IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**SMC**" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.2243-2246/Kol/2018 & ***Cross Objection*** **No.128, 130-132/Kol/2018** (a/o ITA No.2243-2246/Kol/2018) Assessment Years:2008-09-2011-12)

DCIT, Central Circle-3(3), Aaykar Bhawan, Poorva, E.M. Bypas, 110, Shantipally, 4th Floor, Kolkata-700107	बनाम / **V/s.**	Sri Biswanath Garodia, 9, Dover Park, Kolkata-19 [**PAN No.ADGPG 4384 E**]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent/प्रतयाक्षेपक /Co-objector

आवेदक की ओर से/By Assessee	Shri D.S. Damle, Advocate
राजस्व की ओर से/By Respondent	Shri C.J. Singh, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	27-02-2019
घोषणा की तारीख/Date of Pronouncement	20-03-2019

आदेश /O R D E R

This batch of eight cases pertains to a single assessee Sri Biswanath Garodia. The Revenue has filed its four appeal(s) ITA No.2243-2246/Kol/2018 followed by taxpayer's Cross Objection(s) therein CO Nos.128, 130-132/Kol/2018 for assessment years 2008-09 to 2011-12, against the Commissioner of Income-tax (Appeals)-21, Kolkata's separate orders; all dated 07.08.2018, passed in case Nos.10237-10240/DCIT,CC-3(3)/CIT(A)-21/KOL/2017-18, reversing Assessing Officer's action adding the latter's overseas deposits in Switzerland HSBC bank accounts amounting to ₹28,50,418/-,₹15,00,780/-, ₹4,63,128/ & ₹7,44,100/-(assessment year-wise);

respectively on merits, involving proceedings of the Income Tax Act, 1961; in short 'the Act'.

2. It transpires at the outset that the Revenue's identical substantive ground in all four cases is to revive the Assessing Officer's action making the impugned addition(s) after treating assessee's alleged undisclosed sum(s) deposited in swiss bank accounts. The latter's plea in this as many cross objections that all four re-assessments are not liable to be sustained since barred by limitation prescribed in sec. 153 of the Act. Both the learned representatives are *ad idem* during the course of hearing that the assessee's Cross Objections raising the said legal issue go to root of the matter in all four assessment years. I therefore proceed to adjudicate the same first for the sake of convenience and brevity.

3. Case file(s) suggests that instant batch of eight cases has emanated from swiss bank authorities information to the Government of India under exchange of information clauses framed in corresponding double taxation avoidance agreement (DTAA) between the two countries. The same alleged to have contained the taxpayer's name alongwith date of birth on the contract details. It was further mentioned therein that the assessee had opened his bank account in Switzerland way back on 08.06.1999. He is also stated to have admitted the swiss account money in issue as sale proceeds in export business.

4. It transpires from a combined perusal of the case file(s) that all this culminated in u/s. 148 notice issued to the taxpayer on 16.02.2016 which stood served on 19.12.2016. The assessee filed his written response thereto seeking to treat his original returns to be in response to section 148 notice. The Assessing Officer supplied re-opening reasons on 14.03.2016. He finally completed the impugned re-assessments on 08.11.2017 adding assessee's swiss bank deposits sum(s) in all four assessments hereinabove to be his undisclosed / concealed income.

5. The assessee preferred his separate corresponding appeals in all four assessment years 2008-09 to 2011-12 challenging correctness of the impugned addition(s) on various legal aspects as well as on merits. The CIT(A) has deleted the impugned addition(s) on merits as follows:-

"05. FINDINGS & DECISION:

1. I have carefully considered the submissions of the Ld. AR of the appellant and perused the impugned order. I have also gone through the reasons recorded by the Ld. AO for reopening the assessment u/s 147 of the Act. In Ground Nos. 1 & 2 the appellant in sum & substance has objected to the legal validity of the proceedings initiated u/s 147 of the Act. On perusal of the recorded reasons, I find that the Ld. AO's formation of belief that income escaped assessment was based on the copies of the bank statements of HSBC Bank, Geneva, which he had furnished before the CIT(A) in the appellate proceedings for AY 2006-07 & 2007-08. The Ld.AO noted that this bank account and the transactions therein were not reflected in assessee's income tax returns filed earlier. This fact led him to form a reasonable belief that income from such bank account was chargeable to tax for the relevant assessment year and the same had escaped assessment. It is the case of the appellant that the reopening of assessment was based on surmises and conjectures and that there was no tangible material in the AO's possession on the basis of which proceedings u/s 147 could be validly initiated. The Ld. AR of the appellant contended that neither the reassessment was initiated on the basis of any document found or unearthed by the AO independently nor that the accretions reflected in the bank statements belonged to the appellant.

