

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

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

आयकर अपील सं./ ITA No. 1192/JP/2018

निर्धारण वर्ष / Assessment Year : 2010-11

D.C.I.T., Central Circle, Kota.	बनाम Vs.	M/s Hadoti Punji Vikas Ltd., C-Block, 6/7, Multimetals Campus, Large Scale Industrial Area, Kota, Rajasthan.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAACH 4047 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

प्रत्याक्षेपण / C.O. No. 44/JP/2018

(Arising out of आयकर अपील सं./ ITA No. 1192/JP/2018)

निर्धारण वर्ष / Assessment Year: 2010-11

M/s Hadoti Punji Vikas Ltd. 6/7, Heavy Industrial Area, C-Block, Multimetals Limited Campus, Kansua Road, Large Scale Industrial Area, Kota.	बनाम Vs.	D.C.I.T., Central Circle, Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAACH 4047 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT-DR)
निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal (CA) &
Shri Gulshan Agarwal (CA)

सुनवाई की तारीख / Date of Hearing : 07/03/2019
उदघोषणा की तारीख / Date of Pronouncement : 29/03/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the revenue and cross objection by the assessee are directed against the order of the Id. CIT(A)-2, Udaipur dated 16/07/2018

for the A.Y. 2010-11. The Revenue in its appeal has taken following grounds:

- “1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 15,32,00,000/- & Rs. 3,40,00,000/- made by the AO u/s 68 of the IT Act on account of unexplained unsecured loans & unexplained share application money allegedly obtained by the assessee from M/s Prithvi Vinimay Pvt. Ltd. and M/s Birla Arts Pvt. Ltd., M/s Macro Soft Technology Pvt. Ltd., M/s Teac Consultants Pvt. Ltd., M/s Sangam Distributors Pvt. Ltd., respectively.*
- 2. Whether on the facts and circumstances of the case and in law, the C1T(A) was justified in deleting the addition of Share application money by observing that the alleged investor companies M/s Prithvi Vinimay Pvt. Ltd. and M/s Birla Arts Pvt. Ltd., M/s Macro Soft Technology Pvt. Ltd., M/s Teac Consultants Pvt. Ltd., M/s Sangam Distributors Pvt. Ltd., are not shell companies without considering the financial statements of these companies.*
- 3. Whether on the facts and circumstances of the case and in law, the C1T(A) was justified in deleting the addition of unsecured loans allegedly obtained from M/s Prithvi Vinimay Pvt. Ltd. and M/s Birla Arts Pvt. Ltd., M/s Macro Soft Technology Pvt. Ltd., M/s Teac Consultants Pvt. Ltd., M/s Sangam Distributors Pvt. Ltd., merely for the reason that evidences in the form of statement on oath of the relevant entry operators were not available on record.*
- 4. Whether on the facts and circumstances of the case and in law, the C1T(A) was justified in deleting the addition of unsecured loans allegedly obtained from M/s Prithvi Vinimay Pvt. Ltd. and M/s Birla Arts Pvt. Ltd., M/s Macro Soft Technology Pvt. Ltd., M/s Teac Consultants Pvt. Ltd., M/s Sangam Distributors Pvt. Ltd., despite the fact that the directors or Principal Officers of these companies were never produced before the AO for examination despite number of opportunities provided by the AO for producing and also ignoring the fact that the assessee neither expressed its inability in producing the lenders nor produced them either.*

4. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of unsecured loans allegedly obtained from M/s Prithvi Vinimay Pvt. Ltd. and M/s Birla Arts Pvt. Ltd., M/s Macro Soft Technology Pvt. Ltd., M/s Sangam Distributors Pvt. Ltd., M/s Teac Consultants Pvt. Ltd., merely by observing that the assessee has cooperated in assessment by showing his willingness to produce the Directors of lender companies and some Directors/Officers were also produced before the AO despite the fact that even the Directors which were produced before the AO failed to substantiate the genuineness of the alleged transactions.*
6. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of unsecured loans by observing that the appellant cannot be fastened upon the burden to produce the lenders before the AO and in not considering the decision of the Hon'ble Supreme Court in Navodaya Castles (p) Ltd Vs CIT(2015) 56 taxmann.com 18(8C) when there were genuine concerns of the genuineness of the transactions.*
7. *Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs. 52,43,029/- made by the AO by invoking the provisions of section 14A of the IT Act.*
8. *Whether on the facts and circumstances of the case in law, the CIT(A) was justified in deleting the disallowance of Rs. 7,50,385/- made by the AO on account of retention charges.*

The Appellant craves, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal”.

2. Grounds No. 1 to 6 of the revenue's appeal are regarding the addition made by the A.O. U/s 68 of the Act on account of unexplained loans as well as unexplained share application money received from five companies which was deleted by the Id. CIT(A) on the ground that the

A.O. was not having any material in his possession to substantiate the addition as the A.O. was not having even the statement of the alleged entry operator whereas the assessee has produced all the documentary evidences in support of the claim. The assessee is a group concern of Kota Dall Mill (KDM) group and subjected to the search and seizure action U/s 132 of the Act carried out on 02/07/2015. The A.O. initiated the proceedings U/s 153A of the Act in pursuant to the search for the A.Y. 2010-11 to 2013-14 and 2015-16 and made various additions U/s 68 of the Act on account of share application money, special deposits against the issue of preferential equity shares treating the same as accommodation entries availed by the assessee from the entry providers. The assessee challenged the orders passed by the A.O. before the Id. CIT(A) and contended that the A.O. has made the addition merely on the basis of the statements recorded by the Investigation Wing, Kolkata and without any incriminating material found or seized during the search and seizure action in the case of the assessee. The assessee also raised objection against the additions made by the A.O. on the ground that the assessee was not given an opportunity of cross examination of the witnesses whose statement was relied upon by the A.O. while passing the assessments. The Id. CIT(A) did not accept these objections raised by the assessee, however, on merits of the addition, the Id. CIT(A) has deleted

the major part of the addition for which the A.O. was not having any material in his possession but confirmed the addition in respect of which the statement of the alleged entry provider was with the A.O.. Thus, both the assessee as well as the revenue are aggrieved by the impugned order of the Id. CIT(A) and filed appeal as well as the cross objection for the respective assessment year.

3. The A.O. has observed that the assessee received share capital and unsecured loan from various companies. The A.O. issued show cause notice to the assessee as to why unsecured loan and share capital received from five companies should not be treated as unexplained U/s 68 of the Act. After considering the explanation of the assessee, the A.O. held that the share capital and unsecured loan received from five companies amounting to Rs. 18.72 crores is unexplained cash credit and accordingly made an addition of the said amount to the total income of the assessee. While making the addition, the A.O. has relied upon the report of the Investigation Wing, Kolkata wherein it was reported that these five companies are managed and controlled by the entry operators and therefore, these are accommodations entries provided by these entry operators. On appeal, the Id. CIT(A) has deleted the addition in respect of all the transactions of unsecured loan and share capital on the ground that the A.O. was not having any documentary evidence to even the

statement of the persons who have allegedly provided accommodation entries to the assessee through these companies.

4. Before us the Id. CIT-DR has submitted that this company was found to be a shell company as per the investigation carried out by the DDIT(Inv.), Kolkata as well as the enquiry was also conducted by the A.O. through the Investigation Wing, Kolkata. Further the assessee was asked by the A.O. to produce Principal Officer/Directors of the company for examination but the assessee failed to discharge its onus. The assessee has introduced his unaccounted income in the books of account in the garb of share application money as the assessee has failed to establish the genuineness of the transaction. It is evident from the evidences collected by the Department during the investigation, enquiry, search and survey action and the A.O. received information from the Investigation Wing, Kolkata regarding involvement of Kota Dall Mill including the assessee in obtaining entries of bogus share application money. Such information was received prior to the initiation of the proceedings U/s 153A of the Act and also during the pendency of the proceedings of assessment. The Assessing Officer also conducted further enquiry during the assessment proceedings U/s 153A of the Act about the genuineness of the transaction of unsecured loans. The assessee was duly confronted with the results on all these facts and information shared by the

Investigation Wing, Kolkata. In these circumstances, it cannot be a case of addition made without any incriminating material, but the A.O. was having sufficient material disclosing the undisclosed income in the shape of unexplained cash credit introduced by the assessee in the garb of share capital. Once the A.O. has brought on record the report of the Investigation Wing, Kolkata to prove that the said company is a shell company and engaged in providing bogus accommodation entries then the assessee was duty bound to discharge its onus of proving the genuineness of the transactions. The assessee has failed to produce the Principal Officer or the Director of the loan creditor before the A.O. for examination despite various opportunities given by the Assessing Officer. He has relied upon the decision of Hon'ble Delhi High Court in the case of CIT Vs. Navodaya Castles Pvt. Ltd. 226 Taxman 190 and the SLP filed by the assessee was dismissed by the Hon'ble Supreme Court reported in 230 Taxman 268 (S.C.)

5. On the other hand, the Id AR of the assessee has submitted that prior to the search U/s 132 of the Act, the assessment of the assessee was completed U/s 143(3) of the Act wherein the share application money received by the assessee from this company was treated as genuine by the A.O.. Even the said transaction was also examined by the A.O. in the assessment of the share applicant U/s 143(3) of the Act, therefore, prior

to the search, the assessment completed U/s 143(3) of the Act and there was no defect found by the A.O. in the claim of the assessee as the genuineness of the transaction of share application money received from this company. Further nothing has either been found or seized during the course of search and seizure action U/s 132 of the Act which can support the case of the A.O. in treating the said share application money as bogus transaction and consequently unexplained cash credit U/s 68 of the Act. The Id AR of the assessee has submitted that even otherwise the assessee has produced all relevant documentary evidence in support of its claim and to establish the identity, creditworthiness of the share applicant and genuineness of the transaction. He has referred to the relevant documentary evidence filed by the assessee which are placed at page Nos. 415 to 605 of the paper book and submitted that the assessee produced income tax return of the share applicant, books of account/financial statements for the A.Y. under consideration, bank statement showing the payments made by the share applicant, ledger statement, share allotment advice, affidavit of the Director of the share applicant company, financial statement of the share applicant for six years from F.Y. 2009-10 to 2015-16 to show the creditworthiness of the share applicant and availability of the funds. He has referred to the details and submitted that the said company was having sufficient fund as its is

manifest from the financial statement and particularly the share capital and reserves of the said company as on 31/3/2012 was Rs. 97,21,54,685/- whereas the said company has paid the share application money to the assessee of Rs. 19.75 crores only. The department has accepted the transaction while passing the assessment orders U/s 143(3) of the Act in the share applicant. He has referred the assessment orders for the A.Y. 1998-99 to 2001-02, 2008-09 and 2014-15 which were undergone scrutiny assessment and the A.O. has accepted the transaction of investment made by the said company in the shares of the assessee. Even as per the ROC record, the status of the said company is shown as active and not as a shell company. Hence, the Id AR has submitted that once the assessee has produced all the relevant documents to establish the identity, creditworthiness of the share applicant and genuineness of the transaction, which were not disturbed by the department in the assessment in the case of the share applicant then the said transaction cannot be treated as the bogus in the hand of the assessee. He has supported the order of the Id. CIT(A). The Id AR has also relied upon the series of decisions on this point and submitted that once the assessee has discharged its onus by producing the documentary evidence then in absence of any contrary material brought by the Assessing Officer, the addition made by the Assessing Officer is not sustainable. He has also

referred to the report of the Kolkata Investigation Wing and submitted that even the notice issued U/s 133(6) of the Act was duly responded by the said company and hence no adverse report has been given by the DDIT (Inv), Kolkata. The only objection is non-production of the Director of the said company, however, the assessee has duly produced the affidavit of the Director of the share applicant. As regards the unsecured loan taken from three companies namely Birla Art Pvt. Ltd., Prithvi Vinimay Pvt. Ltd. and Macro Soft Pvt. Ltd. The Id. AR has submitted that during the year itself, the assessee has repaid the entire loan amount and nothing was outstanding as on 31/3/2010, therefore, once the assessee has repaid the loan amount during the year under consideration then the addition made by the A.O. on account of unexplained cash credit is not sustainable as the said credit was not more outstanding in the books of the assessee. He has referred to the details of the loan and the repayment of the same during the year under consideration. The Id AR has pointed out that the last transaction of repayment was made on 13/10/2009 and thereafter nothing was pending or outstanding in respect of these loan amounts taken from these three companies.

6. We have considered the rival submissions as well as relevant material on record. The A.O. has made the addition U/s 68 of the Act in

respect of unsecured loan and share capital received by the assessee, the details of which are as under:

Assessment year	Nature of Addition	Description of addition	Addition Made Amount	Total additions for the Assessment year
2010-11	Unsecured Loans	M/s Birla Arts Pvt. Ltd.	7,76,00,000	
	Unsecured Loans	M/s Prithvi Vinimay Pvt. Ltd	7,47,50,000	
	Unsecured Loans	M/s Macrosoft Technology Pvt. Ltd	8,50,000	
	Share Capital	M/s Sangam Distributors Pvt. Ltd	3,10,00,000	
	Share Capital	M/s Teac Consultants Pvt. Ltd	30,00,000	
	Others	Disallowance u/s 14A of I.T. Act.	52,43,029	
	Others	Addition on account of disallowance of retention charges	7,50,385	19,31,93,414

The first three transactions are in respect of unsecured loans taken by the assessee from three companies. There is no dispute that all these loan amounts were repaid by the assessee during the year under consideration and the repayment of loan was paid on 13/10/2009, therefore, as on the closing of previous year i.e. 31/3/2010 nothing was outstanding in respect of unsecured loans. Once the receipt as well as repayment of the loan in question are through banking channel then even if the A.O. has doubted the transaction of receipt of loan as an accommodation entry if the assessee has repaid the same during the year under consideration then it

has neutralized the effect of accommodation entry. Even otherwise we note that the A.O. has made the addition based on the report of the DDIT (Inv.), Kolkata and was not having any other documentary evidence in his possession to support the decision of treating the transaction of unsecured loan as bogus transaction being accommodation entries. The said report of the DDIT(Inv.), Kolkata was also not based on any documentary evidence but the narration of the statements of the alleged entry operators, however, the A.O. was not having even the statement of the alleged entry operators. On the contrary, the assessee produced all the supporting documentary evidence which includes the ITR of the loan creditors and shareholders, their financial statements including the balance sheet, bank statement showing the entry of payment to the assessee as well as the repayment made by the assessee of the loan amount in case of share application, the assessee also produced copy of the ledger showing the transaction with share applicant, share allotment advice, affidavit of the Directors of the companies who had paid share capital, financial statement of last 5-6 years showing the source of funds with the share applicants as well as loan creditors, copy of earlier orders passed by the A.O. in the cases of share applicants and loan creditors wherein the transactions of giving loan as well as investment made in the shares of the assessee company were not disturbed by the A.O.. The

assessee also produced copy of ROC master data wherein all these companies status was shown as active or amalgamated in some of the cases. There is no dispute that all these companies are registered NBFCs and the summons issued by the DDIT(Inv), Kolkata were duly responded by these companies, therefore, even otherwise the existence of these companies are not in dispute. The whole case of the A.O. is based that these are shell companies, however when these companies are registered NBFCs and subjected to scrutiny assessment for all the relevant years and further the ROC is showing the status of these companies as active then in absence of any material to show that these companies are shell companies. The decision of the A.O. is not based on any cogent material or evidence but merely based on the report of the DDIT(Inv.), Kolkata wherein it is alleged that as per the statements of the entry operators who are managing and controlling these companies then indulged in providing accommodations entries in the shape of share application as well as loan etc. We note that in respect of these five companies, the assessee has produced following documents, which are as under:

M/s Teac Consultants Pvt. Ltd (AY 2010-11).

