

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.782/M/2019
Assessment Year: 2010-11**

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| M/s. Geetanjali Space Pvt. Ltd., B-47, Shakti Dhara Society, Colony Road, Bapu Nagar, Ahmedabad, Gujarat – 382 350 PAN: AADCG2733L | Vs. | Dy. CIT CC-1(1), Room No.903, 9 th Floor, Pratishtha Bhavan, M.K. Road, Mumbai - 400020 |
| (Appellant) | | (Respondent) |

**ITA No.1969/M/2019
Assessment Year: 2010-11**

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| Dy. CIT, Central Circle -1(1), Room No.903, 9 th Floor, Pratishtha Bhavan, Old C.G.O. Bldg. (Annexe) M.K. Road, Mumbai - 400020 | Vs. | M/s. Geetanjali Space Pvt. Ltd., B-47, Shakti Dhara Society, Colony Road, Bapu Nagar, Ahmedabad, Gujarat – 382 350 PAN: AADCG2733L |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Dilip Lakhani, A.R.
Shri Jash Davda, A.R.

Revenue by : Shri Rahul Raman, D.R.

Date of Hearing : 30.04.2019

Date of Pronouncement : 31.05.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled cross appeals one by the assessee and the other by the Revenue have been preferred against the order

dated 28.01.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The grounds raised by the assessee are as under:

"1. On the facts & circumstances of the case the appellant prays that the Learned Commr. of Income Tax (Appeals) has erred in partly allowing the ground raised by the appellant challenging the additions made amounting to Rs. 30,23,00,000/- in the order passed u/s 143(3) r.w.s. 153A. The appellant prays that the order passed by Ld. Commr. of Income Tax (Appeals) confirming the order of the Learned Assessing Officer and partly confirming the additions made by concluding that incriminating material was found during the course of search in respect of GSD Trading & Financial Services Pvt. Ltd.

2. On the facts & circumstances of the case the appellant prays that, during the course of search no incriminating material is found or seized in connection with the investment in share capital of the company by GSD Trading & Financial Services Pvt. Ltd. The conclusion of Learned Commr. of Income Tax (Appeals) that in respect of GSD Trading & Financial Services Pvt. Ltd. incriminating material was found is erroneous and contrary to the facts of the case.

3. On the facts & circumstances of the case the appellant prays that in the order passed by Ld. Commr. of Income Tax (Appeals) that there is a reference to incriminating material found during the course of search in respect of the transaction of investment by GSD Trading & Financial Services Pvt. Ltd., is bad in law. In view of this the appellant prays that the order passed by Ld. Commr. of Income Tax (Appeals) by invoking the provisions of Section 153A and confirming the additions made of Rs. 7,91,00,000/- is not justified and be deleted.

4. On the facts & circumstances of the case the appellant prays that during the original assessment proceedings the complete information about the share capital received from GSD Trading & Financial Pvt. Ltd. amounting to Rs. 7,91,00,000/- was submitted and the Ld. Assessing Officer has passed the order u/s 143(3) and has accepted the claim of the appellant after due verification. No new material is found during the course of search as regards the share capital issued by the appellant. In view of this the appellant prays that that the order passed by Ld. Commr. of Income Tax (Appeals) by invoking the provisions of Section 153A and making addition of Rs.7,91,00,000/- may be cancelled.

5. On the facts & circumstances of the case the appellant prays that the invocation of the provisions of Section 153A and making addition while passing the order u/s. 143(3) rws 153A amounting to Rs. 7,91,00,000/- in respect of investments made by GSD Trading & Financial Pvt. Ltd. in the share capital of the company be deleted.

Without prejudice to grounds 1 to 5:

6. On the facts & circumstances of the case the Ld. Commr. of Income Tax (Appeals) has erred in confirming the addition of Rs.7,91,00,000/- u/s 68 of Income Tax Act, 1961 in respect of the investment by GSD Trading & Financial Pvt. Ltd. in the share capital of the appdant company. The appellant prays that the Ld. Commr. of Income Tax (Appeals) has erroneously concluded that the provisions of Section 68 are applicable to the amount received by the appellant as share capital. The appellant prays that the addition made by the Ld. Commr. of Income Tax (Appeals) may be deleted.

7. On the facts & circumstances of the case the appellant prays that the Ld. Commr. of Income Tax (Appeals) has relied upon the statement of Mr. Rajesh Daftary without correctly interpreting the answers given by him and also without giving opportunity of cross examination. The order passed by the Ld. Commr. of Income Tax (Appeals) is against the principles of natural justice and the appellant prays that the addition made by the Ld. Commr. of Income Tax (Appeals) amounting to Rs.7,91,00,000/- may be deleted.

8. On the facts & circumstances of the case and on erroneous assumptions the Ld. Commr. of Income Tax (Appeals) has erred in concluding that the appellant has failed to prove the credit worthiness of the investors as well as genuineness of the transactions. The Ld. Commr. of

Income Tax (Appeals) has ignored the evidences, proof and the material produced before him. The appellant prays that addition made by the Ld. Commr. of Income Tax (Appeals), amounting to Rs.7,91,00,000/-, based on such erroneous conclusion may be deleted.

9. On the facts & circumstances of the case the appellant prays that the appellant with the evidences and explanation has established the identity, credit worthiness and genuineness of the transactions and the claim of the appellant may be accepted and addition made by the Ld. Commr. of Income Tax (Appeals) by invoking the provisions of Section 68, amounting to Rs.7,91,00,000/- may be deleted.

10. On the facts & circumstances of the case the appellant prays that the amount received towards share capital is in the nature of capital receipt and the provisions of Section 68 cannot be invoked while computing the total income of the appellant. The appellant prays that the addition made by the Ld. Commr. of Income Tax (Appeals) by invoking the provisions of Section 68 amounting to Rs.7,91,00,000/- may be deleted.

11. The Ld. Commr. of Income Tax (Appeals) has erred in confirming the levy of interest u/s 234B. The appellant denies the liability of payment of interest u/s 234B. On the facts & circumstances of the case the appellant submit that levy of interest u/s 234B is not justified and be deleted.

12. The appellant craves leave to add / withdraw or amend any ground(s) of appeal at the time of hearing.”

3. Whereas the ground raised by the Revenue is as under:

“Whether on the facts and circumstances of the case, the CIT(A) was right in giving relief to the extent of Rs.22.32 crores being additions made u/s. 68 of I.T. Act, 1961, though the creditworthiness and genuineness of the parties from whom share application money was received were not proved.”

4. The facts in brief are that the assessee is a Pvt. Ltd. company and is carrying on the business of real estate development. The assessee filed original return of income under section 139(1) of the Act on 15.10.2010. The case of the assessee was selected for scrutiny and statutory notice under section 143(2) of the Act dated 26.08.2011 was issued and duly served upon the assessee and thereafter the assessment was framed under section 143(3) of the Act vide order dated 18.03.2013. During the financial year, the assessee had issued 2418400 equity shares of face value of Rs.10/- at a premium of Rs.115/- to 16 entities and Rs.2,41,84,000/- were credited to the share capital account and Rs. 27,81,16,000/- were credited to share premium account which were reflected in the balance sheet of the assessee as on 31.03.2010. During the assessment proceedings, the AO raised various queries qua the share capital

issue which were responded to by the assessee . The AO also issued notices under section 133(6) of the Act to all the 16 parties who subscribed to the share capital of the assessee which were complied with by the said parties by filing the complete details confirming the investments by giving copy of PAN number, bank statements, ITRs and financial statement etc. The AO had enquired about the basis of issue of shares at premium , the shareholdings pattern as on 31.3.2010 and also the status of shareholdings as on the date of issue of notice u/s 142(1) of the Act. After review of all the materials , the AO had passed the assessment order u/s 143(3) accepting the contentions and claims of the assessee. A search action under section 132 of the Act was conducted at the office premises of the assessee situated at B/47, Shakti Dhara Society Colony Road, Bapu Nagar, Ahmedabad. The search commenced on 28.01.2015 which was finally concluded on 27.03.2015. Thereafter, notice under section 153A of the Act was issued on 28.07.2016 which was served on the assessee on 05.08.2016. The assessee complied with the said notice by filing a return of income on 26.08.2016 declaring an income of Rs.20,853/- which was similar to the income declared in the return filed under section 139(1) of the Act. During the course of search, no incriminating material with regard to issue of share capital or investors was found or seized as is clear from the copies of panchnamas placed at page Nos.20-21 and 22-25 of the paper book respectively. In these panchnamas there was no reference to finding of any material relating to share capital/investors and on page No.24 there is a reference to certain loose papers. However, none of them were incriminating and relating to the

issue of share capital. The AO on the basis of search operation observed that assessee had issued the share capital consisting of 24,18,400 equity shares of face value of Rs.10/- at Rs.115/- to 16 parties. The AO also noted that in the same year, the assessee allotted 14,77,600 shares to Gajipara family/Patel family at par. The AO noted that in the immediately succeeding assessment year i.e. 2011-12, the equity shares issued at a premium were purchased by two companies M/s. Sheenathji Organiser P. Ltd. & M/s. Shantam Stock Trading Pvt. Ltd. which were under the control by Gajipara family at a paltry sum of Rs.5/- per share. Thus the AO found that the share was initially issued to 16 parties at a premium of Rs.115/- per share and thereafter bought back by two companies belonging to the promoters at a very small sum of Rs.5 per share. Thus the AO came to the conclusion that promoter group has ploughed back its undisclosed income in the company and has also ensured to keep control of the buyers companies entirely within the group company. The AO also noted that after search, a survey action under section 133A of the Act was conducted in the case of M/s. GSD Trading and Financial Services Pvt Ltd, Arihant Shramjivi Society, Dhebar Road, Opp. Andh Mahila Vikasgar, Rajkot, Gujrat and detailed statement of Shri Rajesh Daftary, present Director of the company was recorded. The AO noted that during the course of survey Shri Rajesh Daftary could not justify the investments in assessee company at such a high premium of Rs.115/- per share and thus came to the conclusion that Shri Rajesh Daftary and Shri Prakash Bagrecha the erstwhile director of the company was engaged in the activity of providing accommodation entries in the garb of share capital/share

premium and unsecured loans through a number of companies. The AO, concluded that the assessee has not proved the genuineness and creditworthiness of the subscribers/investors satisfactorily and issued a show cause notice calling upon the assessee to furnish complete details of share holdings in all these assessment years as mentioned in the notice showing details of allotment, rate of allotment, number of shares allotted, complete names and addresses of the shareholders along with rates at which share were allotted to the shareholders/investors. Thereafter, the assessee filed various replies on 14.11.2016, 28.11.2016, 03.12.2016 replying all queries raised by the AO. Before the AO it was also contended that as no incriminating material regarding the issue of shares was found, no addition can be made in the case of completed assessments. The AO did not deal with this issue in the assessment order. Besides the AO has not issued a single notice or letter to any of the 16 parties during 153A proceedings. The AO after taking into consideration the submissions and replies of the assessee found the same to be not acceptable. According to the AO, the assessee has failed to prove the genuineness and creditworthiness of 16 parties from whom the assessee had raised Rs.30,23,00,000/- by way of share capital and share premium, the details whereof are given on page No.14 to 17 of the assessment order. According to the AO the assessee has failed to prove as to how the shares were issued at a premium of Rs.115/- per share when the company was not having any substantial business to justify the charging of premium and ultimately the entire amount of Rs.30,23,00,000/- was added to the income of the assessee as unexplained cash credit under

section 68 of the Act by framing assessment under section 143(3) read with section 153A vide order dated 27.12.2016.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by deleting the addition to the tune of Rs.22,32,00,000/- by holding that the addition can not be made de hors incriminating material seized during the year qua said share capital/share premium raised by the assessee from 15 parties while the Ld. CIT(A) sustained the addition to the extent of Rs.7,91,00,000/- by treating the statement of Shri Rajesh Daftary as incriminating material with respect to investment made by M/s. GSD Trading and Financial Services Pvt. Ltd. by observing and holding as under:

“17.6 I have noted that the AO had not brought any new material on record as a consequence of the search operation regarding the valuation of shares or the change in share-holding, over and above what had already been placed by the Appellant Company before the AO in the original assessment proceeding concluded before the search operation. Since, the details of the change in shareholding were already part of the assessment record and had been duly verified by the AO in the original assessment proceedings, before the search operation was conducted on the Appellant Company, the same can't be construed as an incriminating material for the purposes of assessment u/s 153A of the Act.

Present Case, a Non-Abated Assessment

18.0 In this case, a search and seizure operation was conducted u/s 132 of the Act at the office premises of the Appellant Company situated at B/47, Shakti Dhara Society, Thakkarbapa Nagar, Ahmedabad on 28.01.2015. The appellant had filed the original return of income u/s 139(1) of the Act on 15.10.2010, declaring a total income of Rs. 20.850/-. The case was picked up for scrutiny and an assessment order u/s 143(3) of the Act was passed on 18.03.2013 on 3,88,650/-.

18.1 Thus, before the search operation was conducted on the Appellant Company on 28.01.2015, the assessment order for the current Asstt. Year viz. A.Y. 2010-11 was already completed by the AO. Hence, the assessment in the present case was already completed and concluded, as on the date of the search and in the absence of any pendency, it didn't abate.

No Incriminating Material found during search operation

19.0 In this case, the search operation was conducted by the DDIT(Inv.) Unit -IV(2), Thane on the Appellant Company on 28th January, 2015. The premises of the Appellant Company, namely B/47, Shakti Dhara Society, Thakkarbapa Nagar, Ahmedabad was also covered vide warrant No. PN/ Addl.DIT/ Inv/ Kalyan/ 240/05.01.2015.

19.1 During the course of search operation, no incriminating material relating to the share capital / share premium raised from various parties were found / seized. The Appellant Company had been categorical in stating that during the course of search no document was found indicating the non-genuine nature of the share capital / share premium. To buttress this argument, the copies of the Panchnama dated 28th January, 2015 had also been filed by the Appellant company, which are placed at Page 254 to 256 of the Paper Book (Part-1) filed during the course of the appellate proceedings.

19.2 I have gone through the various Panchnamas drawn in the name of the Appellant Company, list of the books of accounts and other material seized during the course of the search operation. I am constrained to note that there is no reference to the share capital/share premium in any of the said seized documents. This particular observation is further reinforced by the fact that even in the show-cause notice dated 23.11.2016 issued by the Assessing Officer, during the course of proceedings u/s. 153A of the Act, there is no reference to any seized material in relation to the issuance of shares. Even the assessment order passed by the AO u/s 153A r.w.s. 143(3) of the Act doesn't refer to any incriminating material found / seized, during the course of search operation. These facts clearly show that the contention of the appellant that no incriminating material was found during the course of search operation conducted on the Appellant Company is true.

19.3 The Appellant Company had vehemently contended that during the course of assessment proceedings u/s. 153A of the Act, vide letter dated 14th November, 2016, in Para 4, it had been clearly stated by the appellant before the AO that during the course of search operation u/s. 132 of the Act, no incriminating material or documents were found regarding the subscription of share capital / share premium. Thus, the issue of no incriminating material being found during the course of search operation had been duly brought to the notice of the Assessing Officer, but while passing the assessment order u/s 153A r.w.s. 143(3) of the Act, the said contention of the Appellant had been ignored by the AO and had not been rebutted at all. It had also been vehemently argued that in the assessment order passed u/s 143(3) r.w.s. 153A of the Act, there is not a whisper about any material being found or seized during the course of search in relation to the share capital / share premium.

19.4 In these facts and circumstances, the Appellant Company had contended that in the case of a completed assessment, the Assessing Officer can make addition u/s. 153A r.w.s. 143(3) of the Act, by only relying upon the incriminating material found during the course of search. Hence, if no incriminating material had been found as a result of the search operation conducted u/s 132 of the Act, the conclusions drawn and the decisions made in the original assessment order needs to be endorsed. It has also been stated by the Appellant Company that the Assessing Officer cannot

review his own judgment in proceedings U/s. 153A of the Act, unless and until there is an incriminating material found during the course of search.

Scope of Section 153 A - Judicial View

20.0 For the proposition that while framing an assessment order u/s 153A of the Act in the case of a completed assessment, the AO can only rely upon the incriminating material found during the course of search, the Appellant Company had relied on 18 case laws. These case laws had been filed in a compilation titled "Paper Book of Case Laws" containing Pages 1 to 259. The details of the case laws relied upon by the Appellant company are tabulated, as under:-

| <i>Sr. No.</i> | <i>Case Law</i> | <i>Citation</i> | <i>Courts</i> | <i>Page No.</i> |
|----------------|---|--|------------------------------|-----------------|
| 1. | <i>Ameeta Mehra Vs Additional Director of Income-tax</i> | <i>395 ITR 185(2017)</i> | <i>Delhi High Court</i> | <i>1-13</i> |
| 2. | <i>Anil Mahavir Gupta Vs Asst. Commissioner of Income-tax</i> | <i>182TTJ265 (2017)</i> | <i>Mumbai ITAT</i> | <i>14-39</i> |
| 3. | <i>Balasore Alloys Lts. Vs Asst. Commissioner of Income-tax</i> | <i>ITA No.1166/621/667/ Mum/2015</i> | <i>Mumbai ITAT</i> | <i>40-56</i> |
| 4. | <i>Commissioner Of Income-tax-II, Thane Vs continental Warehousing Corporation (Nhava Sheva) Ltd.</i> | <i>374 ITR 645</i> | <i>Bombay High court</i> | <i>57-84</i> |
| 5. | <i>M/s Dalwala</i> | <i>ITA no. 5932 to</i> | <i>Mumbai</i> | <i>85-99</i> |

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|-----|---|------------------------------------|--------------------------|----------------|
| | <i>Securities Ltd. V/s Dy. Commissioner of Income-tax</i> | <i>5934/M/2009</i> | <i>ITAT</i> | |
| 6. | <i>Commissioner of Income-tax-20 Vs Shri Deepak Kumar Agarwal</i> | <i>IT A no. 1709 of 2014(2017)</i> | <i>Bombay High court</i> | <i>100-115</i> |
| 7 | <i>PCIT Vs Desai Construction Private Limited</i> | <i>387 ITR 552 (201 7)</i> | <i>Gujrat High Court</i> | <i>116-122</i> |
| | | | | |
| 8. | <i>Gurinaers inghBawa VsAsst. Commr, Of Income</i> | <i>150ITD40</i> | <i>Mumbai IT AT</i> | <i>123-129</i> |
| 9. | <i>Jai Lokenath Oil Extractions (P) Ltd Vs Deputy Commr. Of Income-tax, Central Circle - XXVII, Kolkata</i> | <i>83 Taxmann.com 369(2017)</i> | <i>Kolkata ITAT</i> | <i>130-138</i> |
| 10. | <i>Asst. Commr. Of Income Vs Jayendra P. Jhaveri.</i> | <i>65SOT118</i> | <i>Mumbai ITAT</i> | <i>139-146</i> |
| 11. | <i>Commr. Of Income-tax Vs Kabul Chawla</i> | <i>380ITR573</i> | <i>Delhi High Court</i> | <i>147-159</i> |
| 12. | <i>PCIT Vs Meeta Gutgutia</i> | <i>395 ITR 526(2017)</i> | <i>Delhi High Conn</i> | <i>160-186</i> |
| 13. | <i>PCIT - 18 Vs Ms. Lata jain</i> | <i>384 ITR 543 (201 7)</i> | <i>Delhi High Court</i> | <i>187-188</i> |
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|-----|---|----------------------------------|---------------------------------|-----------------------|
| 14. | <i>Commr. Of Income-tax Vs. MurliAgro Products Ltd.</i> | <i>49 Taxmann.com 172</i> | <i>Bombay High Court</i> | <i>189-194</i> |
| 15. | <i>Nikki Agarwal vs. Asst. Commissioner of Income Tax</i> | <i>ITA No.879/M/2011</i> | <i>Mumbai ITAT</i> | <i>195-212</i> |
| 16. | <i>PCIT-4 Vs. Saumya Construction (P) Ltd.</i> | 387 ITR 529 (2017) | Gujrat High court | 213-227 |
| 17. | <i>Smt. Yamini Agarwal vs. Deputy Commr. Of Income-tax, Central Circle-3(3), Kolkata</i> | 83 Taxmann.com 209 (2017) | <i>Kolkata ITAT</i> | <i>228-240</i> |
| 18. | <i>Dayawanti Vs. Commissioner of Income-tax</i> | 84 Taxmann.com 296 | Supreme Court | 241-259 |

20.1 It is pertinent to note here that the Section 153A(1) of the Act starts with a non-obstante clause and disregards the normal provisions of the assessment prescribed under the Act in the case of a search operation carried out u/s 132 of the Act. By virtue of clause (a) of section 153A(1), the AO is required to issue notice requiring the assessee to file the return of income for the six assessment years prior to date of search. The further consequences of a search carried out u/s 132 are mentioned in clause {b), whereby the A.O. is required to assess or reassess the total income of those six years. As such, the AO has no option but to make an assessment in respect of all the concerned six years. He has to bring the proceedings to a logical conclusion by making an assessment of the returns filed for all the six years.

20.2 Having said so, the next question, which needs to be addressed is - what issues can be taken up for assessment u/s 153A of the Act, in a case where at the time of the search operation, the original assessment was already completed,

20.3 In such a scenario, the second proviso to Section 153A(1) specifies that any assessment or reassessment falling within the period of six assessment years pending on the date of initiation of search under section 132 or requisition of books under section 132A as the case may be, shall abate. In this regard, the relevant proviso is reproduced below:-

S. 153A. ".....Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this subsection pending on the date of initiation of the search under *section*

132 or making of requisition under section 132A, as the case may be, shall abate".

20.4 Further, in Para 65.5 of the CBDT Circular No. 7/2003 dated 05.09.2003 giving explanatory notes on the provisions relating to direct taxes in the Finance Act, 2003, the CBDT has clarified as under:-

"65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years vending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. It is clarified that the appeal revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

20.5 The word 'abate' means to stop or to put an end. The object of the above proviso is clearly to eliminate the multiplicity of assessment or reassessment proceedings, which are pending on the date of search or requisition of records, as the case may be, and which are now required to be undertaken afresh in view of section 153A of the Act.

20.6 The word 'pending' occurring in the second proviso to Section 153A of the Act, is also significant. It is qualified by the words '*on the date of initiation of the search*', which makes it clear that on initiation of the proceedings u/s. 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under section 132A of the Act, stands abated. As a corollary, the assessments / reassessments already completed and falling within the six years period referred to in section 153A of the Act are to be considered final and cannot be altered.

20.7 The Special Bench of Hon'ble Mumbai 1TAT in the case of *All Cargo Global Logistics Ltd vs DCIT(2012) 147 TTJ 0513 (SB) : (2012) 74 DTK 0089 (SB) : (2012) 137 JTD 0287 (SB) : (2012) 18 ITR 0106 (SB)* has observed as under:

"52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall"

and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter.

20.8 It has been categorically observed in the above mentioned judgment that only the pending proceedings, as on the date of search shall abate meaning thereby that the completed proceedings attains finality.

20.9 The next question which needs to be answered is - What is the scope of assessment/ reassessment under the provisions of section 153A of the Act for the assessments/reassessments which have abated and those which have attained finality ?

20.10 The use of the phrase '*so far as may be*' in section 153A(1)(a) implies that all the provisions of the Act as contained under Chapter XIV prescribing the procedure for assessment or under any other Chapter of the Act with respect to the return of income filed U/s. 139 shall be applicable to the returns filed pursuant to notice issued U/s. 153A/153C of the Act. The applicability of those provisions which are inconsistent with the provisions of section 153A are restricted by the use of the phrase '*so far as may be*'.

20.11 As such, for the assessments proceedings which are abated, the AO gets all the powers prescribed under the law, as if the assessment is being made for the first time. Thus, if the assessment is made for the first time, all the provisions of assessment, relevant for making of an assessment u/s. 143(3) shall be applicable. In the case of re-assessment, the principles pertaining to assessment u/s 147/148 of the Act shall become applicable.

20.12 As far as the assessments/reassessments, which do not abate or which have attained finality, the principle of time barring rule comes into play. The assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed, only in a case, where incriminating seized material is found, during the course of the search operation u/s 132 of the Act. Further, as observed above, the objective behind the second proviso to section 153A(1) is to eliminate multiplicity of proceedings. In such cases, it is only the seized material and undisclosed income emanating out of the search proceedings, which is relevant for the purpose of assessment.

20.13 The Hon'ble Bombay High Court in the case of ***CJT vs. Continental Warehousing Corporation*** [374 ITR 645], has held that when the assessment has attained finality, then the AO while passing the independent assessment order u/s 153A of the Act can't disturb the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s 132 of the Act establish that the reliefs granted under the finalized assessment/reassessment were contrary to the facts unearthed during the course of search operation.

20.14 In the case referred, *supra*, the Hon'ble Bombay High Court has upheld the following observations of Hon'ble ITAT:-

"i. On a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of the proceedings under Section 153A, it is only the assessment / reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessments/reassessments already finalized for those assessment years covered under Section 153A of the Act.

ii. By a circular No. 8 of 2003 dated 18-9-2003 (See 263 JTR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/ reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate.

iii. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A(1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1)."

20.15 A similar view has been taken by the Hon'ble Bombay High Court (Nagpur Bench) in case of *Murli Agro Products Ltd Vs. CIT 49 Taxman.com 172in ITA No 36 of 2009*, wherein it has been held that on initiation of proceedings U/s. 153A, it is only the assessment proceedings that are pending on the date of conducting search U/s. 132 or making requisition U/s. 132A of the Act that stand abated and not the assessments already finalized. The relevant excerpts of the judgment are reproduced hereunder:-

"9. What Section 153A contemplates is that, notwithstanding the regular provisions for assessment/ reassessment contained in the IT Act, where search is conducted under Section 132 or requisition is made under Section 132A on or after 31/5/2003 in the case of any person, the Assessing Officer shall issue notice to such person requiring him to furnish return of income within the time stipulated therein, in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made and thereafter assess or reassess the total income for those assessment years. The second proviso to Section 153A provides for abatement of assessment/reassessment proceedings which are pending on the date of search/requisition. Section 153A(2) provides that when the assessment made under Section 153A(1) is

annulled, the assessment or reassessment that stood abated shall stand revived.

10. Thus on a plain reading of Section 153A of the Income-tax Act, it becomes clear that on initiation of proceedings under Section 153A, it is only the assessment/reassessment proceedings that are pending on the date of conducting search under Section 132 or making requisition under Section 132A of the Act stand abated and not the assessment/reassessments already finalized for those assessment years covered under Section 153A of the Act. By a circular No.8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings under Section 153A, the proceedings pending in appeal, revision or rectification proceedings against finalized assessment/reassessment shall not abate. It is only because, the finalized assessments/reassessments do not abate, the appeal, revision or rectification pending against finalized assessments/reassessments would not abate. Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalized for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted. Similarly on annulment of assessment made under Section 153A(1) what stands revived is the pending assessment/reassessment proceedings which stood abated as per section 153A(1).

11. In the present case, as contended by Shri Mani, learned counsel for the assessee, the assessment for the assessment year 1998-99 was finalized on 29-12-2000 and search was conducted thereafter on 3-12-2003. Therefore, in the facts of the present case, initiation of proceedings under Section 153A would not affect the assessment finalized on 29-12-2000.

12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalized assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings which would show that the relief under Section 80 HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80 HHC

deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act."

20.16 In the above mentioned judgment, the Hon'ble Bombay High Court has held that no addition can be made in respect of assessments which have become final, if no incriminating material is found during the course of search. It has been held that once the original assessment has attained finality, then the Assessing Officer while passing the assessment order U/s. 153A r.w.s. 143(3) cannot disturb the assessment/ reassessment order which had attained finality, unless the material gathered during the course of the search proceedings establishes something contrary to it. If there is nothing on record to suggest that any incriminating material was unearthed during the search, the AO, while passing order U/s. 153A r.w.s. 143(3) cannot disturb the original assessment order passed U/s. 143(3) of the Act.

20.17 On this issue the Special Bench of Hon'ble Mumbai HAT in the case of *All Cargo Global Logistics Ltd vs DCJT(2012) 147 TTJ 0513 (SB) : (2012) 74 DTR 0089 (SB) : (2012) 137 ITD 0287 (SB) : (2012) 18 ITR 0106 (SB)* has also observed as under:-

"58. Thus, question No.1 before us is answered as under:

a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately;

b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material which in the context of relevant provisions means - (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search."

20.18 The Hon'ble Mumbai Tribunal in the case of *Guruprerana Enterprises v. ACIT (57 DTR 465)*, has held that only the assessments pending before the AO for completion shall abate u/s. 153A and the issues decided in the assessment cannot be reconsidered and re-adjudicated, unless there is some fresh material found during the course of search in relation to such points.

20.19 The Hon'ble Ahmedabad Tribunal in the case of *Meghmani Organics Ltd. vs. DCIT (129 TTJ 255)[2010]*, has held that where there are no pending assessments as on the date of the search then the completed assessment shall rule the field and the income assessed there under cannot be disturbed.

20.20 The Visakhapatnam Bench of the Tribunal, in the case of *KGR Exports vs. JCIT (ITA No. 494/V/2007)*, has held as under :-

"Since section 153A overrides provisions of section 147 and 148, can it be the intention of the legislature to give enormous powers on the Assessing Officer for opening a completed assessment time and again? In our

opinion, the legal restrictions and conditions prescribed for reopening the assessment still applies to the cases reopened u/s 153A. The intention of the legislature could not have been otherwise lest it should lead to unnecessary harassment upon the assessees. Though the completed assessments can be reopened under Section 153, the issues which have already been concluded in the earlier assessments should not be subject matter of reassessment unless some incriminating material concerning those issues were found during the course of search. Otherwise, in the concluded assessments which have been reopened u/s 153A, the assessing officer should restrict himself with the additions arising out of the incriminating materials found during the course of search."

20.21 In the case of *Viraj Forgings Ltd. vs. DOT [ITA No. 1948/M/2008]* and *Viraj Impoexpo Ltd. vs. DOT in [ITA No. 1949/M/2008]*, the Hon'ble Mumbai HAT has held as follows:-

"4.2 We have perused the records and considered the rival contentions carefully. The legal dispute raised in this ground is whether issues considered and decided in the regular assessment can be reconsidered in an assessment proceedings initiated under section 153A, In case of search, the AO under section 153A is empowered to issue notices to the searched person requiring him to furnish the return of income in respect of each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Further the second proviso to section 153A also provides that assessment or re-assessment relating to any assessment year falling within the period of six assessment years referred to above pending on the date of initiation of search under section 132 or making of requisition under section 132A as the case may be shall abate. Normally, the assessments which are pending in appeal or in revision cannot be said to be complete and therefore assessment/re-assessment pending in appeal/revision could also to be considered as pending on the date of search but the CBDT in the circular No.7 of 2003 dated 5.9.2003 has clarified that appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 will not abate. In other words, only the assessments pending before the Assessing Officer for completion shall abate. In this case there is no dispute that on the date of search, the assessment in the case of assessee had already been completed by the AO and in terms of the circular of the CBDT, the regular assessment made in case of the assessee will not abate. Therefore in our view the points/ issues decided in the assessment cannot be re-considered in the proceedings under section 153A unless there is some fresh material found during the course of search in relation to such points/issues."

20.22 The Delhi Tribunal in the case of *Sanjay Aggarwal v, DOT (47 taxmann.com 210)* has after considering the decision of *All Cargo Global Logistics Ltd.* held, as under:-

"In view of provisions of section 153A, in respect of assessment years for which original assessments have already been completed on date of search, total income shall be determined by restricting additions only to those which flow from incriminating material found during course of search; So far as assessments pending on date of search are concerned, those assessments would abate in terms of second proviso to section 153A(1) and total income shall be computed afresh uninfluenced by fact whether or not there is any incriminating material found in course of search."

20.23 The Hon'ble Delhi High Court in the case of *CIT vs. RRJ Securities [2016] 380 ITR 612*, has clearly held that in the absence of any incriminating material, the concluded assessments could not be interfered U/s. 153A of the Act. In the facts of that case, it was held that the documents seized have no reference to the income of the assessee for relevant assessment year and, thus, the AO has no jurisdiction to make the re-assessment U/s. 153A.

20.24 The Hon'ble Delhi High Court in the case of *Pr. CIT vs. Laia Jain (ITA 274 and 276 of 2016)*, considering the ratio laid down in the case of *CIT vs. Kabul Chawla [2016] 380 ITR 573*, has held that section 153A assessment cannot be made for the assessment years in which incriminating material is not recovered even though incriminating material may be recovered for other years in the block of 6 years.

20.25 The Hon'ble Kolkata Tribunal in the case of *LMJ International Ltd. vs. DCIT (119 TTJ 214)* has observed as under:

"Where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be disturbed; items of regular assessment cannot be added back in the proceeding under s. 153C when no indiscriminating documents were found in respect of the disallowed amounts in the search proceedings".

20.26 In case of *MGF Automobiles Ltd. vs. ACIT (ITA No.4212/Del/2011)*, the Hon'ble Delhi IT AT observed as under:-

"there are three possible circumstances that emerge on the date of initiation of search u/s 132(1): (a) proceedings are pending; (b) proceedings are not pending but some incriminating material found in the course of search indicating undisclosed income and/or assets and (c) proceedings are not pending and no incriminating material has been found. In circumstance (a), since the proceedings are pending, they are abated and the AO gets a free hand to make the assessment. In circumstance (b), there is no question of abatement as the proceedings are not pending and the AO has to pass an assessment order u/s 153A to assess the undisclosed income. In circumstance (c), the AO has to pass an

assessment order though as there is no incriminating material no income can be assessed. On facts, as the assessments were completed and there was no incriminating material found during the search, the AO was not entitled to make any addition."

20.27 In the case of *Guruinder Singh Bawa v DCIT, (2012) (28 taxmann.com 328)*, the Hon'ble Mumbai IT AT has held that where in search assessment under section 15 3A, all assessments pertaining to six immediately preceding assessment years were complete, the AO can't make any addition there-under, unless there is any incriminating material recovered during search.

20.28 The Hon'ble Delhi High Court in a recent decision in the case of *Pr. CIT vs. Meeta Gutgutia [2017-TIOL-1000HC-DEL-IT]*, has affirmed the view that no addition can be made for a particular assessment year without there being an incriminating material that relates to the said assessment year which would justify such an addition. The Hon'ble Supreme Court in the case of *Principal Commissioner of Income-tax, Central IT, New Delhi Vs. Meeta Gutgutia [2018] 96 taxmann.com 468 (SC)* has dismissed the SLP in the case and thus upheld the decision of Hon'ble Delhi High Court that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year.

20.29 The Memorandum explaining the provisions of Finance Bill 2003, stated I that the then existing provisions contained in Chapter XIVB relating to block assessment prescribing single assessment of undisclosed income for block period, were introduced for avoidance of disputes, early finalization of such, assessments and reduction in multiplicity of proceedings. However, there were parallel proceedings carried on namely regular assessment proceedings as well as block assessments for undisclosed income resulting into multiplicity of proceedings. In order to rectify this anomaly, a scheme of single assessment was introduced by inserting section 153A to Section 153D in the IT Act.

20.30 The purpose behind the introduction of section 153A/153C of the Act will get defeated, if the AO is allowed to assess/reassess the total income again in respect of completed assessments, in contradiction with the second proviso, except for the undisclosed income on the basis of incriminating material. If the view of the A.O. is accepted then the same will not only multiply assessment proceedings, but will also multiply the appellate proceedings and create fictitious demands.

20.31 In view of the aforesaid detailed discussion and judicial precedents, I am of the view that assessments which are completed u/s 143(3) do not abate. Further, proceedings u/s 153A of the Act does not empower the AO to re-adjudicate the same issues again, unless fresh incriminating material is found during the course of search. The Assessing Authority cannot disturb the assessment order which has attained finality, unless the material

gathered during the course of search, establishes that the income computed in the finalised assessment was not in accordance with the facts unearthed during the course of search.

20.32 To conclude, in the case of completed assessments, where no incriminating material is found during the course of search, the assessment u/s. 153A of the Act is to be made on originally assessed income and no addition or disallowance can be made *de hors* the incriminating evidences recovered during the course of search.

Whole Share Capital added by generalizing the statement of Mr. Raiesh Daftary

21.0 The AO had in Para 3.6 of the assessment order passed u/s 153A of the Act arrived at certain conclusions and since, the same goes to the root of the matter, it is reproduced hereunder:-

"3.6.....The survey u/s 133A conducted at one of such allottees, i.e. M/s GSD Trading & Financial Services Pvt. Ltd., wherein detailed statement Mr. Rajesh Daftary was recorded, proved that they were engaged in the activity of providing accommodation entries in the garb of share capital/ share premium and unsecured loan etc. through a number of companies. Such companies need not be directly owned by such accommodation entry providers, as many a times they keep benamidars at the front while manage whole their affairs personally"

21.1 The above observations of the AO clearly reveals that the AO had in his possession only the statement of Shri Rajesh Daftary and that also in relation to one of the share allottee company namely, M/s GSD Trading & Financial Services Pvt. Ltd.. Though the statement of Shri Rajesh Daftary relate to only one of the share subscriber, namely M/s GSD Trading & Financial Services Pvt. Ltd., but the A.O. had generalized the statement to all the share subscribers and held the entire share capital to be bogus in the proceedings u/s 153A of the Act.

21.2 Thus, the AO had without bringing any material on record concluded in a vague and generalized manner in Para 3.6 of the assessment order passed u/s 153A of the Act that the entire share capital is in the nature of accommodation entries, which is both factually and legally wrong. I am of the considered opinion that these conclusions drawn by the AO are purely based on conjectures and surmises and are not based on any cogent material or tangible evidence on record.

21.3 Another vague and unsubstantiated observation made by the AO is that the investing companies need not be directly owned by such accommodation entry providers, as many a times they keep benamidars at the front. The

assessment order fails to throw any light on several vital queries viz. Which companies are benami concerns and who are the benamidars ? Who are the dummy owners of such companies ? What is the evidence on record to hold them to be dummy ? Who are the real owners of the said benami companies ?

21.4 Further, the AO had in Para 1.8 of the show-cause notice issued to the Appellant Company stated that Shri. Prakash Bagrecha was also engaged in the activity of providing accommodation entries, without bringing any material on record. There is no whisper in the assessment order that any statement of Shri Prakash Bagrecha was ever recorded. The assessment order is absolutely silent on the issue as how and why Shri Prakash Bagrecha should be treated as an entry operator. It also needs to be emphasized here that the assessment order had miserably failed to bring on record the details of alleged entry operating concerns run by Shri Prakash Bagrecha. Further, it is also not clear as to which are the alleged entry operating concerns run by Shri Prakash Bagrecha, who had invested in the share capital / share premium of the Appellant Company.

21.5 Mere suspicion, however strong or probable it maybe, is no effective substitute for the legal proof required to substantiate a charge, which the learned AO has failed to furnish. There is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule helps to maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of a dispassionate judicial enquiry based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of evidence brought on record. Reliance is placed on *Ashish Batham v. State of MP, AIR 2002 SC 3206*.

21.6 The act of raising of presumption itself does not amount to proof. Presumption however strong, cannot take the place of evidence. Reliance is placed on the decisions of *Pooja Bhatt 66 TTJ (Mum) 817 & D. M. Kamani (HUF) 65 TTJ (Pat) 504*. It is well settled by the Hon'ble Supreme Court in more than one decision that courts have to be watchful and avoid the danger of suspicion to take place of legal proof for some time, unconsciously it may happen to be a short step between moral certainty and legal proof. In this regard, reference may be made to the judgment in the case of *Narendra Singh v. State of MP, 2004 SCC 1893*.

21.7 It is well settled proposition of law that the court should safeguard itself against the danger of basing its conclusions on suspicions, howsoever strong they may be. It is equally well settled that the Courts decision must rest not upon suspicion but upon legal grounds established by legal testimony. Mere suspicion, however strong, cannot take the place of proof. Reliance is placed upon *State v. Gulzari Lal Tandon AIR 1979 S.C. 1382 and JA, Naidu v. State of Maharashtra AIR 1979 S.C, 1537*.

21.8 The above stated principles of the Indian Evidence Act are equally applicable and have been applied with full force in Income-tax proceedings. The Hon'ble Supreme Court in *Chuharmal v. CIT [1988] 172-ITR-250* stated:-

"what was meant by saying that the Evidence Act did not apply to proceedings under the Income-tax Act, 1961, was that the rigour of the rules of evidence contained in the evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of invoking the principles of the Evidence Act in proceedings before them, they were prevented from doing so."

21.9 It is settled law that suspicion, howsoever, strong cannot take the place of legal proof, as has been held by the Hon'ble Supreme Court in the case of *Umacharan Shaw and Bros. v. CIT [1959] 37-ITR-271*. Further reliance is placed upon:

Krishnand v. State of Madhya Pradesh: AIR 1977 SC 796
Jayadayal Poddar v. Mst. Bibi Hazra: AIR 1974 SC 171
CIT v. K Mahim Udma [2000] 158 CTR (Ker.) 100 : [2000] 242 ITR 133 (Ker.)
Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC)
Omar Salay Mohamed Sail v. CIT [1959] 37 ITR 151 (SC)
Asstt. CIT v. Jindal Saw Pipes Ltd. [2008] 118 TTJ 228 : [2008] 11 DTR (Delhi) (Tri.) 281

21.10 The Hon'ble Supreme Court in *Dhakeshwari Cotton Mills v. CIT [1954] 26 ITR 775 at 782* observed:

"As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of Section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all There must be something more than bare suspicion to support the assessment under Section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab."

21.11 The Punjab & Haryana High Court in *CIT v. Anupam Kapoor [2008] 299 ITR 179* did not believe on the allegation:

"A cheque had been taken by the lieneficiary i.e. by paying cash equivalent to the cheque amount and the premium thereon". The Hon'ble Court at page 182 observed: There was no material before the Assessing Officer, which could have led to a conclusion that the transaction was, simpliciter a device to camouflage activities, to defraud the Revenue. No such presumption could be drawn by the Assessing Officer, merely on surmises and conjectures".

21.12 The Hon'ble Supreme Court in *Parimiseti Seetharamatnma v. CIT [1965] 57-ITR-532 at 536-537* observed: -

'By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases, in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable, because it falls within an exemption provided by the Act, lies upon the assessee'.

No Confession / Surrender of Income

22.0 A survey has been conducted on M/s GSD Trading & Financial Services Pvt. Ltd. and statement of Rajesh Daftary was recorded on 28.01.2015. Though the AO had relied very heavily on the statement of Shri Rajesh Daftary, but a perusal of the statement of Shri Rajesh Daftary reveals that there is no confession in the said statement for providing any accommodation entry to the Appellant Company. Thus, according to the Appellant Company, the contention of the AO in the assessment order that Shri Rajesh Daftary had provided accommodation entries is factually incorrect.

22.1 I have also noted that as per the data from the ROC website, it is clear that Shri. Rajesh Daftary was appointed as director on 24.06.2011 after the receipt of share application money from M/s GSD Trading & Financial Services Pvt. Ltd. on 28.02.2010 & 31.03.2010. In fact, the entire share capital and share premium had been raised by the appellant Company before 31.03.2010 and Shri. Rajesh Daftary had become a director M/s GSD Trading & Financial Services Pvt. Ltd. only later on. Hence, it had been contended that the statement of Shri Rajesh Daftary had no evidentiary value in relation to investments made by the various subscribers including M/s GSD Trading & Financial Services Pvt. Ltd..

22.2 Further, it is stated that nowhere in the statement of Shri Rajesh Daftary relied upon by the AO it had been stated by him that cheque had been given by the shareholders for subscribing the share capital/premium, in exchange of unaccounted cash. Thus, there is no confession by Shri Rajesh Daftary in his statement recorded, during the course of the survey operation. Also, I have noted that, there is neither any confession nor any surrender of income by the Appellant Company on the issue of share capital / share premium.

22.3 In-fact, I am constrained to note that no 132(4) statement is on record, wherein the Appellant Company had been confronted about the alleged share capital / share premium. Thus, during the course of the search operation conducted u/s 132 of the Act, the Appellant Company / directors / promoters had not been confronted at all with any material whatsoever regarding the so called bogus share capital / share premium.

Complete Details furnished in the Proceedings u/s 153A of the Act

23.0 During the course of the assessment proceedings u/s 153A of the Act, the Appellant Company was asked to prove the identity and credit worthiness of the subscribers and the genuineness of the transaction. The Appellant company was also show caused as to why the amount received as share capital and share premium should not be added back to the total income, as unexplained cash credit u/s 68 of the Act.

23.1 During the 153A proceedings, the Appellant Company had again furnished ledger account confirmation and bank statement of all the parties in which payments made to the Appellant Company on account of share capital / share premium are fully reflected. The Appellant Company had also furnished to the AO, copies of the Income Tax Return, Auditor's Report, Balance Sheet, Profit & Loss Account alongwith schedules etc. The Financials of all the subscribers reflected the investment made by them in the Appellant Company. The Appellant Company had also submitted that all the payments were made through banking channels. Further, it was stated that there were no cash deposits appearing in the bank statements of the share subscribers, immediately before the payments had been made to the Appellant Company. Further, the parties have substantial net worth, taxable income and high bank balances.

23.2 To summarize, it was stated that by submitting the above documentation, the Appellant Company had discharged its onus to prove the identity and credit worthiness of the subscribers and genuineness of the transaction in the proceedings u/s 153A of the Act. Therefore, it was submitted by the Appellant Company that no addition u/s 68 of the Act is warranted.

23.3 The above submissions made in the proceedings u/s 153A of the Act before the AO were also made by the Appellant Company during the course of the appellate proceedings before the undersigned.

No Investigation / Enquiries conducted by AO u/s 153A of the Act

24.0 The Appellant Company had also contended that if the AO had any doubt about the genuineness of the share capital / share premium, he should have issued fresh notices u/s 131/133(6) of the Act for investigation and verification of the same. I have taken note of the fact that during the course of the original assessment proceedings, the AO had held the share capital / share premium to be genuine, after due verification and enquiry conducted u/s 133(6) of the Act.

24.1 Now, if the AO wants to change his opinion on the issue, the least he could have done in the proceedings u/s 153A of the Act is to examine the share subscribers u/s 131 / 133(6) of the Act for satisfying himself about the nature and source of the credits, as envisaged in the provisions of section 68 of the Act. In the absence of any incriminating material in relation to the share capital / share premium and further, in the absence of any enquiry / investigation by the AO, it is wrong on the part of the AO to hold the entire share capital as bogus in a proceeding u/s 153A of the Act, overlooking the fact that it is a case of completed assessment, wherein the share capital / share premium had already been held to be genuine.

24.2 According to the appellant, the AO has failed to investigate the issue of share capital during the course of assessment proceedings u/s 153A of the Act and has added the entire share capital and share premium in a routine manner without making any effort to bring any material evidence on record.

24.3 It is the AO's duty to establish with evidences that the facts stated by the Appellant are not correct, since the law of burden is canonized in common law doctrine "*incumbit probatio qui dicit non qui negat*", i.e. burden lies upon one who alleges and not upon one who deny the existence of the fact. Nevertheless, the A.O. apart from raising suspicions about the credit worthiness of the parties based on pure assumptions has not brought on record any material to justify such suspicions and assumptions. In the instant case, the A.O. did not carry any of his doubts to a logical conclusion by converting them into hard facts on the basis of evidences during the assessment proceedings.

24.4 I have also taken note of the fact that there was enough time left for completing assessment but the Assessing Officer had passed the order without investigating in to the facts the appellant's case. The Assessing Officer had powers to issue summons to parties u/s 131 of the Act or could have called for information u/s 133(6) of the Act. Instead of doing these exercises, the AO had passed the order with a pre-determined mind set and made the addition of the entire share capital without making any enquiries.

24.5 The Hon. Supreme Court in the case of ***CIT v. Orissa Corporation P. Ltd.*** 159 JTR 78 had held, as under:-

"Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income tax assessees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices u/s 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they -were creditworthy. There was no effort made to pursue the so called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion can be arrived at, no question of law as such arose. The High Court was right in refusing to state a case."

24.6 The decision of Hon. Bombay High Court in the case of ***CIT v. Creative World Telefilm Ltd.*** - 333 ITR 100 (Bombay High Court) is relevant and reproduced here-under:-

"Held, dismissing the appeal of revenue that there was no dispute that the assessee had given the details of names and addresses of the

shareholders, their PAN/GIR numbers and had also given the cheque numbers, name of the bankers. The assessing officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders. Thus, the view taken by the Tribunal could not be faulted."

24.7 It has also been contended by the Appellant Company that the AO had in the assessment order passed u/s 153A of the Act not made any reference to the vital fact that notices u/s 133(6) of the Act were issued during the course of original assessment proceedings and in response to such notices detailed replies had been received from all the share subscribers. Further, the Appellant had contended that the AO had failed to state in the assessment order passed u/s 153A of the Act, the vital fact that the share capital / share premium had been held genuine by the AO in the original assessment proceedings. Thus, it had been contended that the assessment order passed by the AO is based on the appreciation of wrong facts.

Survey conducted u/s 133A on M/s. GSD Trading & Financial Services Pvt. Ltd.

25.0 I have noted that the Inv. Wing had conducted the survey operation only on one of the share subscriber viz. M/s. GSD Trading & Financial Services Pvt. Ltd. In Para 3.6 of the assessment order passed by the Assessing Officer u/s 153A of the Act, it had been clearly stated that a survey u/s. 133A of Act had been conducted at one of the share allottee namely, M/s. GSD Trading & Financial Services Pvt. Ltd.. It was during the course of this survey operation that a detailed statement of Mr. Rajesh Daftary was recorded. Though, the statement of Mr. Rajesh Daftary was recorded specifically in relation to the investment made by M/s. GSD Trading & Financial Services Pvt. Ltd., it is noted that the Assessing Officer has generalized the statement of Mr. Rajesh Daftary for all the share subscribers.

Analysis of the Statement of Shri Raiesh Daftary

26.0 The Appellant Company had contended that the only ground on which the Assessing Officer had made the addition of the entire share capital is the statement of one Mr. Rajesh Daftary recorded u/s. 131(1A) of the Act on 28th January, 2015 at Rajkot. It had also been contended that in the statement of Mr. Rajesh Daftary, there was not a single piece of evidence to prove that the entire share application money received by the Appellant Company was not genuine. Further, it is contended that Mr. Rajesh Daftary had never admitted that he is engaged in the business of providing accommodation entries.

26.1 It is also stated by the Appellant Company that Mr. Rajesh Daftary has clearly stated in reply to Q.No.27 that the transaction of investment in M/s GSD Trading & Financial Services Pvt. Ltd., was done by Mr, Prakash Baghrecha, who was the director of the Appellant Company, at the relevant point of time. It had been contended by the Appellant Company that statement of Mr. Rajesh Daftary does not have any evidentiary value, as he was not the Director of the appellant company at the time when the impugned shares were subscribed at premium.

26.2 On these contentions, I have noted that as per the Table No. 2 on the Page 3 of the assessment order, the share capital / premium had been introduced on 31.12.2009, 28.02.2010 and 31.03.2010 i.e. the share capital had been introduced during the current Asstt. Year under consideration viz. A.Y. 2010-11. However, as per the material on record, Mr. Rajesh Daftary had become the director of the M/s GSD Trading & Financial Services Pvt. Ltd., on 24.06.2011. Thus, the claim of the appellant that it was Mr. Prakash Baghreacha, who was controlling the affairs of the Appellant Company at the time of subscription of the share capital in the Appellant Company, appears to be factually, correct. It needs to be emphasized here that there is no statement of Shri Prakash Bagrecha, which is part of the material on record.

26.3 I have taken cognizance of the fact that the Appellant Company had made, a without prejudice contention that even if it is assumed that statement of Mr. Rajesh Daftary had any evidentiary value, then also he was the director of only one company namely M/s GSD Trading & Financial Services Pvt. Ltd. Thus, according to the appellant, if the statement of Mr. Rajesh Daftary is to be considered as incriminating, then it should be restricted to the investment made by M/s GSD Trading & Financial Services Pvt. Ltd. only and the statement of Mr. Rajesh Daftary should not be generalised on conjectures and surmises to cover all the shareholders.

26.4 I have gone through the statement of Mr. Rajesh Daftary, a copy of which had been filed during the course of appellate proceedings. The statement of Mr. Rajesh Daftary had been recorded U/s. 131(1A) of the Act on 28.01.2015 at M/s GSD Trading & Financial Services Pvt. Ltd., "Arihant", Shramjivi Society, Dhebar Road, Opp. AndhMahlla Vikas Gruh, Dhebar Road, Rajkot. The relevant portion of the statement of Mr. Rajesh Daftary is reproduced hereunder:-

"Q2 Please mention the name of business concerns in which you and your family members are interested.

Ans. Sir, the list of business concerns in which me and my family members have interest:

| <i>Sr. No.</i> | <i>Name of Business Concern</i> | <i>Name of the Family member</i> | <i>Relation</i> |
|----------------|---|---|--------------------------|
| <i>1.</i> | <i>D.S. Integrated Finsec Pvt, Ltd,</i> | <i>Self and ilarajesh Daftary, and Ami Rajesh Daftary</i> | <i>Wife and Daughter</i> |
| <i>2.</i> | <i>Samvedn Builders Pvt Ltd.</i> | <i>Self and ilarajesh Daftary</i> | <i>Selt and Wife</i> |
| <i>3.</i> | <i>GSD Trading & Financial Services Pvt. Ltd.</i> | <i>Self, ilar. Daftary</i> | <i>Self and Wife</i> |

| | | | |
|----|-----------------------------------|-----------------------|-------------|
| 4. | <i>Arihant Software Pvt. Ltd.</i> | <i>Self</i> | <i>Self</i> |
| 5. | <i>Arihant Enterprise</i> | <i>Self</i> | <i>Self</i> |
| 6. | <i>Ami Investment</i> | <i>Ila R. Daftary</i> | <i>wife</i> |
| 7. | <i>Rajesh J. Daftary HUF</i> | <i>Karta</i> | <i>Self</i> |

Q.3 Please mention the name of business concerns which are controlled by you.

Ans. The only concerns controlled by me or my family members are as under:

| <i>Sr. No.</i> | <i>Name of Business Concern</i> | <i>Name of the Family member</i> | <i>Relation</i> |
|----------------|---|--|--------------------------|
| 1. | <i>D.S. Integrated Finsec Pvt. Ltd.</i> | <i>Self and Ila Rajesh Daftary, and Ami Rajesh Daftary</i> | <i>Wife and Daughter</i> |
| 2. | <i>Samvedn Builders Pvt. Ltd.</i> | <i>Self and Ila Rajesh Daftary</i> | <i>Self and Wife</i> |
| 3. | <i>GSD Trading & Financial Services Pvt. Ltd.</i> | <i>Self, Ila R. Daftary</i> | <i>Self and Wife</i> |
| 4. | <i>Arihant Software Pvt. Ltd.</i> | <i>Self</i> | <i>Self</i> |
| 5. | <i>Arihant Enterprise</i> | <i>Self</i> | <i>Self</i> |
| 6. | <i>Ami Investment</i> | <i>Ila R. Daftary</i> | <i>wife</i> |
| 7. | <i>Rajesh J. Daftary HUF</i> | <i>Karta</i> | <i>Self</i> |

26.5 As per the reply to Q. No, 2 & 3, it is evident that out of the above-mentioned several entities, there is only one company, namely M/s GSD Trading & Financial Services Pvt. Ltd., which had subscribed to the share capital of the appellant company. In this regard, reference may also be made to the various business activities carried out by the group companies of Mr. Rajesh Daftary, which also refers to only one of the share subscriber namely M/s GSD Trading & Financial Services Pvt. Ltd. The relevant Q.No.6 & 7 and the answer to the same is reproduced, hereunder:-

**Q.6 Kindly mention the business activities being carried out by your Group companies and concerns of your family.*

Ans. Sir, in this regard I would like to state that:

| Sr. No. | Name of the Company | Brief of Business Activity |
|---------|--|---|
| 1. | <i>M/s. D. S. Integrated Finsec Pvt. Ltd.</i> | <i>This company was purchased from a party from Ahmedabad, the name of contact person named Chavda, who is a CA. I don't remember exact details of concerned person. The company is NBFC and into the business of finance. The Books of accounts are being maintained at our office at Arihant, Sharamjivi Society, Opp. AndhMahilaVikasGruh, Dhebar Road, Rajkot.</i> |
| 2. | <i>M/s. Samvedna Builders Pvt. Ltd.</i> | <i>This company was purchased from a party from Ahmedabad, the name of contact person named Chavda, who is a CA. I don't remember exact details of concerned person. The company is engaged in the business of building and construction. The books of accounts are being maintained at our office at Survey No. 65, Vagudad Road, Vajdivad, KalawadRoad, Rajkot.</i> |
| 3. | <i>M/s. GSD Trading & Financial Services Pvt. Ltd.</i> | <i>This company was purchased from a party from Ahmedabad, the name of contact person named Chavda, who is a CA. I don't remember exact details of concerned person. The company is NBFC and into the business of finance. The books of accounts are being maintained at our office at FF-83, Samruddhi Bhavan, Opp. Bombay Petrol Pump, Gondal Road, Rajkot-360002 andArihant, Sharamjivi Society, Opp. AndhMahilaVikasGruh, DhebarRoad, Rajkot.</i> |
| 4. | <i>M/s. Arihant Software Pvt. Ltd.</i> | <i>This is a family promoted company. It was incorporated in the year 2004. This company is not engaged in any business at present. It has only interest income. The books of accounts are being maintained at our office at 9th Floor, Opp. Radio Station, Adinath Towers, Rajkot.</i> |

Q.7 Please state the names of the company/concern which are being run from this business premises i.e. "Arihant" Shramjivi Society, Debar Road Opp. AndhMahila Vikas Gruh, Rajkot.

Ans. The following companies/concerns are being run from the above business premise:

- (1) M/s. D.S. integrated Finsec Pvt. Ltd.
 (2) M/s. GSD Trading & Financial Services Pvt. Ltd.
 (3) M/s. Samvedna Builders Pvt. Ltd.
 (4) M/s. Arihant Software Pvt. Ltd.
 (5) M/s. Arihant Enterprise, Prop. RajeshbhaiJ. Daftary
 (6) M/s. Ameer Investment, Prop. Ilaben Rajeshbhai Daftary Recording of the statement is adjourned for lunch break. Recording of the statement resumed on 28-01-2015 at 3:30 P.M."

26.6 A perusal of the reply to Q. No. 6 & 7 of above statement reveals that M/s GSD Trading & Financial Services Pvt. Ltd., had been purchased by Mr. Rajesh Daftary through a party from Ahmedabad. The Question No. 24, 25 and 26 are directly related to the appellant company and being important are reproduced along-with the relevant replies, hereunder:-

"Q.24 Please furnish details of investment by your company in Geetanjali Space Pvt Ltd.

Ans. Sir, I do not have complete details at the moment. Though the company M/s. GSD Trading & Financial Services Pvt ltd had investment was mad when I was not director of the company. This investment was sold in the financial year 2010-11. At that time also, Sh. Prakash Bagrecha was the director of the company. This investment was sold in the financial year 2010-11. At that time also Sh. Prakash Bagrecha was \ the director of the company. I do not have records as regards sale of these shares at this moment. I will contact Mr. Prakash Bagrecha and submit the required details later.

Q.25. The amount of Rs. 7.91 Crores is a big amount. It does not appear to be credible that you don't know the sale of securities which were purchased for Rs. 7.91 Crores.

Ans. Sir, this transaction was done when Mr. Prakash Bagrecha was I director of the company and when he controlled affairs of the company. I will contact Mr. Prakash Bagrecha and submit the required details in this regard later.

Q26. A chart as under is prepared as under, of investments made in Geetanjali Space Pvt Ltd on the basis of records of your office.

F.Y. 2009-2010 A.Y. 2010-2011

Date Corresponding Received Payment/Inv Amount

| | | | | |
|--|---|--------|----------------------------|--|
| | immediate receipt in Kotak Mahindra Bank on account of cheque issued by | Amount | vestment made in favour of | |
|--|---|--------|----------------------------|--|

| | | | | |
|------------|---|----------|---------------------------------|----------|
| 23.02.2010 | <i>Jasmine Vintrade Ltd</i> | 9790000 | | |
| 23.02.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 4350000 |
| 24.02.2010 | <i>Daffodil Commotrade Pvt Ltd</i> | 10000000 | | |
| 24.02.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 10000000 |
| 25.02.2010 | <i>Fantastic Vincom Pvt Ltd</i> | 10000000 | | |
| 25.02.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 10000000 |
| 03.03.2010 | <i>Satyam Investment Management Pvt Ltd</i> | 8000000 | | |
| 04.03.2010 | <i>Jasmine Vintrade Pvt Ltd</i> | 4500000 | | |
| 04.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 9650000 |
| 05.03.2010 | <i>Jasmine Vintrade Pvt Ltd</i> | 1550000 | | |
| 05.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 1550000 |
| 08.03.2010 | <i>Fantastic Vincom Pvt Ltd</i> | 10000000 | | |
| 08.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| 09.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| 11.03.2010 | <i>Jasmine Vintrade Pvt Ltd</i> | 4000000 | | |
| 11.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 4000000 |
| 17.03.2010 | <i>DafoodilCommotrade PvtLtd</i> | 5000000 | | |

| | | | | |
|------------|--|----------|---|---------|
| | | | | |
| 17.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| | | | | |
| 19.03.2010 | <i>Daffodil Commotrade Pvt Ltd</i> | 5000000 | | » |
| 19.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| 22.03.2010 | <i>Damodar Tie Up Pvt Ltd</i> | 5000000 | | |
| 22.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| 23.03.2010 | <i>Daffodil Commotrade Pvt Ltd</i> | 5000000 | | ^ |
| 23.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 4450000 |
| 25.03.2010 | <i>Damodar Tie up Pvt ltd</i> | 4000000 | | |
| 25.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 3000000 |
| 29.03.2010 | <i>Damodar Tie Up PvtLtd</i> | 4900000 | | |
| 29.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 2100000 |
| 29.03.2010 | <i>Damodar Tie Up Pvt Ltd</i> | 10100000 | | |
| 31.03.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 5000000 |
| 23.02.2010 | <i>Jasmine Vintrade Ltd</i> | 9790000 | | |
| 23.02.2010 | | | <i>Geetanjali Space Pvt Ltd</i> | 4350000 |

Please go through the same and explain the above entries.

Ans. Sir, This transaction was done when Mr. Prakash Bagrecha was director of the company and when he controlled affairs of the company. I will contact Mr. Prakash Bagrecha and submit the required details in this Plater".

26.7 In reply to the query on investment made by M/s GSD Trading & Financial Services Pvt. Ltd. in the Appellant Company, it is clearly stated by Shri. Rajesh Daftary that he does not have the complete details. In fact, Shri. Rajesh Daftary had failed to submit any details regarding the investment made in the appellant company. He has shifted the entire onus on Mr. Prakash Bagrecha by claiming that these transactions were done by him and he controlled the affairs of the company. A perusal of the chart reproduced in Q. No. 26 clearly reveals that Mr. Rajesh Daftary had been duly confronted with the adverse material that cheques had been received by M/s GSD Trading & Financial Services Pvt. Ltd. and the amounts were immediately transferred to the Appellant Company.

26.8 I have gone through the statement of Mr. Rajesh Daftary and noted that it is only about one shareholder, namely M/s GSD Trading & Financial Services Pvt. Ltd., about which Shri. Rajesh Daftary had been questioned and he had failed to submit any plausible explanation about the source of investment made in the Appellant Company. No documentary evidence had been furnished by Shri. Rajesh Daftary in relation to the investment made by M/s GSD Trading & Financial Services Pvt. Ltd. Hence, the statement of Mr. Rajesh Daftary in relation to M/s GSD Trading & Financial Services Pvt. Ltd. is considered as an incriminating material for the purpose of making an assessment u/s 153A of the Act. Accordingly, the Assessing Officer is empowered to consider the same in the proceedings U/s. 153A of the Act.

26.9 In the case of *Commissioner of Income-tax, Thichur Vs. ST. Francis Clay Decor Tiles [2016] 70 taxmann.com 234 (Kerala)*, the Hon'ble Kerala High court has held that neither under section 132 or under section 153A, phraseology 'incriminating' is used by Parliament, therefore, any material unearthed during search operations or any statement made during course of search by assessee is a valuable piece of evidence in order to invoke section 153A of the Act.

26.10 In the case of *B. Kishore Kumar Vs CIT, 234 Taxman 771(SC)*, the Hon'ble Supreme Court has dismissed the SLP against High Court's order, wherein it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents. Further, it was held that it is not the case of the assessee that the admission made by him was incorrect or there is a mistake. When there is a clear and categorical admission of the undisclosed income by the assessee himself, there is no necessity to scrutinize the documents.

26.11 In the case of *Dayawanti through Smt Sunita Gupta & Anr Vs. CIT & Anr. (2016) 290 CTR 0361 (Del) : (2016) 143 DTR 0209 (Del) : (2017) 390*

ITR 0496 (Delhi), the HonTDle Delhi High Court had held that when statements were made under oath and were part of record and continued to be so, their probative value is undeniable; hence assessee's argument that they could not be acted upon or given any weight is insubstantial and meritless. The relevant portion of the said judgment is reproduced hereunder:-

"20. The lynchpin of the assessee's submissions on this aspect is also that the statements were not recorded during the search but later and that they cannot be considered of any value. This court is un-persuaded with the submission. The search was conducted on 22-03-2006. Various materials: documents, agreements, invoices and statements in the form of accounts and calculations were seized. On 18 April 2006 and 3 May 2006, the assessee's sons (including one of the appellants, Abhay Gupta) recorded statements under oath; the assessee too made her statement under oath, admitting that though returns were filed ostensibly on her behalf, she was not in control of the business. She and all other family members made short statements and endorsed the statements under oath, of those who elaborated the trading and business operations relating to clandestine income. These statements under oath were part of the record and continued to be so. They were never explained in any reasonable manner. Their probative value is undeniable; the occasion for making them arose because of the search and seizure that occurred and the seizure of various documents, etc. that pointed to undeclared income. In these circumstances, the assessee's argument that they could not be acted upon or given any weight is insubstantial and meritless. This court also notices that the decision in CIT Vs. Anil Bhatia 352 ITR 493 (Del) which held that such statements are relevant, though noticed, has not been doubted in any later decision, including Kabul Chawla, which is the mainstay of the assessee's case. Consequently the first question of law is answered against the assessee and in the revenue's favour."

26.12 To conclude, it is held that the statement of Shri. Rajesh Daftary is to be considered as incriminating only with respect to the investment made by M/s GSD Trading & Financial Services Pvt. Ltd. As far as the other shareholders are concerned, since there is no reference to them in the said statement of Mr. Rajesh Daftary, the same cannot be treated_as incriminating for other shareholders. Accordingly, the Ground Nos. 1 to 4 of the present appeal raising jurisdic tional issue relating to the scope of section 153A of the Act in a case of completed assessment is partly allowed."

6. Now the assessee is in appeal before us challenging the order of Ld. CIT(A) both on legal issue challenging the jurisdiction of the AO to make addition qua share capital and share premium de hors incriminating materials found during the search as well as on merit whereas the Revenue has

challenged only the issue on merit and no jurisdictional issue was raised in Revenue's appeal.

7. The Ld. A.R. vehemently submitted before the Bench that the issue of share capital of issuing 2418400 equity shares whereby the assessee raised Rs.30,23,00,000/- from 16 entities to whom the shares were issued at a face value of Rs.10/- each at a premium of Rs.115/- comprising Rs.2,41,84,000/- as share capital and Rs.27,81,16,000/- share premium account was examined thoroughly in the original assessment proceedings by calling upon the assessee to submit the various details such as share application form, bank statements, ITRs, confirmations, PANs and financial statements which were duly submitted before the AO and AO after examining all these details and also after carrying out independent verifications by issuing notice under section 133(6) of the Act to 16 parties framed the assessment by accepting the share capital/share premium as genuine. The Ld. A.R. also referred to the reply filed by the M/s. GSD Trading and Financial Services Pvt. Ltd. a copy of which is filed at page No.15 of the paper book. The Ld. A.R. submitted that the identity, genuineness and creditworthiness of the said investor stood examined by the AO in the original assessment proceedings which culminated in framing the order under section 143(3) of the Act dated 18.03.2013. The Ld. A.R. submitted that on the date of search the assessment has already attained finality and thus has not abated on the date of search. Therefore, any addition to be made in the assessment framed under section 143(3) read with section 153A of the Act has to be on the basis of incriminating material as found and seized during the course of search and not otherwise. The Ld. A.R.

vehemently supported the order of Ld. CIT(A) on this ground that Ld. CIT(A) has accepted this legal issue that any addition in the assessment framed under section 143(3) read with section 153A can only be made on the basis of incriminating material seized during the course of search and thus deleted the addition to the extent of Rs.22,32,00,000/-, however, strongly opposed the order of Ld. CIT(A) in treating the statement of Shri Rajesh Daftary recorded during the course of survey proceedings on oath that the said statement constituted an incriminating material. The Ld. A.R. contended that the AO has made the addition in respect of entire share capital receipt in the assessment proceedings by solely relying on the statement of Shri Rajesh Daftary taken in survey proceedings under section 133A of the Act which was deleted by Ld. CIT(A) to the extent of Rs.22,32,00,000/- in respect of 15 investors and thus the Ld. CIT(A) has erred in considering the statement of Shri Rajesh Daftary to be an incriminating material in respect of investment made by M/s. GSD Trading and Financial Services Pvt. Ltd. amounting to Rs. 7,91,00,000/-. The Ld. A.R. argued that in the statement of Shri Rajesh Daftary there is no reference to the search which was carried out on the assessee and he never admitted that he was engaged in the business of providing accommodation entries. The Ld. A.R. argued that Shri Rajesh Daftary has only stated in answer to the question No.2 & 3 that he had control over M/s. GSD Trading and Financial Services Pvt. Ltd. when the investment was made and thereafter in reply to question No.11 he stated that share holding in M/s. GSD Trading and Financial Services Pvt. Ltd. he got control of the company only on 28.05.2010 whereas the transaction of issue of

shares had taken place on 28.02.2010 and 31.03.2010. The Ld. A.R. further referred to the statement specifically query No.24 of the statement in reply to which Shri Rajesh Daftary has stated that M/s. GSD Trading and Financial Services Pvt. Ltd. had made investments in the assessee company when he was not a director/shareholder of the company and at that time Shri Prakash Barecha was the director and shareholder of the company. Thus the Ld. Counsel submitted that it is proved beyond doubt that statement of Shri Rajesh Daftary can not have any evidentiary value so far as the investment by M/s. GSD Trading and Financial Services Pvt. Ltd. is concerned. The Ld. Counsel thereafter referred to the question No.26 in which a chart showing investments in the assessee company is tabulated which includes date of investments, corresponding receipt in Kotak Mahindra Bank and investment amount etc. The Ld. A.R. specifically referred to page No.66 of the paper book which contains the details of investments made by M/s. GSD Trading and Financial Services Pvt. Ltd. and the said payment details with the investment chart provided in the statement in question No.26. The Ld. Counsel contended that there is nothing in the statement of Shri Rajesh Daftary which could be construed as incriminating material found during the course of search. The Ld. Counsel drew the attention to the Bench to page No.64 to 83 the documents in the form of application for allotment of equity shares, payment details, copies of bank statements, audited annual accounts, memorandum of article of association and ITR of M/s. GSD Trading and Financial Services Pvt. Ltd. and also the details of the bank account from where the payments were made. The Ld. A.R. also submitted that in A.Y. 2010-11 the

case of the investor M/s. GSD Trading and Financial Services Pvt. Ltd. was completed under section 143(3) and the investor had a net worth of Rs.23.55 crores and investments of Rs.321.77 crores which clearly proved the genuineness of the transaction. The Ld. A.R. finally summing up his arguments submitted that there is no evidence/material in the possession of the AO which is contrary to the material produced during the original assessment proceedings or during the proceedings under section 153A of the Act. Finally, the Ld. A.R. submitted before the Bench that the addition as sustained by Ld. CIT(A) to the tune of Rs.7,91,00,000/- qua investment made by M/s. GSD Trading and Financial Services Pvt. Ltd. is wrong and against the facts on record and also against the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehouse Corporation Ltd. 374 ITR 645 wherein it has been held that if there is no incriminating material found during the course of search in respect of unaccounted income then for completed assessments no addition can be made in the order framed under section 143(3) read with section 153A of the Act. The ld Counsel contended that in the present case also since there is no incriminating material seized by the search party during the course of search in respect of the investments by M/s. GSD Trading and Financial Services Pvt. Ltd. and whatever was found was only the form of share application form, copy of bank account, copy of audited financial statement, copy of memorandum of article of association, copy of ITRs etc. and therefore are in no way can be considered as incriminating material. The Ld. A.R., therefore, prayed that the addition Rs.7,91,00,000/- may kindly be deleted on the ground that

there is no incriminating material found during the course of search qua the said investment.

8. The Ld. D.R., on the other hand, relied heavily on the order of AO and Ld. CIT(A) to the extent that addition was made rightly on the basis of material found during the course of search and also on the basis of statement of Shri Rajesh Daftary who was a director, shareholder in the investor company that he was not a director/shareholder on the date of investment in the assessee company and only taken over the company on 28.05.2010 whereas the transaction of issue of shares had taken place on 28.02.2010 and 31.03.2010. The Ld. D.R. stressed upon the statement of Shri Rajesh Daftary who denied to have any knowledge of the investments made by the M/s. GSD Trading and Financial Services Pvt. Ltd. in the assessee company by citing the reason that he was not a director or shareholder on the date of investment. The Ld. D.R. relied heavily on the order of authorities below to emphasize his arguments that the statement of Shri Rajesh Daftary was a sufficient and incriminating material and justifying the addition in the hands of the assessee. Finally, the Ld. D.R. submitted before the Bench that order of Ld. CIT(A) deserved to be affirmed on the issue of upholding of Rs.7,91,00,000/- addition qua investment by M/s. GSD Trading and Financial Services Pvt. Ltd. as the same is based upon incriminating material and the appeal of the assessee deserves dismissal.

9. We have heard the rival submissions of both the parties and perused the material on record including the impugned order and decisions cited by the Ld. A.R. The undisputed facts

are that during the year the assessee raised share capital of Rs.30,23,00,000/- comprising Rs.2,41,84,000/- towards share capital and Rs.27,81,16,000/- qua share premium which the assessee raised by issuing 24,84,400 equity shares of face value of Rs.10/- at a premium of Rs.115/- from 16 parties. The case of the assessee was done under scrutiny and the order was passed under section 143(3) dated 18.03.2013. During the course of the original assessment proceedings, the AO raised specific queries on this issue of share capital which was responded to by the assessee by filing the necessary details such as share application forms, bank statements, ITRs ,confirmations along with bank and financial statements of the investors. The assessee had also justified the issue of shares at premium by submitting valuation report and the details of shareholdings were also produced. The AO had also verified the said investments by issuing notice under section 133(6) to 16 parties who confirmed the investments and filed all the necessary details as called for by the AO. Thereafter, the assessment was framed under section 143(3) accepting the identity, genuineness and creditworthiness of the investors. Thereafter, a search was conducted on the assessee under section 132 of the Act on 28.01.2015 which was concluded on 27.03.2015. We have examined the copies of panchnamas, copies whereof are placed at page No.20 to 21 and 22 to 25 and find that there is nothing incriminating about the investments/issue of share capital raised by the assessee found by the search party during the course of search. We note that there are some loose papers found and seized during the course of search but none of them were incriminating in nature

relating to the issue of share capital. Even in the order framed under section 153A read with section 143(3), there is no whisper about the material found during the course of search or any reference thereto while making the addition. In this case, we observe that the assessment proceedings were already completed vide order dated 18.03.2013 passed under section 143(3) and the assessment has not abated on the date of search and any addition could only be made on the basis of incriminating material found during the course of search. The Ld. CIT(A) has deleted the addition to the extent of Rs.22,32,00,000/- on the ground that there is no incriminating material qua the said issue of share capital found during the course of search and the same was deleted by following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehouse Corporation Ltd. 374 ITR 645 and Murali Agro Products Ltd. Vs. CIT 49 taxmann.com 172 Nagpur Bench. However, the Ld. CIT(A) sustained the addition to the extent of Rs.7,91,00,000/- by holding that the statement of Shri Rajesh Daftary which is only in respect of investment made by one shareholder M/s. GSD Trading and Financial Services Pvt. Ltd. treated as incriminating material on the ground that he has failed to submit any plausible explanation about the investment made in the assessee company and no documentary evidence was furnished by the said person in relation to the investment made by M/s. GSD Trading and Financial Services Pvt. Ltd. We observe that investigation wing of the department conducted a survey operation on M/s. GSD Trading and Financial Services Pvt. Ltd. and during the course of such survey a detailed statement of Shri Rajesh Daftary was recorded in relation to the

investment made by M/s. GSD Trading and Financial Services Pvt. Ltd. under section 131(IA) of the Act on 28.01.2015. We have carefully perused the statement of Shri Rajesh Daftary and find that nowhere Shri Rajesh Daftary has stated anything about the investment by M/s. GSD Trading and Financial Services Pvt. Ltd. in the assessee company. He has only stated that the investment was made prior to taking over the said company as director/shareholder on 28.05.2010 when Shri Prakash Bagrecha was director/shareholder of the said company. We further find that it was never admitted by Shri Rajesh Daftary that he or the investor company M/s. GSD Trading and Financial Services Pvt. Ltd. is ever engaged in providing accommodation entries. In our opinion, the statement of Shri Rajesh Daftary recorded during the course of survey is not and can not be treated as incriminating material qua the investment in shares of the assessee company by M/s. GSD Trading and Financial Services Pvt. Ltd. In the statement of Mr Rajesh Daftary there is nothing contrary to the evidences produced by the assessee during the original assessment proceedings or during proceedings u/s 153A of the Act. The ratio laid down by the Hon'ble High Court is that any addition in the assessments abated on the date of search can not be made de hors the incriminating materials/evidences found during the search. We are therefore not in agreement with the conclusion drawn by Ld. CIT(A) that the statement of Shri Rajesh Daftary is an incriminating material and accordingly the order of Ld. CIT(A) is set aside on this issue and AO is directed to delete the addition. The legal issue raised in ground no 1 to 5 by the assessee is allowed.

10. Even the assessee has a very strong case even on merit which has been challenged by the assessee in ground No.6 to 10. We find from the perusal of the order of AO that assessee was not provided the opportunity of cross examination of Shri Rajesh Daftary and relied on the statement of Shri Rajesh Daftary in the back of the assessee to make the addition by ignoring the fact that the said investment by M/s. GSD Trading and Financial Services Pvt. Ltd. stood verified during the course of original assessment proceedings. Moreover, Shri Rajesh Daftary has nowhere admitted that transaction entered into with the assessee company are not genuine. Shri Rajesh Daftary has only stated that at the time of making the investment in the assessee company he was not director and shareholder of the investor i.e. M/s. GSD Trading and Financial Services Pvt. Ltd. We further find that the assessee has submitted all the proof, documents and evidences in respect of said investment in the original assessment proceedings as well as the proceedings under section 153A of the Act in the form of share application, bank statement, audited financial statement and memorandum and article of association, ITRs, name of the bank from where the payments were made. The said investments were duly reflected in the books of GSD Trading and Financial Services Pvt. And were also shown in the schedule of investments forming part of the Balance Sheet as on 31.3.2010. Ltd The AO also verified the said transactions by issuing notice under section 133(6) of the Act to the said party which was replied by the investor confirming the investment and by filing all the necessary details and thus the AO accepted the genuineness and creditworthiness of the transactions in the original

assessment proceedings. We find merit in the submissions of the Ld. A.R. that amendment in section 68 covering the share capital is applicable from A.Y. 2013-14 and is not applicable to the year under consideration. The case of the assessee is supported by the various decisions of the Hon'ble Bombay High Court in the case of Pr. CIT Vs Apeak Infotech 88 taxmann.com 695 (Bom) and CIT Vs Gagandeep Infrastructure (P) Ltd.80 taxmann.com 272(Bom) .We, therefore, are of the view that assessee has satisfied three tests of capacity , identity and genuineness of the investor and has a very strong case and no addition is called for.

11. The appeal of the assessee is allowed.

ITA No.1969/M/2019 (Revenue's appeal)

12. The only issue raised by the Revenue is against the deletion of addition of Rs.22,32,00,000/- by Ld. CIT(A) as made by the AO in respect of share capital issued by the assessee from 15 shareholder on the ground that genuineness and creditworthiness of the parties were not proved. The facts of the case have been discussed in the assessee's appeal. The order of Ld. CIT(A) deleting the addition has also been reproduced hereinabove. Therefore, for the sake of brevity we are relying on the facts and the operative part of Ld. CIT(A) which has been reproduced above in the assessee's appeal.

13. The Ld. D.R. while arguing the revenue's appeal submitted before the Bench that Ld. CIT(A) has wrongly deleted the addition of Rs.22,32,00,000/- as made by the AO in respect of 15 shareholders whose creditworthiness and genuineness were

not proved. The Ld. D.R. while referring to the buy back of these shares in the subsequent financial year submitted that the said shares were bought back at a very small amount of Rs. 5/- per share and therefore it is clear that the own unaccounted money has been routed to channelize the same into the business of the assessee. The Ld. D.R. submitted that it is very strange that the share issued at a premium of Rs.115/- of face value of Rs.10/- were bought back at Rs.5/-. The mere filing of the documents of the investors and confirmations of the investments from the investors do not prove the genuineness and creditworthiness of the investors. The Ld. D.R. argued that though the AO issued notices under section 133(6) of the Act which were responded by the investors by filing the necessary details but the fact remains that the whole arrangement in which the shares were issued to 16 parties and were bought back in subsequent year is shrouded with doubts and suspicion that whole arrangement was structured in order to plough back the unaccounted money into the business of the assessee. The Ld. D.R. relied on a series of decisions in defense of his arguments namely CIT vs. Market Pvt. Ltd. (2015) 56 taxmann.com 206 Delhi, ITO Exim vs. Finlease Pvt. Ltd. 4778/Del/2013 A.Y. 2006-07 order dated 08.03.2019, P.R. Securities Ltd. vs. DCIT in ITA No.4978/Del/2014 A.Y. 2005-06 order dated 23.08.2018. Finally, the Ld. D.R. prayed before the Bench that since the assessee has failed to prove the genuineness and creditworthiness of the investors and thus the order of Ld. CIT(A) may to be set aside and order of AO may kindly be restored.

14. The Ld. A.R., on the other hand, submitted that the Ld. CIT(A) deleted the addition on jurisdictional and legal issue under section 153A of the Act on the ground that no addition could be made in respect of share capital De hors the incriminating material found during the course of search. The Ld. A.R. submitted that this legal aspect/jurisdictional issue has not been challenged by the Department so far as investments made by 15 investors are concerned qua absence of incriminating material during search. The Ld. A.R. submitted that once it is established that there is no incriminating material no addition can be made while passing the order under section 153A of the Act and nothing would survive thereafter and therefore the ground raised by the Revenue is infructuous. Without prejudice the Ld. A.R. submitted that during the course of original assessment proceedings the assessee has filed all the necessary evidences about the identities of the investors, their confirmations and financial statements, ROC returns, application forms, ITRs to substantiate the genuineness of these transactions and creditworthiness of the investing entities during the original assessment proceedings as well as proceedings under section 153 of the Act. The Ld. A.R. submitted that in the original assessment proceedings, the AO even issued notices under section 133(6) to all 16 parties and called upon them to file details of the investments made and source thereof which were duly responded with all the necessary details before the AO. The AO only after examination of all these details accepted the investments and no addition was made. Thus it was proved that all the three ingredients of section 68 identity, genuineness and creditworthiness were proved.

Countering the allegation of Ld. D.R. that these shares were bought back in the subsequent year at a very small amount, the Ld. A.R. submitted that any subsequent event can not be extrapolated into the current year to make the addition. In defence of his argument the Ld. A.R. relied on the decision of Chartered Motors Pvt. Ltd., Ahmedabad vs. ACIT ITSS(A)/26/Ahd/2012 A.Y. 2008-09 order dated 28.08.2014 wherein it has been held that the subsequent buy back can not be ground for making addition for issue of shares in earlier years. The Ld. A.R. also distinguished the facts of the case as relied upon by the Ld. D.R. and submitted that the ratio of these decisions is not applicable to the assessee's case. Even the ratio laid down by the Hon'ble Supreme Court in the case of Pr. CIT Vs NRA Iron & Steel (P) Ltd. ITA No.29855/ 2018 dated 05.03.2019 does not apply as in that case upon enquiry by the AO nobody responded and in some cases notices issued were returned unserved whereas in the present case the parties filed their confirmations along with other evidences to prove the investments in the assessee company. The Ld. A.R. relied on a series of decisions, mentioned below, in support of his contentions by submitting that no addition can be made under section 68 of the Act in the hands of the assessee if the assessee has submitted all the details regarding the genuineness and creditworthiness of the shareholder if the assessee has given names and addresses of the shareholder to the AO. The assessee relied upon the following decisions in defense of his arguments:-

1. SLP rejected by Supreme Court on Lovely Exports Pvt. Ltd. 319 ITR 5 299 ITR 268
2. SLP rejected by Supreme Court on Chain House International (P) Ltd. 103 taxmann.com 435 & 98 taxmann.com 47
3. Principal Commissioner of Income Tax, Panji v/s Paradise Inland Shipping (P.) Ltd 84 Taxmann.com 58
4. Commr. Of Income tax v/s Creative World Telefilms Ltd. 333 ITR 100

5. Commr. Of Income tax v/s Oasis Hospitalities Private Limited 333 ITR 119
6. Commr. Of Income tax v/s Gangour Investment Ltd. 335 ITR 359
7. Commr. Of Income tax v/s Siri Ram Syal Hydro Power Private Limited 196Taxman 441
8. Comrn. Of Income tax v/s HLT Finance Pvt. Ltd. 12 Taxmann.com 247
9. Commr, Of Income Tax, Central-III Vs Anshika Consultants (P) Ltd. 62 Taxmann.com 192
10. Commr. of Income tax v/s STL Extrusion P. Ltd. 333 ITR 269
11. Commr. Of Income tax v/s GP International Limited 325 ITR 25
12. Asst. Commr. Of Income tax v/s Venkateshwar Ispat (P) Ltd 319 ITR 393
13. Commr. Of Income Tax Vs Fair finvest Ltd. 44 taxmann.com 356
14. Commr. Of Income Tax, Bhopal (M.P.) Vs. Peoples General Hospital Ltd. 35 taxmann.com 444
15. Commr. Of Income Tax, Chennai Vs. Pranav Foundations Ltd. 51 taxmann.com 198
16. Principle Cornmr. Of Income Tax - 8 Vs. Softline Creations (P.) Ltd. 81 taxmann.com 269
17. M/s Baba Bhoothnath Trade & Commerce v/s ITO ITA No 1494/Kol/2017
18. Asstt. Commr. Of Income Tax, Central Circle 13 Vs Adamine Construction (P) Ltd. 87 Taxmann.com 216
19. Flourish Builders & Developers Pvt Ltd v/s Dy. CIT 3342/DEL/2015
20. Jayneer infrapower & Multiventures P Ltd v/s Dy CIT 103 taxmann.com 118
21. Asstt. Commr. Of Income Tax Vs Bahubali Dyes Ltd. 55 taxmann.com 357
22. Bharti Syntex Ltd. Vs Deputy Commr. Of Income Tax 19taxmann.com 361
23. Asstt. Commr. Of Income Tax Vs. Hitkarni Prakashan Ltd. 15 taxmann.com 316
24. Jadau Jewellers and Manufacturers (P.) Ltd. Vs. Asstt. Commr. Of Income Tax Central Circle - 2 Jaipur 83 taxmann.com 249
25. Income Tax Officer 13(2)(3) Aayakar Bhavan, Mumbai Vs. Shreedham Construction Pvt. Ltd. ITA no 3754/M/2017 ITA no 3755/M/2017 ITA no 3756/M/2017
26. Shalimar Buildcon (P.) Ltd. Vs. Income Tax Officer, Ward-2(2), Jaipur 128 ITD 396
27. Deputy Commissioner Of Income Tax, 1(2) Raipur Vs. RCP Infratech (P.) Ltd., 95 taxmann.com 163
28. Asstt. Commissioner Of Income Tax, Central Circle-IX, New Delhi Vs. Ravnet Solutions (P.) Ltd. 93 taxmann.com 59
30. ITO v/s Wiz -Tech Solutions Pvt Ltd. ITA No. 1162

The Ld. A.R. also argued that the assessee is not required to prove the source of source of investment as has been held in the following cases:

1. PCIT vs. Veedhata Tower Pvt. Ltd. ITA No.819 of 2015(Bom)
2. S. Hastimal Vs. CIT 49 ITR 273(Mad)
3. Tolaram Daga vs. CIT 59 ITR 632(Assam)

The Ld. A.R. further contended that proviso to section 68 as introduced w.e.f. 01.04.2013 is not applicable retrospectively and thus does not apply to the year under consideration as has been held in the following decisions namely Principal Commr. Of Income Tax Vs. Apeak Infotech 88 taxmann.com 695(Bom) and Commr. Of Income Tax - 1 Vs. Gagandeep Infrastructure (P.) Ltd. 80taxmann.com 272(Bom)

The Ld. A.R. finally prayed before the Bench that the appeal of the Revenue may primarily be dismissed on the ground that the Ld. CIT(A) has allowed the appeal of the assessee on legal issue of additions of Rs.22,31,00,000/- not based upon any incriminating material which was not challenged by the Revenue before this Hon'ble Forum. Without prejudice, the Ld. A.R. submitted that even on merit the appeal of the Revenue deserved to be dismissed as the assessee has proved all three ingredients as have been submitted above.

15. After hearing both the parties, perusing the material on record and carefully analyzing the ratio laid down in various decisions relied on and referred to by both the parties, we observe that in this case the Ld. CIT(A) has deleted the additions on jurisdictional and legal issue by holding that no addition can be made in an assessment framed under section 143(3) read with section 143A of the Act de hors the incriminating material found during the course of search as the assessment has already been attained finality on the date of search. We find merit in the argument of the Ld. A.R. that since the Revenue has not challenged the jurisdictional issue, the appeal on merit becomes infructuous. Even on merit, the assessee has a very

strong case in its favour as the assessee has filed all the evidences in the form of share application form, bank statements of the investor, audited annual statement confirmations, PAN etc. before the AO and even the notices issued under section 133(6) of the Act by the AO in order to carry out the verification independently were duly responded by the parties and filed all the necessary evidences to the satisfaction of the AO along with confirmation. Even in the assessment framed under section 143(3) the AO has examined these details in great depth the shares bought in the subsequent year and accepted these investments in the assessment framed under section 143(3) vide order dated 18.03.2013. Even in the proceedings under section 153A the assessee has filed all the necessary evidences before the authorities below. Under these circumstances, we hold that on legal ground as well as on merits appeal of the Revenue is liable to be dismissed.

16. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 31.05.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 31.05.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.