2. After giving a thoughtful consideration to the facts, I do not find force in the arguments put forth by the Ld. AR. In the present case it is undisputed that the bank Account with HSBC Bank, Geneva was standing in assessee's name. In the appellate proceedings for AYs 2006-07 & 2007-08, the appellant had suo moto furnished copies of the said bank statements before the Ld. CIT(A) who in turn had forwarded the same to the Ld. AO. The Ld. AO had got these statements authenticated from the Swiss tax authorities through CBDT(FT & TR) Division. It may be true that this document was not unearthed by the Ld. AO or received from any external source or agency but this does not take away the fact that this foreign bank account standing in assessee's -name was not disclosed in the tax returns filed by the appellant earlier. It is true that the appellant had at all time disputed that the monies in the foreign bar-e account did not belong to him. However whether the monies deposited in the bank account and the accretions thereto belonged to the appellant or some other person as claimed by him required investigation of facts and examination by the Ld. AO. At the stage of recording of his reasons for reopening of assessment it was not necessary for AO to come to final conclusion about true ownership of the money deposited in such account. Such investigation and examination of facts was a matter for later stage, i.e. re-assessment proceedings. It might well be that the appellant will be able to establish that the monies in the foreign bank account did not belong to him but that conclusion could be arrived at by the Ld. AO only after making necessary enquiries. At the stage of the issuance of the notice u/s148, the only question was whether sufficient material was available before the AO, on the basis of which a reasonable person could have formed the requisite belief. In my considered view the bank statements with the Ld. AO, based on which he formed his reasons to believe did constitute relevant material for the basis of the formation of the requisite belief by the AO under section 147 of the Act. In my considered view therefore the initiation of proceedings u/s 147 and the issuance of reassessment notice u/s 148 was valid and the conditions precedent for initiating reassessment proceedings were fulfilled by the Ld. AO. Ground Nos. 1 & 2 are therefore rejected.

3. In Ground No. 3, the limited question to be adjudicated in this ground is whether the impugned order was passed within the period of limitation prescribed under the .provisions of the Income-tax Act, 1961. In the facts of the present case, the normal period of limitation in the appellant's case expired on 31.12.2016. The Explanation to Section 153 however contains certain exceptional circumstances where in the period

of the limitation gets extended. In terms of clause (x) 01 the Explanation to Section 153, the period 'commencing from the date on which a reference is made for exchange of information by the competent authority to the date on which the information requested is last received or a period of one year, whichever is less; is required to be excluded while computing the period of limitation for the purposes of Section 153 of the Act.

4. In the appellate proceedings, the Ld. ARs of the appellant vehemently argued that the impugned order was barred by limitation. It was claimed that the benefit of exclusion of time limit as provided in clause (x) of the Explanation was not available to the Ld. AO since the communication by Singapore Tax Authority, as served upon the appellant did not bear or reveal any date and in that view of the matter the benefit of clause (x) of the Explanation was not available to the Ld. AO. The appellant further contended that in the communication sent by FT & TR Division, the said Indian Tax Authority had informed the Singapore Tax Authority that assessment proceedings were getting time barred in December 2016, which further supported the appellant's case that the last date of passing of order was 31.12.2016 and not the extended time limit of 31.12.2017 in terms of Explanation to Section 153 of the Act.

5. On giving due consideration to the submissions of the Ld. AR and the facts available on record, I find that the limited point of dispute regarding the issue of limitation concerns the date on which the information was received from the competent foreign tax authority by the Ld. AO. In my considered view the date of receipt of information from the foreign tax authority is irrelevant. In the impugned order the Ld. AO has clearly stated that reference was duly made by the competent authority in November 2016 which was well within the normal period of limitation i.e. 31.12.2016 and therefore the benefit of extended time limit set out in clause (x) of the Explanation to Section 153 was available to the Ld. AO. I am therefore of the considered view that the objections raised by the appellant disputing the validity of the assessment order on the grounds of period of limitation is untenable. This ground is therefore rejected and the validity of the assessment order is upheld.

6. In Ground Nos. 4 to 6, the appellant has challenged the merits of the addition of Rs.28,50,418/- made by the Ld. AO u/s 68 of the Act. I have carefully considered the submissions made the Ld. AR of the appellant in this regard. I have also perused the detailed observations & findings recorded by the Ld. AO in the impugned order. I have also gone through the various documents & evidences furnished by the appellant in the paper book. From the sequence of events as narrated in the foregoing and from the assessment order for the year under consideration and for the earlier years, I find that a search u/s 132 was conducted against the appellant in 2011 on the basis of information available with the Department that an account with HSBC Private Bank Geneva Switzerland was maintained in the name of the appellant and which was not disclosed in the tax assessments completed earlier. In the course of the said search, statements of the appellant were recorded by the Investigating Officer concerning the said bank account in which the contradictory answers were given by the assessee. In the course of the assessment proceedings u/s 153A which followed the search, the appellant's statement was recorded by the AO wherein the appellant had denied the amounts invested in the said bank account to be his monies. Against the assessment orders for AYs 2006-07 & 2007-08 wherein the money deposited in the said bank account was assessed as appellant's income, he had filed appeals before the Ld. CIT(Appeals). The appeals filed by the appellant for AYs 2006-07 & 2007-08 were however accompanied with affidavit of Mr. Onn Sithawalla, a Singapore citizen wherein he had admitted that the Account with Client Code No.5091276522 with HSBC Pvt Bank Geneva Switzerland was opened by the appellant at his request pursuant to his understanding with the assessee for setting up of a joint venture. He

further admitted that after the account was opened in 1999, sums totaling USD 9,00,000 were remitted to the said account during the period 2000 to 2004 from the bank account of M/s MSM Enterprises Pte Ltd CMSM') a company managed by him. The said remittance was made as part of his contribution to the proposed joint venture with the appellant. He further admitted that the sums deposited in the said bank account and accretions thereto beneficially belonged to him and since the joint venture did not materialize, the entire amount transacted through the said bank account was remitted at his instruction to another Singapore company, M/s Donald Mcarthy Pte Ltd (,DMT'), which was his associate. In support of the averments made in the affidavit, copies of the bank statements issued by HSBC Bank as initiated by Mr. Onn Sithawalla were also submitted before the Ld. CIT(Appeals). Since these documents were never furnished before the Ld. AO in the course of assessment and these documents were found to be relevant for deciding the appeal, the remand report was sought from the Assessing Officer. In the remand proceedings, the Ld. AO referred the matter to the FT&TR Division of CBDT for authentication of the bank statements by the Swiss tax authorities. The Swiss tax authorities after obtaining the no-objection of the appellant confirmed the genuineness of the bank statements and entries made therein. Based on the authenticated bank statement, the Ld. AO admitted that the amounts assessed in the AYs 2006-07 & 2007-08 were not appropriate because the amounts were deposited in prior years. The relevant extracts of the remand report dated 29.07.2015 is as follows:

> *"The bank account submitted by the appellant contains the following receipts from MSM Enterprises Pvt. Ltd*

Date	*Amount in USD*
22.06.2000	*149987.5*
30.06.2001	*100000*
15.07.2001	*99987.5*
16.09.2004	*99975*
20.09.2004	*74975*
22.09.2004	*74975*
04.10.2004	*79981*
06.10.2004	*89981*
12.10.2004	*79975*
13.10.2004	*49975*
Total	*899812*

The payments of 798792 and 387182.25 were actually made from the account maintained in Euro. These; payments are made to the Euro account of Donald Mcarthy Trading Pte Limited (Ale 0.0819441022). The details are as under.

Date	*Amount in Euro*	*Amount in USD*
04.03.2009	*450000*	*798792*
05.03.2009	*150000*	
09.05.2011	*273000*	*387182*
Total	*873000*	*1185974*

It may be mentioned here that the balance in the account mentioned became zero after payment of Euro 273000 and was closed. The balances in the other accounts (USD & GBP) became nil as on 13.05.2011."

7. Against the order of Ld. CIT(Appeals) partially confirming the additions, the appeals were filed before the Hon'ble ITAT, Kolkata. The Hon'ble ITAT, 'B' Bench, Kolkata by its order dated 21st September 2016 in ITA No.853 to 856/Kol/2016

however held that since no incriminating documents relating to the HSBC Bank account were found in the course of search, no addition with respect to such bank account was permissible in the assessment framed u/s 153A and accordingly allowed relief to the appellant on that ground.

8. As noted in earlier paragraphs, since in the remand proceedings the Ld. AO had obtained the copies of the bank statements as well as statements of investments & transpositions made by the bank, based on the entries in these statements the Ld. AO formed his reasons to believe that income generated from the investments, beneficially belonged to the appellant, and chargeable to tax in India since he was a tax resident in India. The question to be decided in the present appeal is therefore whether the amounts deposited in the said HSBC A/c beneficially belonged to the appellant and consequently therefore the accretions thereto are rightfully chargeable to tax in the hands of the appellant.

9. On careful scrutiny of the impugned order it is observed that even though the Ld. AO has passed a very lengthy order, major part of this order is the repetition of the events which had occurred at the time of search and subsequent thereto till the passing of the order of assessment u/s 153A for the AYs 2006-07 & 2007-08. Much emphasis has been put by the Ld. AO with regard to contradictory statements given by the appellant at the time of search and at the time of framing of the assessment u/s 153A of the Act. There is no dispute that the assessee had indeed given contradictory statements concerning the said HSBC A/c at the time when the assessments u/s 153A were completed for the AYs 2006-07 to 2011-12. However it is significant to note that at the relevant time when these statements were recorded neither the appellant nor even the AO had in their possession the relevant bank statements of HSBC A/c. The assessment proceedings for these two years had been completed on the basis of some information for which official confirmation from Swiss tax authority was admittedly awaited and not received. Even the appellant did not have in his possession the affirmative statement of Mr. Sithawalla by which he could have explained the source of money deposited in the said HSBC A/c. It was only in February 2015 i.e. after the completion of the assessments u/s 153A, the assessee came in possession of the affidavit of Mr. Onn Sithawalla as well as bank statements herein he had admitted that the amounts deposited in the HSBC A/c were remitted by MSM. It was only after such affidavit was received, the appellant brought before the appellate authorities all relevant facts, supported by the affidavit and the bank statements and claimed that even though HSBC account was opened in his own name, the monies transacted therein beneficially belonged to Mr. Sithawalla and/or his companies. The submissions made before the Ld. CIT(A) were also made by the appellant before the Ld. AO in the course of remand proceedings and the appellant cooperated in the enquiry conducted by the AO. In the remand proceedings not only the appellant submitted the relevant documentary evidences but by authorizing the Swiss tax authorities to provide official confirmation of the relevant bank statements the appellant cooperated in furnishing true and correct facts in the remand report an such further enquiry the Ld. AO in his remand report admitted that the amounts deposited in the bank account represented receipts from MSM. In the remand report the Ld. AO also admitted that the entire amounts deposited in the said HSBC A/c were ultimately remitted in 2009 & 2011 to the Euro A/c of DMT, Singapore. From the foregoing facts and events as are apparent from the records, I find force in the appellant's submissions that even though contrary statements were made till the completion of assessments u/s 153A, there has been no contradiction in the submissions of the appellant before the tax & appellate authorities after February 2015. I find that after Mr. Sithawalla had admitted the ownership of the sums transacted through the said HSBC A/c, there has been no contradictions in the explanation provided by the appellant. In my considered opinion therefore the Ld.

AO's reliance on contrary statements initially provided by the appellant is of no significance in deciding the issue at hand.
10. I note that the Ld. AO per se did not disbelieve or dispute the explanation put forth by Mr. Sithawalla nor the Ld. AO considered Mr. Sithawalla to be a non-existing entity. The Ld. Aa himself chose to issue notice u/s 131 to Mr. Sithawalla for verifying the facts as affirmed in his affidavit made in February 2015. The Ld. AO in his submissions pointed out various legal and factual infirmities in notice u/s 131 issued to Mr. Sithawalla who was permanent resident of Singapore. According to Ld AR in terms of the provisions of the Civil Procedure Code, 1908; the Ld. AO had not statutory power to issue summons to the witness staying beyond 500 kms. Be the same as it may, despite various infirmities, I find that the Ld. AO opted to treat Mr. Sithawalla to be the pertinent witness believing the averments made in the affidavit to be true. Although the Ld. AO has made much ado about alleged discrepancy in the weight of the postal consignment through which the summons was sent by speed post by the appellant, I find that the assessee had furnished before the Ld. AO evidence, which proved that the notice issued u/s 131 was actually served on Mr. Sithawalla at his Singapore address. The assessee also furnished before the Ld. AO, the requisite evidence to show that such summon was actually served on him at the given address. The Ld. AR also furnished the evidence that in response, Mr. Sithawalla had directly provided to the AO copy of his affidavit in support of his transactions, which was the subject matter of AO's enquiry. From the foregoing facts therefore I find that whatever was possible within the assessee's control, he had performed the same to support his contention that the monies transacted though HSBC A/c belonged to Mr. Sithq,walla and/or companies controlled and menaced by him.

11. In the impugned order the Ld. Aa states that the affidavit of Mr. Sithawalla could not be accepted in evidence because the assessee was unable to enforce his attendance before the Ld. AO for his examination. According to him it was the duty of the appellant to enforce and ensure attendance of Mr. Sithawalla along with the requisite documents to verify the averments made in the affidavit. The Ld. AO further claimed that M/s Mangal Steel Enterprises Ltd had transactions with MSM it was evident that undisclosed income had been siphoned off to the account opened by the assessee in his name with HSBC Geneva with his Passport as his identity. The Ld. AO in his impugned order admits that as per the documents submitted, Mr. Sithawalla was managing & controlling the affairs of MSM and DMT and therefore the very fact that they had objected for verification of the information by Singapore authorities was clear indication that the account with HSBC Geneva was belonging to the appellant. The Ld. AO further stated that in the summons issued to Mr. Sithawalla, certain documents and copies of the accounts were requested to be produced which the appellant could have collected. The non-collection and submission of such information clearly supported his conclusion that the monies deposited in the said bank account did not belong to Mr. Sithawalla but to the appellant. In conclusion the Ld. AO held that the very fact that MSM & DMT managed by Mr. Sithawalla objected for the verification of documents by the Singapore tax authorities left him with no alternative but to conclude that the account with HSBC Bank opened in assessee's name belonged to him and the same was not disclosed in his tax return.

12. In my considered opinion the conclusions drawn by the Ld. AO are apparently not tenable. In the first instance I find that the notice u/s 131 was issued by the Ld. AO in contravention of provisions of Code for Civil Procedure, 1908. Rule 19 of Order XVI of CPC provides that no summons to a witness can be issued where the person ordinarily resides beyond 500 kms from the Court. In the circumstances the notice u/s 131 requiring appearance of Mr. Sithawalla before the Ld. AO at Kolkata was legally untenable. If the Ld. AO having statutory powers could not have enforced the attendance of Mr. Sithawalla at Kolkata, he could not expect the appellant, an

ordinary citizen of India, to ensure his attendance for examination by the Ld. AO. I however find that having received the summons from the Ld. AO the assessee made every effort to serve the said summon u/s 131 and ultimately succeeded in serving the same at his Singapore address through speed post. Requisite evidence in support of the service of summons was furnished. I therefore find that the charge of non-compliance cannot be attributed to the appellant. I also find that Mr. Sithawalla acknowledged the receipt of summons and in confirmation of his transactions in relation to HSBC A/c, directly furnished copy of his affidavit to the Ld. AO vide his letter dated 16.11.2016. I also note that subsequent to issue of notice u/s 131 the Ld. AO made reference to FT & TR division of CBDT requesting the said authority to conduct enquiries through Singapore tax authorities. The impugned order is however silent as to what precise enquiry was sought to be conducted by FT & TR division through Singapore tax authority. It is also apparent from the impugned order that at the stage of conducting enquiry through FT & TR division, the appellant was not kept informed nor made a party to the enquiry conducted by Singapore tax authority. I also find that a letter bearing reference number B/49/IND/EXCH/16/427(1782) was received by Mr. Rajat Bansal, Joint Secretary (FT & TR)-II, Ministry of Finance from Director Exchange of Information Branch, Competent Authority, Singapore issued in terms of Article 28 of the DTAA between India & Singapore. From the said letter it appeared that the Indian competent authority had made a reference for conducting enquiry vide its letter dated 25.11.2016. However, the said letter did not state what was the scope & ambit of the enquiry, which FT&TR division required the Singapore authority to conduct. It also appeared that FT & TR division had sought information only from MSM, DMT & Citibank N.A. I therefore find that even in the reference made by FT & TR division, no enquiry was sought to be conducted Mr. Sithawalla, against whom the notice u/s 131 was issued by the Ld. AO. I also find that in Para 2 of the letter the Singapore authority reported that MSM & DMT through their legal counsels had objected to the request for information. As noted earlier, nothing has been brought on record by the Ld. AO, as regards the scope of enquiry & information which was sought to be collected from Singapore tax authorities and therefore in absence of relevant information and in view of the fact that the appellant was not made party to such enquiry, it cannot be said that the appellant had created any obstructions in conducting enquiry. Moreover the fact revealed by the letter of the Competent authority, Singapore shows that no enquiry was sought to be conducted from Mr. Sithawalla whose affidavit was relied upon by the appellant in support of his contention that the monies did not belong to him. In the circumstances therefore I find that the reasons adduced by the Ld. AO in the assessment order are not supported by the relevant documents which showed that no enquiry was sought to be conducted from Mr. Sithawalla.

13. In light of the foregoing facts the question which begs answer is whether on the facts of the present case it could be held that only because the account with HSBC was opened in the name of the appellant, the monies transacted really belonged to the appellant and therefore accretions during the relevant year represented the appellant's undisclosed income chargeable to tax in India. If one examines the facts concerning the said HSBC A/c, then one finds that this account was opened in the .appellant's name in June 1999 with NIL balance. Till June 2000, no transaction took place in the said account. The first deposit in the account was reflected on 22.06.2000 when HSBC Republic Bank (Sussie) S.A.; as the bank was then known, gave credit for net sum of $149987.50. The entry in the statement of accounts stated that the amount was received from MSM Enterprises Ltd, Singapore. The further deposits were made in the years 2001 & 2004. From the statement of accounts, it is apparent that each of such deposit originated from the account of MSM Enterprises Pte Ltd. This fact was examined by the Ld. AO in the remand proceedings and in the remand report he accepted that the source of deposits was MSM. The said account continued till May

2011 when the amount remaining in the account was remitted to the Euro denominated account of DMT with Citibank N.A., Singapore. This has been confirmed by the HSBC Bank in the statement of accounts and debit advices issued and confirmed by the Ld. AO in his remand report submitted before my predecessor. I therefore find that the bank account in question was in existence for almost twelve years, starting in June 1999 and ending with May 2011. During the span of twelve years, the monies were deposited in the account only by way of ten remittances. In each case the entry in the statement of accounts showed that the remitter of funds was MSM. During the span of twelve years, the withdrawals from the said account was made on three occasions totaling Euro 8,73,000 equivalent to USD 11,85,974. All the three remittances were made to the account of DMT. Save & except these deposits and withdrawals, all other entries in the bank statements pertained to investments and transposition of investments made by HSBC Bank out of the sums deposited. I therefore find that save & except for the monies received from MSM, there was no other deposit which was sourced from any other part or person directly or indirectly related to the appellant. Similarly save & except, the remittances made to DMT on three dates, there was no other person or party who received the funds transacted through the said HSBC A/c. It is no doubt true that the account was opened in the personal name of the appellant and therefore the primary onus of providing the explanation with regard to transaction appearing in the said account was on the appellant. After obtaining the confirmation in the form of Affidavit from Mr. Sithawalla, the appellant had discharged his initial onus of showing that the monies transacted through this account did not beneficially belong to him. I further find that the assessee did not only rely on the affidavit of Mr. Sithawalla admitting the source of deposits and withdrawals but the contemporaneous entries in the bank statements recorded by HSBC Bank also supported the explanation that the monies deposited originated from MSM and the monies were remitted to the account of DMT. I thus find that the source of deposit and the destination of monies in the said account ended with companies managed & controlled by Mr. Sithawalla. In the circumstances, I find that Mr. Sithawalla was directly involved and connected with the account with HSBC although the same appeared in the name of the appellant. I note that in his affidavit Mr. Sithawalla had explained the factual background leading to opening of the bank account in the assessee's name. Merely because the joint venture contemplated by the parties did not materialize, did not and cannot lead to conclusion that the account opened in the assessee's name and the monies transacted through the said account beneficially belonged to the appellant. From Page 24 of the impugned order, the Ld. AO has categorically admitted that both MSM & DMT were managed by Mr. Sithawalla. As such both the payer & payee companies were not under the control, supervision or superintendence of the appellant. Merely because M/s Mangal Steel Enterprises Ltd, a company managed by the appellant, had transactions with MSM in the past cannot ipso facto lead one to believe that in 2015, Mr. Sithawalla would have affirmed certain facts on oath in the Ld. AO's opinion did not reveal the truth. Once the Ld. AO admitted that Mr. Sithawalla was in control of the affairs & management of the payer & payee companies, then the onus was on the Ld. AO to prove that the monies which originated & ended in the coffers of Mr. Sithawalla's companies actually belonged to the appellant. No manner of corroborative evidence has been gathered by the Ld. AO which in any manner proved any close nexus between Mr. Sithawalla and the appellant. Nothing has been brought on record by the Ld. AO on the basis of which any prudent person could come to conclusion that Mr. Sithawalla, a resident of Singapore and businessman in his own right, would have come forward in 2015 and make a statement on oath claiming the beneficial ownership of the monies deposited in appellant's bank account, unless the facts stated in affidavit were actual & true.

> *14. I find that in the present case the addition has been made by the Ld. AO purely on the ground that the title of the bank account appeared in assessee's name and the passport issued in the name of the appellant was used for identification purposes. It is true where an account appears in the name of the person, the presumption would be that the monies transacted in that account beneficially belong to the person in whose name the account appears. However such presumption is rebuttable. If the holder of the account rebuts such presumption with sufficient evidence then the onus shifts to the person who claims that the monies transacted beneficially belonged to the person in whose name the account appears. In the present case till February 2015, such presumption could have validly entertained by the Ld. AO because no explanation whatsoever was furnished by the appellant. However in February 2015, the appellant not only furnished the affidavit of Mr. Sithawalla but also submitted third party evidence in the form of bank statements of HSBC Bank A/c for the period June 1999 to May 2011 counter signed by Mr. Sithawalla. The entries in the bank statements supported the averments made in the affidavit of Mr. Sithawalla to the effect that the monies were deposited in the bank account by MSM, a company controlled by him and monies ended in the account of DMT, also controlled by him. It is also noteworthy to state that during such long existence of the bank account, not a single deposit or withdrawal from the said bank account was made by the appellant or for the benefit of the appellant. Had the amounts transacted through the said account beneficially belonged to the appellant, then there would have been at least one instance where the Ld. AO could have found since evidence to show that deposit or withdrawal beneficially connected to the appellant. However no such case has been made out by the Ld. AO nor entries in the bank statement support the theory put forth by the Ld. AO that the monies transacted in the said account belonged to the appellant. On the contrary if the documents and evidences brought on record are read harmoniously and in totality and also considering the surrounding circumstances, then the conclusion which a prudent person can draw is that the monies transacted through the HSBC A/c did not belong to the appellant but to Mr. Sithawallaand his companies, who were named payer & payees in the bank statements. Since the Ld. AO has not been able to bring on record any cogent & tangible material which could link either the deposits or withdrawals made in the names of MSM & DMT with the appellant, and he has also not been able to disprove the affidavit of Mr. Sithawalla, the conclusions drawn by the Ld. AO treating the accretions to be the income of the appellant is held to be untenable. The addition of Rs.28,50,418/- made in the impugned order is therefore deleted. Ground Nos. 4 to 6 are therefore allowed*."

This leaves both the parties agreed to the extent indicated in their respective pleadings.

6. I reiterate that the sole issue before me as of now is as to whether the impugned assessments framed in all four assessment years are time barred or not u/s 153 of the Act. Mr. Singh has taken pains to file the following written submissions supporting the impugned re-assessments on the instant legal issue as follows:-

> "*For the A.Ys. 2008-09 to 2011-12, regular assessments u/s 153A/143(3) were completed on 18.02.2015. Notices u/s 148 for all 4 years were issued on 18.02.2016 and served on 19.02.2016. As per the provisions of Sec. 153(2) of the Act, as applicable w.e.f. 01.06.2016, no order of assessment, reassessment or re-computation could be made u/s 147 after the expiry' of 9 months from the end of the financial year in which the notice u/s 148 was served.*

Accordingly, in the ordinary course, the assessments u/s 147 for the 4 years were required to be completed on or before 31.12.2016, being 9 months from the close of the financial year in which notices u/s 148 were served on the assessee.

In connection with reassessments of these 4 years, reference was made by the AO to the FT & TR Division of the Board, who in turn had made reference to Singapore Tax Authority under Article 28 of the Agreement for avoidance of double taxation and the prevention of fiscal evasion between Govt. of India and the Govt. of the Republic of Singapore, seeking information in relation to assessee's transactions with Singapore Tax Residents, namely, MSM Enterprises (Pte) Ltd, Donald Mcarthy Trading (Pte) Ltd & Citibank N.A. Singapore Ltd. The reference was made to the Singapore Tax Authority by the FT& TR Division of CBDT on 25.11.2016. Once the reference to Singapore Tax Authority was made in pursuance of an Agreement entered into with said Government, which is referred to in Sec. 90 of the Income Tax Act, then the period of limitation was required to be calculated with reference to Clause-(x) of Explanation (1) u/s 153 of the Act. Clause-(x) of Explanation 1 reads as follows:

> "For the purpose of Sec. 153, in computing the period of limitation -
> (x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever less,

It is submitted that in terms of Clause (x) of the Explanation-1 to Sec. 153 the AO was given additional 1 year period for completing the assessment. In the present case, admittedly the reference by a competent authority u/s 90 of the I.T. Act read with Article 28 of the DTAA with Singapore was made on 25.11.2016. As on that date, 36 days were available to the AO for passing of the assessment order u/s 153(2) of the Act. However, once the reference under Article 28 of the DTAA with Singapore was made, the period of one year commencing from 25.11.2016 was required to be excluded in working out the period of limitation. In the resent case, the period which was required to be excluded in working out period of limitation commenced on 5.11.2016 and ended on 24.11.2017. Additionally, the AO had 36 more days to pass the assessment order from 24.11.2017. Since the assessment orders were passed on 08.11.2017 they were within time and therefore A/R's contention that the assessment orders were barred by limitation is not factually and legally enable and liable to be rejected.

It may also be pertinent to submit that the contentions raised by the respondent-assessee through cross objections are not maintainable because these contentions were never raised by the assessee before the CIT(A) and the CIT(A) never adjudicated on these factual and legal aspects while disposing the appeals. The appeal before the Tribunal arises out of the order of the CIT(A) and therefore the scope of appeal before the Tribunal should necessarily be restricted to the grounds raised by the assessee before CIT(A) and decision thereon by the first appellate authority. It is evident that before CIT(A), the assessee had never raised this specific issue of limitation and never produced before the CIT(A) any factual material as regards the date on which the reference to Singapore Tax Authority was made and the date on which the information from Singapore Tax authority was received. Such information is however produced by the assessee for the first time before the Tribunal and the same being not available before the lower authorities, it is no more open for the assessee to make out altogether new case before the Tribunal and claim that the assessment orders were time barred with reference to new evidence brought before the Tribunal for the first time.

Submitted for the consideration of the Hon'ble Tribunal."

7. I have given my thoughtful consideration to rival contentions. Mr. Damle vehemently contends during the course of hearing that all four re-assessments framed in the impugned as many as assessment years are time barred. I deem it appropriate at this stage to recapitulate the relevant facts once again. The Assessing Officer admittedly set sec. 148 re-opening mechanism in motion in identical four notices issued on 16.02.2016 which stood served on the taxpayer on 19.02.2016 followed by the impugned re-assessments framed on 08.11.2017. Section 153 of the Act prescribes time limit for completion of assessment, re-assessment & re-computation. Sub-section 2 thereof makes it clear that no order of assessment, re-assessment or re-computation shall be made u/s 147 after expiry of nine months from the end of the financial year in which sec. 148 notice stood served. There can hardly be any dispute about nine months from the end of the financial year of such section 148 notice service dated 19.02.2016; last upto 31.12.2016. The Revenue's submission extracted hereinabove are fair enough to this effect. I therefore observe that last date of framing of re-assessments in all these assessment years was 31.12.2016.

8. I further notice that Explanation-1 to sec. 153 prescribes certain specified circumstances in clauses (i) to (xi) as exception to statutory running of limitation period in framing of assessment, re-assessment & re-computation. Clause(X) deals with an instance of exchange of information between competent authority of the two countries u/s 90 and 90A with Government of India being one of them. I notice that the CBDT (FT and TR (Foreign Tax and Tax Research division) made necessary reference on 25.11.2016 on which stood replied 08.08.2017 as per the Revenue's stand. The said period of almost nine months deserves to be excluded since coming under clause (x) of Explanation-1 to sec. 153 of the Act. The Assessing Officer was very well aware of all clinching developments during the course of re-assessment regarding exchange of communication between the two tax jurisdictions as he only had initiated the necessary process in question triggering sec. 90 r.w.s. 91 machinery in motion.

9. I proceed with the sole issue of limitation in this factual backdrop. I repeat at this stage that sec. 153 Explanation-1 clause-(x) expressly stipulates that the relevant time period which is to be excluded as outside the purview of limitation prescribed for framing assessments, re-assessments is the period commencing from the date on which reference or first of the reference for exchange of the information is made by an authority competent under an agreement in sec. 90 or sec. 90A and ending with the date on which the information requested is last received by the PCIT or CIT or one year; whichever is less. The latter date *qua* other side information is 08.08.2017 followed by the impugned re-assessments framed on 08.11.2017 in the instant lis. I find no substance in Mr. Singh's arguments. I make it clear first of all that the department has itself treated 08.08.2017 to be the latter of the date(s) falling in former limb of sec. 153 Explanation-1 clause-(x) of the Act. I therefore observe in this factual backdrop that the time span between said reference and final information i.e. 25.11.2016 to 08.08.2017 is admittedly less than one year as per "***whichever is less***" connotion in clause-(x). I am therefore of the opinion that the clock of limitation that had stopped ticking on 25.11.2016 at the time of CBDT reference resumed on 08.08.2017. Meaning thereby that 36 days of time limitation between 25.11.2016 to 31.12.2016 as per original limitation stood restored with effect from 08.08.2017 onwards. This crucial period of 36 days taken from 08.08.2017 onwards expires very well before 08.11.2017 in all four cases.

10. Mr.Singh lastly invites my attention to 1st proviso to Explantion-1 to sec. 153 of the Act that the time limit in such a case of 36 days hereinabove has to be further extended by 60 days which brings the impugned re-assessments within limitation. This plea is also devoid of any merit. I find that the above stated proviso stipulates that the remaining time limit has to be extended to 60 days if it is less than the said period. The same clause cannot be read as extension of time limit for further 60 days. In any case this remaining period of 24 days; if added to earlier 36 days starting from 08.08.2017, expires on 07.10.2017 as against the re-assessments in issue dated 08.11.2017. I conclude in this factual backdrop that all the impugned re-assessments in these four assessment years are clearly time barred since framed on 08.11.2017

going by the above statutory provision. I quash the impugned re-assessments since not framed within statutory limitation period. The assessee's four Cross Objection No.128, 130-132/Kol/2018 are accepted. The Revenue's appeals ITA No.2243-2246/Kol/2018 fail accordingly.

11. The Revenue's instant four appeals ITA No.2243-2246/Kol/2018 are dismissed and assessee's Cross Objection Nos. 128, 130-132/Kol/2018 are allowed.

Order pronounced in open court on 20/03/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,

*Dkp/Sr.PS
दिनांकः- 20/03/2019 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Shri Biswanath Garodia, 9, Dover Park, Kolkatga-19
2. राजस्व /Revenue-DCIT, C.C. 3(3), Aayakar Bhawanl Poorva, E.M.Bypass, 110 Shantipally, 4th Floor, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।