S. No.	Particulars of Documents	S. No. of PB where documents annexed AY 2010-11/VOL- II
1	Copy of Ack. of ITR of AY 2010-11 along with computation sheet	477-478

2	Copy of Balance sheet of AY 2010-11 along with enclosures	479-484
3	Copy of relevant page of bank statement showing the entry of payment made to assessee.	485
4	Copy of share application form of equity share	486-487
5	Copy of ledger showing the transaction with share applicant	488-489
6	Share Allotment advice	490
7	Copy of affidavit of Mr Jitendra Sharma director of company.	491-494
8	Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016.	495-501
9	Copy of assessment order passed in the case of above named company for AY 2005-06, AY 2006-07, AY 2012-13 and 2014-15.	502-521
10	Copy of ROC master data.	522-523
11	Copy of PAN card.	524
12	Certificate of Incorporation.	525
13	Copy of Certificate of NBFC Registration.	526
14	Copy of Summon no. 1433 dated 13.10.2017 and reminder summon no.-1592 dated 31.10.2017 issued by DDIT (Investigation), Unit-1(3), Kolkata u/s 131 of Income Tax Act, 1961 to M/s Teac Consultants Private Limited.	527-530
15	Copy of reply in response to summon issued to the company.	531-533
16	Copy of letter for confirmation of source of funds used for applying the shares along with supporting documents	534-537

M/s Sangam Distributors Pvt. Ltd (AY 2010-11).

S. No.	Particulars of Documents	S. No. of PB where documents annexed AY 2010-11/VOL- II
1	Copy of Ack. of ITR of AY 2010-11 along with computation sheet	538-539

2	Copy of Balance sheet of AY 2010-11 along with enclosures	540-541
3	Copy of relevant page of bank statement showing the entry of payment made to assessee.	542-543
4	Copy of share application form of equity share	544-546
5	Copy of affidavit of Mrs Neelam Gautam director of company.	547-550
6	Copy of order passed by Calcutta High Court regarding amalgamation of other companies in this company	551-577
7	Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, and 31.03.2013.	578-581
8	Copy of assessment order passed in the case of above named company for AY 2006-07, AY 2007-08 and 2013-14.	582-593
9	Copy of ROC master data.	594-595
10	Copy of PAN card.	596
11	Certificate of Incorporation.	597

M/s Birla Arts Pvt Ltd (AY 2010-11).

S. No.	Particulars of Documents	S. No. of PB where documents annexed AY 2010-11/VOL- III
1	Copy of Ack. of ITR of AY 2010-11 along with computation sheet	598-599
2	Copy of Balance sheet of AY 2010-11 along with enclosures	600-606
3	Copy of relevant page of bank statement showing the entry of payment made to assessee.	607-613
4	Copy of account confirmation from books of unsecured loan creditor	614-615
5	Copy of ledger showing the transaction with unsecured loan creditor	616-617
6	Copy of affidavit of Mrs Neelam Gautam director of company.	618-621
7	Copy of Calcutta High Court order regarding the amalgamation of another companies with assessee company	622-648

8	Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016.	649-655
9	Copy of assessment order passed in the case of above named company for AY 2006-07, AY 2012-13, AY 2013-14 and 2014-15.	656-676
10	Copy of ROC master data.	677-678
11	Copy of PAN card.	679
12	Certificate of Incorporation.	680
13	Copy of Certificate of NBFC Registration.	681

M/s Macrosoft Technology Private Limited (AY 2010-11).

S. No.	Particulars of Documents	S. No. of PB where documents annexed AY 2010-11/VOL- III
1	Copy of Ack. of ITR of AY 2010-11 along with computation sheet	682-683
2	Copy of Balance sheet of AY 2010-11 along with enclosures	684-688
3	Copy of relevant page of bank statement showing the entry of payment made to assessee.	689-692
4	Copy of account confirmation from books of unsecured loan creditor	693
5	Copy of ledger showing the transaction with unsecured loan creditor	694
6	Copy of affidavit of Mrs Deepa Kriplani director of company.	695-698
7	Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016.	699-705
8	Copy of assessment order passed in the case of above named company for AY 2009-10, AY 2011-12, 2012-13 and 2014-15.	706-725
9	Copy of ROC master data.	726-727

10	Copy of Certificate dated 06.11.2011 issued by registrar of company regarding modification of charges	728
11	Copy of PAN card.	729
12	Certificate of Incorporation.	730
13	Copy of summon no. 2116 dated 31.10.2017 issued by DCIT (CC), Kota u/s 131(1) of the Income Tax Act 1961.	731
14	Copy of reply in response to summon no. 2116 dated 31.10.2017 issued by DCIT (CC), Kota u/s 131(1) of the Income Tax Act 1961.	732-733
15	Copy of notice no. 1612 dated 21.09.2017 issued by DCIT (CC), Kota u/s 133(6) of the Income Tax Act 1961.	734
16	Copy of reply in response to notice no. 1612 dated 21.09.2017 issued by DCIT (CC), Kota u/s 133(6) of the Income Tax Act 1961 along with dispatch proof.	735-736

M/s Prithvi Vinimay Private Limited (AY 2010-11)

S. No.	Particulars of Documents	S. No. of PB where documents annexed AY 2010-11/VOL- III
1	Copy of Ack. of ITR of AY 2010-11 along with computation sheet	737-738
2	Copy of Balance sheet of AY 2010-11 along with enclosures	739-744
3	Copy of relevant page of bank statement showing the entry of payment made to assessee.	745-768
4	Copy of account confirmation from books of unsecured loan creditor	769-770
5	Copy of ledger showing the transaction with unsecured loan creditor	771-772
6	Copy of affidavit of Mr. Ravi Mundra director of company.	773-776
7	Copy of order passed by Calcutta High Court regarding amalgamation of other companies in this company	777-802

8	Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, and 31.03.2013.	803-806
9	Copy of assessment order passed in the case of above named company for AY 2006-07, and 2014-15.	807-815
10	Copy of ROC master data.	816-817
11	Copy of Certificate dated 08.02.2013 issued by registrar of company regarding modification of charges	818
12	Copy of PAN card.	819
13	Certificate of Incorporation.	820
14	Copy of summon no. 1440 dated 13.10.2017 and reminder summon no.1578 dated 31.10.2017 issued by Deputy Director Investigation, Unit 1(3) Kolkata u/s 131 of the Income Tax Act 1961.	821-824
15	Copy of reply in response to summon no. 1440 dated 13.10.2017 and reminder summon no.1578 dated 31.10.2017 issued by Deputy Director Investigation, Unit 1(3) Kolkata u/s 131 of the Income Tax Act 1961.	825-827

We further note that all these companies were also assessed by the A.O. U/s 143(3) of the Act and the assessee produced the assessment orders passed for the A.Y. 2005-06 to 2014-15. Once the identity and creditworthiness of these companies are proved with the supporting evidence then in absence of any contrary material to disprove the evidence produced by the assessee, the addition made by the A.O. is not sustainable. It is also not in dispute that all the transactions are carried out through banking channel and the A.O. has not brought any material or fact on record to show that prior to the transaction of loan and share

capital, any cash deposit is made in the bank account of the share applicant and loan creditor company. Even the assessee has produced the details of the availability of the funds with all these companies and those financial statements showing the funds with these companies were accepted by the A.O. while passing the assessment order U/s 143(3) of the Act. At the outset, we note that in the case of group concern M/s Kota Dall Mill Vs DCIT in ITA Nos. 997 to 1002/JP/2018, 1119/JP/2018, 1057 to 1062/JP/2018 and 1210/JP/2018, the Tribunal while deciding the identical issues vide order dated 31/12/2018 has considered the transactions of unsecured loan taken from these companies namely Birla Art Pvt. Ltd., M/s. Teac Consultant Pvt. Ltd and M/s. Sangam Distributors Pvt. Ltd. in para 15 as under:

“15. We have considered the rival submissions as well as the relevant material on record. The AO has made the addition on account of unsecured loans taken from all the parties whereas the Id. CIT (A) has deleted the addition in respect of the loans taken from M/s. Birla Arts Pvt. Ltd., M/s. Teac Consultant Pvt. Ltd and M/s. Sangam Distributors Pvt. Ltd. and confirmed the addition made on account of loan taken from M/s. Jalsagar Commerce Pvt. Ltd. The issue of addition made in respect of the unsecured loans taken from M/s. Jalsagar Commerce Pvt. Ltd. was considered and decided by us in the assessee’s appeal. The revenue is aggrieved by the order of the Id. CIT (A) as the unsecured loans taken from these three companies were deleted on the ground that the AO was not having any material to substantiate that these

companies are controlled by so called entry operators. The relevant finding of the Id. CIT (A) in para 6.1 to 6.14 are as under :

- 6.1 As discussed in para 4.4.8 above, in respect of these three lenders namely M/s Birla Arts Private Limited, M/s Teac Consultants Private Limited and M/s Sangam Distributors Private Limited adverse findings alongwith eloquent evidences in the form of statement on oath of relevant entry operators are not visible in the reports dated 28.11.2017 and 06.12.2017 from Investigation Directorate, Kolkata and therefore it could not be treated as shell company.
- 6.2 Now, coming to the loan from M/s Birla Arts Private Limited no notice under Section 131 or 133(6) of the Act was issued to this company, either by the AO or by the concerned AO or by the DDIT (Inv.) Kolkata. This shows that no independent enquiry was done by the AO to establish that the said companies were shell companies, blind reliance has been placed by the AO on the investigation report of the DDIT, Kolkata. Also, on bare perusal of the assessment order, it is evident that the name of the said companies does not appear in the statement of any of the entry operators as reproduced by the AO in the Assessment Order.
- 6.3 As far as the remaining lender companies namely, M/s Teac Consultants Private Limited and M/s Sangam Distributors Pvt. Ltd. are concerned, it is evident from the documents placed on record that Notice was issued by DDIT, Kolkata u/s 131 to these companies which was duly complied with and relevant documents were filed. There is no fact on record that the notices remained unserved or these companies were not found existent on the given addresses. Furthermore, Affidavit of the directors were also submitted wherein the Directors confirmed providing unsecured loan to the Appellant and source of providing the said loan. Also, it

is evident from the assessment Order that no statement/evidence has been relied upon or provided by the AO for substantiating that these companies are controlled by the so-called Entry Operators.

6.4 For these three creditors namely, M/s Birla Arts Private Limited, M/s Teac Consultants Private Limited and M/s Sangam Distributors Private Limited, the Appellant in discharge of its onus u/s 68 of the Act has filed confirmation of accounts as well as bank statement reflecting the transactions with other substantiating documents along with assessment orders in case of lender companies, which are available at page no.443 to 644 of PB. From these documentary evidences placed on record, identity, creditworthiness and genuineness of transactions is established. There is no gain saying that the onus squarely lies on the appellant to prove the identity, creditworthiness and genuineness of the cash credits. In the case of Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244 (Pat), the Hon'ble Patna High Court has held "*if the loans are given by an account paying cheque, it amounts to identification of the parties and discharge of burden by the borrower.*" In view of the above, it is clear that Appellant discharged its burden u/s 68 of the Act. Even otherwise, there is no adverse finding of any investigation conducted by the department in relation to these companies. Therefore, in the absence of any independent inquiry and any adverse findings to rebut the evidences filed by the Appellant, I find that the addition in respect of unsecured loans from 03 companies namely, M/s Birla Arts Private Limited, M/s Teac Consultants Private Limited and M/s Sangam Distributors Private Limited totaling to Rs. 12,36,40,000/- is unjustified; firstly, on the ground that no inquiries were made to rebut the evidences filed by the Appellant and secondly, on the ground that Appellant duly discharged its burden casted upon u/s 68 of the Act to explain nature and source of the transactions by proving the identity,

creditworthiness of creditor and genuineness of the transaction. In particular, none of the material or statements have been provided in the Assessment Order wherein names of the said companies are mentioned. Notably, the transactions with the said four companies are duly verifiable from confirmation of accounts placed at page no. 453 to 455, 532 to 534 & 588 to 589 of PB with supporting bank statements placed at page no. 444 to 452, 521 to 531 & 571 to 587 PB and have been carried out through banking channels only and thus, appellant has duly proved the identity, creditworthiness and genuineness of the transactions.

6.5 Furthermore, from the perusal of documentary evidences submitted by the Appellant, it is seen that transactions have been done through banking channels and on the date of making of loans, there is balance available in the accounts of the borrowers, which proves the creditworthiness and genuineness of the transactions. There is no case of any cash deposition in the account of any of the creditors at the time of issuing cheques/RTGS in favour of the Assessee. Therefore, in view of the settled judicial precedent in case of CIT V. VARINDER RAWLLEY [2014] 366 ITR 232 (PUNJAB & HARYANA), CIT V. VIJAY KUMAR JAIN [2014] 221 TAXMAN 180, CIT v. Victor Electrodes Ltd. [2010] 329 ITR 271, Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244 (Pat) and others as referred by the Appellant, I am of the considered view that Appellant duly discharged its burden casted upon it u/s 68 of the Act. It is further seen that no notice u/s 131 or 133(6) of the IT Act were issued to M/s Birla Arts Private Limited, however as far as the companies M/s Teac Consultants Private Limited and M/s Sangam Distributors Private Limited are concerned, these have duly replied to the notices issued by DCIT/DDIT(Inv.), Kolkata in respect of commission, these facts remain uncontroverted by the AO.

- 6.6 The AO during assessment proceedings took negative inference from the statement of Shri Rajendra Agarwal recorded during search u/s 132(4) wherein he made disclosure in respect of Long Term Capital Gain in his individual hands. I have gone through the statement of Shri Rajendra Agarwal and his disclosure made in his statement, Notably, the disclosure made was in his personal capacity only and with respect to LTCG only and not in respect of any other transactions be it be receipt of unsecured loans. Further, Rajendra Agarwal is not a partner in the Appellant Firm. Therefore, I find that in the absence of any nexus of the Statement of Shri Rajendra Agarwal with the appellant firm or its total income, this basis of addition adopted by the AO is farfetched & cannot be concurred.
- 6.7 It is further seen that AO has not brought any specific defect / discrepancies in the direct evidence brought on record by the Appellant. The AO has observed that on the date of debit in the account statement of creditor, there is corresponding credit entry of equal amount, however, this observation of the AO is itself not sufficient to prove beyond doubt that Appellant routed its unaccounted income by these companies rather it proves the source in the hands of the Appellant. It is usual business practice, while making loans to party, funds are required to be arranged by the lender, therefore reflection of such entries in bank statement doesn't lead to draw any adverse inference against the Appellant. Needless to say that Appellant is not required to prove source of the source u/s 68 of the Act in view of the settled judicial precedents.
- 6.8 In my considered view, mere not believing an explanation cannot lead to a conclusion that the borrowed amount is the income of the assessee(borrower) from some undisclosed sources while in the

present case, no evidences of any generation of undisclosed income or their utilization in the form of unsecured loans has been found and brought on record.

