice was issued were not correct, he would cease to have jurisdiction to proceed with the reassessment;

(iv) Explanation 3 lifts the embargo inserted by judicial interpretation on the making of a s. 147 assessment in respect of items not referred to in the recorded reasons. However, it does not and cannot override the

substantive part of s. 147 that the income for which the notice was issued must be assessable. The learned DR relied on the order of the CIT(A).

19. We have considered the submission of the learned counsel for the Assessee in the light of the judgment of the Hon'ble Bombay in the case of Jet Airways (I) Ltd. (Supra). We are of the view that on the facts and in the circumstances of the present case the ratio laid down by the Hon'ble Bombay High Court in the case of Jet Airways India Ltd. (supra) is squarely applicable. As we have already seen that the assessment was reopened for the reason that the jewellery purchased by the Assessee was from undisclosed sources and the purchases were bogus. That addition has not been sustained now. The Assessing Officer however, proceeded to make an addition on account of Long Term Capital Gain (LTCG) on sale of shares. This was clearly beyond the scope of the proceedings under section 148 of the Act. The Assessing Officer, therefore, could not have proceeded to make the impugned addition of bogus LTCG. Similar view has been expressed by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories vs. CIT, ITA 148 of 2008 dated 3/6/2011. The Hon'ble Delhi High Court followed the decision of the Hon'ble Bombay High Court in the case of Jet Airways (supra). In that view of the matter we hold that the addition by treating the LTCG as bogus cannot be sustained as it was beyond the scope of the proceedings under section 147 of the Act. We therefore delete the said addition also and allow Ground No..6 to 8. .

20.. In view of the above conclusions we are of the view that the issue with regard to the validity of initiation of re-assessment proceedings u/s 147 of the Act does not require any consideration.

21. In the result, the appeal is allowed. “

By adopting above detailed discussion *mutatis mutandis*, I delete the impugned identical additions on merits. Assessee's legal ground challenging the validity of reopening in issue is declined as not pressed.

ITA Nos. 2241/Kol/2018 &
2242/Kol/22018
A.Y 2010-11
Smt. Laxmi Devi Chindalia &
Shri Aditya Chindalia

4. These two assessee's appeals are allowed in above terms.

Order pronounced in the Court on 28-02-2019

Sd/-

[S.S.Godara]
Judicial Member

Dated : 28.02.2018
PP, Sr. PS

Copy of the order forwarded to:

- 1.Smt. Laxmi Devi Chindalia 408 Marshall House, 25 Strand Road, Kolkata-700 001 & Shri Aditya chindalia, 413 Marshall House, 25 Strand Road, Kolkata-700 001.
2. ITO, Ward-34(2), Kolkata, 110 Shantipally, Near Ruby Hospital, E. M Bye Pass, Income Tax Building, Poorva, Kolkata-700 107.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
Head of Office/D.D.O., ITAT, Kolkata