

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1158 & 1159/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2011-12 and 2012-13)

Uni Design Jewellery India Private Ltd., Plot No. 3, Uni Design House, CEPZ WICEL, Opp. SEEPZ Main Gate, Andheri(E), Mumbai-400093	बनाम/ v.	DCIT-Central Circle 1(2) Mumbai.
स्थायी लेखा सं./PAN: AAACU3940J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri. Rakesh Mohan	
Revenue by:	Shri. Rejeev Gubgodra (DR)	

सुनवाई की तारीख /**Date of Hearing** : 03.04.2019

घोषणा की तारीख /**Date of Pronouncement** : 30.05.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

These two appeals, filed by assessee, being ITA No. 1158 & 1159/Mum/2018 for assessment year(s) 2011-12 and 2012-13 respectively, are directed against separate appellate order(s) both dated 18.12.2017 in appeal number(s) CIT(A)-47/AP.11663/16-17 and CIT(A)-47/AP.11664/16-17 respectively, passed by learned Commissioner of Income Tax (Appeals)-47, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12 and 2012-13 respectively, the appellate proceedings had arisen before learned CIT(A) from the separate assessment order(s) both dated 31.10.2016 passed by

learned Assessing Officer (hereinafter called “the AO”) u/s 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter called “the Act”) for AY 2011-12 and 2012-13 respectively. Since common issues are involved in both the years , we shall dispose of both the appeals vide this common order. First we will take up appeal of the assessee in ITA no. 1158/Mum/2018 for AY 2011-12.

2. The grounds of appeal raised by assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) in ITA no. 1158/Mum/2018 for AY 2011-12 , read as under:-

“Ground No. 1

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the AO in initiating re-assessment proceedings under section 147 of the Act. The order under section 143(3) r.w.s. 147 of the Act is bad in law and without jurisdiction.

Ground No. 2

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the AO in adding an amount of Rs.1,21,345/- (14.55% of Rs.8,33,985/-) being the profit element embedded in the alleged bogus purchase.

The appellant craves leave to add, omit or alter grounds of appeal before or during the hearing of the appeal.”

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing & sale/export of gold and diamond jewellery. The assessee filed its return of income on 05.08.2011 declaring total income of Rs.3,94,63,163/-. Thereafter , the assessee also filed return of income on 29.10.2012 in response to notice issued by the AO u/s. 153A of the 1961 Act declaring total income of Rs.3,94,63,163/-. The assessment was framed by AO vide assessment order dated 21.03.2014 passed by the AO u/s. 143(3) r.w.s. 153A of the 1961 Act assessing total income of the assessee at Rs.4,10,43,660/- . Thereafter , assessment was reopened by AO u/s 147 of the 1961 Act after recording reasons for reopening of the concluded assessment on 07.01.2016 which culminated into an issue of notice dated 27.01.2016 by the AO u/s. 148 of the 1961 Act, which

notice as per AO was duly served on the assessee. The assessee in response to aforesaid notice dated 27.01.2016 issued by the AO u/s 148 of the 1961 Act, vide letter filed with AO on 27.06.2016 submitted that return of income filed u/s 153A of the 1961 Act be treated as return of income filed in response to notice issued u/s 148 of the 1961 Act. The assessee requested the AO to furnish reasons recorded u/s 147 of the 1961 Act for reopening of the concluded assessment, which were duly furnished to the assessee by AO on 19.07.2016. The reasons which were recorded for reopening of the concluded assessment were that search & seizure operations were conducted by DDIT(Inv.) Unit-IX(3), Mumbai u/s. 132 of the 1961 Act in the case of Mahendra Brothers Export Private Ltd. Group, its associated concerns, Directors and related persons on 08.08.2011 and information was received by AO from learned DCIT, Central Circle-4, Surat vide letter dated 26.11.2015 which was received by AO on 22.12.2015 that Shri Rajendra Jain, Shri Dharmichand Jain and Sanjay Chaudhary are some of the entry providers operating in Mumbai who are indulging in providing accommodation entries in the nature of bogus sales and unsecured loans. A search and seizure operations in these group cases u/s 132 of the 1961 Act were also carried on 03.10.2013 by DGIT(Inv.), Mumbai. During the course of search and seizure operations u/s 132 of the 1961 Act, list of beneficiaries of these accommodation entries obtained from these groups were compiled by Revenue. The AO observed from the said list of beneficiaries of accommodation entries obtained from these groups that the assessee is also mentioned as one of the beneficiaries of the bogus accommodation entries for purchases to the tune of Rs. 8,33,985/- from M/s Mani Prabha Impex P. Ltd. during the previous year relevant to impugned assessment year, which led to the reopening of the concluded assessment by the AO u/s 147 of the 1961 Act based on aforesaid fresh incriminating information received by the AO from DDIT(Inv.), Mumbai and DCIT, Surat. The assessee filed objection to reopening of the concluded assessment u/s 147 of the