- 6.9 Similarly, I find that various observations of the AO on balance sheet / ITR of the lender companies are misconstrued, misconceived and are factually incorrect. I further find that the various other allegations / observations of the AO are misconceived and premature only and in view the appellant's submission made in para 10 as reproduced in Para No. 4.2 of this order, the same does not lead anywhere to draw any adverse inference against the Appellant. Further, the various case laws relied upon by the AO are distinguishable from the facts of the present case as categorically countered by the Appellant in his written submissions as mentioned in para 16 as reproduced in Para No. 4.2 above.
- 6.10 It is settled judicial precedents that under the income tax law primary burden u/s 68 of the Act is on the Appellant and once this burden is discharged u/s 68 of the Act, no addition u/s 68 of the Act is justifiable in the hands of the Assessee in view of the judgments in case of Shree Barkha Synthetics Ltd. V/s Assistant Commissioner of Income-tax (2006) 155 TAXMAN 289 (RAJ.), COMMISSIONER OF INCOME-TAX, JAIPUR -II V. MORANI AUTOMOTIVES (P.) LTD. [2014] 264 CTR 86 (RAJASTHAN-HC), CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC), Commissioner of Income-tax v/s Mark Hospitals (P.) Ltd. [2015] 373 ITR 115 (Madras)(MAG.), Commissioner of Income-tax, Ajmer v. Jai Kumar Bakliwal [2014] 366 ITR 217 (Rajasthan), CIT v/s. Creative World Telefilms Ltd (2011) 333 ITR 100 (Bom), Commissioner of Income-tax-I v. Patel RamniklalHirji [2014] 222 Taxman 15 (Gujarat)(MAG.), Principal

Commissioner of Income-tax-4 v. G & G Pharma India Ltd. [2016] 384 ITR 147 (Delhi) referred above which have been also been followed recently by Hon'ble Delhi Tribunal in case of ITO vs. Softline Creations (P) Ltd. in ITA No. 744/Del/2012 vide its order dated 10.02.2016. Further, Hon'ble Apex Court as well as High Court has held that once the identity of creditor is established, the department is free to reopen the assessment of creditor and no addition can be made in the hand of borrower as rightly held in case of CIT v/s Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC), Commissioner of Income-tax v. Rock Fort Metal & Minerals Ltd. [2011] 198 TAXMAN 497 (Delhi), Divine Leasing & Finance Limited [2008] 299 ITR 268 (Delhi) CIT v. Orissa Corporation (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC) and others on this question of law.

- 6.11 Further, power to call for information/production of evidences or enforcing attendance under the law is given to the income tax authorities only and therefore, in view of the judgment CIT v/s Victor Electrodes Ltd. [2010] 329 ITR 271, the Appellant cannot be fastened upon the burden to produce the lenders before the assessing authorities though in the instance case, appellant has cooperated in assessment by showing his willingness to produce the directors of lender companies and some directors/officer were also produced before the AO. Thus, in view of the judicial precedents referred above, under the facts and circumstances of the present case it is untenable to make any addition for alleged non-appearance by the concerned person before the authorities though they complied with the notices/summon issued to them.
- 6.12 In the present case in hand, I find that AO asked Assessee to produce lender companies without verifying the facts of lending money from respective jurisdiction assessing officer and without

verifying their returns of income and balance sheet wherein these transactions are reported, accordingly the AO has not followed the principles laid down under section 68 of the Act. The Hon'ble Gujrat High Court in the case of Commissioner of Income-tax v. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Guj.) has held that:-

Once the assessee has established that he has taken money by way of account payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under section 68 was discharged. It further appears that the assessee had also produced confirmation letters given by those lenders. [Para 15]

Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective returns they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, the Assessing Officer does not follow the principle laid down under section 68. [Para 16]

In the instance case before me, the AO has not followed the due procedure of law u/s 68 of the Act. Therefore, requiring the Assessee to produce the directors of the lender company was not legally tenable in view of the judgment of Gujarat High Court (supra).

- 6.13 It is noted that no clinching evidences has been brought on record that any unaccounted income was routed through unsecured loans by the Appellant Firm as no evidences as to receipt/payment of cash for receipt of unsecured loans were found during search in case of the Appellant. Mere suspicion howsoever strong cannot take place of evidence. Thus, in the absence of any incriminating material found during search to rebut the evidences filed by the

Appellant, the impugned addition made in respect of unsecured loan u/s 68 of the Act is legally untenable and unjustified.

- 6.14 In view of the above discussion of relevant facts and following the several ratios on the subject from Hon'ble Apex Court, High Courts including jurisdictional High Courts, Tribunals including jurisdictional Tribunals, the impugned addition in respect of unsecured loans from 03 companies namely, M/s Birla Arts Private Limited, M/s Teac Consultants Private Limited and M/s Sangam Distributors Private Limited totaling to Rs.12,36,40,000/- is not sustainable and hence the same stands deleted.”

Thus the Id. CIT (A) was of the view that so far as the loans taken from M/s. Jalsagar Commerce Pvt. Ltd., the AO was having the statement of Shri Anand Sharma to the effect that the said company was involved in providing accommodation entry and controlled by the entry operator whereas in respect of these three companies the AO was not having any document or even the statement of any person who are entry operators and controlling these companies so as to establish that the transactions are in the nature of bogus accommodation entries. We have already considered the issue on merits in respect of the addition made on account of unsecured loans taken from M/s. Jalsagar Commerce Pvt. Ltd. whereas the loans taken from these companies are even as per the revenue on better footings of genuineness than M/s. Jalsagar Commerce Pvt. Ltd. There is no dispute that the AO was not having any evidence or even any statement to impugn the transactions as bogus accommodation entries. Further, the assessee has produced all the relevant supporting documentary evidence as we have reproduced in the foregoing paras as referred by the Id. A/R of the assessee and

these creditor companies were subject to regular assessments and scrutiny assessments under section 143(3) were completed by the department as per the details reproduced. Therefore, once these creditor companies are regularly assessed to tax and duly examined by the department at the scrutiny assessments, then the transactions of loans cannot be held as bogus when the same were accepted in the hands of the creditors. We further note that these companies were having sufficient funds in the shape of share capital, reserves and surplus. The details of the share capitals of these companies are as under :-

M/s Birla Arts Pvt. Ltd

Assessment Year	Financial Year	Share capital raised	
1998-1999	1997-1998	12,90,000	
1999-2000	1998-1999	16,82,000	
2003-2004	2002-2003	50,00,000	
2004-2005	2003-2004	2,74,40,000	
2005-2006	2004-2005	3,69,50,000	
2007-2008	2006-2007	3,26,00,000	
2010-2011	2009-2010	250,00,000	
2011-2012	2010-2011	20,00,000	
2014-2015	2013-2014	67,57,37,000	

M/s Teac Consultants Pvt. Ltd

Assessment Year	Financial Year	Share capital raised	
1996-1997	1995-1996	26,00,000	
2001-2002	2000-2001	73,98,000	
2003-2004	2002-2003	1,00,00,000	
2005-2006	2004-2005	4,85,50,000	
2007-2008	2005-2006	3,35,00,000	
2010-2011	2009-2010	2,76,00,000	
2011-2012	2010-2011	94,00,000	

M/s Sangam Distributors Pvt. Ltd.

Assessment Year	Financial Year	Share capital raised
2005-2006	2004-2005	2,47,50,000
2006-2007	2005-2006	10,50,00,000
2007-2008	2006-2007	7,93,50,000
2011-2012	2010-2011	2,50,00,000
2013-2014	2012-2013	13,00,00,000

These details clearly show that at the time of granting of loans to the assessee these companies were having sufficient funds. Further, we have already recorded the details of repayment made by the assessee of these loans and once regular repayment was there even prior to the date of search, then the transactions cannot be doubted as nothing can be achieved by taking the loan and then repaying the same through banking channel even if there is corresponding channelization of cash. As we have discussed earlier that the AO has not pointed out any discrepancy in the financial statements or in the bank account statements of the loan creditors to show that there was deposit or introduction of the cash prior to giving the loan to the assessee, accordingly, in view of the facts and circumstances of the case as well as our finding on the issue of addition in case of M/s. Jalsagar Commerce Pvt. Ltd., we do not find any error or illegality in the order of Id. CIT (A) qua this issue.

7. The remaining two companies namely, M/s Prithvi Vinimay Pvt. Ltd. and M/s Macro Soft Technology Pvt. Ltd. were also considered and decided by the Tribunal in the case of M/s Kota Dall Mill (supra) in para 19 as under:

"19. Having considered the rival submissions as well as the relevant material on record, we note that the AO has made the addition of

the amount of partners' capital from these four corporate entities on identical reasoning as the addition was made on account of unsecured loans. During the year under consideration, the assessee firm received Rs. 42,47,25,000/- on account of partners' capital from the corporate partners as under :-

S. No.	Name of the Partner	Addition of Capital during AY under Appeal
1	M/s Bansidhar Advisory Private Limited	Rs. 13,22,20,000/-
2	M/s Vasundhara Advisory Private Limited	Rs. 8,96,45,000/-
3	M/s Prithvi Vinimay Private Limited	Rs. 13,93,45,000/-
4	M/s Macro Soft Technology Private Limited	Rs. 6,35,15,000/-
	Total	Rs. 42,47,25,000/-

We find that the assessee produced all the relevant documentary evidence in support of the transactions before the AO. The summary of these documents are as under :-

S.No	Particulars	Paper book Page No.
M/s Vasundhara Advisory Pvt. Ltd.		
1	• Copy of ledger a/c of partner from books of accounts of assessee.	843-845
2	• Copy of Ack. of ITR of AY 2010-11 and computation of total income.	846-847
3	• Copy of Balance sheet of AY 2010-11	848-855
4	• Confirmation of a/c of the assessee from books of accounts of partner.	856-859
5	• Copies of relevant bank a/c of partner showing the entries of payment made to assessee against capital introduce.	860-872
6	• Copy of affidavit executed by Mr. Ravi Mundra director of Doshi Management Pvt. Ltd on behalf of amalgamated Company M/s Vasundhara Advisory Pvt Ltd,	873-875
7	• Copy of order of Calcutta High Court regarding amalgamation of company in Doshi Management Pvt. Ltd	876-900
8	• Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012 and 31.03.2013.	901-904
9	• Copy of assessment order passed in the case of above named company for AY 2014-15.	905-908

10	• Copy of ROC master data.	909
11	• Copy of certificate dated 06.11.2011 issued by registrar of companies regarding modification of charges/mortgage.	910
12	• Copy of PAN card.	911
13	• Copy of Summon No. 1439 dated 13.10.2017 and reminder notice No. 1579 dated 31.10.2017 issued by DDIT (Investigation), Unit-1(3), Kolkata u/s 131 of Income Tax Act, 1961.	912-915
14	• Copy of reply submitted by the company in response to summon/notice issued to it along with dispatched proof	916-918
M/s. Prithivi Vinimay Pvt. Ltd.		
15	• Copy of ledger a/c of partner from books of accounts of assessee.	919-921
16	• Copy of Ack. of ITR of AY 2010-11 and computation of total income.	922-923
17	• Copy of Balance sheet of AY 2010-11	924-942
18	• Confirmation of a/c of the assessee from books of accounts of partner.	943-946
19	• Copies of relevant bank a/c of partner showing the entries of payment made to assessee against capital introduce	947-958
20	• Copy of affidavit executed by Mr. Ravi Mundra director of Doshi Management Pvt. Ltd on behalf of amalgamated Company M/s Prithvi Vinimay Pvt Ltd,	959-962
21	• Copy of order of Calcutta High Court regarding amalgamation of company in Doshi Management Pvt. Ltd	963-987
22	• Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012 and 31.03.2013.	988-991
23	• Copy of assessment order passed in the case of above named company for AY 2006-07 and 2014-15.	992-1000
24	• Copy of ROC master data.	1001-1002
25	• Copy of certificate dated 08.02.2013 issued by registrar of companies regarding modification of charges/mortgage.	1003
26	• Copy of PAN card.	1004
27	• Copy of Summon No. 1440 dated 13.10.2017 and reminder notice No. 1578 dated 31.10.2017 issued by DDIT (Investigation), Unit-1(3), Kolkata u/s 131 of Income Tax Act, 1961.	1005-1008
28	• Copy of reply submitted by the company in response to summon/notice issued to it along with displaced proof	1009-1011
M/s Macro Soft Technology Pvt. Ltd.		
29	• Copy of ledger a/c of partner from books of accounts of assessee.	1012-1013
30	• Copy of Ack. of ITR of AY 2010 and computation of total income.	1014-1015
31	• Copy of Balance sheet of AY 2010-11	1016-1024
32	• Confirmation of a/c of the assessee from books of accounts of partner.	1025-1027
33	• Copies of relevant bank a/c of partner showing the entries of payment made to assessee against capital introduce.	1028-1033
34	• Copy of affidavit of Deepa Kriplani director of company.	1034-1037
35	• Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016.	1038-1044

36	• Copy of assessment order passed in the case of above named company for AY 2009-10, 2011-12, AY 2012-13 and 2014-15.	1045-1064
37	• Copy of ROC master data.	1065-1066
38	• Copy of certificate dated 06.11.2011 issued by registrar of companies regarding modification of charges/mortgage.	1067
39	• Copy of PAN card.	1068
40	• Copy of notice No. 1604 dated 21.09.2017 issued by DCIT, CC, Kota u/s 131 of Income Tax Act, 1961.	1069
41	• Copy of Reply of Notice submitted by the company	1070
42	• Copy of Summon No. 2115 dated 31.10.2017 issued by DCIT, CC, Kota u/s 131 of Income Tax Act, 1961.	1071
43	• Copy of Reply of Notice submitted by the company on 13.11.2017 and 23.11.2017.	1072-1074
M/s Banshidhar Advisory Pvt. Ltd		
44	• Copy of ledger a/c of partner from books of accounts of assessee.	1075-1077
45	• Copy of Ack. of ITR of AY 2010-11 and computation of total income.	1078-1079
46	• Copy of Balance sheet of AY 2010-11	1080-1089
47	• Confirmation of a/c of the assessee from books of accounts of partner.	1090-1093
48	• Copies of relevant bank a/c of partner showing the entries of payment made to assessee against capital introduce.	1094-1100
49	• Copy of affidavit executed by Mr. Ravi Mundra director of Doshi Management Pvt. Ltd on behalf of amalgamated Company M/s Banshidhar Advisory Pvt Ltd,	1101-1103
50	• Copy of order of Calcutta High Court regarding amalgamation of company in Doshi Management Pvt. Ltd	1104-1128
51	• Copy of balance sheet of company of 31.03.2010, 31.03.2011, 31.03.2012 and 31.03.2013.	1129-1132
52	• Copy of assessment order passed in the case of above named company for AY 2014-15.	1133-1137
53	• Copy of ROC master data.	1138-1139
54	• Copy of certificate dated 06.11.2011 issued by registrar of companies regarding modification of charges/mortgage.	1140
55	• Copy of PAN card.	1141
56	• Copy of Summon No. 1438 dated 13.10.2017 and reminder notice No. 1580 dated 31.10.2017 issued by DDIT (Investigation), Unit-1(3), Kolkata u/s 131 of Income Tax Act, 1961.	1142-1145
57	• Copy of reply submitted by the company in response to summon/notice issued to it along with dispatched proof	1146-1148

Thus it is apparent that in support of the claim of identity of the corporate partners, their capacity and genuineness of the transactions, relevant documentary evidences were already filed before the AO. The assessee has also produced the assessment orders passed under section 143(3) for various assessment years in case of these four corporate partners who have

introduced the partners' capital in the assessee firm. The details of the assessment orders passed under section 143(3) are as under :-

Assessment u/s 143(3)

Name of Company	Assessment year	Paper Book page no.
M/s Vasundhara Advisory Pvt. Ltd.	2014-15	905
M/s Prithivi Vinimay Pvt. Ltd.	2006-07	992
M/s Prithivi Vinimay Pvt. Ltd.	2014-15	998
M/s Macro Soft Technology Pvt. Ltd.	2009-10	1048-1050
M/s Macro Soft Technology Pvt. Ltd.	2011-12	1052-1053
M/s Macro Soft Technology Pvt. Ltd.	2012-13	1059-1060
M/s Macro Soft Technology Pvt. Ltd.	2014-15	1061-1062
M/s Banshidhar Advisory Pvt. Ltd	2014-15	1133-1134

All these four companies status has been shown in the Master data of ROC as "Active" and three of which, namely, M/s. Banshidhar Advisory Pvt. Ltd., M/s.Prithvi Vinimay Pvt. Ltd. and M/s. Vasundhara Advisory Pvt. Ltd. status was shown as "Amalgamated". Therefore, these companies have already under gone process of amalgamation through the approval of the Hon'ble High Court. Hence, there cannot be any dispute about the identity and the affairs of these companies as genuine. The assessee also produced the records about the availability of the funds with these four companies which were sufficient to introduce the partners' capital. The details of the source of funds of these four companies as submitted by the assessee are as under:-

M/s Vasundhra Advisory Pvt. Ltd.

Assessment Year	Financial Year	Share capital raised
2006-07	2005-06	5,76,00,000
2010-11	2009-10	6,61,50,000
2011-12	2010-11	5,43,50,000
2014-15	2013-14	10,82,35,000

M/s Prithvi Vinimay Pvt. Ltd

Assessment Year	Financial Year	Share capital raised
2005-06	2004-05	1,51,00,000
2006-07	2005-06	4,68,20,000
2007-08	2006-07	2,72,20,000
2010-11	2009-10	7,84,00,000
2011-12	2010-11	1,96,00,000
2014-15	2013-14	12,87,50,000

M/s Macro Soft Technology Pvt.Ltd

Assessment Year	Financial Year	Share capital raised
2002-03	2001-02	9,98,000
2004-05	2003-04	9,75,00,000

M/s Bansidhar Advisory Pvt. Ltd

Assessment Year	Financial Year	Share capital raised
2006-07	2005-06	5,76,00,000
2010-11	2009-10	10,64,00,000
2011-12	2010-11	1,61,00,000
2014-15	2013-14	15,00,00,000

The assessee has also submitted the records regarding the corporate guarantee of Rs. 73.60 crores given by the SBBJ in favour of M/s. Bansidhar Advisory Pvt. Ltd. and, therefore, it was brought on record the fact that the bank has issued the corporate guarantee only after verification of the financial condition of the said company. We find that the bank guarantee to the company of Rs. 73.60 crores issued by the bank is always secured by the liquid-able assets of the company which shows that the company was having underlined assets to secure the said bank guarantee and consequently the creditworthiness of the said company was duly examined by the bank. The Id. CIT (A) has considered all these facts while deciding this issue in para 7.3 to 7.3.9 as under :-

7.3 It may be mentioned that same procedure of remand report have been done as discussed in para 4.3 above and the same is not

repeated here. Similarly, as discussed in para 4.4.3 this matter too was referred by the AO for verification by issuing commission u/s 131(1)(d) to the Deputy Director of Income Tax (Inv), Unit-1(3), Kolkata vide same letters and same reports as discussed in para 4.4.4 were received from The Deputy Director of Income Tax (Inv), Unit-1(3), Kolkata. As observed in para 4.4.5 & 4.4.6, the two reports dated 28.11.2017 and 06.12.2017 from The Deputy Director of Income Tax (Inv), Unit-1(3), Kolkata are capable to find out where the appellant has employed foul means and where the transaction are of routine business requirements. From the careful perusal of these the two reports dated 28.11.2017 and 06.12.2017 from the Deputy Director of Income Tax (Inv), Unit-1(3), Kolkata. I don't find adverse findings alongwith eloquent evidences in the form of statement on oath of relevant entry operators in respect of capital contributions by four companies, namely, M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited and M/s Macro Soft Technology Private Limited. The same is evident from the respective details for above lenders in the above reports dated 28.11.2017 and 06.12.2017 as under:-

“With reference to your above quoted letter, this office has issued Summon notices u/s 131 of the Income Tax Act, 1961 dated 13.10.2017 to the following sixteen (16) companies based in Kolkata as mentioned in your above quoted letter requesting to furnish the requisite details related to share application money/share premium/special deposits/unsecured loan/capital introduced by partners or any transactions made with group concerns of the KDM Group for the period from F.Y. 2009-10 to 2015-16 within

05 (five) days of receipt of Summon Notices. As regards 5 (five) assesses, Summons notices u/s 131 of the Income tax Act, 1961 has not been issued since it is observed that the present address of five (5) companies is located either in Rajasthan or Patiala.

..... In response to said both notices dated 13.10.2017 & 31.10.2017, none of the directors appeared personally but the following companies have submitted their reply containing various details by post on different dates, the details of which is mentioned under and the same is being forwarded herewith in original for your further necessary action at your end.”

<i>S. No.</i>	<i>NAME OF CONCERNS</i>	<i>PARTICULARS OF SUBMISSION</i>	<i>Date of submission received by post</i>
<i>12.</i>	<i>BANSHIDHAR ADVISORY PVT LTD (AMALGAMATED WITH DOSHI MANAGEMENT PVT LTD)</i>	<i>Transactions details with KDM Group concern, copy of ledger, copy of certificate of incorporation & PAN Card, copy of assessment order u/s 143(3) for A.Y. 14-15, audited accounts for F.Y. 09-10 to 12-13, source of fund, bank statement showing the transactions with KDM group concerns, nature of business & copy of Hon'ble High Court order in respect of Amalgamation.</i>	<i>07.11.2017</i>
<i>13.</i>	<i>VASUNDHARA ADVISORY PVT LTD (AMALGAMATED WITH DOSHI MANAGEMENT PVT LTD)</i>	<i>Nature of business, copy of Hon'ble High Court order in respect of Amalgamation, transactions related to investment in equity shares and capital</i>	<i>07.11.2017</i>

		<i>contribution with KDM group concern, bank statement depicting the transactions with KDM group concerns, audited accounts for F.Y. 09-10 to 12-13, source of fund, copy of certificate of incorporation & PAN Card, copy of ledger & copy of assessment order u/s 143(3) for the A.Y. 14-15.</i>	
14.	<i>PRITHVI VINIMAY PVT LTD (AMALGAMATED WITH DOSHI MANAGEMENT PVT LTD)</i>	<i>Transactions details, copy of ledger along with supporting documents incl. Share applications, share allotment, account confirmation from Kota Dall Mill, Form-2, audited accounts for F.Y. 09-10 to 12-13, copy of assessment order u/s 143(3) for A.Y. 14-15, copy of certificate of incorporation and PAN card, details regarding source of fund, bank statement depicting the transactions details & copy of Hon'ble High Court order in respect of Amalgamation.</i>	07.11.2017
No summons were issued for M/s Macro soft Technology Pvt. Ltd by DDIT (Inv.) Unit 1(3) Kolkata			

“.....this office has also verified the companies as per database of paper/shell companies/entities prepared by Directorate of Investigation Wing, Kolkata on the basis of statements of various entry operators at different occasions before the Income Tax Department. On verification, the following facts has been emerged out from the database

which reveals that some companies are listed in the database of paper/shell companies controlled & managed by entry operators and the same is being produced as under in the tabular form:

SL. NO.	NAME OF CONCERNS	PAN	ADDRESS GIVEN IN COMMISSION	NOTICE ISSUED	ENTRY OPERATOR	DUMMY DIRECTOR
1	BANSIDHAR ADVISORY PVT LTD (AMALGAMATED WITH DOSHI MANAGEMENT PVT LTD)	AACCB7815M	11A ESPLANADE EAST 3 RD FLOOR, KOLKATA – 700069	NOTICE ISSUED U/S 131 AT GIVEN ADDRESS	This company is amalgamated with M/s Doshi Management Pvt Ltd which has been identified as paper/shell company controlled & managed by entry operator Anand Sharma	SHASHI KUMARI RAMANI- The name of these dummy directors are listed in database, who worked/works under different entry operators for different period, the details of which has been given below in tabular form.
1	VASUNDHARA ADVISORY PVT LTD (AMALGAMATED WITH DOSHI MANAGEMENT PVT LTD)	AACCV1837B	11A ESPLANADE EAST 3 RD FLOOR, KOLKATA – 700069	NOTICE ISSUED U/S 131 AT GIVEN ADDRESS	This company is amalgamate with M/s Doshi Management Pvt Ltd which has been identified as paper/shell company controlled & managed by entry operator Anand Sharma	PUNAM RAMANI – The name of these dummy directors are listed in database, who worked/works under different entry operators for different period, the details of which has been given below in tabular form.
1	PRITHVI VINIMAY PVT LTD (AMALGAMATED	AADCP4531D	11A ESPLANADE EAST 3 RD FLOOR, KOLKATA – 700069	NOTICE ISSUED U/S 131 AT	This company is amalgamated	DEEPAK TIBREWAL – The name of

	WITH DOSHI MANAGEMENT PVT LTD)			GIVEN ADDRESS	with M/s Doshi Management Pvt Ltd which has been identified as paper/shell company & controlled & managed by entry operator Anand Sharma	these dummy directors are listed in database, who worked/wor ks under different entry operators for different period, the details of which has been given below in tabular form.
It may be mentioned here that amalgamation took place in July 2014 where as statement of Shri Anand Sharma are prior to March 2014.						

“Further, the verification and investigation of past and present directors of following companies has been carried out with the help of Database of Entry Operators prepared by Directorate of Investigation Wing, Kolkata which reveal that the directors of these companies have been listed under the name of various entry operators who are engaged in the business of providing accommodation entries by appointing various dummy directors by known entry operators whose names has been mentioned in the under mentioned table.

S. No.	Name of company	Name of Director(s)	Period	Name of Entry Operator
1.	VASUNDHARA ADVISORY PVT LTD	PUNAM RAMANI	28.02.2011- TILL DATE	NAWAL KISHORE JALAN
2.	PRITHVI VINIMAY PVT LTD	DEEPAK TIBREWAL	28.03.2014- TILL DATE	PANKAJ AGARWAL
3.	BANSIDHAR ADVISORY PVT LTD	SHASHI KUMARI RAMANI	09.01.2009- 16.03.2012	ANKIT BAGRI

It may be mentioned here that three companies namely; M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited were amalgamated with M/s Doshi Management Pvt Ltd in July 2014 in accordance with permission from Kolkata High Court, whereas the statements entry operator Anand Sharma are dated 02.07.2013 and 06.02.2017 i.e. prior to March 2014 by which M/s Doshi Management Pvt. Ltd. might have been identified as paper/shell company. Neither statement of Shri Anand Sharma nor any list or annexure of said statements indentifying M/s Doshi Management Pvt. Ltd. is available on record, though it is included in the report of DDIT (Inv.), Unit 1(3), Kolkatta. Therefore, the label of paper/shell company cannot be applied to M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited as at the relevant time they were not part of M/s Doshi Management Pvt. Ltd. Moreover, in data base of directorships for these companies; M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited as reproduce above also clearly show no direct control or influence of the alleged entry operator Anand Sharma. Similarly, the statement of Ankit Bagri is not implicating M/s Bansidhar Advisory Pvt. Ltd. in any manner as Shell Company. There are no statements from Nawal Kishore Jalan and Pankaj Agarwal on record implicating M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited as shell companies.

7.3.1 In view of above ground reality I am treating M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited not as shell company as treated by the AO as nowhere adverse facts, details and

corroboratory evidences in the form of statements of the alleged entry operator Anand Sharma or Ankit Bagri implicating them are found in the reports dated 28.11.2017 and 06.12.2017 from Investigation Directorate, Kolkata. I have also considered the assessment order, the remand report along with its all enclosures, the relevant statements reproduced in the Assessment Order by the AO, the submissions made by the appellant along with paper book for the year under consideration and all relevant material placed on record and could not find a single piece of evidence to say that any one of above could be shell company.

7.3.2 It is seen that during this year, the AO has made additions in the hands of Assessee on account of partner's capital from four companies, namely, M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited and M/s Macro Soft Technology Private Limited. The AO alleged that despite providing huge capital contribution, none of the newly introduced Partner is interested in the business activities of the Assessee Firm as there is no working Partner on their behalf and none of them have nominated any Director or other Officer of the Company to act as Working Partner in the Assessee Firm.

7.3.3 However, the A/R of the Appellant while representing the case has argued the matter in detail and has filed detailed submissions as reproduced above in response to the findings and allegations of the AO. A summarized form of the submissions and arguments put forth by the A/R is given hereunder:

- a) The Appellant has duly discharged the initial onus cast upon it u/s 68 of the Act by furnishing the Name, Address, PAN, Copy of ITR, Copy of Bank Statement and Confirmation from the Partners, Balance Sheet etc. Through the said documents, identity, creditworthiness of the corporate

partners along with the genuineness of the transactions carried out with them was duly established.

b) The AO has not observed anything in the assessment order regarding any defect or flaw in the documents submitted.

c) The capital contributions of the companies that have been treated as unexplained by the AO were introduced in AY 2012-13. In the assessment proceedings of AY 2012-13 which was completed u/s 143(3) of the Act, such capital contributions were treated as genuine. Thus, once in the completed assessment proceedings the capital contribution of those companies has been considered as genuine than there is no reason to treat the capital received from such companies during the year as non genuine without having any material and only on presumption, assumption and surmises.

d) Submission made in Ground No. 2 in respect of unsecured loans may also be treated as a submissions for the purpose of this ground of appeal.

e) All the partners must be working partners is not mandatory under any of the laws in force.

f) All the transactions were done through proper banking channels.

g) The notices issued to the four companies u/s 131/133(6) of the Act were duly complied with along with the copy of the relevant documents.

h) Affidavits of the directors of all companies were submitted wherein the Directors confirmed their investment as partner's capital in the Appellant Firm.

i) No reliance can be placed on rejected books of account for working out peak credit for the purpose of making additions in the hands of the appellant.

j) The reports/inspection report and statements relied upon by the AO were not provided to the appellant during assessment proceedings and directly reproduced in the assessment order.

7.3.4 In my considered view, as far as the partner's capital from the companies namely, M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited and M/s Macro Soft Technology Private Limited is concerned, it is evident from the documents placed on record that Notice was issued by DDIT, Kolkata u/s 131/133(6) to these companies which was duly complied with and relevant documents were filed. There is no fact on record that the notices remained unserved or these companies were not found existent on the given addresses. Furthermore, Affidavit of the directors were also submitted wherein the Directors confirmed investment in the Appellant Firm in the form of partner's capital.

7.3.5 The only allegation of the AO is that the Directors of these companies have not been nominated as working partners. In my view, such allegation is without any substance as there is no legal obligation on a partnership firm to appoint all the partners as working partners. There are various partners in firms which only do investment in the firm and do not participate in the regular business activities of the firm. Such partners are called sleeping partners and the said partners do exist in the normal business parlance.

7.3.6 The Appellant in discharge of its onus u/s 68 of the Act has filed confirmation of accounts as well as bank statement reflecting the transactions with other substantiating documents as well as the relevant assessment orders, which are available at page no. 645 to 867 of PB. From these documentary evidences placed on record,

identity, creditworthiness and genuineness of transactions is established. There is no gain saying that the onus squarely lies on the appellant to prove the identity, creditworthiness and genuineness of the cash credits. In the case of Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244 (Pat), the Hon'ble Patna High Court has held "*if the loans are given by an account paying cheque, it amounts to identification of the parties and discharge of burden by the borrower.*" In view of the above, it is clear that Appellant discharged its burden u/s 68 of the Act. Even otherwise, there is no adverse finding of any investigation conducted by the department in relation to the said companies. Therefore, in the absence of any independent inquiry and any adverse findings to rebut the evidences filed by the Appellant, I find that the addition in respect of the partner's capital from the aforesaid 04 companies totaling to Rs. 42,47,25,000/- is unjustified; firstly, on the ground that no inquiries were made to rebut the evidences filed by the Appellant and secondly, on the ground that Appellant duly discharged its burden casted upon u/s 68 of the Act to explain nature and source of the transactions by proving the identity, creditworthiness of the corporate partners and genuineness of the transaction. Notably, the transactions with the said four companies are duly verifiable from confirmation of accounts filed at page 650 to 653, 708 to 711, 763 to 766 & 830 to 832 of PB with supporting bank statements placed at page 654 to 660, 712 to 716, 767 to 778 & 833 to 838 of PB and have been carried out through banking channels only and thus, appellant has duly proved the identity, creditworthiness and genuineness of the transactions.

7.3.7 Furthermore, from the perusal of documentary evidences submitted by the Appellant, it is seen that transactions have been

done through banking channels and on the date of making of loans, there is balance available in the accounts of the borrowers, which proves the creditworthiness and genuineness of the transactions. There is no case of any cash deposition in the account of any of the investor companies at the time of issuing cheques/RTGS in favour of the Assessee. Therefore, in view of the settled judicial precedents as already relied upon and mentioned in Ground No. 2 above, I am of the considered view that Appellant duly discharged its burden casted upon it u/s 68 of the Act. It is further seen that M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited and M/s Macro Soft Technology Private Limited have duly replied to the notices issued by DCIT/DDIT(Inv.), Kolkata in respect of commission, these facts remain uncontroverted by the AO.

7.3.8 Further, it is evident from the Assessment Order that other findings and allegations of the AO with respect to the partner's capital are similar to the findings made by the AO with respect to the unsecured loans of the Appellant. As the said similar findings and allegations have already been dealt with in Ground No. 2 above, these are not again dealt with for the sake of brevity. However, my view regarding the findings and allegations as already discussed in Ground No. 2 above, shall mutatis mutandis apply to the findings and allegations of the AO with respect to partner's capital made in this ground of appeal.

7.3.9 In view of the above discussion of relevant facts and following the several ratios on the subject from Hon'ble Apex Court, High Courts including jurisdictional High Courts, Tribunals including jurisdictional Tribunals, the impugned addition of Rs.

42,47,25,000/- on account of partner's capital from M/s Bansidhar Advisory Private Limited, M/s Vasundhara Advisory Private Limited, M/s Prithvi Vinimay Private Limited and M/s Macro Soft Technology Private Limited is not sustainable and hence the same stands deleted.”

Thus the finding of the Id. CIT (A) are based on the facts as well as the documentary evidence produced by the assessee whereas the AO has not brought on record any contrary evidence except the allegation made in the report of the Investigation Wing Kolkata. Therefore, the documentary evidences brought by the assessee cannot be negated merely on the basis or allegation made in the report which is nothing but narration of the statements recorded of certain persons. The report of the DDIT Investigation cannot substitute the documentary evidence. Accordingly, in view of the facts and circumstances, we do not find any error or illegality in the order of the Id. CIT (A) qua this issue.

The finding of the Id. CIT(A) for the year under consideration is based on the identical grounds as in the case of M/s Kota Dall Mill while deleting the addition made by the A.O. in respect of all these five companies. Thus having regard to the facts and circumstances of the case as well as the documentary evidence produced by the assessee in respect of the claim, the addition made by the A.O. based on merely allegations in the report of DDIT (Inv.), Kolkata without any supporting cogent material or documentary evidence is not sustainable. Therefore, in view of the earlier order as well as evidence produced by the assessee, we do not find any

error or illegality in the order of the Id. CIT(A) in deleting the addition. Hence, we uphold the same.

8. Ground No. 7 of the revenue's appeal is regarding the disallowance U/s 14A of the Act. The A.O. has observed that the assessee has incurred interest expenditure of Rs. 51,20,219/- and was considered to be an expenditure directly incurred in respect of investment in shares and income from such investment does not form part of the total income. Accordingly, the A.O. made disallowance of interest expenditure of Rs. 51,20,219/- and further a disallowance on account of indirect expenditure under Rule 8D(2)(ii) of the Income Tax Rules, 1962 was also made 1% of the average investment. On appeal, the Id. CIT(A) has deleted the addition on the ground that the A.O. has even not recorded any satisfaction that the alleged expenditure has any direct nexus with the investment when the assessee was having sufficient interest free funds.

9. We have heard the Id. CIT-DR as well as the Id AR of the assessee and considered the relevant material on record. The assessee is in the business of finance and therefore, the interest expenditure is essentially connected with the business of the assessee if except the borrowed fund is directly used by the assessee for the purpose of investment in shares.

We further note that there is no fresh investment made by the assessee during the year but all these investments were old investments, therefore, in absence of any finding that the assessee has used the borrowed fund at the time of making the investment, the disallowance on the ground of interest expenditure is not warranted. As regards the indirect expenditure, the Id. CIT(A) has noted that the A.O. has applied amended provisions of Rule 8D(2)(ii) of the Rules, however, that the amendment is w.e.f. 02/6/2016 and not applicable for the year under consideration even otherwise when these investments are old investments and the A.O. has not identified which of the indirect expenditure for any direct or proxy nexus for earning the exempt income. The disallowance by invoking the provisions of Rule 8D of the Rules is not automatic, there may be case when the assessee does not claim any expenditure or the expenditure claimed by the assessee is less than the amount of disallowance computed under Rule 8D of the Rules then the disallowance if any cannot be more than the actual claim of expenditure. The Id. CIT(A) has considered this issue in para 9.3 and 9.3.1 as under:

"9.3 I have considered the rival submissions and perused the material on record.

9.3.1 In my considered view, the AO has legally erred in directly applying the provision of section 14A of the Act, without recording any satisfaction as to the correctness of the claim made by the Appellant. In the assessment order, there is no satisfaction recorded by the AO as

required by section 14A(1) of the Act before proceeding further to make any disallowance u/s 14A of the Act. Further, it is seen that AO has mechanically applied the Rule 8D as amended w.e.f. 02.06.2016, which was not even applicable to relevant assessment year. In my considered view, the law cannot be applied mechanically and that too retrospectively. It is seen that AO has not established any nexus of investment with borrowed funds, rather availability of sufficient interest free funds justifies the case of the Appellant that disallowance u/s 14A of the Act is unwarranted. Further, it is seen that AO has neither pointed out nor given any specific findings in the assessment order that any exempt income was earned during the relevant assessment year. Therefore, in the relevant cases also wherein section 14A of the Act is applicable, only the relevant portion of expenditure is required to be disallowed and not the complete expenses, which in the instance case, the AO has done without making any case for disallowance u/s 14A of the Act. Therefore, in view of the non-fulfilment of such statutory requirement as laid down in various judicial precedents and Circulars as relied upon by the A/R in his submission, in my considered view, the disallowance u/s 14A of the Act of Rs. 52,43,029/- is unwarranted. Accordingly, the same is deleted. In view of the above, addition of Rs. 52,43,029/- is deleted and these grounds of appeals are allowed."

The revenue has not brought any fact or material to controvert the finding of the Id. CIT(A) or to point out that the finding of the Id. CIT(A) is perverse. Accordingly, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue. Hence, we uphold the same.

10. Ground No. 8 of the revenue's appeal is regarding the addition on account of retention charges. The assessee has claimed retention charges of Rs. 7,50,385/-.The A.O. without discussing any reason for making the addition or disallowance has added the said amount to the total income of

the assessee. The assessee challenged the addition made by the A.O. before the Id. CIT(A) and submitted that this amount was paid as fee to the RIICO for not supporting the commercial activity at the industrial site allotted by the RIICO to the assessee. Thus, it was contended that this is a business expenditure incurred by the assessee. The Id. CIT(A) has allowed the claim of assessee and deleted the addition made by the A.O.

11. We have heard the Id. CIT-DR as well as the Id. AR of the assessee, we find that this amount was paid by the assessee being the fee for not commencing the commercial activity at the industrial site allotted by the RIICO, therefore, to be retained the right over the commercial site. The assessee to pay the fee as per the rules of the allotment. Thus, the expenditure was incurred by the assessee to retain its right over the site allotted by the RIICO and to protect the interest of the assessee. Once the charges are paid for extending the time period to start the commercial activity at the site allotted by the RIICO then the same is an allowable business expenditure U/s 37(1) of the Act. Accordingly, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

12. In the cross objection for the A.Y. 2010-11, the assessee has raised following grounds:

"1. On the facts and in the circumstances of the case and in law the order passed U/s 153A read with Section 143(3) of the Income Tax

Act, 1961 is bad in law, void-ab-initio, and deserves to be annulled as the assessment for the year under consideration was not abated as on the date of search and CIT(A) erred in holding that the contention of the assessee cannot be accepted in view of SLP's admitted in various cases. The Id. CIT(A) further erred in holding that the additions are to be adjudicated on merits as per relevant ground of appeal hence the issue remains for academic discussion only.

2. *On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in not declaring the assessment order as bad in law and void ab initio. It is contended that the A.O. passed the assessment order against the doctrine of "audi alterm partem", violating the principle of natural justice and not giving the opportunity of cross examination of the alleged accommodation entry providers, therefore, the assessment order ought to hold as bad in law and deserves to be annulled. The findings of the Id. CIT(A) in this regard are perverse and erroneous.*
3. *The appellant craves leave to add, alter, amend, any of the grounds of appeal at or before the time of hearing of appeal."*

13. In the cross objection, the assessee has raised issue regarding the addition made by the A.O. without any incriminating material as well as the order of the A.O. is not sustainable when the assessee was not given the opportunity of cross examination. We have heard the Id AR of the assessee as well as the Id CIT-DR and considered the relevant material on record. We find that this issue is common as raised in all the group concerns of Kota Dall Mill which are subjected to the search and seizure action on 02/7/2015. We have considered these two issues in the case of M/s Multimetals Limited Vs. DCIT in ITA Nos. 1024 to 1026, 1100 to 1104

& 1230/JP/2018 and C.O. 38 & 39/JP/2018 vide order dated 29/01/2019 in para 9 and 14 as under:

"9. *We have considered the rival submissions as well as relevant material on record. Undisputedly the assessment for the A.Y. 2010-11 to 2012-13 were not pending on the date of search on 02/7/2015 as the original assessment U/s 143(3) of the Act were also completed prior to the date of search. Thus, the assessment for these three assessment years were not got abated by virtue of search U/s 132 of the Act on 02/7/2015 and therefore the Assessing Officer would assess the total income of the assessee as per the provisions of Section 153A of the Act in respect of these three assessment years having regard to the fact that whether any incriminating material was found or came to the knowledge of the Assessing Officer during the search and seizure proceedings. Since these assessment years were not pending as on the date of search, therefore, the proceedings U/s 153A of the Act in respect of these three assessment years would be in the nature of reassessment and not in the nature of assessment as in the case of the remaining assessment years in the A.Y. 2014-15 and 2015-16 which were got abated by virtue of search and seizure action U/s 132 of the Act on 02/7/2015. At the outset we note that the assessments framed by the Assessing Officer U/s 153A of the Act in the case of the assessee before us is solely on the basis of the information received from the Kolkata Investigation Wing which contains the statement of one Shri Anand Sharma in respect of some assessments and the statement of Shri Ankit Bagri in respect of some other assessments. Thus, undisputedly the Assessing Officer has made the addition while completing the assessment U/s 153A of the Act for all the assessment years on the basis of the information received from the Investigation Wing, Kolkata and not on the basis of*

any material or information gathered during the course of search and seizure action in the case of the assessee. We find that the assessment framed by the Assessing Officer as well as the orders passed by the Id. CIT(A) in the case of the assessee are identical and based on similar facts and circumstances as in the case of M/s Kola Dall Mill pursuant to the same search and seizure action carried out on 02/7/2015. This Tribunal in the case of Kota Dall Mill Vs DCIT vide order dated 31/12/2018 in ITA Nos. 997 to 1002/JP/2018, 1119/JP/2018, 1057 to 1062/JP/2018 and 1210/JP/2018 has considered and decided this issue in para 6 as under:

“6. We have considered the rival submissions as well as the relevant material on record. Undisputedly, the assessments for the assessment years 2010-11 to 13-14 were not pending on the date of search on 2nd July, 2015. Even in some of the assessment years orders under section 143(3) were passed and in other cases the assessment was completed under section 143(1) of the Act. Thus the assessments for the assessment years 2010-11 to 13-14 were not got abated by virtue of search under section 132 on 2nd July, 2015 and the AO would reassess the total income of the assessee as per the provisions of section 153A in respect of these four assessment years i.e. 2010-11 to 13-14. The proceedings under section 153A in respect of these four assessment years would be in the nature of reassessment and not in the nature of assessment as in the cases of the remaining two assessment years i.e. 2014-15 and 15-16 those were got abated by virtue of search and seizure action under section 132 of the Act on 2nd July, 2015. It is a settled proposition of law that the assessment or reassessment under section 153A in respect of the assessment years which have already been completed and assessment orders have been passed determining the assessee’s total income, the addition to the income that has already been assessed

can be made only on the basis of incriminating material. In the absence of any incriminating material the completed assessment can only be reiterated. The provisions of section 132 read with section 153A of the Act stipulate two types of situations – one where the assessment of any assessment year falling within six assessment years is pending on the date of initiation of search under section 132 or making of requisition under section 132A of the Act. Therefore, the assessment under section 153A in respect of those assessment years which stand abated due to the reason of pending on the date of initiation of search or requisition shall be the original/first assessment. In the second category where the assessment or reassessment has already been completed on the date of initiation of search or making of requisition as the case may be, the assessment under section 153A would be in the nature of reassessment. The Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla while analyzing the provisions of section 153A read with section 132 of the Act has observed in para 37 and 38 as under :-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i.* Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii.* Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii.* The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv.* Although Section 153 A does not say that additions should be strictly made on

the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

Thus the Hon'ble High Court has held that in the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The Hon'ble High Court has also referred the term used in section 153A as "assess" which is relatable to abated proceedings and the word "reassess" related to completed assessment proceedings. Therefore, the completed assessments can be interfered with by the AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of document or undisclosed income or property

discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. The Hon'ble Delhi High Court has reiterated its view in case of Principal CIT vs. Kurele Paper Mills (supra) in para 1 to 3 as under :-

1. The Revenue has filed the appeal against an order dated 14.11.2014 passed by the Income Tax Appellate Tribunal (ITAT) in 3761/Del/2011 pertaining to the Assessment Year 2002-03. The question was whether the learned CIT (Appeals) had erred in law and on the facts in deleting the addition of Rs. 89 lacs made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 ('ACT') on bogus share capital. But, the issue was whether there was any incriminating material whatsoever found during the search to justify initiation of proceedings under Section 153A of the Act.

2. The Court finds that the order of the CIT(Appeals) reveals that there is a factual finding that "no incriminating evidence related to share capital issued was found during the course of search as is manifest from the order of the AO." Consequently, it was held that the AO was not justified in invoking Section 68 of the Act for the purposes of making additions on account of share capital.

3. As far as the above facts are concerned, there is nothing shown to the court to persuade and hold that the above factual determination is perverse. Consequently, after considering all the facts and circumstances of the case, the Court is of the opinion that no substantial question of law arises in the impugned order of the ITAT which requires examination."

The SLP filed by the revenue against the said decision of Hon'ble Delhi High Court was dismissed by the Hon'ble Supreme Court vide order dated 7th December, 2015. In a subsequent decision, the Hon'ble Delhi High Court in the case of Principal CIT vs. Meeta Gutgutia has again analyzed this issue in para 55 to 71 as under :-

55. On the legal aspect of invocation of Section 153A in relation to AYs 2000-01 to 2003-04, the central plank of the Revenue's submission is the decision of this Court in *Smt. Dayawanti Gupta (supra)*. Before beginning to examine the said decision, it is necessary to revisit the legal landscape in light of the elaborate arguments advanced by the Revenue.

56. Section 153A of the Act is titled "Assessment in case of search or requisition". It is connected to Section 132 which deals with 'search and seizure'. Both these provisions, therefore, have to be read together. Section 153A is indeed an extremely potent power which enables the Revenue to re-open at least

six years of assessments earlier to the year of search. It is not to be exercised lightly. It is only if during the course of search under Section 132 incriminating material justifying the re-opening of the assessments for six previous years is found that the invocation of Section 153A *qua* each of the AYs would be justified.

57. The question whether unearthing of incriminating material relating to any one of the AYs could justify the re-opening of the assessment for all the earlier AYs was considered both in *Anil Kumar Bhatia (supra)* and *Chetan Das Lachman Das (supra)*. Incidentally, both these decisions were discussed threadbare in the decision of this Court in *Kabul Chawla (supra)*. As far as *Anil Kumar Bhatia (supra)* was concerned, the Court in paragraph 24 of that decision noted that "we are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We therefore express no opinion as to whether Section 153A can be invoked even under such situation". That question was, therefore, left open. As far as *Chetan Das Lachman Das (supra)* is concerned, in para 11 of the decision it was observed:

"11. Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or Information available with the Assessing Officer which can be related to the evidence found. This, however, does not mean that the assessment under Section 153A can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

58. In *Kabul Chawla (supra)*, the Court discussed the decision in *Filatex India Ltd. (supra)* as well as the above two decisions and observed as under:

"31. What distinguishes the decisions both in *CIT v. Chetan Das Lachman Das (supra)*, and *Filatex India Ltd. v. CIT-IV (supra)* in their application to the present case is that in both the said cases there was some material unearthed during the search, whereas in the present case there admittedly was none. Secondly, it is plain from a careful reading of the said two . decisions that they do not hold that additions can be validly made to income forming the subject matter of completed assessments prior to the search even if no incriminating material whatsoever was unearthed during the search.

32. Recently by its order dated 6th July 2015 in ITA No. 369 of 2015 (*Pr. Commissioner of Income Tax v. Kurele Paper Mills P. Ltd.*), this Court declined to frame a question of law in a case where, in the absence of any incriminating material being found during the search under Section 132 of the Act, the Revenue sought to justify initiation of proceedings under Section 153A of the Act and make an addition under Section 68 of the

Act on bogus share capital gain. The order of the CIT (A), affirmed by the ITAT, deleting the addition, was not interfered with."

59. In *Kabul Chawla (supra)*, the Court referred to the decision of the Rajasthan High Court in *Jai Steel (India) v. Asstt. CIT [2013] 36 taxmann.com 523/219 Taxman 223*. The said part of the decision in *Kabul Chawla (supra)* in paras 33 and 34 reads as under:

'33. The decision of the Rajasthan High Court in *Jai Steel (India), Jodhpur v. ACIT (supra)* involved a case where certain books of accounts and other documents that had not been produced in the course of original assessment were found in the course of search. It was held where undisclosed income or undisclosed property has been found as a consequence of the search, the same would also be taken into consideration while computing the total income under Section 153A of the Act. The Court then explained as under:

"22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:

- (a) the assessments or reassessments, which stand abated in terms of II proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;
- (b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material; and
- (c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

34. The argument of the Revenue that the AO was free to disturb income *de hors* the incriminating material while making assessment under Section 153A of the Act was specifically rejected by the Court on the ground that it was "not borne out from the scheme of the said provision" which was in the context of search and/or requisition. The Court also explained the purport of the words "assess" and "reassess", which have been found at more than one place in Section 153A of the Act as under:

"26. The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess'-have been used at more than one place in the Section and a harmonious construction of the entire provision

would lead to an irresistible conclusion that the word assess has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents."

60. In *Kabul Chawla (supra)*, the Court also took note of the decision of the Bombay High Court in *CIT v. Continental Warehousing Corpn (Nhava Sheva) Ltd.* [[2015\] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 \(Bom.\)](#) which accepted the plea that if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment under Section 153A and 153C of the Act. The legal position was thereafter summarized in *Kabul Chawla (supra)* as under:

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i.* Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii.* Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii.* The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the. aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv.* Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

61. It appears that a number of High Courts have concurred with the decision of this Court in *Kabul Chawla (supra)* beginning with the Gujarat High Court in *Saumya Construction (P.) Ltd. (supra)*. There, a search and seizure operation was carried out on 7th October, 2009 and an assessment came to be framed under Section 143(3) read with Section 153A(1)(b) in determining the total income of the Assessee of Rs. 14.5 crores against declared income of Rs. 3.44 crores. The ITAT deleted the additions on the ground that it was not based on any incriminating material found during the course of the search in respect of AYs under consideration i.e., AY 2006-07. The Gujarat High Court referred to the decision in *Kabul Chawla (supra)*, of the Rajasthan High Court in *Jai Steel (India) (supra)* and one earlier decision of the Gujarat High Court itself. It explained in para 15 and 16 as under:

'15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall

assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, sub-section (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading "Assessment in case of search or requisition". It is "well settled as held by the Supreme Court in a catena of decisions that the heading or the Section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153. the intention of the Legislature is clear, viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment In case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition, in other words, the assessment should connected With something round during the search or requisition viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition' or disallowance can be made only on the basis of material collected during the search or requisition, in case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT(supra)*, the earlier assessment would have to be reiterated, in case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

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19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of an the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as. the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT (supra)*. Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court In the case of *CIT v. Jayaben Ratilal Sorathia (supra)* wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years ; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.'

62. Subsequently, in *Devangi alias Rupa (supra)*, another Bench of the Gujarat High Court reiterated the above legal position following its earlier decision in *Saumya Construction (P.) Ltd. (supra)* and of this Court in *Kabul Chawla (supra)*. As far as Karnataka High Court is concerned, it has in *IBC Knowledge Park (P.) Ltd. (supra)* followed the decision of this Court in *Kabul Chawla (supra)* and held that there had to be incriminating material *qua* each of the AYs in which additions were sought to be made pursuant to search and seizure operation. The Calcutta High Court in *Salasar Stock Broking Ltd. (supra)*, too, followed the decision of this Court in *Kabul Chawla (supra)*. In *Gurinder Singh Bawa (supra)*, the Bombay High Court held that:

"6. once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

63. Even this Court has in *Mahesh Kumar Gupta (supra)* and *Ram Avtar Verma (supra)* followed the decision in *Kabul Chawla (supra)*. The decision of this Court in *Kurele Paper Mills (P.) Ltd. (supra)* which was referred to in *Kabul Chawla (supra)* has been affirmed by the Supreme Court by the dismissal of the Revenue's SLP on 7th December, 2015.

The decision in Dayawanti Gupta

64. That brings us to the decision in *Smt. Dayawanti Gupta (supra)*. As rightly pointed out by Mr. Kaushik, learned counsel appearing for the Respondent, that there are several distinguishing features in that case which makes its ratio inapplicable to the facts of the present case. In the first place, the Assessee there were engaged in the business of Pan Masala and Gutkha etc. The answers given to questions posed to the Assessee in the course of search and survey proceedings in that case bring out the points of distinction. In the first place, it was stated that the statement recorded was under Section 132(4) and not under Section 133A. It was a statement by the Assessee himself. In response to question no. 7 whether all the purchases made by the family firms, were entered in the regular books of account, the answer was:

"We and our family firms namely M/s. Assam Supari Traders and M/s. Balaji Perfumes generally try to record the transactions made in respect of purchase, manufacturing and sales in our regular books of accounts but it is also fact that some time due to some factors like inability of accountant, our busy schedule and some family problems, various purchases and sales of Supari, Gutka and other items dealt by our firms is not entered and shown in the regular books of accounts maintained by our firms."

65. Therefore, there was a clear admission by the Assessee in *Smt. Dayawanti Gupta (supra)* there that they were not maintaining regular books of accounts and the transactions were not recorded therein.

66. Further, in answer to Question No. 11, the Assessee in *Smt. Dayawanti Gupta (supra)* was confronted with certain documents seized during the search. The answer was categorical and reads thus:

"Ans:- I hereby admit that these papers also contend details of various transactions include purchase/sales/manufacturing trading of Gutkha, Supari made in cash outside Books of accounts and these are actually unaccounted transactions made by our two firms namely M/s. Asom Trading and M/s. Balaji Perfumes."

67. By contrast, there is no such statement in the present case which can be said to constitute an admission by the Assessee of a failure to record any transaction in the accounts of the Assessee for the AYs in question. On the contrary, the Assessee herein stated that, he is regularly maintaining the books of accounts. The disclosure made in the sum of Rs. 1.10 crores was only for the year of search and not for the earlier years. As already noticed, the books of accounts maintained by the Assessee in the present case have been accepted by the AO. In response to question No. 16 posed to Mr. Pawan Gadia, he stated that there was no possibility of manipulation of the accounts. In *Smt. Dayawanti Gupta (supra)*, by contrast, there was a chart prepared confirming that there had been a year-wise non-recording of transactions. In *Smt. Dayawanti Gupta (supra)*, on the basis of material recovered during search, the additions which were made for all the years whereas additions in the present case were made by the AO only for

AY 2004-05 and not any of the other years. Even the additions made for AYs 2004-05 were subsequently deleted by the CIT (A), which order was affirmed by the ITAT. Even the Revenue has challenged only two of such deletions in ITA No. 306/2017.

68. In para 23 of the decision in *Smt. Dayawanti Gupta (supra)*, it was observed as under:

"23. This court is of opinion that the ITAT's findings do not reveal any fundamental error, calling for correction. The inferences drawn in respect of undeclared income were premised on the materials found as well as the statements recorded by the assessee. These additions therefore were not baseless. Given that the assessing authorities in such cases have to draw inferences, because of the nature of the materials - since they could be scanty (as one habitually concealing income or indulging in clandestine operations can hardly be expected to maintain meticulous books or records for long and in all probability be anxious to do away with such evidence at the shortest possibility) the element of guess work is to have some reasonable nexus with the statements recorded and documents seized. In tills case, the differences of opinion between the CIT (A) on the one hand and the AO and ITAT on the other cannot be the sole basis for disagreeing with what is essentially a factual surmise that is logical and plausible. These findings do not call for interference. The second question of law is answered again in favour of the revenue and against the assessee."

69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be expected to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material *qua* the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in *Smt. Dayawanti Gupta (supra)*, therefore, do not detract from the settled legal position in *Kabul Chawla (supra)* which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material *qua* each of those AYs."

The Hon'ble Delhi High Court has concurred with the view as taken in case of *Kabul Chawla (supra)* as well as the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Jai Steel India Ltd. vs. ACIT (supra)*. Even on the issue of addition made by the AO in the

proceedings under section 153A in respect of the assessment year which was already completed on the date of search, the Hon'ble High Court has held that in the absence of any material which was subsequently unearthed during the search and was not already available to the AO, the additions made by the AO on account of security deposits were rightly deleted by the Id. CIT (A). The relevant observations of the Hon'ble High Court in case of Principal CIT vs. Meeta Gutgutia (supra) are in para 53 as under :-

"53. At this stage, it is also to be noticed that an elaborate argument was made by Mr. Manchanda on the aspect of the security deposits accepted by the Assessee. These were of two kinds - one was of refundable security deposits and the other for non-refundable security deposits. As far as the refundable security deposits were concerned, the AO himself in his remand report accepted them as having been disclosed. This has been noticed by the CIT (A) in para 7.2.1 of his order for AY 2004-05. As regards non-refundable security deposit, the CIT (A) accepted the AO's findings that treating the sum as 'goodwill written off on deferred basis' was not correct, hence the addition of Rs. 5,09,343 was held to be justified and correct. It was duly accounted for under 'liabilities' and transferred to income in a phased manner. This was not done by manipulating the account books of the Assessee as alleged by the Revenue. This would have been evident had the return been picked up for scrutiny under Section 143(3) of the Act. This, therefore, was not material which was subsequently unearthed during the search which was not already available to the AO. Consequently, the additions sought to be made by the AO on account of security deposits were rightly deleted by the CIT (A)."

Thus the essential corollary of these decisions is that no addition can be made in the proceedings under section 153A in respect of the assessments which were completed prior to the date of search except based on some incriminating material unearthed during the search which was not already available to the AO. It is pertinent to note that the SLP filed by the revenue against the decision of Hon'ble Delhi High Court in case of Principal CIT vs. Meeta Gutgutia was dismissed vide order dated 2nd July, 2018. There are series of decisions on this issue including the decision of Hon'ble Jurisdictional High Court in

case of M/s. Jai Steel India vs. ACIT (supra) wherein the Hon'ble High Court has held in para 23 to 30 as under:-

"23. The reliance placed by the counsel for the appellant on the case of *Anil Kumar Bhatia (supra)* also does not help the case of the assessee. The relevant extract of the said judgment reads as under:—

"19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, *the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note to the undisclosed income, if any, unearthed during the search.* For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub-section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the

duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

21. Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub-section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but also the 'total income' of the assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub-Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in case where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. *Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total*

income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made." (Emphasis supplied)

24. The said judgment also in no uncertain terms holds that the reassessment of the total income of the completed assessments have to be made taking note of the undisclosed income, if any, unearthed during the search and the income that escaped assessments are required to be clubbed together with the total income determined in the original assessment and assessed as the total income. The observations made in the judgment contrasting the provisions of determination of undisclosed income under Chapter XIVB with determination of total income under Sections 153A to 153C of the Act have to be read in the context of second proviso only, which deals with the pending assessment/reassessment proceedings. The further observations made in the context of de novo assessment proceedings also have to be read in context that irrespective of the fact whether any incriminating material is found during the course of search, the notice and consequential assessment under Section 153A have to be undertaken.

25. The argument of the learned counsel that the AO is also free to disturb income, expenditure or deduction de hors the incriminating material, while making assessment under Section 153A of the Act is also not borne out from the scheme of the said provision which as noticed above is essentially in context of search and/or requisition. The provisions of Sections 153A to 153C cannot be interpreted to be a further innings for the AO and/or assessee beyond provisions of Sections 139 (return of income), 139(5) (revised return of income), 147 (income escaping assessment) and 263 (revision of orders) of the Act.

26. The plea raised on behalf of the assessee that as the first proviso provides for assessment or reassessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.

27. The Allahabad High Court in *Smt. Shaila Agarwal's (supra)* has held as under:—

"19. The second proviso to Section 153A of the Act, refers to abatement of the pending assessment or re-assessment proceedings. The word 'pending' does not operate any such interpretation, that wherever the appeal against such assessment or reassessment is pending, the same along with assessment or reassessment proceedings is liable to be abated. The principles of interpretation of taxing statutes do not permit the Court to interpret the Second Proviso to Section 153A in a manner that where the assessment or reassessment proceedings are complete, and the matter is pending in appeal in the Tribunal, the entire proceedings will abate.

20. There is another aspect to the matter, namely that the abatement of any proceedings has serious causes and effect in as much as the abatement of the proceedings, takes away all the consequences that arise thereafter. In the present case after deducting bogus gifts in the regular assessment proceedings, the proceedings for penalty were drawn under Section 271(1)(c) of the Act. *The material found in the search may be a ground for notice and assessment under Section 153A of the Act but that would not efface or terminate all the consequence, which has arisen out of the regular assessment or reassessment resulting into the demand or proceedings of penalty.*" (Emphasis supplied)

The said judgment which essentially deals with second proviso to Section 153A of the Act also supports the conclusion, which we have reached hereinbefore.

28. It has been observed by the Hon'ble Supreme Court in *K.P. Varghese v. ITO* [\[1981\] 131 ITR 597/7 Taxman 13](#) that "it is well recognized rule of construction that a statutory provision must be so construed, if possible that absurdity and mischief may be avoided."

29. The argument of the counsel for the appellant if taken to its logical end would mean that even in cases where the appeal arising out of the completed assessment has been decided by the CIT(A), ITAT and the High Court, on a notice issued under Section 153A of the Act, the AO would have power to undo what has been concluded up to the High Court. Any interpretation which leads to such conclusion has to be repelled and/or avoided as held by the Hon'ble Supreme Court in the case of *K.P. Varghese (supra)*.

30. Consequently, it is held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because a assessment under Section 153A of the Act in pursuance of search or requisition is required to be made."

In the case in hand, the transactions of unsecured loans as well as introduction of capital by the partners were duly recorded in the books of account and available with the AO. Further, during the course of search under section 132 of the Act on 2nd July 2015 no material much less incriminating material was either found or seized to disclose any undisclosed income on account of unsecured loans or partners' capital received by the assessee firm. The AO has proposed to make the addition on account of unsecured loans and partners' capital under section 68 being unexplained cash credit solely on the basis of the information received from Investigation Wing Kolkata. It is pertinent to note that the said information was available with the AO prior to the search conducted under section 132 of the Act in case of the assessee on 2nd July, 2015. Therefore, even the sole basis of assessments framed under section 153A of the Act is the information received from Investigation Wing Kolkata and statement of one Shri Anand Sharma, who is stated to be an entry operator and managed various concerns/companies including M/s.Royal Crystal Dealers, one of the loan creditors of the assessee. Except the said statement and report of the Investigation Wing Kolkata, the AO has neither referred to or was having in possession of any material to indicate that the unsecured loans shown in the books of accounts as well as partners' capital received by the assessee are nothing but assessee's own unaccounted and undisclosed income routed back in the garb of unsecured loans and partners' capital. There is no dispute that these transactions of unsecured loans and partners' capital contribution are duly recorded in the books of accounts and disclosed in the return of income which were already completed as the assessments for these four assessment years were not pending on the date of search, therefore, it is manifest from the record that during the course of search and seizure under section 132 of the Act in the case of the

assessee no material much less the incriminating material was unearthed or any undisclosed income which was not disclosed in the books of accounts was detected or found. The only incriminating material which was referred by the AO is pages 21 to 26 of Annexure AS-1 in respect of long term capital gain earned by Shri Rajendra Agarwal and his family members. The said long term capital gain was disclosed by Shri Rajendra Agarwal in his statement under section 132(4) and, therefore, it was surrendered and offered to tax by Shri Rajendra Agarwal and his family members in the year of search. The AO himself has not made any addition in the hand of the assessee on account of long term capital gain which was found during the course of search and seizure. Thus, except the material disclosing the long term capital gain in the hand of Shri Rajendra Agarwal, no other incriminating material either found or referred or is the basis of the addition made by the AO while framing the assessment under section 153A of the Act for the assessment years 2010-11 to 13-14. It is appropriate to refer relevant part of the assessment order in para 12 pages 48 to 50, para 19 page 83 and para 22 page 86 as under :-

" 12. Submissions made on behalf of the assessee firm have been duly considered. However, even the very elaborate and case laws loaded submissions of the assessee are totally off the mark. Against the self-speaking facts of the very nature of the activities of the so called partner's providing huge partner's capital in the most uninterested manner and providing huge unsecured loans without any collateral or other security, the emphasis of the assessee firm in its submissions has been on seeking protection under various judicial decisions even without having any fact coherence. The submissions made by the assessee are completely devoid of merit in the light of the following facts and circumstances;

a. The department has very sound basis to treat, the receipts of unsecured loan and partner's capital from the above mentioned companies as bogus and in genuine. The findings of this office and Investigation report of the Investigation Directorate Kolkata are not

based on any presumption, assumption, guess or bare suspicion. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open for the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source as enumerated the Hon'ble Supreme Court in the case of Roshan Di Hatti v. CIT (1977) 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT (1963) 50 ITR 1 (SC).

Prima facie onus is always on the assessee to prove the cash credit entry found in the books of account of the assessee. In land mark cases like Kale Khan Mohammad Hanif v CIT (1963) 50 ITR 1 (SC), Roshan Di Hatti v CIT (1977) 107 ITR (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source. It may also be pointed out that the burden of proof is fluid for the purposes of Section 68. Once assessee has submitted basic documents relating to identity, genuineness of transaction and creditworthiness then AO must do some inquiry to call for more details to invoke Section 68.

- b. The assessee firm has filed confirmation letters and this office has carried out further enquiry to examine the reality of the transactions. An enquiry was sent to the Investigation Directorate Kolkata and it has been established that these investor or lender Companies are controlled by the entry operators. The statements of various entry operators are sufficient evidences to show that the unsecured loan and partner's capital are assessee's own undisclosed income brought into the books of the assessee under the garb of unsecured loan and partner's capital.*
- c. The department has carried out search over the assessee group and during the course of search action u/s 132 of the I.T. Act, 1961, the incriminating documents seized during search proceedings vide pg no. 21 to 26 of Annexure AS-1 of Party B-1, wherein the details of year-wise LTCG earned by Shri Rajendra Agrawal and his family members, is maintained, which during search action has been accepted to be bogus by all family members in their respective statements."*

"19. In view of above facts of the case and in the light of above judicial decision, it is established that genuineness of the transaction has not been proved. Section 68 of the I.T. Act provides for charging to income tax on any sum credited in the books of the assessee maintained for any previous year if the assessee offers no explanation about the nature and source thereof or the explanation offered is not, in the opinion of the Assessing Officer, satisfactory. It places no duty upon the Assessing Officer to point to the source from which the money was received by the assessee. Where an assessee fails to prove satisfactorily the source and the nature of certain amount of credit during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt are of an assessable nature. Thus, the assessee is unable to discharge its burden of proof by failing to establish lender's identity, forget the genuineness of transactions and creditworthiness of the lender. Hence, the unsecured loans and partner's capital shown to have been received from various Kolkata Based Companies and other Companies remained unexplained. In the circumstances, I am left with no option than to tax the entire unexplained credits by way of partner's capital and Unsecured loans received from the persons mentioned in para 5 above as unexplained cash credits u/s 68 of the Income Tax Act, chargeable to tax as income of the assessee firm for the respective assessment years."

" 22. After examination of the information and details placed on record and discussion with the assessee, the total income of the assessee is computed as under :-

Returned income as per ITR u/s 153A of the Act.	Rs. 2,82,83,460/-
Additions/ Unexplained cash credits u/s /68 of the Act in the form of /unsecured loan and partner's /capital	Rs. 67,20,14,999/-
Assessed income	Rs. 70,02,98,459/-
R/o	Rs. 70,02,98,459/-

The total income of the assessee in the status of Firm for Assessment Year 2010-11 relevant to Previous Year 2009-10 is assessed at Rs. 70,02,98,459/- u/s 153A read with section 143(3) of I.T. Act, 1961. The form ITNS-150 showing calculation of tax and interest chargeable, if any, is attached herewith and forms a part of this Order. A notice of demand u/s 156 of the Act and challan for payment of tax, if payable, is

hereby issued. Penalty notice u/s 274 rws 271(1)(c) is issued separately."

The entire finding of the AO is based on the information received from the Investigation Wing Kolkata and statement of Shri Anand Sharma. The Id. CIT (A) though has not disputed the legal proposition on this issue, however, the contention of the assessee was turned down merely on the ground that the SLPs filed by the revenue in the cases of Kabul Chawla (supra) and M/s. All Cargo Global Logistics (supra) etc. have been admitted for decision by the Hon'ble Supreme Court. The relevant part of the finding of the Id. CIT (A) in para 3.2.2 and 3.2.4 at pages 35 and 36 are as under :-

"3.2.2 As per the provisions of this section where a search is initiated u/s 132 of the Act, the A.O shall issue a notice requiring the person searched to furnish his return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Once such returns are filed, the AO has to assess or reassess the total income of such six assessment years.(emphasis supplied by me). *(The decisive words used in the provisions are to 'assessee or reassess the total income')*. The A.O. is thus duty bound to determine the 'total income' of the assessee for such six assessment years and it is obvious that 'total income' refers to the sum total of income in respect of which a person is assessable. The total income therefore will cover not only the income emanating from declared sources or any material placed before the Assessing Officer but from all sources including the undisclosed ones, or based on the unplaced material before the AO.

3.2.3 The concept of 'assess or reassess' and 'shall abate' as contemplated u/s 153A is under hot judicial debate. I find that legally, this issue is very contentious in view of the divergent views of the various authorities. The appellant has tried to highlight most of them. However, it is equally pertinent to mention here that the Department has not accepted the decisions of Hon'ble Mumbai High Court in the case of M/s All Cargo Global Logistics as well as Continental Warehousing (Nhava Sheva) Ltd., and SLP has been filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court has granted leave vide order dated

12.10.2015 as reported in 64 taxmann.com 34 (S.C.). Similarly, in the case of Kabul Chawla SLP has also been filed.

3.2.4 In view of SLPs admitted in case of *Kabul Chawla*, M/s All Cargo Global Logistics as well as Continental Warehousing (Nhava Sheva) Ltd., (supra), assessee's contention cannot be accepted. Moreover, in any case, the additions are to be adjudicated on merits as per relevant ground of appeal, the issue raised in this ground for present remains for academic discussion only. Accordingly, issue raised in ground no. 12 is dismissed.”

Therefore, neither in the assessment order nor in the order of the Id. CIT (A) there is any mention or finding that the additions have been made by the AO on the basis of any incriminating material found during the course of search and seizure in the case of the assessee. The AO has solely relied upon the report of the Investigation Wing Kolkata and statement of one Shri Anand Sharma recorded by the Investigation Wing during the survey under section 133A of the Act. Therefore, even if the information/report of the Investigation Wing Kolkata is considered as a relevant evidence, the same cannot be regarded as incriminating material unearthed during the course of search and seizure under section 132 of the IT Act in case of the assessee. The requirement for making the addition under section 153A in the assessment years where the assessment was not pending on the date of search and the proceedings are in the nature of reassessment is essentially the incriminating material disclosing undisclosed income which was not disclosed by the assessee. In the case in hand, the AO himself has not claimed any incriminating material found during the search and seizure in the case of the assessee. Accordingly, in the facts and circumstances of the case and in view of the binding precedents on this issue in which the SLP filed by the revenue was also dismissed by the Hon'ble Supreme Court, the additions made by the AO while passing the assessment

orders under section 153A for the assessment years 2010-11 to 13-14 are not sustainable and accordingly the same are liable to be deleted. We order accordingly.”

The foundation of the assessment order is the information received from the Investigation Wing, Kolkata and statement of Shri Anand Sharma and Shri Ankit Bagri in respect of the different transactions of unsecured loan/special deposits for issuing special preferential equity shares. The Id. CIT(A) though has not disputed the legal proposition on this issue, however, the ground raised by the assessee was dismissed merely on the reason that the SLP filed by the revenue in the case of CIT Vs. Kabul Chawla (Supra) and M/s All Cargo Global Logistics Ltd. (supra) have been admitted for decision by the Hon'ble Supreme Court. The relevant findings of Id. CIT(A) in the case of Kota Dall Mill has been reproduced by the Tribunal in the order cited (supra) and we find that an identical finding has been given by the Id. CIT(A) in the case of assessee. Therefore, neither in the assessment order, the Assessing Officer has referred or relied upon any incriminating material found during the course of search and seizure action in the case of assessee nor the Id. CIT(A) has disputed this fact that the Assessing Officer was not having any incriminating material in his possession found and seized during the course of search and seizure action in the case of the assessee which has disclosed any unaccounted or undisclosed income of the assessee. The information received from the Investigation Wing, Kolkata as well as the statement of Shri Anand Sharma and Shri Ankit Bagri cannot be regarded as incriminating material unearthed during the course of search and seizure U/s 132 of the Act in the case of the assessee. Hence, in view of the decisions/binding precedents as relied upon by the Id AR and also considered by this

Tribunal in the case of Kota Dall Mill (supra), we have no reason to take a different view on this issue. Accordingly, by following the earlier decision of this Tribunal in the case of group concern M/s Kota Dall Mill we hold that the addition made by the Assessing Officer while passing the assessment orders for the A.Y. 2010-11 to 2012-13 U/s 153A of the Act are not sustainable and liable to be deleted. Hence, this ground of the assessee's appeal is allowed.

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14. *We have considered the rival submissions as well as relevant material on record. There is no dispute that the assessee demanded the cross examination of the witnesses, therefore, statements have been relied upon by the Assessing Officer while framing the assessments under consideration. The Id. CIT(A) though while calling the remand report of the Assessing Officer directed to allow the cross examination to the assessee, however, when the Assessing Officer has expressed his inability to produce the witnesses for cross examination, the Id. CIT(A) has finally rejected the objection raised by the Assessing Officer. An identical issue has been considered by us in the case of Kota Dall Mill (supra) vide order dated 31/12/2018 in para 11.1 as under:*

"11.1. Even otherwise, the assessment order is solely based on the report of the Investigation Wing Kolkata which in turn is nothing but the narration of the statements recorded during the investigation and the AO was having in possession the statement of only Shri Anand Sharma. Therefore, all these proceedings conducted by the Investigation Wing Kolkata were at the back of the assessee and hence the statement which is the foundation of the report of the Investigation Wing Kolkata as well as the assessment order cannot be accepted in the absence of giving an opportunity of cross examination to the assessee. We find that the assessee has insisted for cross examination during the assessment

proceedings and further during the appellate proceedings. The Id.CIT(A) even called for a remand report and directed the AO to allow cross examination to the assessee. However, the AO has expressed his inability to allow the assessee for cross examination of the witnesses due to the reason that the witnesses belong to Kolkata and it is not possible for AO to make such arrangement. The Id. CIT(A) has finally denied the cross examination to the assessee by giving his finding in para 5.11 at page 188 already reproduced in the earlier part of this order and, therefore, the only reason for denial of cross examination by the Id.CIT(A) is that the statements are so vocal and undeniable that cross examination of such accommodation entry provided by thousands of beneficiaries across India is neither practicable nor viable and therefore uncalled for. We find that the assessee has demanded the cross examination only in respect of the alleged transactions of loans and not for the entire business of the entry providers providing the bogus entries. Undisputedly, the statement of Shri Anand Sharma was recorded by the Investigation Wing Kolkata at the back of the assessee, even the proceedings by the Investigation were conducted at the back of the assessee, therefore, the said statement of Shri Anand Sharma cannot be the sole basis of assessment without giving an opportunity of cross examination to the assessee. The Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE (supra) while dealing with the issue of violation of principles of natural justice for not providing the opportunity of cross examination of the witnesses whose statements were relied on by the AO has held in para 6 to 9 as under :-

6. "According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even

when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them”.

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers witnesses at the price which is mentioned in the price list itself could be the subject-matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject-matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came up before this court in CCE v. Andaman Timber Industries Ltd., order dated 17.3.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. *In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.*

9. *We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal. No costs.”*

Once the assessee has disputed the correctness of the statement and wanted to cross examine the witness which was not given by the AO as well as Id. CIT (A), then the orders passed based on such statement are not sustainable in law. The Hon’ble Delhi High Court in case of CIT vs. Ashwani Gupta, 322 ITR 396 (Delhi) while dealing with the issue of not

providing the opportunity to cross examine the witnesses has held in para 5 to 7 as under :-

"5. Secondly, in fact, a rectification application being MA 264/Delhi/2008 under section 254(2) of the Income-tax Act, 1961 had been filed by the revenue before the said Tribunal. In that also, in paragraph (g) of the Miscellaneous Application, the revenue had submitted as under:—

"(g) Because, although findings of the Tribunal are factually correct but the decision of the Tribunal is not acceptable because violation of the canons of natural justice in itself is not fatal enough so as to jeopardize the entire proceedings. In the interest of justice, the Tribunal could have set aside the assessment order with the limited purpose of offering assessee an opportunity to cross-examine Shri Manoj Aggarwal before completing the proceedings." [Emphasis supplied]

6. A reading of the said paragraph (g) makes it clear that the revenue had accepted the findings of the Tribunal on facts as also the position that there had been a violation of principles of natural justice. However, the revenue's plea was that the violation of principles of natural justice was not fatal so as to jeopardize the entire proceedings. The said miscellaneous application was also rejected by the Tribunal by its order dated 28-11-2008.

7. In view of the foregoing circumstances, we feel that no interference with the impugned order is called for. The Tribunal has correctly understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following approach adopted by us in *SMC Share Brokers Ltd.'s case (supra)*, we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration."

Thus the Hon'ble High Court has held that once there is a violation of principles of natural justice inasmuch as seized material is not provided to the assessee nor is cross examination of the person on whose statement the AO relied upon, granted, then, such deficiencies would amount to denial of opportunity and consequently would be fatal to the proceedings. The Hon'ble Bombay High Court in the case of H.R. Mehta

vs. ACIT, 387 ITR 561 (Bombay) has also considered the issue of not providing opportunity of cross examination in para 11 to 17 as under :-

11. We have therefore proceeded to hear and decide the matter unassisted by the revenue. In the course of his submissions Mr. Tralshawala had pressed into service inter alia the decision of the Calcutta High Court in *Mather & Platt (India) Ltd. (supra)* and submitted that merely because a person is not found at an address after several years it cannot be held that he is non-existent and that the assessee had discharged his primary onus by identifying the source of the amount paid. The Court observed that once the primary onus is discharged, the onus shifted to the revenue to verify genuineness of the transaction. In the present case no such effort was made by the revenue. We find that in *S. Hastimal (supra)* the Madras High Court observed that after a lapse of several years the assessee should not be placed upon the rack and called upon to explain not only merely, the origin and source of his capital contribution but the origin of origin and the source of source as well. In yet another case of *Bahri Brothers (P) Ltd. (supra)* the Division Bench of Patna High Court observed that where the assessee upon whom the initial burden lies, produces bank certificate to establish that the transaction was carried out through account payee cheques thus disclosing the identity of the creditors as also the source of income, the burden shifts on to the department and the department cannot add the cash credits to his income from undisclosed source.

12. The Hon'ble Supreme Court in *Nemi Chand Kothari (supra)* observed that in order to establish the receipt of a cash credit, the assessee must satisfy three conditions i.e. identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. In the instant case by virtue of the fact that the transaction was completed by cheque payments, the appellant has contended that it had satisfied all the three tests.

13. In *Kishanchand Chellaram (supra)* wherein the Supreme Court observed that the revenue authorities had not recorded the statement of the Manager of the bank and it was difficult to appreciate as to why it was not done and why the matter was not probed further by the revenue.

14. The Delhi High Court in *Ashwani Gupta (supra)* held that once there is a violation of the principles of natural justice inasmuch as when its seized material was not provided to an assessee nor was he permitted to cross-examine a person on whose statement the Assessing Officer relied, it would amount to deficiency, amounting to a denial of opportunity and therefore violation of principles of natural justice. In that case CIT (A) had deleted addition made by the Assessing Officer neither since the Assessing Officer had failed to provide copies of seized material to the assessee nor had he allowed the assessee to cross-examine the party concerned. The Division Bench held that once there is violation of the

principles of natural justice inasmuch as seized material was not provided to the assessee nor was given opportunity of cross examining the person whose statement was being used against the assessee the order could not be sustained.

15. In *Andaman Timber Industries (supra)* the Supreme Court found that the Adjudicating Authority had not granted an opportunity to the assessee to cross examine the witnesses and the tribunal merely observed that the cross examination of the dealers in that case, could not have brought out any material which would not otherwise be in possession of the appellant-assessee. The Supreme Court set aside the impugned order and observed that it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross examination and make the remarks such as was done in that case.

16. In the instant case although the appellant assessee has called upon us to draw an inference that the burden shifted to the revenue in the present case once it was established that the payments were made and repaid by cheque we need not hasten and adopt that view after having given our thought to various issues raised and the decisions cited by Mr. Tralshawalla and finding that on a very fundamental aspect, the revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

17. In our view in the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very issue.”

Thus the denial of opportunity to cross examine was considered by the Hon'ble High Court which goes to the root of the matter and strikes at the very foundation of the assessment and, therefore, renders the

assessment order passed by the AO not sustainable. The Id. A/R has submitted that Coordinate Bench of this Tribunal in the case of DCIT vs. Shri Prateek Kothari vide order dated 16th December, 2012 in ITA No. 159/JP/2016 has considered this issue in para 2.8 to 2.11 as under :-

“2.8 We have heard the rival contentions and perused the material available on record. The transaction under question relates to unsecured loans taken by the assessee amounting to Rs 1 Crores from M/s Mehul Gems Pvt Ltd during the impugned assessment year and not accepting the said loan transaction as a genuine transaction by the Assessing officer and the resultant addition made under section 68 of the Act. Undisputedly, the primary onus to establish genuineness of the loan transaction is on the assessee. In the instant case, the assessee has provided the necessary explanation, furnished documentary evidence in terms of tax filings, affidavits and confirmation of the Directors, bank statements of the lender, balance sheet of the lender company, and an independent confirmation has also been obtained by the Assessing officer to satisfy the cardinal test of identity, creditworthiness and genuineness of the loan transaction. However, the Assessing officer has not given any finding in respect of such explanation, documentary evidence as well as independent confirmation. Apparently, the reason for not accepting the same is that the Assessing officer was in receipt of certain information from the investigation wing of the tax department as per which the transaction under consideration is a bogus loan transaction. The said information received from the investigation wing thus overweighed the mind of the Assessing officer. The Assessing officer stated that the primary onus is on the assessee to establish the genuineness of the transaction claimed by it and if the investigation done by the department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties alongwith necessary documents to establish the genuineness of the transaction. In response, the assessee submitted that Shri Bhanwarlal Jain is not known to him and regarding various incriminating documentary evidences seized during the course of search and statements recorded of Shri Bhanwarlal Jain and other persons, he specifically requested the AO to provide copies of such incriminating documents and statement of all various persons recorded in this regard and provide an opportunity to the assessee to cross examine such persons. However, the AO didn't provide to the assessee copies of such incriminating documents and statements of various persons recorded and allow the cross-examination of any of these persons. While

doing so, the AO stated that “in his statements, Bhanwarlal Jain had described that they are indulged in providing accommodation entries of bogus unsecured loans and advances through various Benami concerns (70) operated and managed by them. This admission automatically makes all the transactions done by them as mere paper transactions and in these circumstances, further as per the information name and address of assessee and the Benami Concern through which accommodation entry of unsecured loans was provided is appearing in the list of beneficiaries to whom the said Group has provided. This admission is sufficient to reject the contentions of the assessee.” Further, regarding cross examination, the AO stated that “the right of cross examination is not an absolute right and it depends upon the circumstances of each case and also on the statute concerned. In the present case, no such circumstances are warranted as in the list of beneficiaries to whom accommodation entries were provided by the said group categorically contains the name and address of the assessee. Further the group has categorically admitted to providing of accommodation entries of unsecured loans through various benami concerns.” The AO further relied upon the decision of Hon’ble Supreme Court in the case of C. Vasantlal & Co. Vs. CIT 45 ITR 206(SC) and Hon’ble Rajasthan High Court in case of Rameshwarlal Mali vs. CIT 256 ITR 536(Raj.) among others. In this regard, it was submitted by the assessee that if the entries and material are gathered behind the back of the assessee and if the AO proposes to act on such material as he might have gathered as a result of his private enquiries, he must disclose all such material to the assessee and also allow the cross examination and if this is not done, the principles of natural justice stand violated.

- 2.9 *In light of above discussions, in our view, the crux of the issue at hand is that whether the principle of natural justice stand violated in the instant case. In other words, where the AO doesn’t want to accept the explanation of the assessee and the documentation furnished regarding the genuineness of the loan transaction and instead wants to rely upon the information independently received from the investigation wing of the department in respect of investigation carried out at a third party, can the said information be used against the assessee without sharing such information with the assessee and allowing an opportunity to the assessee to examine such information and explain its position especially when the assessee has requested the same to the Assessing officer.*

2.10 *In this regard, the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC) (Copy at Case Law PB 812-818) has held that "The rule of law on this subject has been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh where it was stated that while proceeding under sub-section (3) of section 23, the Income-tax Officer, though not bound to rely on evidence produced by the assessee as he considers to be false, yet if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the assessee the material on which he is going to find that estimate; and that in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilized to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and that he should further give him ample opportunity to meet it." It was held in that case that "In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing."*

The Hon'ble Supreme Court in case of C. Vasantlal & Co. Vs. CIT 45 ITR 206 (SC) has held that "the ITO is not bound by any technical rules of the law of evidence. It is open to him to collect material to facilitate assessment even by private enquiry. But, if he desires to use the material so collected, the assessee must be informed about the material and given adequate opportunity to explain it. The statements made by Praveen Jain and group were material on which the IT authorities could act provided the material was disclosed and the assessee had an opportunity to render their explanation in that regard."

The Hon'ble Supreme Court in case of Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (SC) (Copy at Case Law PB 585-591) has held that "whether there was any material evidence to justify the findings of the Tribunal that the amount of Rs. 1,07,350 said to have been remitted by Tilokchand from Madras represented the undisclosed income of the assessee. The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was the

letter, dated 18-2-1955 said to have been addressed by the manager of the bank to the ITO. Now it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding. In the first place, this letter was not disclosed to the assessee by the ITO and even though the AAC reproduced an extract from it in his order, he did not care to produce it before the assessee or give a copy of it to the assessee. The same position obtained also before the Tribunal and the High Court and it was only when a supplemental statement of the case was called for by this Court by its order, dated 16-8-1979 that, according to the ITO, this letter was traced by him and even then it was not shown by him to the assessee but it was forwarded to the Tribunal and it was for the first time at the hearing before the Tribunal in regard to the preparation of the supplemental statement of the case that this letter was shown to the assessee. It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the bank to the ITO, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him.”

2.11 *In light of above proposition in law and especially taking into consideration the decision of the Hon’ble Supreme Court in case of C. Vasantlal & Co. (supra) relied upon by the Revenue and which actually supports the case of the assessee, in the instant case, the assessment was completed by the AO relying solely on the information received from the investigation wing, statement recorded u/s 132(4) of Shri Bhanwarlal Jain and others, and various incriminating documentary evidence found from the search and seizure carried out by Investigation Wing, Mumbai on the Shri Bhanwarlal Jain group on 03.10.2013. It remains undisputed that the assessee was never provided copies of such incriminating documents and statements of Shri Bhanwarlal Jain and various persons and an opportunity to*

cross examine such persons though he specifically asked for such documents and cross examination. On the other hand, the burden was sought to be shifted on the ITA No. 159/JP/16 The ACIT, Central -2, Jaipur vs. M/s Prateek Kothari, Jaipur 21 assessee by the A.O. It is clear case where the principle of natural justice stand violated and the additions made under section 68 therefore are unsustainable in the eye of law and we hereby delete the same. The order of the Id CIT(A) is accordingly confirmed and the ground of the Revenue is dismissed.”

Thus when the assessee has specifically asked for cross examination of the witnesses whose statements were relied upon by the AO, then the denial of the opportunity to cross examine would certainly in violation of principles of natural justice and consequently renders the assessment order based on such statement as not sustainable in law. Hence in view of the facts and circumstances of the case where the assessee has repeatedly requested and demanded the cross examination of the witnesses whose statements were relied upon by the AO in the assessment order and further the report of the DDIT Investigation Kolkata is also based on the statement of such person then the denial of cross examination by the AO as well as Id. CIT (A) despite the fact that the assessee was ready to bear the cost of the cross examination of the witnesses is a gross violation of principles of natural justice. Thus the additions made by the AO on the basis of such statement without any tangible material is not sustainable in law and liable to be deleted. Accordingly the addition made by the AO is also deleted on merits apart from the legal issue decided in favour of the assessee.”

The facts and circumstances in both the cases are identical and therefore, following the earlier order of this Tribunal in case of Kota Dall Mill, we hold that the addition made by the Assessing Officer on the basis of the information/report of the DDIT (Investigation), Kolkata as well as the statements of Shri Anand Sharma and Shri Ankit Bagri without giving an opportunity of cross examination is not sustainable as

the addition is solely based on the statement and information which is nothing but summary of statements recorded by the DDIT(Inv), Kolkata. Hence, the addition made by the Assessing Officer is deleted. Ground No. 2 of the appeal is decided in favour of the assessee.

We find that the A.O. has not referred any incriminating material found during the search and seizure proceedings but what is relied upon by the A.O. is the report of the Investigation Wing, Kolkata, which was preexisting the search and seizure action in the case of the assessee. Accordingly in view of the earlier orders of this Tribunal, the addition made by the A.O. are otherwise not sustainable in law.

11. As regards the order passed by the A.O. without giving the opportunity of cross examination, we find that the facts on this issue are identical as in the case of other group concerns of Kota Dall Mill. In the case of M/s Multimetals Limited Vs DCIT (supra), the Tribunal has again considered this issue and followed the decision of the Tribunal in the case of Kota Dall Mill (supra). The relevant findings of the Tribunal are reproduced in the foregoing paras of this order. Hence, following the earlier orders of this Tribunal, we decide this issue in favour of the assessee and against the revenue.

14. In the result the appeal of the revenue is dismissed and the cross objection of the assessee is allowed.

Order pronounced in the open court on 29th March, 2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 29th March, 2019.

*Ranjan

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

1. अपीलार्थी / The Appellant- The D.C.I.T., Central Circle, Kota.
2. प्रत्यर्थी / The Respondent- M/s Hadoti Punji Vikas Ltd., Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1192/JP/2018 & CO 44/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar