

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं. / I.T.A. Nos. 2295/Ahd/2018
WITH
CROSS OBJECTION No. 146/Ahd/2019
(निर्धारण वर्ष / Assessment Year : 2011-12)

DCIT Central Circle 1(3), Ahmedabad	बनाम/ Vs.	Ganesh Plantation Ltd. Ganesh Corporate House, 100 Feet Hebatpur-Thaltej Road, Nr. Sola Bridge, Off. S. G. Highway, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG7004R		
(Appellant / Respondent)	..	(Respondent / Cross Objector)

&

आयकर अपील सं. / I.T.A. Nos. 2200/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2011-12)

Ganesh Plantation Ltd. Ganesh Corporate House, 100 Feet Hebatpur-Thaltej Road, Nr. Sola Bridge, Off. S. G. Highway, Ahmedabad - 380054	बनाम/ Vs.	The ACIT Central Circle 1(3), Room No. 304, Aayakar Bhavan, Ashram Road, Ahmedabad- 380009
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से/Revenue by :	Shri L. P. Jain, Sr.D.R.
अपीलार्थी ओर से /Assessee by :	Ms. Nupur Shah alongwith Shri Dhiren Shah, A.Rs.

सुनवाई की तारीख / Date of Hearing	15/02/2021
घोषणा की तारीख / Date of Pronouncement	13/04/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned cross appeals have been filed at the instance of the Revenue and the assessee. The assessee has also filed cross objection in the appeal of the Revenue against the order of the Commissioner of Income Tax (Appeals)-11, Ahmedabad ('CIT(A)' in short) dated 04.09.2018 arising in the assessment order dated 29.12.2017 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. Both cross appeals of Revenue and assessee as well as cross objection of assessee arises from the same assessment order and first appellate order and involve connected issues. Hence, all the captioned appeals are disposed off by this common order.

3. To begin with, we shall take up Revenue appeal in ITA No.2295/Ahd/2018 for adjudication purposes.

4. Grounds of appeal raised by the Revenue in ITA No. 2295/Ahd/2018 read as under:

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.4,00,00,000/- on account of Unexplained Credit u/s 68 of the Act.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition made by the AO ignoring the overwhelming and strong evidences discussed by the AO in the assessment order relating to the impugned unexplained transaction of Rs.4,00,00,000/- entered into by the assessee.”*

5. Grounds of appeal raised by the assessee in its cross appeal in ITA No. 2200/Ahd/2018 whereby the jurisdiction assumed by AO under s.147 of the Act was raised, read as under:

“1. The Ld. CIT (A) has grossly erred in law and on facts in allowing the appeal partly. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.

I. LACK OF JURISDCITION :-

The entire proceedings are invalid and ex facie bad in law as the same are not supported by ingredients of the statutory provisions under which initiation of proceedings is done. Hence all subsequent proceedings in furtherance to illegal initiation of proceedings are mere continuation of illegality in perpetuity.

II. CHALLENGING THE VALIDITY OF ISSUANCE OF NOTICE U/S. 148 OF THE ACT AND REOPENING THE ASSESSMENT U/S. 147 OF THE ACT AS WELL AS PASSING THE ORDER U/S. 143(3) R.W.S. 147 OF THE ACT.

1. The Ld. CIT (A) has erred in law and on facts while upholding the issue of notice under section 148 and sustaining the assessment made under section 143 read with 147 of the Act, 1961 is unsustainable both on facts and in law. The Appellant submits that the impugned re-assessment proceedings u/s 148 and the Order passed u/s. 143(3) r.w.s. 147 of the Act in pursuance thereof was not in accordance with law and consequently ought to be held as void ab-initio.

2. The Ld. CIT (A) has erred in law and on facts in failing to properly appreciating the written submission of the appellant company and various judicial pronouncements relied upon by the appellant company thereto.”

6. Briefly stated, the assessee company filed its return of income for AY 2011-12 on 12.07.2012 declaring total income at

Rs.6,54,22,430/-. The case was selected for scrutiny assessment and the total income was assessed at Rs.6,67,58,012/- under s.143(3) of the Act vide assessment order dated 18.03.2014. Subsequently, the notice under s.148 of the Act dated 30.03.2017 was issued and served upon the assessee company. In response, the assessee filed return of income for the AY 2011-12 in question and the re-assessment of taxable income was thus carried out. While passing the re-assessment order under s.143(3) r.w.s. 147 of the Act dated 29.12.2017, the AO *inter alia* made an addition of Rs.4 Crore on account of alleged unexplained cash credits under s.68 of the Act.

6.1 The AO reproduced the reasons recorded for revoking jurisdiction under s.147 of the Act in its re-assessment order and noted that search and seizure action under s.132 of the Act was commenced in the case of Venus Group of Ahmedabad on 10.03.2015. Documents related to unaccounted cash transaction of the Venus Group were seized on the premises from the premises 'Terrace of Crystal Arcade', C G Road, Ahmedabad. The building, 'Terrace of Crystal Arcade' was constructed by M/s. Sunderdeep Builders (Prop.-Rajesh Sunderdas Vaswani) during F.Y. 2003-04. After a detailed discussion, the AO broadly observed that the documents were seized and on their co-relation with books of accounts/bank statement of Venus Group, it was found (by the AO of Venus Group) that unaccounted cash transactions of Venus Group were first recorded on cash vouchers and then on the basis of such recording, the entries were recorded on a "day cash book". As also observed, it was noted by the AO of the Venus Group that the cash entries in seized documents pertains to the beneficiary, Ganesh Plantation Ltd. (assessee) for F.Y. 2010-11 (A.Y. 2011-12). On receipt of such information, the AO of the assessee herein called for

and verified the cash records of the assessee for relevant year *vis-à-vis* information so received. After such verification, reasons were recorded under s.148(2) of the Act and approval thereon was taken under s.151 of the Act to reopen the completed assessment.

6.2 In the course of reassessment proceedings, the assessee objected to the action taken under s.147 r.w.s. 148 of the Act, which was disposed of by the AO against the assessee. On merits, the AO listed out various documents seized from the Terrace of Crystal Arcade and belonging to Vaswani family and Venus Group as confronted to the assessee as per para 7 of reassessment order. A statement dated 07.08.2015 of the oral witness Mr. Deepak M. Gajjar who was writer of the seized material and used against the assessee, was also stated to be provided to assessee. It was noted by the AO that in the course of cross examination carried out on behalf of the assessee, the witness Mr. Deepak M. Gajjar reiterated his earlier statement under s.131 of the Act. Mr. Deepak M. Gajjar thus re-affirmed that he had written the cash entries in the seized documents on directions of Ashok Vaswani. The assessee demanded for recording of statement of Vaswani Brothers and their cross examinations by the assessee which was denied on the ground that where the Revenue authorities have not placed reliance on the oral evidence of Vaswani Brothers, the assessee cannot stretch its right to cross examine all these persons who never made any examination in chief in the first place. It was asserted by the AO that copies of all evidences collected from the searched person (Venus Group/Vaswani Group) was provided to the assessee and Mr. Deepak M. Gajjar, the writer of main seized document (day cash book) has confirmed in cross examination by the assessee in this proceeding that he had hand written this document on regular basis. The AO finally proceeded against the assessee on the basis of seized

materials stated to be belonging to Venus Group etc. and held that assessee has paid unaccounted cash of Rs.4 Crore in aggregate to Venus Group and taken accommodation from Venus Group through banking channel in lieu thereof. The AO tabulated a decoded amount of Rs.4 Crore in aggregate from the annexures/loose papers written in encrypted form from material seized and held that transfer of amount through banking channel by Venus Group concern to assessee confirms the transaction in exchange of corresponding cash payment by the assessee. Based on such factual analysis, the AO invoked provisions of Section 68 of the Act and held that credit of Rs.4 Crore received by the assessee through banking channel during F.Y. 2010-11 from M/s. Sunderdeep Builders lacks in bonafide and nature and source of such credit in books is unsatisfactory. Accordingly, an amount of Rs.4Crore was added to the income previously assessed and brought within the ambit of taxation in the reopened proceedings under challenge.

7. Aggrieved by the aforesaid addition made under s.68 of the Act by the AO, the assessee preferred appeal before the CIT(A).

7.1 Before the CIT(A), the assessee made two fold challenges (i) wrongful assumption of jurisdiction under s.147 of the Act and (ii) unjustified additions on factual matrix.

7.2 For challenge on jurisdiction, the CIT(A) took note of the reasons recorded as well as the legal objections. However, the CIT(A) found scarce merit in the legal challenge for invocation of jurisdiction under s.147 of the Act.

7.2.1 The reasons recorded by the AO forming the basis for reopening the completed assessment are reproduced hereunder for ready reference:

- *“An information was received from ACIT, CC-1(1), Ahmedabad on 18.01.2017.*

1. *A search u/s 132 of the Income Tax Act, 1961 was conducted in the case of Venus. Group of Ahmedabad on 10.03.2015. On the Terrace of Crystal Arcade, C G Road, Ahmedabad , which was also covered u/s 132 of the Income Tax Act, documents related to unaccounted cash transactions of the Venus Group were seized.*

The assessing officer of Venus Group, ACIT-Central Circle-1 (1), Ahmedabad vide his letter dated 16.01.2017 has informed that on analysis of documents seized and their correlation, it was found that unaccounted cash transactions were first recorded on cash vouchers and then on the basis of recording made on these cash vouchers, the entries were recorded on the "day cash book". The unaccounted cash book has transaction recorded in continuous manner without any gap between January 2007 & 07/03/2015. The continuity of recording of unaccounted cash transaction indicates that entries are made to record all unaccounted cash transactions of Venus Group and Vaswani family members. The cash book is written in coded form for names, amount, dates and estimates. The signature on seized unaccounted day cash book by Shri Deepak Budharmal Vaswani/Ashok Sunderdas Vaswani indicates that such transactions are regular & continuous.

2. *Basic features of unaccounted day cash book are as under:*

- *The unaccounted daily cash book was found and seized since 01.01.2007.*
- *The cash book is maintained in a systematic manner on daily basis.*
- *The cash entries are written on the basis of supporting vouchers.*
- *There" is coding of dates, amount and other descriptions in the unaccounted day cash book.*
- *Once the entries are made in daily cash book, the cash book for a particular month was kept in green color envelopes. The period is also mentioned on envelopes*
- *The supporting vouchers are in two different colours. The green colour vouchers indicate the receipt of cash and pink colour voucher indicates the expenses/payment.*

- *The supporting pink/green colour vouchers are arranged if* the systematic manner as per the nature of expenses like land/person etc.*
 - *Cash vouchers related to person are also kept in green colour envelopes.*
 - *These green colour envelopes had noting as per the nature. For example if it is related to a land property, then land survey no. alongwith the broker name is written on the envelope.*
 - *In this manner, the unaccounted cash book was found to have been maintained in a highly systematic fashion.*
3. *On analysis of seized evidences found during the search, it has been noticed that the main persons of the group are engaged in huge land dealings. Upon correlation of cash books/cash vouchers/day books with the sale deeds of land transactions, it has been noticed that there is huge transaction of unaccounted cash in these land dealings. Such cash transaction are recorded in the name of different entities in the seized cash vouchers. The amount which is legally paid for the purchase/sale of the land has been paid vide cheque through bank accounts. This figure is shown as the total consideration of deals in the registered sales/purchase deed of the lands. Also, the amount paid through cheque and which is the total consideration of land dealing as shown in sales/purchase deeds, is entered with a noting as "Against EC" in the seized papers.*
4. **'Against EC' transactions:**
- The 'Against EC' transactions in the unaccounted day cash book have their relation with the receipt and payment of equivalent amount of RTGS in the bank account. For e.g., if there is cash- receipt against EC, it indicates that equivalent amount of RTGS has been paid to the other party through banking channel.*
5. *These are independently correlated and verified from various seized documents. It has been found that these transactions are related to cash transaction and bank transaction for exchange of cash with RTGS/EC. As per the unaccounted cash book, summary sheet and cash vouchers seized from Terrace of Crystal Arcade C.G Road Ahmedabad, it has been found that there are entries with the particulars as 'Against EC'. It has been further found on the basis of noting in the unaccounted cash book that **'Against EC'** entries have been written with name of some persons/entities/concerns-*

6. *On further analysis & correlation of incriminating seized evidences related to 'Against EC'. It has been found that;*

- i) The 'Against EC' entries have also been recorded in the day cash book seized from the Terrace of Crystal Arcade, C. G. Road Ahmedabad.*
- ii) The entries/noting of 'Against EC' in the unaccounted day cash book proves that 'Against EC' entries are essentially .cash receipt and cash payment on payment/receipt of RTGS/Cheques in the bank account.*
- iii) The entries are reversed as and when the cash is returned back to the Venus Group and thereby the account is squared off in most of the cases. This can be illustrated asunder;*
 - (a) If cash is received on a particular date, the corresponding amount of RTGS/EC has been paid back to the concerned party from the bank.*
 - (b) In most of the cases the transaction are routed through the bank account of SDB (Sunderdeep Builders) and Green stone Agro products & Infrastructure Private Limited maintained in Indian bank/Yes bank.*
 - (c) On various voucher the noting have been recorded as 'SDB'/ Green Stone.*
 - (d) Later on, after acquisition of Sanjeet Motor Financial Private Limited (SMFPL) such transactions are also routed through it*

7. *Correlation of "Against EC" entries with seized material from 901 Sapphire Complex, C.G. Road Ahmedabad in the case of Venus Group established the following facts:*

- (i) Ashok S Vaswani is main person of Venus Group who manages the finance of the Venus Group & Vaswani family members. It is from this office premise at 901 5 Sapphire Complex, Opp; Ratnam, C G Road Ahmedabad that Ashok S Vaswani was doing all finance related transaction.*
- (ii) Some of the names of 'Against EC' parties/entities along with the concerned person in whose name the 'Against EC' are noted in the seized documents (unaccounted cash book, cash voucher) are also found in the seized material from 901 Sapphire Complex, C. G. Road Ahmedabad and correlate with evidences seized from Terrace of Crystal Arcade C.G. Road Ahmedabad.*

(iii) It has been found that the names mentioned on these pages are also mentioned on the other seized evidences like cash voucher, summary sheet of Against EC transactions (page number 2 to 9 of Annexure A-129, seized from the Terrace of Crystal Arcade) and cash book related to 'Against EC' transactions

(iv) It has been found that 'Against EC' entries are the cash receipt and cash payment to various parties who are in the need of RTGS/cash. The Venus Group through; its Concerns like Sunderdeep Builders (SDB), Sanjeet Motor Finance Private Limited (SMFPL) and Greenstone Agro-Products & Infrastructure Private Limited is involved in the business of providing accommodation entries.

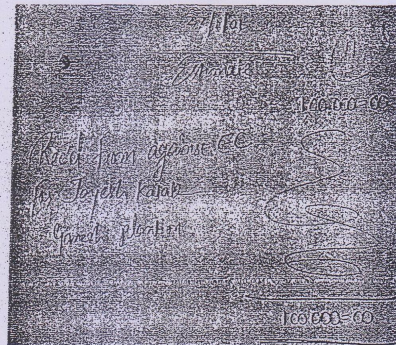
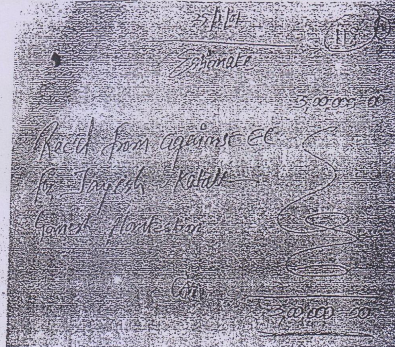
8. Correlation of 'Against EC' entries with bank accounts of Venus Group:

Every transaction- of nature 'Against EC' was first recorded on some voucher in the similar pattern as for the other cash transactions like green colour voucher for cash receipt and red colour voucher for cash payment. It has been found from the correlation of the seized material that the name on the cash voucher is of key person doing the cash transaction on behalf of the entities/concerns. On basis of name, date and amount noted on the vouchers, many bank entries were correlated, that clearly establishes that the entries recorded in the name of 'Against EC' in the cash book are cash receipt/payment against payment/receipt through RTGC/Cheque/other banking channel. The correlation of the bank account displays the real beneficiaries of the cash transaction. -

9. *From the correlation of the bank statements and the transactions recorded in the seized unaccounted cash book and supporting cash vouchers, various beneficiaries have been identified who have transacted in unaccounted cash while dealing with the entities of Venus Group. It was found that assessee has been involved in accommodation entry of Rs. 4,00,00.000 through the Venus Group in financial year 2010-11.*

The cash voucher on seized page no. 118 & 119 of Annexure A-129 seized from Terrace of Crystal Arcade C.G. Road Ahmedabad shows that it is related to cash

received 'Against EC' from Jayesh Kotak for Ganesh Plantation Ltd. The EC entry has been correlated with the bank account of Sunderdeep Builders (SDB) and it has been found that there are RTGS transfers from the account of Sunderdeep Builders to Ganesh Plantation Ltd. The relevant seized cash receipt voucher(s) is as under:



9.1 Along with the vouchers, the transactions with Ganesh Plantation Ltd have also been recorded on page number 8 of Annexure A-129 of Terrace of Crystal Arcade, which is the summary sheet of 'Against EC' transactions. Relevant part is as under:

10/1/01	T. BSOE	25,000.00
11/01	Jayesh Kotak	3,00,000.00
27/01		1,00,000.00
10/1/01	T. BSOE	10,000.00

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Director

9.2 It is also pertinent to mention here that the name of Ganesh Plantation Ltd Ltd has also been mentioned in the seized page no. 88 of Annexure A-5 seized from 901, Sapphire Complex, C.G. Road Ahmedabad (the office premise of Ashok Sunderdas Vaswani). On this page, the details of financial transactions with various parties has been mentioned for various financial years. The relevant part of the seized material is as under:

Dr. Ganesh Plantation Ltd	0	(Bank)	(Bank)	0
Dr. Elegance Skyz Pvt. Ltd	0	0	0	0
Dr. G.S. Ghugra	0	0	0	0
Dr. Ganesh Plantation Ltd	0	0	0	0
Dr. Ganadhar Harwan	0	0	0	0

9.3 The details of the transaction of the nature of 'Against EC' which could be correlated with the bank statements of Venus Group concerns & assessee are as given below.

Cash transaction recorded in seized material of Venus Group								Counter transaction in bank account of Venus Group concern			
Annexure No. of Terrace of Crystal Arcade	page no. of vouche	Decoded Date	F.Y.	Name as recorded on seized documents	Decoded Amount (Rs)	Receipt/ Payment	summary page no. of Annex, 129	RTGS reflecte d in bank account of	Account number	RTGS/Che que reference	Name of Counter party as per bank statement
A-129	119	27-Jan-2011	10-11	Jayesh Kotak/ Ganesh Plomtestion	10000000	Receipt	8	SDB	482314869	IDIBH1102 4621015	GANESH PLANTA TION LTD
A-129	118	25-Jan-2011	10-11	Jayesh Kotak/ Ganesh Plomtestion	30000000	Receipt	8	SDB	482314869	IDIBH1102 4621015	GANESH PLANTA TION LTD

9.4. Financial Year wise details of cash payment and cash receipt by the Venus Group from above mentioned beneficiary is given as under:

Financial Year	Payment (Rs.)	Receipt (Rs.)
2010-11	Nil	40000000

Deepak Budharmal Vaswani of Venus Group, vide his letter dated 24.07.2015 before the DDFT (Inv.), Unit 1(2) Ahmedabd, has owned up that the seized documents from Terrace of Crystal Arcade C.G. Road Ahmedabad pertains to Venus Group.

10. Subsequent to information received from ACIT-Central Circle-1(1), Ahmedabad, as mentioned in preceding paras, verification of records of assessee was carried out. It is

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seen that assessee is engaged in real estate & share trading. It has filed return of income u/s 143 (1) declaring total income of Rs.6,54,22,430/- on 12/07/2012. Thereafter, the assessment was completed u/s 143(3) with assessed- income of Rs.6,67,58,012/- on 18/03/2014 with disallowance u/s 14A of Rs.7,94,670/- on exempt income from share transactions.

Further, on verification of the balance sheet & records, it is revealed that assessee has advanced huge unsecured loan to J P Fincorp Services Pvt. Ltd (now renamed as Ambe Tradecorp Pvt.Ltd.) of Rs. 72,40,00,000/- during the F.Y. 2010-11. J P Fincorp Services Pvt. Ltd is a group concern of the J P Iscon Group which is headed by Jayesh Kotak Pravin Kotak, Amit Gupta & Jateen Gupta. During F.Y. 2010-11 (AY 2011-12), Jayesh Kotak , Pravin Kotak, Amit Gupta & Jateen Gupta were directors in J P Fincorp Services Pvt Ltd. In fact, Jayesh Kotak has verified the return of income of J P Fincorp Services Pvt Ltd for A Y20H- 12.

Further Jayesh Kotak has also taken unsecured loan of Rs. 1 Crore during F.Y. 2009-10 from assessee which was repaid by him during the FY 2010-11 .

11. *It is important to note here that a search had been conducted on J P Iscon group on 25/02/2017. During the search, it was gathered that directors Jayesh Kotak & Pravin Kotak operated the bank account of J P Fincorp Services Pvt Ltd., which is a final beneficiary company of J P Iscon Group for accommodation entries taken by the Group from bogus concerns run by Shrish Chandrakant Shah, Mumbai-based known accommodation entry provider. The cases of JP Iscon Group- related to search? operation are also assessed by this office.*

Hence, considering the above facts and evidences, I believe that assessee has paid unaccounted cash Rs.4,00,00,000/- to Venus group and taken accommodation entry from Venus group. The relation of the Venus Group and J P Iscon group is very well established from above given facts which again leads to believe that Assessee has facilitated accommodation entry of Rs. 4,00,00,000/- further to JP Iscon Group.

12. *In view of the above, I have reasons to believe that income, in the form of unaccounted cash, of Rs.4,00,00,000/- has escaped assessment for F.Y. 20-10-11 i.e. A.Y. 2011-12 in the hands of assessee by reason of the failure on part of assessee to disclose fully & truly all the material facts necessary for its' assessment in this AY 2011-12. Accordingly, it is a fit case for reopening u/s. 147 of the I.T. Act & issue of notice u/s 148 of the I.T. Act' 1961."*

7.3 In the backdrop of factual matrix, the legal objection of assumption of jurisdiction under s.147/s.148 of the Act was disposed off against the assessee by the CIT(A). The relevant operative para in this regard is reproduced hereunder:

*“4.2. Submission of the appellant and assessment order has been carefully considered. The AO in Para 5 on Page 7 of the assessment order has reproduced the reason recorded for reopening of the case u/s. 147 of the Act for A.Y. 2011-12 by stating that an information was received from the ACIT, Central Circle 1(1), Ahmedabad, on 18.01.2017 and in Para 1, the AO has stated about the search u/s. 132 of the Act conducted in the case of Venus Group on 10.03.2015 and thereafter, in the reason recorded, the AO has referred to certain seized loose paper vouchers found and seized in the search case of Venus Group for recording of the reason for reopening of the case u/s. 147 of the Act and for issuance of notice u/s. 148 of the Act dated 27.03.2017. The appellant company in its synopsis of arguments has taken a contention that provisions of section 153C(1) which starts with " i53C(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that," . Therefore, as per the word used in section 153C(1) of the Act, once the AO has relied upon the seized material loose paper pages found and seized in the search case of Venus group, the notice issued u/s. 148 and proceedings initiated u/s. 147 of the Act is illegal and void ab initio. The appellant company further contended that provisions of section 153C were applicable for framing assessment, if any, which excludes the application of section 147, hence, notice issued u/s. 148 of the Act and assessment framed in furtherance thereto u/s. 147 read with section 143(3) of the Act are void ab initio. In support of the aforesaid contention, the appellant company relied upon the decision of the **Hon'ble Supreme Court in the case of Manish Maheshwari v. Asstt. CIT [2007] 159 Taxman 258 (SC)** and following judicial pronouncements of various Income-tax Appellate Tribunals as under:-*

- i) G. KoteswaraRaovs DCIT [2015] 64 taxmann.com 159 (Visakhapatnam - Trib.)*
- ii) Income-tax Officer v. Arun Kumar Kapoor [2011] 16 taxmann.com 373 (Amritsar)*
- iii) Rajat Shubra Chatterji v. ACIT (ITA No. 2430/Del/2015 dated 20.05.2016) ITAT Delhi*
- iv) State Bank of India v. Dy CIT [2013] 22 ITR (Trib.) 609*
- v) Jindal Stainless Ltd. v. Assistant Commissioner of Income-tax, Central Circle 6, New Delhi [2009] 120 ITD 301 (Delhi)*

During the course of appeal hearing , the Authorized Representative relied upon the decision of the Hon'ble Jurisdictional Gujarat High Court in the case of Cargo Clearing Agency (Gujarat) vs. Joint Commissioner of Income-tax [2008] 307 ITR 1 (Guj) wherein, it has been held that" when one considers the entire scheme relating to the procedure for reassessment as laid down in the group of sections from sections 147 to section 153 of the Income-tax Act, 1961 and compares it with the special procedure for assessment of other persons as per section 153C r.w.s 153A of the Act, no jurisdiction to reopening an assessment while relying on the seized material found and seized in the case of third party in the case of appellant is permissible as per provisions of the Income-tax Act, 1961 while issuing the notice u/s. 148 r.w.s. 147 of the Act. Therefore, there is a lack of jurisdiction in the present case of the appellant as the AO has issued the notice u/s 148 of the Act by recording the reason for reopening of the case u/s. 147 of the Act by relying upon the seized material found and seized in the search case of Venus Group. Therefore, the reopening of the case in the case of the appellant company is required to be quashed on the ground of lack of jurisdiction.

*4.3 The submission of the appellant and facts of the case as mentioned in the assessment order have been carefully considered. The case laws cited upon by the appellant are not relevant, as the facts of the appellant's case are not identical to the facts of the case laws cited upon, thus, these are not relied upon. On going through the provisions contained u/s. 147 of the Act, there is no bar upon Assessing Officer not to use information/details found during the course of search. Provisions u/s.153C are applicable only if the evidence found during the course of search belong to the other person but provisions of section 147 are wider and the AO is free to use the evidence found during the course of search. Hence, this ground of appeal is **dismissed.**"*

7.4 The CIT(A), however, found considerable merit in the plea of the assessee for unsustainability of addition of Rs.4Crore on account of alleged unexplained cash credit under s.68 of the Act. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

"6.2 Submission of the appellant and assessment order has been carefully considered. The AO in the assessment order in Para 5 under the heading "Reasons and basis of reopening of the case " has reproduced the reasons recorded for reopening of the case u/s. 147 of the Act in the case of the appellant company. The AO has mainly relied upon the information received from the ACIT, Central Circle 1(1), Ahmedabad vide his letter dated 18.10.2017 and seized loose paper pages found and seized in the search proceedings of Venus

Group cases. In the reasons recorded, the AO has made an allegation of accommodation entry transaction and has alleged that the appellant company has made an uncounted cash payment of Rs. 4 Crore against the receipt of outstanding advance of loan of Rs. 4 crore from M/s. Sunderdeep Builders which was the advance given by the appellant company to M/s. Sunderdeep Builders in earlier years, which was outstanding as payable on the 1st day of F.Y. 2010-11 relevant to A.Y. 2011-12 in the books of accounts of M/s. Sunderdeep Builders. The AO in the assessment order has not identified any of the statement of main persons of Venus Group namely Shri Ashok Vaswani, Shri Deepak Vaswani and Shri Rajesh Vaswani, Proprietor Sunderdeep Builders about their admission that the Venus Group is indulged into any accommodation entry transaction and nothing has been brought on record against the appellant company even from the submissions made by the Venus Group search case assesses in their search case assessment proceedings in respect of seized loose paper pages relied upon by the AO against the appellant company in the reason recorded for reopening of the case and in the reassessment proceedings. There is no statement of Shri Rajesh Vaswani, Ashok Vaswani and Shri Deepak Vaswani recorded u/s. 132(4) of the Act and u/s. 131 of the Act in respect of scanned copies of the seized loose paper pages reproduced by the AO in the assessment order. From perusal of the synopsis of arguments submitted by the appellant company and supporting documents and evidences compiled in the paper book, I have verified the ledger account of M/s. Sunderdeep Builders from the books of account of the appellant company compiled at Page No. 710 of the Paper Book No. Ill, there was an opening debit balance of M/s. Sunderdeep Builders on 01.04.2008 for an amount of Rs. 1 Crore and thereafter on 26.05.2008, the appellant company advanced Rs. 10 Crore to M/s. Sunderdeep Builders in F.Y. 2008-09 and in the same financial year 2008-09, M/s. Sunderdeep Builders has repaid back to the appellant company an amount of Rs. 7 crore between the period 29.09.2008 to 20.10.2008. The appellant company in its synopsis of arguments has submitted that the AO in his reason recorded for reopening of the case in Para 5 of the assessment order, under the head " Reasons & Basis of reopening of the case", in Para (i) has stated that " unaccounted cash transactions were first recorded on cash vouchers and then on the basis of recording made on these cash vouchers, the entries were recorded on the " day cash book". The unaccounted cash book has transaction recorded in continuous manner without any gap between January 2007 & 07/03/2015". However, the AO in the assessment order has not brought on record any seized material to support the allegation of accommodation entry transaction for the advance of Rs. 10 crore given by the appellant company to M/s. Sunderdeep Builders in F.Y. 2008-09 and repayment of advance taken by M/s. Sunderdeep Builders for an amount of Rs. 7 Crore in F.Y. 2008-09. The appellant company emphatically submitted that the outstanding payable of Rs. 4 Crore on 31.03.2009 by M/s. Sunderdeep Builders was repaid to the appellant company on 24.01.2011 by account payee cheque duly reflected in the bank account of the appellant company and therefore, the allegation of

any accommodation entry transaction and alleged cash payment by the appellant company to M/s. Sunderdeep Builders for recovering back the advance of Rs. 4 crore from M/s. Sunderdeep Builders does not arise at all. The appellant company further took a contention that there was no search proceedings in the case of the appellant company and consequent to the search proceedings in the case of Venus Group, there was no cross enquiry with the appellant company in respect of the alleged loose paper vouchers relied upon by the AO in the assessment order by the Investigation Wing and there was no cross enquiry by the Assessing Officer of the Venus Group cases. The appellant company has submitted that the AO has taken a contradictory stand in the assessment order by making an observation about the alleged cash of Rs. 4 crore by the appellant company in lieu of cheque payment and subsequently of making allegation of cash received "Against EC" from Jayesh Kotak for Ganesh Plantation Ltd. **The appellant company has stated that Shri Jayesh Kotak is neither a director of Ganesh Plantations Ltd or a shareholder or an employee of appellant company Ganesh Plantations Ltd.** I have also verified the seized scanned copy of loose paper pages reproduced by the AO on **page 32 of the assessment order, wherein, nothing has been found to be noted as the word " cash " and there is no signature or name of any director of appellant company Ganesh Plantations Ltd or any employee of Ganesh Plantations Ltd and the name written is Jayesh Kotak and the AO has not brought on record any evidence that Shri Jayesh Kotak is a director of Ganesh Plantations Ltd or shareholder of Ganesh Plantations Ltd.** The facts of appellant company's case is squarely covered by the decision of the Hon'ble C.B.I. Vs. V.C. SHUKLA & Others (cited supra) that loose paper vouchers / pages found and seized from third party cannot be considered as an evidence in the case of the appellant company and following the decision of the **Hon'ble ITAT in the case of Prarthna Construction Pvt.Ltd,** which has been upheld by the Hon'ble Gujarat High Court (cited supra) I am of the view that the addition made by the AO on account of unexplained cash credit under section 68 of the Act of Rs. 4,00,00,000/- is not justified. I also agree with the contention of the appellant company that loose paper pages found and seized in Venus Group search cases required to be treated as dumb document for which the appellant company relied upon the latest decision of the Hon'ble ITAT, Ahmedabad "C" Bench in the case of Nishant Construction Pvt. Ltd vs. ACIT, Circle 5, Ahmedabad, ITA No. 1502/Ahd/2015 (A.Y. 2011-12) dated 14.02.2017, wherein, the Hon'ble Tribunal in Para 25 to 31 has held as under:-

“25. Coming to the evidentiary value of the impounded loose sheet mentioned elsewhere, the Hon'ble Supreme Court in the case of Common Cause (A Registered Society) and Others vs. Union of India and Others in Writ Petition Civil Appeal No. 505 of 2015 has observed as under :-

16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case

(supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible

17. It has further been laid down in V.C. Shukla (Supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

26. The Hon'ble Supreme Court further observed :-

17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made In a book, that book is a bonk of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as/ relevant evidence, still, the statement mode therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfill the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

27. With respect to evidentiary value of regular account book, the Hon'ble Supreme Court in the case of V.C. Shukla 1998 (3) SCC 410 has laid down :-

" 37. In Beni v. Bisan Dayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason

being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said, that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

28. *It is apparent from the aforesaid discussion that the loose sheet of papers are wholly irrelevant as evidence being not admissible u/s. 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value.*

29. *Moreover, the Assessing Office did not make any inquiry from buyers of flat in respect of actual prices paid by them. He also did not make any other inquiry in order to corroborate his conclusion. There is no incriminating evidence to show that the assessee has sold the flats at a higher rate.*

30. *In our understanding of the facts, the impounded loose sheet can at the most be termed as "dumb document" which did not contain full details about the dates, and its contents were not corroborated by any material and could not be relied upon and made the basis of addition.*

31. *In the case of CIT vs. Kulwant Rai 291 ITR 36 the ruling given in the case of Dhakeswari Cotton Mills Ltd. 26 ITR 775 by the Hon'ble Supreme Court has been relied upon wherein the Hon'ble Supreme Court has held " even though Income Tax Authorities including the Assessing Officer has unfettered discretion and not strictly bound by the rules and pleadings as well as materials on record and is legitimately entitled to act on the material which may not be accepted as evidence, nevertheless such discretion does not entitle them to make a*

pure guess and base an assessment entirely upon it without reference to any material or evidence at all".

Considering the discussion made herein above and following the decisions of the Hon'ble Supreme Court, jurisdictional Gujarat High Court and Hon'ble ITAT, Ahmedabad, (cited supra), I hold that the addition made by the AO as unexplained cash credit u/s 68 of the Act for an amount of Rs. 4,00,00,000/- is not justified and the same is hereby deleted. This ground of appeal is allowed."

8. Aggrieved by the reversal of additions made by the AO under s.68 of the Act on merits, the Revenue is in appeal before the Tribunal in ITA No.2295/Ahd/2018.

9. The assessee is also in cross appeal in ITA No.2200/Ahd/2018 whereby the validity of jurisdiction assumed under s.147 of the Act has been challenged. The assessee has also filed cross objection in CO No.146/Ahd/2019 whereby it supported the action of the CIT(A) in deleting the additions under s.68 of the Act on merits.

10. When the matter was called for hearing, the learned DR for the Revenue submitted that while the CIT(A) was right in adjudicating the jurisdiction assumed by the AO under s.147 of the Act in favour of the Revenue and against the assessee, it was alleged that the CIT(A) fell in gross error in not endorsing the action of the AO towards additions under s.68 of the Act on merits. The learned DR relied upon the process of reasoning adopted by the CIT(A) for upholding the assumption of jurisdiction under s.147 of the Act. It was pointed out that the AO has not merely acted upon a report/information of investigation wing of searched person but has conducted appropriate enquiries on his part as regards the allegations and its relevance to the facts and that too after hearing the assessee on allegations. It was submitted that it is only after enquiries made, the action under s.147 of the Act were initiated and thus the belief formed by AO on the material obtained from AO of

searched person cannot be regarded as 'borrowed satisfaction'. It was thus contended that issuance of notice under s.147 of the Act was after proper application of mind to the facts existing in the instant case.

11. As regards the additions on merits, the learned DR relied upon the detailed factual analysis carried out by the AO and detailed observations made by the AO in its re-assessment order. In furtherance, it was contended on behalf of the Revenue that tell-tale evidences were found from the premises of the searched person i.e. Venus Group. The encrypted transactions in unaccounted cash recorded in seized documents were decoded and co-related with the transactions carried out and recorded between the Venus Group and the assessee. It was established by the AO after detailed discussion that the assessee has paid Rs.4Crore in cash (Rs.1Crore on 27.01.2011 & Rs.3 Crore on 25.01.2011) in exchange of corresponding receipt of Rs.4 Crore through bank channel from M/s. Sunderdeep Builders on 24.01.2011 in settlement of outstanding receivables of the assessee. The credit received by the assessee through banking channel and recorded in its book was not found genuine by AO as a result of underhand cash dealing. The nature and source of credit of Rs.4 Crores shown to be received by assessee from Sunderdeep Builders was thus rightly found unsatisfactory by the AO. It was contended that the CIT(A) has adjudicated the issue on merits against Revenue on irrelevant and flimsy considerations. The learned DR accordingly urged for reversal of the action of the CIT(A) and restoration of the order of the AO on merits.

12. In support of its cross appeal in ITA No. 2200/Ahd/2018 and in rebuttal to the stand taken on behalf of the Revenue on the point

of validity of jurisdiction assumed under s. 147 of the Act, the learned counsel for the Assessee Ms. Shah adverted to the reasons recorded and contended that the action of the AO suffers from the vice of change of opinion on the existing issue which tantamounts to review of the existing action in the garb of Section 147 of the Act which is not permissible in law. A reference was made to the notice issued under s.142(1) of the Act dated 03.12.2013 issued in the course of original assessment proceedings under s.143(3) of the Act. Question nos. 8 & 9 thereof were adverted in this regard wherein specific query was made by the AO in respect of all sundry creditors and all advances made party-wise, it was contended that the issue was examined towards the transactions between the assessee and the Venus group which is sought to be reviewed by wrongly exercising jurisdiction under s.147 of the Act. It was contended that the mere change of opinion cannot be the basis for reopening a completed statement is a well settled principle as understood in long line of judicial precedents. It was next contended that on perusal of reasons recorded under s.148(2) of the Act, it can be seen that a search action was carried out under s.132 of the Act in the case of Venus Group of Ahmedabad on 10.03.2015. It is pointed out in the reasons recorded that a case against the assessee has been built on the premise that documents relating to certain unaccounted cash transactions between assessee and Venus Group were found from the premises of the searched person, namely, Venus Group. In this regard, it was submitted that the AO has recorded the reasons for reopening of the case under s.148 of the Act merely on the basis of information and documents received from the AO of the searched person. The reasons recorded were based on 'borrowed satisfaction' already drawn by the AO of searched person and suffers from non-application of mind of the AO of assessee. It was simultaneously contended in the alternative that in the facts and circumstances,

where the seized documents belong to the third party i.e. assessee, the jurisdiction of the AO, at best, falls under s.153C of the Act and invocation of Section 147 of the Act in such circumstances is not permissible to the Revenue under the scheme of the Act. It was thus contended that the issuance of notice under s.148 r.w.s. 147 of the Act is a complete non-starter and is thus bad in law.

13. We have also heard the rival submissions on factual aspects towards merits of additions made. We shall deal with the arguments canvassed on behalf of the Revenue to support the order of the AO and defense made on behalf of the assessee of the CIT(A)'s order on aspects of merits in succeeding paragraphs.

14. To begin with, before we proceed to deal on aspects of merits, we shall straightway address ourselves on the preliminary objects raised towards assumption of jurisdiction. The main grievances of the assessee on assumption of jurisdiction are three fold; (i) the jurisdiction to the AO would lie under s.153C of the Act, if any and invocation of jurisdiction under s.147 of the Act in the case of assessee, arising from search in Venus Group, is contrary to scheme of the Act and thus devoid of legitimacy; (ii) the satisfaction of the AO on the reasons cited suffers from the vice of non-application of mind and a mere borrowed satisfaction; & (iii) the action taken under s.147 of the Act is actuated by re-visiting an opinion already formed on the subject matter of dispute at the time of original assessment and thus vitiated on the grounds of change of opinion / review of assessment.

14.1 We do not see any substance in the line of arguments raised on behalf of the Assessee in these objections for assumption of jurisdiction. Prior to amendment carried out in S. 153C applicable

from 1st June, 2015, the jurisdiction under Section 153C of the Act would come into play in the case of person other than searched person only where seized documents in the hands of person searched/ covered under s.132/132A of the Act 'belong to' such other person (the assessee herein) and the AO of the searched person forms a requisite satisfaction towards seized material belonging to and incriminating such other person of undisclosed income. Likewise, the AO of the third person simultaneously is also expected to be satisfied towards existence of jurisdiction under s.153C of the Act vested with him based on seized documents found from the command of searched person as belonging to third person. The debate on scope of conferment of powers under S. 153C prior to its amendment by Finance Act, 2015 was subjected to judicial scrutiny. The Courts have consistently held that the expression 'belongs to' with reference to person other than searched person implies something more than idea of casual association and Section 153C of the Act could not be invoked in the pre amendment era unless the AO of the searched person is satisfied for cogent reason that the seized documents belong to the person other than searched person. In the instant case, no such satisfaction *per se* is found to have been formed by the AO of the searched person(Venus Group) and in the absence of such express satisfaction, the AO of the assessee was not vested with jurisdiction to exercise powers conferred under s.153C of the Act. The AO of the Assessee was thus ousted from exercise of jurisdiction under S. 153C. In the circumstances, the AO of the Assessee has rightly resorted to S. 147 of the Act on fulfillment of stipulated conditions. The loose papers seized together with cash diary recorded by/ for the searched person are admittedly not belonging to the assessee *per se* although certain entries showing therein are claimed to be pertaining to / relatable to the assessee. Noticeably, the AO of assessee has explicitly stated in

para 4.2 and para 9.4 of the impugned re-assessment order that seized material 'belongs to' searched person i.e. Venus Group. In the backdrop of these facts, the plea canvassed on behalf of the assessee for availability of jurisdiction under s.153C of the Act in supersession to Section 147 of the Act does not merit acceptance.

14.2 The second contention of assessee towards borrowed satisfaction of the AO merely on the basis of certain information received from other AO is also apparently without any force. On perusal of the reasons recorded for reopening of the assessment, it becomes crystal clear that certain seized papers were found from the possession of the third party i.e. searched person which alleged certain surreptitious unaccounted cash transactions between the assessee and the searched person. The AO has clearly indicated that the seized documents were duly analyzed by him. Furthermore, from para 10 of the reasons recorded, it is noticed that on receipt of the information from the AO of the searched person, a pre-verification exercise of records of the assessee was also carried out to ascertain the facts indicated in the seized material. It is only after verification of the seized documents *qua* the records of the assessee, the action was initiated under s.147/ s. 148 of the Act. Thus, these facts clearly suggest that the AO exerted himself on the information received from the AO of searched person and formed his own and independent *prima facie* belief on purported escapement of income. It is noticed that the AO has set out the facts in great length in the reasons recorded which overtly indicate the requisite application of mind reasonably expected from AO at the stage of commencement on proceedings under s.147 of the Act. In the circumstances, when seen holistically, the belief of the AO is clearly an independent belief and cannot be labeled as a borrowed satisfaction or a satisfaction without any application of mind.

14.3 The third plea assailing the action of the AO taken under s.147 of the Act on the grounds of change of opinion is apparently a damp squib. As seen in the instant case, a search and survey was conducted at the premises of Venus Group and certain documents were seized. These documents alleged that certain clandestine transactions have been entered between the assessee and Venus Group which remained unrecorded in the regular books maintained by both the parties. Such seized material gathered in the course of search proceedings subsequent to original assessment proceedings added an entirely new dimension to the set of transactions towards credits/advances recorded in regular books by the Assessee and subjected to scrutiny earlier. The facts revealed in the seized documents/ statements claiming to reveal untruthfulness in the entries recorded by AO in regular books did not present to the mind of the AO in the course of original proceedings. The AO simply could not be expected to put blinkers on his eyes and ignore information just for the reason that the transactions through banking channel as recorded in books were earlier subjected to scrutiny. The seized material when seen in conjunction with certain testaments made on behalf of the searched person appears to be a relevant material on standalone basis on which *prima facie* belief towards escapement of income is cognizable. Conclusive proof of escapement is not germane at the stage of assumption of jurisdiction under s.147 of the Act. At the stage of assumption of jurisdiction, final outcome of the proceeding is not relevant. The material at the stage of reopening only need to be relevant to invoke *prima facie* belief of escapement in the mind of person instructed under law. It is well settled that the information so received need not be subjected to sufficiency test at the stage of invoking jurisdiction under s.147 of the Act. Whether the material so gathered would conclusively prove the escapement is not concerned at the stage of

assuming jurisdiction under s.147 of the Act. What is paramount is the relevancy of the material collected. A reference in this regard can be made to the decision of the Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd. vs. ITO (1999) 236 ITR 34 (SC)* and *Dr. Lata Chouhan vs. ITO, (2010) 329 ITR 400 (MP)*. The fresh information recd. By the AO is authentic and evokes certain disquiet. Certain element of subjectivity involved in formation of belief thus cannot overstretched at the threshold stage. Hence, the plea of the assessee that the finality of assessment earlier made under s.143(3) of the Act cannot be disturbed is totally misplaced in the wake of new facts coming to the light of the AO at the time of invoking jurisdiction.

14.4 Hence, the objection of the assessee canvassed on point of jurisdiction fails on all counts. Thus, we see no error in the action of the CIT(A) in upholding the jurisdiction. Consequently, the cross appeal of the assessee in ITA No.2200/Ahd/2018 challenging the validity of assumption of jurisdiction under s.147 of the Act is dismissed.

15. We shall now move to address the challenge to the additions towards alleged unexplained cash credit under s.68 of the Act on merits. As narrated earlier, the AO has made additions of Rs.4 Crore to the total income of the Assessee herein taking shelter of s.68 of the Act having regard to the seized material found from the possession of the searched person(Venus Group cases). It was observed that certain incriminating material were found and seized from the searched person implicating the Assessee towards undisclosed income. In the seized material forwarded to the AO of the Assessee by the AO of the searched person, it is alleged that the amounts were surreptitiously recorded in encrypted form which was

decoded by the revenue and sought to be co-related with the corresponding bank transactions between the searched person and Assessee. On the basis of such documents/ loose papers/ statements etc, it was alleged by the AO that the Assessee has received an amount of Rs. 4 crore from Sunderdeep Builders of Venus group towards through banking channel in Jan 2011 against the corresponding payment of unaccounted cash by the Assessee to Sunderdeep Builders. The AO has thus tied the loose papers/ cash diary found from the possession of the searched person to the assessee and invoked section 68 of the Act in this regard.

15.1 The assessee has categorically denied allegation of cash reimbursement to M/s. Sunderdeep Builders (Prop.-Rajesh Sunderdas Vaswani) against the receipt through banking channel and also denied the allegations of an alleged accommodation entry. Making reference to the elaborate submissions made by the assessee company in its defense before the AO and CIT(A), it is the case of the assessee that the AO has not brought any cogent material or credible evidence on record to support the propriety of seized material against the assessee. It is contended that the seized material does not even make any reference to the assessee herein. The link between the material seized and assessee is missing and thus action against assessee has been initiated in flimsy grounds. It is alleged on behalf of the assessee that whole case has built against the assessee on assumptions and presumptions.

15.2 On perusal of the case records, we notice that certain unaccounted cash transactions of Venus Group were detected from the premises of the searched person. The unaccounted cash transactions were stated to be first recorded by the searched person on loose paper/ cash vouchers in encrypted form and then on the

basis of recording made on these cash vouchers, the entries were recorded on a 'day cash book' not forming part of the regular books of accounts maintained in ordinary course. Notably, the aforesaid unaccounted cash book were found to have transaction recorded in continuous manner without any gap between January 2007 to 07.03.2015. The cash book was also written in coded forms for names, amounts, dates and vouchers and were claimed to be headlined as 'estimates'. The Revenue has contended that such coding was done to alibi and camouflage the real value of unaccounted cash transactions with the assessee and to take a suitable defense in the case of discovery by the Revenue authorities. As further claimed, the transactions were decoded by the Revenue authorities and it was found that a sum of Rs.4 Crore in aggregate was paid in cash by assessee to Venus Group in lieu of corresponding receipt of equivalent amount of payment through banking channel and thus such payment received through banking channel is nothing but an accommodation entry, which was recorded in the books of the assessee on 24.01.2011. In short, on the basis of loose papers/ cash book seized from venus group, the AO has alleged that aforesaid receipt of Rs.4 Crore from M/s. Sunderdeep Builders is a sham transaction and an accommodation entry against payment of unaccounted income.

15.3 In the backdrop of facts set out by AO, we notice that the allegation of alleged accommodation entry of receipt/repayment of existing loans receivable by assessee from M/s. Sunderdeep Builders is largely centered around a statement recorded under s.131 of the Act of Accountant, Deepak M. Gajjar of Venus Group in which he has merely deposed that the unaccounted cash books were written by him as per the direction of Ashok Sunderdas Vaswani and such day cash book was handed over to one Vasibhai at Crystal

Archade as per directions of Ashok Sunderdas Vaswani/Venus Group. The signatures on the unaccounted day cash book were stated to be put by Shri Deepak Budharmal Vaswani and / or Ashok Sunderdas Vaswani of Venus Group. The documents seized were eventually linked by AO to the assessee read with the statement of Mr. Gajjar and the impugned additions were carried out. Significantly, the statement of Mr. Gajjar (who is acting on behalf of Vaswani brothers) doesn't anywhere appear to say that he is privy to the source of cash recorded by him in cash book. He has simply claimed to have merely recorded the entries in an unaccounted cash book under the instruction directions of Vaswani brothers. Thus, the statement of a witness who has no knowledge of relevant facts towards receipt of cash from assessee is not entitled to any weight and is not pertinent in so far as assessee is concerned. Inexplicably, while implicating a third party with grave charges, no enquiry has been made by AO from key persons i.e. Vaswani brothers to elicit any credible information, despite specific request & suggestion from the assessee as recorded in para 8.3 of the assessment order. In the absence of any examination of the key persons, the contest by way of cross examination thereon by assessee was also stonewalled. The unilateral entries made by Venus group (an outside party) in their records and admittedly belonging to them (para 4.2 & para 9.4 of the assessment order) cannot, in our view, have any rational basis to crucify a third party and fix tax liability on it. No live link/proximate nexus of alleged dubious transactions between searched person and the assessee has been brought on record. The enquiries made were directionless without quizzing the key persons who needed to be. Nothing of this sort has been done. No acquiescence of receipt of cash by searched person from assessee has been successfully established. Naturally, propriety demanded the cross examination thereon in the event any

culpable statement roping the assessee somewhere. The AO has conveniently implicated the assessee without any cogent premise on the basis of some aimless examinations.

15.4 No doubt, the documents found possessed from the custody of a searched person may possibly operate as an estoppel against that searched person, if the circumstances so warrant, but it is unconceivable to bind a third party for such entries/diary without demonstrating cogent nexus. The whole action is in the realm of conjectures and surmises mainly on the basis of some scanty and sketchy statement yielded from the accountant of the searched person. The revenue has alleged underhand cash transactions. Hence, the primary onus in the instant case, squarely lied upon the Revenue and that to justify it with direct or circumstantial evidences. The onus rested upon the revenue has not been discharged at all and thus did not shift on to assessee. Consequently, in the absence of any credible proof of receipt of cash from assessee, the apparent has to be taken as real i.e. Sunderdeep Builders have repaid Rs.4 Crore through banking channel in discharge of its existing outstanding liability as a matter of course. The CIT(A) has correctly appreciated the facts and circumstances in its entirety and has come to a rightful conclusion in this regard and thus exonerating the assessee from unvouched and unsupported tax liability. The CIT(A) has rightly observed that the allegation of accommodation entry is not sustainable by appreciating the fact that during the F.Y. 2008-09 relevant to AY 2009-10, there was opening receivable by the assessee from M/s. Sunderdeep Builders (Prop.-Rajesh Sunderdas Vaswani) pegged at Rs.1 Crore which was given as a loan / advances by the assessee company through regular books of accounts prior to F.Y. 2008-09. Interestingly, the assessee company during F.Y. 2008-09 had given

another temporary loan/ advances aggregating to Rs.10 Crore in the month of May 2008 and against which in the same year, the said borrower (Sunderdeep Builders) repaid back the temporary loan partly to the assessee company aggregating to Rs.7 Crore. Resultantly, a balance of Rs.4 Crore remained outstanding as receivable by the assessee as on 31.03.2009 (FY 2008-09). To summarise, a loan of Rs.7 Crore was squared off by the borrower by way of repayment in F.Y. 2008-09. When seen in conjunction with the so called unaccounted day cash book wherein unaccounted cash transactions allegedly recorded continuously spanning over Jan. 2007 to March 2015, no reference has been found to be made in respect any underhand dealing of cash in exchange of square off of Rs. 7 crores. This fact also overshadows the allegation of the revenue and casts serious doubt on the tacit involvement of cash as a *quid pro quo* against banking transactions *qua* the assessee. Hence, a normal inference that remaining outstanding amount of Rs.4 Crore paid back to assessee by borrower through banking channel without corresponding receipt of cash, has to be given primacy and cannot be disturbed.

15.5 In the circumstances, on holistic appreciation of factual position, we see no error in the conclusion drawn by the CIT(A). The CIT(A), in our view, has rightfully deleted the addition made under s.68 of the Act holding the act of AO to be without any rational basis and thus unsustainable in law. We entirely agree with the conclusion drawn by the CIT(A) on the aspects of the merits and hence, we decline to interfere therewith.

16. In the result, appeal of the Revenue as well as cross appeal of the assessee is dismissed.

17. In the cross objection filed by the assessee against the Revenue's appeal, the assessee has merely supported the action of the CIT(A) whereby the additions of Rs.4 Crore made by the AO as unexplained cash credit under s.68 of the Act stands deleted by the CIT(A). In the absence of any grievance arising out of the order of CIT(A), the cross objection is dismissed as infructuous.

18. In the result, both appeals of Revenue & assessee and cross objection of assessee all are dismissed.

This Order pronounced on 13/04/2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad: Dated 13/04/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।