1961 Act vide its letter dated 21.07.2016 which were disposed off by the AO vide letter dated 25.07.2016.

3.2 During the course of the reassessment proceedings conducted by the AO u/s 147 read with Section 143(3) of the 1961 Act, the assessee submitted copies of purchases invoices, copy of ledger account of the said party M/s Mani Prabha Impex Private Limited in the books of accounts of the assessee for the year under consideration and bank statement of the assessee showing entries reflecting payment to said party being debited in the bank account of the assessee. The assessee also submitted that it has purchased raw material from the said party namely M/s Mani Prabha Impex Private Limited and made payment by account payee cheque(s) to the said party. The assessee also claimed before the AO during reassessment proceedings that it has discharged its onus to prove genuineness of these purchases. In order to make further enquiries, the AO deputed ward inspector to locate the said party namely M/s Mani Prabha Impex Private Limited at the given address but the said party was found not operating from the given address. The AO asked assessee to produce the said party before the AO but the assessee could not produce the said party before the AO. The assessee also could not produce the details of the current address of the said party M/s Mani Prabha Impex Private Limited before the AO. The AO also observed that the payments had been made with substantial delay to this party from whom alleged bogus accommodation entries by way of purchase of raw material was obtained which also casted doubt on the veracity of the claim of the assessee that the said purchases are genuine. The AO also observed that DDIT(Inv.), Mumbai and DCIT, Surat during the search and seizure operations have unearthed the modus operandi of issuing bogus bills by the concerns belonging to Shri Rajendra Jain, Shri Dharmichand Jain and Sanjay Chaudhary group and admission was made by their key persons that they were involved in providing bogus accommodation entries by way of purchases and unsecured

loans wherein the assessee was also listed as one of beneficiaries of the alleged bogus entries for purchases provided by these group. The AO was also of the view that the assessee had failed to discharge its onus to prove genuineness of these purchases. The AO also observed that mere filing of purchase bills without any documentary evidences in support of purchases and copy of bank statement showing payment by account payee cheque cannot be conclusive in a case where genuineness of the purchase transactions is in question. The AO observed that the assessee has submitted details of purchases and corresponding sales thereof from concerned party. The AO observed that there cannot be any sales without purchases. Thus, it was held by the AO that the assessee has infact purchased goods from some other party , the details of which are not disclosed by the assessee to Revenue and the assessee has merely obtained bogus invoices from this party M/s Mani Prabha Impex Private Limited without actual receipt of good from this party. The AO also observed that payments to this party M/s Mani Prabha Impex Private Limited was made by the assessee with substantial delays. This led AO to make further addition to income of the assessee by estimating additional G.P. at the rate of 14.55% of these purchases based on the GP of 14.55% already declared by the assessee, vide reassessment order dated 31.10.2016 passed by the AO u/s 143(3) read with Section 147 of the 1961 Act.

4. Aggrieved by an reassessment framed by the AO u/s 143(3) read with Section 147 of the 1961 Act vide assessment order dated 31.10.2016, the assessee filed first appeal before Ld. CIT(A) and submitted that the assessee had made purchases of raw material from this party namely Mani Prabha Impex P. Ltd., and payments were made to this party by account payee cheque . It was submitted that purchase invoices received from the said party, ledger account of said party in books of accounts of the assessee and bank statements were submitted by the assessee before the AO. The assessee also challenged reopening of the concluded assessment by the AO by submitting that

reopening of the concluded assessment by invoking provisions of Section 147 was done based on information received from DGIT(Inv.), Mumbai and DCIT, Surat that the assessee has allegedly being beneficiary of bogus accommodation entry for purchase from M/s Mani Prabha Impex Private Limited , but the assessee contended that there was no independent application of mind by the AO and hence reopening of concluded assessment u/s 147 is bad in law liable to be quashed. The assessee also relied on following case laws which are cited in the appellate order passed by learned CIT(A), as under:

- a) Hon'ble Delhi High Court judgment in the case of CIT v. Kamdhenu Steel and Alloy Limited reported in (2012) 248 CTR 33(Delhi)
- b) Hon'ble Delhi High Court decision in the case of CIT v. SFIL Stock Broking Limited (2010) 325 ITR 285(Delhi) and
- c) Judgment of Hon'ble Supreme Court decision in the case of Chuggamal Rajpal v. S.P.Chadha (1971) 79 ITR 603(SC) .

4.2 On merits , it was submitted by assessee before learned CIT(A) that the assessee has made purchases to the tune of 37,185.21 carats of cut and polished diamonds , the details of which were submitted by assessee before learned CIT(A) as under:-

<i>Sr No.</i>	<i>Particulars</i>	<i>Carats</i>
<i>1,</i>	<i>Opening Stock</i>	<i>9,806.73</i>
<i>2</i>	<i>Add: Purchases</i>	<i>37,185.21</i>
<i>V*- 3</i>	<i>Less: Consumption for manufacturing</i>	<i>(32,779.32)</i>
<i>4.</i>	<i>Less: Sales</i>	<i>(2.31)</i>
<i>5.</i>	<i>Balance Closing Stock</i>	<i>14,212.62</i>

The assessee submitted that it made purchases only of Rs. 8,33,985/- from said party namely M/s. Mani Prabha Impex P. Ltd. for which purchase invoices , ledger account of the said party in books of

accounts of the assessee and details of payments made by account payee cheque to said party as well bank statements were all submitted before the AO . It was submitted that there was no evidences in the possession of Revenue which could establish that these payments were received back by assessee in cash from the said party . Thus, the claim was made that these purchases are genuine. It was submitted that the AO deputed ward inspector to make further enquiries but the said party M/s Mani Prabha Impex Private Limited could not be found out. It was submitted it is the duty of the department to find out the said party and onus is not on the assessee to tell the current whereabouts of the said party. It was submitted that assessee is dealing with numerous entities for purposes of purchases and sales.It was submitted that it is not possible to keep track of these parties. It was submitted by assessee before learned CIT(A) that the turnover of the assessee company was Rs. 140.17 crores. It was claimed that the assessee made purchases to the tune of Rs. 144.49 cores while alleged bogus purchases from M/s Mani Prabha Impex Private Limited were only to the tune of Rs. 8,33,985/- which is a meagre 0.05% of the amount offered to tax. Thus, it was claimed that the assessee has not made any bogus purchases and all its purchases are genuine. It was further submitted that no further enquiry/ investigation was conducted by the AO to find out the genuineness of these alleged bogus transactions. The assessee relied upon following judgements before learned CIT(A) to contend that no additions are warranted, as under:

- a) Mumbai-tribunal decision in the case of Ramesh Kumar & Co. v. ACIT in ITA no. 2959/Mum/2014
- b) Mumbai-tribunal decision in the case of DCIT v. Premsons reported in 139 TTJ 159(Mum-trib.)
- c) Hon'ble Bombay High Court decision in the case of CIT v. Nikunj Eximp Enterprises Private Limited(2015) 372 ITR 619(Bom.)

5. The learned CIT(A) rejected the contentions of the assessee both on legal ground challenging invocation of provisions of Section 147 of

the 1961 Act to reopen concluded assessment as well on merits and upheld the additions as were made by the AO to the income of the assessee @ 14.55% of the alleged bogus purchases. The assessee had challenged invocation of provisions of Section 147 of the 1961 Act by the AO but the said challenge was rejected by Ld. CIT(A) on the ground that fresh incriminating tangible material was received by the AO from DGIT(Inv.) , Mumbai and DCIT, Surat that assessee is indulging in bogus purchases which led to reopening of the concluded assessment u/s 147 of the 1961 Act and the learned CIT(A) held that it is not the case of change of opinion by the AO as the AO did had reasons to believe that income of the assessee had escaped assessment. On merits also , the learned CIT(A) held that the assessee had made purchases to the tune of Rs. 8,33,985/- from parties who are involved in providing accommodation bills. The AO in order to make further enquiries deputed ward inspector but this party namely M/s Mani Prabha Impex Private Limited could not be located at given address by ward inspector . The assessee also could not produce the said party namely M/s Mani Prabha Impex Private Limited nor current address was furnished by the assessee . It was observed by learned CIT(A) that findings of DGIT(Inv.) , Mumbai and DCIT, Surat has conclusively proved that the concerns of Shri Rajendra Jain , Shri Sanjay Chaudhari and Shri Dharichand Jain are involved in providing bogus entries in a systematic and organised manner. Thus, learned CIT(A) by relying on following judicial precedents upheld the additions to the income to the tune of 14.55% of the alleged bogus purchases , as were made by the AO vide appellate order dated 18.12.2017 passed by learned CIT(A):

- a) Hon'ble Supreme Court decision in the case of Kachwala Gems v. JCIT reported in (2006) 288 ITR 10(SC)
- b) Hon'ble Gujarat High Court decision in the case of CIT v. Bholanath Poly Fab Private Limited (2013) 355 ITR 390(Guj)

c) Hon'ble Gujarat High Court decision in the case of CIT v. Simit P. Sheth
355 ITR 290(Guj.)

6. The assessee being aggrieved by the appellate order dated 18.12.2017 passed by Ld. CIT(A) has filed an appeal with tribunal. The contentions are raised by learned counsel for the assessee that assessment was firstly completed by AO u/s 143(3) read with Section 153A of the 1961 Act on 21.03.2014. Later notice was issued by AO u/s 148 of the 1961 Act on 27.01.2016 which was within four year from the end of the assessment year. It was submitted that information was received by the AO from DGIT(Inv.), Mumbai and DCIT, Surat that Shri Rajendra Jain, Shri Sanjay Chaudhary and Shri Dharmichand Jain are providing bogus accommodation entries. It was submitted that DDIT(Inv.) , Mumbai conducted search and seizure operations u/s 132 against Mahendra Brothers Export Private Limited Group , its associated concerns , Directors and related parties on 08.08.2011. The search and seizure operations in the case of Shri Rajendra Jain, Shri Sanjay Chaudhary and Shri Dharmichand Jain were conducted u/s 132 by DGIT(Inv.), Mumbai on 03.10.2013. The learned counsel for assessee submitted that in the information received by AO from DGIT(Inv.), Mumbai and DCIT, Surat, the assessee was listed as one of the beneficiaries of having received accommodation entries for purchases to the tune of Rs. 8,33,985/- from M/s Mani Prabha Impex Private Limited. These persons who were searched by Revenue had admitted of having providing bogus accommodation entries for sale and purchases and for unsecured loans. The assessee submitted that information so received by the AO from DGIT(Inv.), Mumbai and DCIT, Surat did not contain the name of the assessee .It was submitted that there is no evidence on record that these persons were engaged in providing accommodation entries. It was submitted that there is no evidences that the assessee received back cash against cheque issued to M/s Mani Prabha Impex Private Limited. It was also submitted that additions were not made on the basis of any document seized during search and seizure operations

conducted by Revenue u/s 132 of the 1961 Act. The assessee relied upon decision of Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561(SC). It was submitted by learned counsel for the assessee that invocation of provisions of Section 148 of the 1961 Act by Revenue is not justified. The learned counsel for the assessee also relied upon the decision of Hon'ble Bombay High Court in the case of Pr. CIT v. Shodiman Investments Private Ltd. in ITA no. 1297 of 2015, dated 16.04.2018 . The assessee also relied upon decision of Hon'ble Supreme Court in the case of ACIT v. Dhariya Construction Company reported in (2010) 328 ITR 515(SC) . It was submitted that verification of purchases and sales was done by AO while framing assessment u/s 143(3) for AY 2012-13 vide assessment order dated 30.03.2014 wherein additions to the tune of Rs.7,78,43,527/- were made on account of differences in stock i.e. shortage/excess stock. The said assessment order dated 30.03.2014 passed for AY 2012-13 by the AO u/s 143(3) is placed in file. Thus, it was submitted that this is clearly a case of change of opinion which is not permissible within mandate of Section 147/148 of the 1961 Act. It was submitted that quantitatively stock of the assessee tallied which was accepted by the AO but additions have been made on the ground that the assessee had obtained bogus invoices from M/s Mani Prabha Impex Private Limited while actual material was procured from some other party , the details of which were not disclosed by the assessee to Revenue and hence profit embedded in the said purchased were brought to tax by estimating same @14.55% based on actual GP declared by the assessee. It was submitted by learned counsel for the assessee that the AO did not issue notices u/s 133(6) to said parties nor any summons were issued u/s. 131 of the 1961 Act by the AO to said parties. It was submitted that only ward inspector was deputed by AO to make further enquiries who could not locate the said party namely M/s Mani Prabha Impex Private Limited at given address. It was submitted that even Directors of the company were not examined by the AO . It was submitted by learned counsel for the assessee that

even no statements are existing against against the assessee. It was prayed that additions as were made by the AO and which were later affirmed by learned CIT(A) be deleted. Without Prejudice, it was submitted that quantum of additions to income so made at 14.55% of alleged bogus purchases is excessive and prayer is made to uphold the said additions by estimating lower profit embedded in the purchases . The assessee has chosen not to file paper book with tribunal containing evidences on which it wish to rely on.

6.2 The learned DR on the other hand supported the appellate order passed by learned CIT(A) and prayers are made to confirm the same.

7. We have considered rival contentions and perused the material on record including orders of the authorities and case laws cited before us. We have observed that the assessee is engaged in the business of manufacturing & sale/export of gold and diamond jewellery.

7.2 The assessee filed its return of income on 05.08.2011 declaring total income of Rs.3,94,63,163/-. Thereafter , the assessee also filed return of income on 29.10.2012 in response to notice issued by the AO u/s. 153A of the 1961 Act , declaring total income of Rs.3,94,63,163/-. The assessment was framed by AO vide assessment order dated 21.03.2014 passed by the AO u/s. 143(3) r.w.s. 153A of the 1961 Act assessing total income of the assessee at Rs.4,10,43,660/- .

7.3 Thereafter , the AO received information from DGIT(Inv.), Mumbai and from DCIT, Surat that the assessee is beneficiary of bogus accommodation entries for purchases made from M/s Mani Prabha Impex Private Limited to the tune of Rs.8,33,965/- which led AO to reopen the concluded assessment by invoking provisions of Section 147 of the 1961 Act. This information of the assessee being beneficiary of the bogus accommodation entry of purchases to the tune of Rs. 8,33,985/- was based on admissions made by key persons of Mr

Rajendra Jain, Mr Sanjay Chaudhari and Mr Dharmichand Jain group who were searched by Revenue u/s 132 on 03.10.2013 , that their group was engaged in providing bogus accommodation entries for bogus sales as well for providing accommodation entries by way of unsecured loans . Earlier there was a search and seizure operations conducted by Revenue u/s 132 of the 1961 Act on Mahendra Brothers Export Private Limited Group, its associated concerns, Directors and related persons on 08.08.2011.

7.4 The AO reopened concluded assessment by invoking provisions of Section 147 of the 1961 Act after recording reasons for reopening of the concluded assessment on 07.01.2016 which culminated into an issue of notice dated 27.01.2016 by AO u/s. 148 of the 1961 Act , which notice was claimed by the AO to have been duly served on the assessee. There is no dispute between rival parties as to it. It is pertinent to mention that said notice dated 27.01.2016 issued u/s 148 by AO within four years from the end of the relevant assessment year and hence first proviso to Section 147 of the 1961 Act is not applicable. The assessee in response to aforesaid notice dated 27.01.2016 issued by the AO u/s 148 of the 1961 Act, vide letter filed with AO on 27.06.2016 submitted that return of income filed u/s 153A of the 1961 Act be treated as return of income filed in response to notice issued u/s 148 of the 1961 Act. The assessee requested AO to furnish reasons recorded u/s 147 of the 1961 Act for reopening of the concluded assessment, which were duly furnished to assessee by the AO on 19.07.2016. The assessee objected to reopening of the assessment u/s 147 of the 1961 Act . The said objections were duly disposed off by the AO.

7.5 The reasons which were recorded by the AO for reopening of concluded assessment u/s 147 of the 1961 Act were that search & seizure action was conducted by DDIT(Inv.) Unit-IX(3),Mumbai u/s. 132 of the 1961 Act in the case of Mahendra Brothers Export Private Ltd. Group, its associated concerns , Directors and related persons on

08.08.2011 and the information was received by AO from learned DCIT, Central Circle-4, Surat vide letter dated 26.11.2015 which was received by AO on 22.12.2015 that Shri Rajendra Jain, Shri Dharmichand Jain and Sanjay Chaudhary group are some of the entry providers operating in Mumbai who are indulging in providing accommodation entries in the nature of bogus sales and unsecured loans . A search and seizure action in these group cases were carried on 03.10.2013 by DGIT(Inv.), Mumbai. During the course of search and seizure operations u/s 132 conducted by Revenue , list of beneficiaries of these accommodation entries obtained from these groups were compiled by Revenue. The name of the assessee also figured in the said list of beneficiaries of accommodation entries obtained from these groups wherein it is mentioned that the assessee is one of the beneficiaries of the bogus accommodation entries for purchases to the tune of Rs. 8,33,985/- from M/s Mani Prabha Impex P. Ltd. during the previous year relevant to impugned assessment year, which led to the reopening of the concluded assessment by the AO u/s 147 of the 1961 Act based on aforesaid fresh tangible incriminating information received by AO from DGIT(Inv.), Mumbai and DCIT, Surat . The assessee filed objection to reopening of the concluded assessment u/s 147 of the 1961 Act, vide its letter dated 21.07.2016 which were disposed off by the AO vide letter dated 25.07.2016. Thus, in our considered view reopening of the concluded assessment by the AO by invoking provisions of Section 147 of the 1961 Act is justified in the instant case keeping in view facts and circumstances of the case as the AO did received fresh tangible incriminating material that the assessee is indulging in obtaining bogus accommodation bills for purchases which has live link with formation of reasons to believe by the AO that income of the assessee has escaped assessment . It is well settled that at the stage of reopening of the concluded assessment by invoking provisions of Section 147 of the 1961 Act what is required is a prima facie belief of the AO that income of the tax-payer has escaped assessment and

conclusive proof of escapement of income of the tax-payer is not required at the stage of initiation of reopening proceedings u/s 147 of the 1961 Act. The key persons of the searched group belonging to Mr Rajendra Jain, Mr Sanjay Chaudhary and Mr Dharmichand Jain did admitted their modus operandi that they were involved in providing bogus accommodation bills for sales and unsecured loans and the name of the assessee appeared as one of the beneficiaries in the list compiled by Revenue during search operations conducted by Revenue u/s 132 of the 1961 Act, the assessee being beneficiary of accommodation entry for purchases to the tune of Rs. 8,33,985/- from M/s Mani Prabha Impex Private Limited belonging to this group which was searched by Revenue u/s 132 of the 1961 Act. It is also a matter of record that the assessee did made purchases which stood reflected in its books of accounts being made from said M/s Mani Prabha Impex Private Limited to the tune of Rs. 8,33,985/- which also evidences/corroborates correctness of the information received by the AO from DGIT(Inv), Mumbai and DCIT, Surat. So, in our considered view receipt of this tangible incriminating material by the AO from DGIT(Inv.), Mumbai and DCIT, Surat that the assessee is beneficiary of accommodation entries by way of bogus bill for purchases to the tune of Rs. 8,33,965/- from M/s Mani Prabha Impex Private Limited is sufficient to form a prima facie belief by the AO that the assessee's income had escaped assessment . Thus, we have no hesitation in upholding reopening of the concluded assessment u/s 147 of the 1961 Act by the AO as there is a live link between incriminating tangible information received by the AO as detailed above and formation of belief that income of the assessee has escaped assessment. This is a case where re-opening of the concluded assessment is done within four years from the end of the assessment year as notice u/s 148 was issued by the AO on 27.01.2016 which is within four years from the end of the AY as we are concerned with AY 2011-12 and hence first proviso to Section 147 has no applicability to the instant case before us. Thus, in nut-shell based on facts and

circumstance of the case before us and in accordance with established law on reopening of assessment u/s 147 of the 1961 Act, we uphold reopening of the concluded assessment by the AO u/s 147 of the 1961 Act in the instant appeal before us and reject challenge made by assessee to the said reopening of assessment u/s 147 of the 1961 Act.

7.6 The assessee had relied upon decision of Hon'ble Supreme Court in the case of Kelvinator of India Limited(supra) . In this case Hon'ble Supreme Court has held that to validly initiate reassessment proceedings u/s 147 there has to be tangible incriminating material to come to conclusion that there is an escapement of income and the said reasons must have live link with the formation of belief by the AO that income of the tax-payer has escaped assessment . In the instant appeal before us, we have already held that incriminating tangible material was received by the AO which has live link with formation of prima facie belief that the income of the assessee has escaped assessment.

7.7. The reliance of the assessee on the decision of Hon'ble Bombay High Court in the case of Shodiman Investment Private Limited (supra) is also not of any help to assessee as in that case before Hon'ble Bombay High court reopening of the assessment was done by the AO based on information received from DDIT(Inv.), Mumbai that there are suspicious transactions been carried out in the bank account of Mahasagar Securities Private Limited and its related company. Based on such facts, Hon'ble Bombay High Court held reopening by the AO u/s 147 of the 1961 Act to be not valid as it was held by Hon'ble Court that fishing and roving enquiries are not permissible based on suspicion within mandate of Section 147/148 of the 1961 Act .While in the instant case before us, It is based on admission of key persons of searched persons that their group were indulging in providing bogus accommodation entries by way of sales and unsecured loans wherein name of the assessee also found mentioned in the list of beneficiaries of the said accommodation

entries being compiled by Revenue during search operations u/s 132, the AO reopened the concluded assessment u/s 147 and we have already held that this information received by the AO from DGIT(inv.), Mumbai and DCIT, Surat to be tangible incriminating information coming into possession of the AO which has live link with formation of prima facie belief that income of the assessee has escaped assessment.

7.8 We reiterate that at this stage of invoking reopening provisions u/s 147 only prima facie belief of the AO is required as to escapement of income rather than having conclusive proof/evidence of escapement of income . Reference is drawn to decision of Hon'ble Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers Private Limited (2007) 291 ITR 500(SC) , wherein Hon'ble Supreme Court held as under:

"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO[1991 (191) ITR 662], for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is 'reason to believe', but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. Pvt. Ltd. [1996 (217) ITR 597 (SC)]; Raymond Woollen Mills Ltd. v. ITO[1999] 236 ITR 34 (SC).

17. The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied firstly the Assessing Officer must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has

occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a) But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso."

7.9 The assessee also relied upon decision of Hon'ble Supreme Court in the case of ACIT v. Dhariya Construction Co.(supra) wherein Hon'ble Supreme Court held that opinion given by Departmental Valuation Officer(DVO) is not an information as is contemplated u/s 147 of the 1961 Act. It was held that by Hon'ble Supreme Court that the AO has to apply its mind to the information, if any , collected and must form a belief thereof. In the instant case before us, the AO received information from DDIT(Inv.), Mumbai and DCIT, Surat and not from DVO , which we have already held was a tangible incriminating information having live link with formation of belief that income of the assessee has escaped assessment to invoke provisions of Section 147 of the 1961 Act in the instant appeal before us.

7.10 Reference is also drawn to decision of Hon'ble Bombay High Court wherein the reopening of the assessment u/s 147 was done based on information received from Investigation Wing in the case of Avirat Star Home Venture Private Limited v. ITO reported in (2019) 411 ITR 321(Bom.), wherein Hon'ble Bombay High Court upheld reopening of the assessment u/s 147, by holding as under:

"9. With this background, in my mind we may revisit the reasons recorded by the Assessing Officer. In the reasons the Assessing Officer referred to the report of the investigation wing in which it was found that one company namely Finelink Suppliers Private Limited through its current account in Indusind Bank between the specified period, had released huge funds to several companies. It seems that notice under Section 131 of the Act was issued to said FSCI which was received unserved. The report also referred to the said company income and tax paid for various years between financial years 2010-11, 2012-13 and noted that the gross profit and profit before tax were negligible and the tax paid in all three years was nil. The investigation wing also provided copies of the bank's statement of FSPL for the period between 22nd May, 2012 to 31st March, 2012 and conveyed that from the bank statement and further investigation it was clear that the funds had been routed through the accounts of the said company. The funds thus received

were immediately transferred or remitted to other accounts by way of RTGS fund transfer pointing out that the real beneficiaries were the petitioner and other similar companies, in whose account the unaccounted money was brought through regular books of accounts.

10. *In our opinion, the information supplied by the investigation wing to the Assessing Officer thus formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Therefore, it cannot be stated that the Assessing Officer did not have reason to believe that income chargeable to tax had escaped assessment. Being a case where return were accepted without scrutiny, we must leave the question of taxability of such allegedly escaped income to Assessing Officer to examine during scrutiny assessment.*

11. *The Assessing Officer perused the information supplied by the investigation wing and having formed the belief that income chargeable to tax had escaped assessment, cannot be stated to have acted mechanically. Further, mere fact that assessee had asked for certain information from the Assessing Officer, which at this stage was not supplied, would not invalidate the reasons recorded by the Assessing Officer in issuing the impugned notice.”*

7.11 Thus, based on our detailed discussions and reasoning in para 7 to 7.10 above, we uphold the reopening of the assessment by the AO u/s 147 of the 1961 Act in the instant case before us and decide ground number 1 raised by assessee in memo of appeal filed with tribunal against assessee. Thus, ground number 1 stand dismissed. We order accordingly.

8. Coming to merits of the case, the assessee has submitted copies of purchase invoices reflecting purchases made from M/s Mani Prabha Impex Private Limited, copies of ledger account of the said party M/s Mani Prabha Impex Private Limited in the books of accounts of the assessee for the year under consideration and bank statement of the assessee showing bank entries reflecting payment being made to said party being debited in the bank account of the assessee before the authorities below. The assessee had also submitted that it has purchased raw material from the said party namely M/s Mani Prabha Impex Private Limited to the tune of Rs. 8,3,3965/- and made payment by account payee cheque(s) to said party. In order to make further enquiries, the AO deputed ward inspector to locate the said party namely M/s Mani Prabha Impex Private Limited at the given address but the said party was found not

operating from the given address by the said ward inspector . The said party M/s Mani Prabha Impex Private Limited could not be ultimately located/traced by ward inspector. The assessee was asked by the AO to produce said party but the assessee could not produce the said party before the authorities. The assessee also could not produce the details of the current address of the said party M/s Mani Prabha Impex Private Limited. Even in appellate proceedings before us, no current details/whereabout's of the said party namely M/s Mani Prabha Impex Private Limited was brought on record by the assessee. The purchases are appearing in books of accounts of the assessee and the onus is on the assessee to prove that these purchases are genuine. There is admission by the key persons of Mr. Rajendra Jain, Mr Sanjay Chaudhary and Mr Dharmichand Jain group that they were engaged in providing bogus accommodation bills for sales and unsecured loans and the assessee is listed as beneficiary of these accommodation entries for purchases from M/s Mani Prabha Impex Private Limited to the tune of Rs. 8,33,985/- in the list compiled by Revenue during search operations conducted u/s 132 of the 1961 Act. The onus under these circumstances is still more very heavy on the assessee to prove that these purchases were infact genuine. The assessee did not even asked for cross examination of these persons before the authorities below. It is also observed by authorities below that the payments had been made with substantial delay to this party namely M/s Mani Prabha Impex Private Limited from whom alleged bogus accommodation entries by way of purchase of raw material to the tune of Rs. 8,33,985/- were obtained and no satisfactory explanation for substantial delay in making payments to this party is made by assessee even before us. The assessee had infact submitted details of purchases from concerned party and corresponding sales thereof , the quantitative reconciliation of the stock stood explained, which is accepted by the AO. The authorities below had observed that there cannot be any sales without purchases. The assessee is not coming out with all the facts which are especially in the knowledge of

the assessee. The admissions made by key persons of said Mr. Rajendra Jain, Mr Sanjay Chaudhary and Mr Dharmichand Jain group that their group was indulging in the providing of bogus accommodation entries by way of sales and unsecured loan and finding of name of the assessee in list of beneficiaries of these bogus purchases from M/s Mani Prabha Impex Private Limited to the tune of Rs. 8,33,965/- has not yet been demolished by the assessee. The situation got worse with non availability of said M/s Mani Prabha Impex Private Limited at the given address on enquiries been made by ward inspector at behest of the AO. The assessee could neither produce said party before the AO nor gave current address of said party to the AO. Even before us, no details of whereabouts of the said party is produced nor current address of the said party is produced. The assessee is contending that onus is not on the assessee to provide current addresses of the said party . These purchases are appearing in books of accounts of the assessee and the onus is on the assessee to prove that these purchases are genuine . The onus is rather high in the instant case because of incriminating tangible material being in possession of the Revenue. Thus under these facts and circumstances , the authorities below on the touchstone of preponderance of probabilities rightly concluded that the assessee has infact purchased these goods from some other party, the details of which were not disclosed by the assessee to Revenue and the assessee has merely obtained bogus invoices from this party M/s Mani Prabha Impex Private Limited without actual physical receipt of good from this party to make up its books of accounts to tally both sales and purchases. The assessee in all likelihood on touchstone of preponderance of probabilities undertook this activity of entering into bogus accommodation entries for purchase with a view to buy actual material from grey market to save on costs/taxes while in order to make up its book of accounts tally, bogus accommodation bills were obtained from said party namely M/s Mani Prabha Impex Private Limited . The assessee has also contended that in AY 2012-13, the AO

framed assessment vide orders dated 30.03.2014 passed u/s 143(3) wherein additions on account of shortage/excess of stock was made to the tune of Rs. 7,78,43,527/- and the entire purchases were verified by the AO and hence no additions are justified, we are unable to impress ourselves with this feeble argument advanced by the assessee, firstly that was addition made by AO on account of shortage/excess of stock and it was for the assessee to show with cogent evidences/explanation that this item of stock bought from M/s Mani Prabha Impex Private Limited was infact added in its entirety to income as shortages of stock by the AO and now making further additions will lead to double additions of the same income and secondly, this tangible incriminating information of the assessee indulging in obtaining bogus accommodation bills was received by AO after completion of the assessment by the AO for AY 2012-13 u/s 143(3) on 30.03.2014. Under these facts and circumstances of the case, in our considered view keeping in view factual matrix of the case, the profit embedded in these purchases are required to be brought to tax which requires estimation of income as held by Hon'ble Supreme Court in the case of Kachwala Gems v. JCIT reported in (2007) 288 ITR 10 (SC). We would also like to refer to decision of Hon'ble Bombay High court in the case of PCIT v. M/s Mohammad Haji Adam & Co. in ITA no. 1004 of 2016, vide judgment dated 11.02.2019, In our considered view keeping in view factual matrix of the case, estimation of additional income @ 10% of the alleged bogus purchases to the tune of Rs. 8,33,985/- made from said M/s Mani Prabha Impex Private Limited will meet end of justice. The AO had itself estimated additions to income @10.33% of alleged bogus purchases in immediately succeeding assessment year viz. AY 2012-13. Thus, we estimate the additional income over and above what was declared in the return of income filed with the revenue being profit embedded in these alleged bogus purchased from M/s Mani Prabha Impex Private Limited @ 10% of the alleged bogus purchases. We order accordingly.

9. In the result , appeal of the assessee in ITA no. 1158/Mum/2018 for AY 2011-12 stand partly allowed.

10. Since the facts in appeal filed by the assessee for AY 2012-13 in ITA no. 1159/Mum/2018 are similar to facts in ITA no. 1158/Mum/2018 for AY 2011-12, our aforesaid decision for AY 2011-12 in this order shall apply mutatis mutandis to appeal filed by the assessee for AY 2012-13 . We order accordingly.

11. In the result , appeal of the assessee in ITA no. 1159/Mum/2018 for AY 2012-13 stand partly allowed.

11. In the result , both the appeals of the assessee in ITA no. 1158-59/Mum/2018 for AY 2011-12 and 2012-13 respectively stand partly allowed.

Order pronounced in the open court on 30.05.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30.05.2019 को की गई

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 30.05.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI