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

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA Nos.1955 & 1956/M/2020
Assessment Years: 2006-07, 2007-08,

Mr. Jay Ketan Parikh, 94-D, Tahne Heights, 66, Nepean Sea Road, Mumbai- 400 049 **PAN: AAIPP6681J**	Vs.	The Dy. CIT, Central Circle-1(2), 904, 9th Floor, Old CGO Building, Pratishtha Bhavan Annexe, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA Nos.1957 & 1958/M/2020
Assessment Years: 2006-07 & 2007-08

Mr. Raj Hiten Parikh, 42C, Laxmi Nivas, 87 Nepean Sea Road, Mumbai- 400 006 **PAN: AGFPP6664E**	Vs.	The Dy. CIT, Central Circle-1(2), 904, 9th Floor, Old CGO Building, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA Nos.1959 & 1960/M/2020
Assessment Years: 2006-07 & 2007-08

Milan Kavin Parikh, 15A, J Mehta Road, Next to Khatau, Condominium, Nepean Sea Road, Mumbai- 400 006 **PAN: AADPP0814G**	Vs.	The Dy. CIT, Central Circle-1(2), 904, 9th Floor, Old CGO Building, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA Nos.1969 & 1970/M/2020
Assessment Years: 2006-07 & 2007-08

Mr. Saunak Jitendra Parikh, 161-D, Tajnee Heights, 66, Nepean Sea Road, Mumbai- 400 006 **PAN: AADPP0826C**	Vs.	The Dy. CIT, Central Circle-1(2), 904, 9th Floor, Old CGO Building Annexe, Pratishtha Bhavan,

		M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri Rahul Raman, D.R.

Date of Hearing : 18.02.2021
Date of Pronouncement : 07.04.2021

O R D E R

Per Rajesh Kumar, Accountant Member:

The present appeals have been preferred by the different assessees against the orders dated 19.10.2020 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2006-07 & 2007-08.Since all the appeals, though of different asssessees, have common issues with difference in amounts only, therefore all these are decided and disposed off together for sake of convenience. We would take up for adjudication the appeal filed Mr. Jay Ketan Parikh for assessment year 2006-07.

ITA No.1955/M/2020 A.Y. 2006-07

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

"1. The learned CIT (A) has erred in law and on facts in upholding the addition of Rs. 27,99,45,729/- without appreciating that no addition can be made in the impugned unabated assessment proceedings as no corresponding incriminating material was found during the course of search.
2. The learned CIT(A) has erred in law and on facts in upholding the addition of Rs. 27,99,45,729/-, being amount allegedly deposited in HSBC foreign bank accounts of Laptis Trading Ltd and Sulay Trading Ltd, u/s 69A of the Act.
3. The learned CIT (A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 143(3) r.w.s. 153A of the Income-tax Act, 1961, which is against the principles of natural justice and bad in law.
4. The learned CIT (A) has erred in law and on facts in upholding the addition of Rs. 27,99,45,729/- in violation of principles of natural justice. The order passed by CIT(A) is bad in law.
5. The learned CIT (A) has erred in law and on facts in upholding the entire addition of Rs.27,99,45,729/- being alleged peak balance in the HSBC foreign bank

account of Sulay Trading Ltd (USD 2,43,134.65*44.07 =Rs. 1,07,14,944) and HSBC foreign bank account of Laptis Trading Ltd (USD 60,35,211.50*44.61 =Rs. 26,92,30,785) u/s 69A of the Act."

3. The issue raised in 1st ground of appeal is a jurisdictional issue challenging the jurisdiction of the AO to make the addition in the unabated assessment proceedings despite there being no incriminating material found during the course of search.

4. The facts in brief are that the assessee filed the return of income on 16.10.2006 declaring an income of Rs.2,23,167/-. Thereafter a search and seizure action under section 132 of the Act was conducted in the case of M/s. Mahendra Brothers Exports Pvt. Ltd. & other group concerns including directors and other related persons including the assessee on 08.08.2011 after receipt of information by the revenue of undisclosed overseas HSBC accounts. The assessee is a director in M/s. Mahendra Brothers Exports Pvt. Ltd. and also partner in M/s. Ketan Brothers Exports and was also having proprietary business in his name. During the year, he disclosed income by way of short term capital gains, business income and income from other sources. The AO in para No.5 of the assessment order noted that information was received by the Government of India from French Sovereign Government under DTAA in exercise of its sovereign powers that some Indian nationals and residents have foreign bank accounts in HSBC Bank (Suisse) SA Geneva which were not disclosed to the Indian Tax Authorities. The said information was received in the form of document called base note containing various details of the account holders such as name, date of birth, place of birth, sex, residential address, profession, nationality along with date of opening of account in

HSBC Bank (Suisse) SA Geneva besides mentioning account balances in some years. In the case of the assessee also a base note was received wherein it is stated that he is a beneficiary/beneficial owner of bank accounts in HSBC Bank (Suisse) SA Geneva containing all personal details of the assessee as stated hereinabove besides mentioning the balances in two years. Therefore, in order to investigate these facts further, a search and seizure action under section 132 of the Act was conducted by DDIT (Inv.), Mumbai on 08.08.2011 on M/s. Mahendra Brothers Exports Pvt. Ltd. and its directors including the following 4 individuals who are appellant before us.

i) Mr. Milan Kavinchandra Parikh (PAN AADPP0814G)
ii) Mr. Shaunak Jitendra Parikh (PAN AADPP0826C)
iii) Mr. Raj Hiten Parikh (PAN AGFPP6664E)
iv) Mr. Jay Ketan Parikh (PAN AAIPP6681J)

5. It is noteworthy to mention that the assessee denied to have any bank account in HSBC Bank (Suisse) SA Geneva or being beneficial owner of any such accounts during recording of statement u/s 132(4) of the Act. However, on the basis of base note, the AO came to the conclusion that assessee was one of the beneficiaries of the following four bank accounts held by the companies in the HSBC Bank (Suisse) SA Geneva:

S.No.	Name	Account Number/Code Profile client
1.	Sulay Trading Ltd.	5091320491
2.	Laptis Trading Ltd.	5091316222
3.	Olga Ltd.	5091255754
4.	Blackberry International Ltd.	5091255711

The assessee, in order to prove his averments, produced a letter from HSBC Bank (Suisse) SA Geneva stating that the assessee had no bank account in HSBC Bank (Suisse) SA Geneva nor had

any transactions with HSBC Bank (Suisse) SA Geneva. Thereafter, Additional DIT (Inv.), Mumbai wrote a letter to HSBC Bank (Suisse) SA Geneva to verify whether HSBC Bank (Suisse) SA Geneva had issued letter furnished by the assessee before the AO. Besides the department also sought information from HSBC Bank (Suisse) SA Geneva about the assessee being beneficial owner in respect of 4 accounts held by the companies as stated hereinabove. In response to inquiries by the revenue, HSBC Bank (Suisse) SA Geneva confirmed the letter as having been issued by it which was furnished by the assessee before the AO, however, HSBC Bank (Suisse) SA Geneva refused to divulge and disclose any information about these four companies and also whether the assessee being beneficial owner of such accounts citing Swiss secrecy laws. It is pertinent to mention that the bank statements of four companies attached with the base note showed the following information with respect to the assessee:

> "**A. Shri Jay Ketan Parikh**
> (i) In case of Bank account of SulayTrading Limited i.e. IBAN CH 13 0868 9050 9110 8762 0, Shri Jay ketan Parikh is a beneficial owner and the bank account showed a peak credit of US$ of 2,45,764/- (equivalent to Rs. 1,10,59,380/-).
> (ii) Similarly Shri Jay Ketan is a 25% beneficial owner of bank account i.e. IBAN CH 81 08'68 9050 9110 7398 0 held in name of Laptis Trading Limited. It showed a peak credit of US $ of 2,98,9l,844/- (equivalent to Rs. 134,51,_32,980/-,
> (iii) With respect to the account held in the name of Olga Limited and Blackberry International Limited, account balance is shown as 'NIL'.

6. During the course of assessment proceedings, the assessee was examined on oath by the AO under section 131 of the Act on three occasions and confronted with the information contained in the base note about foreign bank accounts and assessee's beneficial ownership therein. Besides, the assessee was asked to sign the consent waiver form so that the further information from HSBC Bank (Suisse) SA Geneva could be

obtained but the assessee refused to sign the same. The Additional DIT also wrote to FT&TR Division of the CBDT for further enquiries from foreign tax authorities, however the report of FT&TR was not received till date of completion of the assessment. The AO added the entire peak balance of USD 2,43,132.65 as appearing in the month of January 2006 in the bank account of Sulay Trading Ltd. and USD 60,35,211.5 being 25% of peak balance of USD 2,41,40,846/- as appearing in the month of March 2006 in the bank account of Laptis Trading Company Ltd. with HSBC Bank (Suisse) SA Geneva. In other words, the entire amount has been added in the hands of the assessee as appearing in the bank statement of Sulay Trading Ltd. whereas 25% of the peak balance has been added as appearing in the bank statement of Laptis Trading Company Ltd. thereby making an aggregate addition of Rs.27,99,45,729/- as unexplained money under section 69 of the Act based on the information contained in the base note by framing assessment under section 143(3) read with section 153A of the Act dated 27.03.2015.

7. The aggrieved assessee challenged the said order passed by AO before the Ld. CIT(A) on jurisdictional issue as well as on merit. The assessee agitated before the Ld. CIT(A) that no addition could have been made in the case of assessee for the impugned year as the assessment year under consideration has not abated on the date of search as the assessment has attained finality. It was pleaded before the Ld. CIT(A) that the said addition could not have been made as no incriminating material was found during the course of search. However, the Ld. CIT(A) not finding any merit in the contentions of the assessee

dismissed the appeal on this issue by observing and holding as under:

> "5.2 I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO. In the case of the assessee, specific information was received from the **French Government under DTAA(Double Taxation Avoidance Agreement)** in the form of a "Base **Note",** wherein, it was mentioned that the assessee was beneficial owner of bank accounts in the names of various entities like; **Sulay Trading Ltd, Laptis trading Ltd., Olga Ltd., Blackberry International Ltd and Fiduciary Equity Trust AG** and it contained various personal details of the assessee, like name, address, date of birth, profession, passport number along with the date of opening of the bank account in HSBC bank Geneva. Further the bank balance in dollars in the years 2005-06 and 2006-07 were mentioned in respect of Sulay Trading Ltd and Laptis trading Ltd., while no balance was appearing in the names of other three entities namely, Olga Ltd., Blackberry International Ltd and Equity Trust.
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> 5.3 In order to investigate the issues further , a search and seizure action u/s. 132(1) of the Act was carried out in the cases of the present assessee, his company M/s. Mahendra Brothers Export ltd. and the directors including Milan K. Parikh, Shaunak J Parikh, Raj H Parikh, on 08.08.2011. At the time of search, the assessee was confronted with the above "Base Note" as received from the French Authorities containing information about HSBC Bank (Suisse) SA Geneva, accounts and assessee being beneficial owner of such accounts. However the assessee denied of being beneficial owner of such accounts. A few days later the assessee produced a letter from HSBC Bank (Suisse) SA Geneva, wherein it was stated that the assessee had no bank accounts in HSBC Bank (Suisse) SA Geneva and that he had no transactions with the bank. Thereafter the **Addl.** DIT(inv.) **Mumbai** wrote a letter to HSBC Bank (Suisse) SA Genevato verify whether they had indeed issued communication, presented by the assessee and also seeking information about the assessee being beneficial owner in respect of accounts in name of Laptis Trading ltd., Sulay Trading Ltd etc.. But the HSBC refused to divulge any information about Sulay Trading and Laptis Trading Ltd and the assessee being beneficial owner of such accounts citing Swiss secrecy laws but confirmed that they had issued communication submitted by the assessee. Consequent upon search, a notice u/s. 153A was issued and served upon the assessee. In response, the assessee filed a return of income on 29.10.2012 declaring total income at Rs. 4,87,718/-. During the course of the assessment proceedings, the assessee was examined on oath by the AO u/s. 131 of the Act on three occasions and was confronted with the Base Note and information about foreign bank accounts and its beneficial ownership.
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> *5.4 Therefore, the* Base Note as received from French Authorities, the statement of the assessee recorded u/s 132(4) at the time of search on 08.08.2011, and material gathered in post search proceedings like HSBS Geneva's letter and the Addl. DIT(Inv.) Mumbai's letter to HSBC Bank (Suisse) SA Geneva, seeking specific information from the bank about deposits in the bank accounts and assessee's relationship with the same, all constitute incriminating material Against the assessee, gathered on account of search and seizure action. In fact the base note contains all personal details of the assessee, including his name, address, profession

and passport number as also details of companies and bank accounts of which the assessee is beneficial owner and the money stashed in such accounts, which is not disclosed to the income tax department and thus constitute, undisclosed income in the hands of the assessee.

5.5 It may be noted that after news of black money of Indian - ' Nationals was published in newpapers and media, and shaken the collective conscience of the nation. Therefore a SIT (Special Investigation Team) was constituted by the Hon'ble Supreme Court under the chairmanship of Justice M.B. Shah (retired Supreme Court Judge), for investigation of Black money stashed in foreign bank accounts and entire investigations was being supervised by the Hon'ble Supreme Court. In fact the SIT, continue to supervise such investigations and action taken even now. The assessee may feel that there was no incriminating material, however the same is without any basis and the facts speak otherwise. The assessee may deny the information received from the French Government but mere denial does not change the facts. **Infact the assessee has tried to put spokes in the investigations carried out by the department by not signing the consent waiver form, so that information could be collected from the HSBC Bank (Suisse) SA Geneva.**

5.6 Therefore considering overall facts of the case, the contentions of the assessee that no incriminating material was found is rejected. Accordingly the ratio of Hon'ble **Special Bench of Mumbai** ITAT decision in the case of **All Cargo Global Logistics Ltd,** which was subsequently upheld by **Hon'ble Bombay High court (58 taxmann.com 78),** in my humble opinion is not applicable to the facts of the case. Likewise the ratio of **Hon'ble High Court of Delhi** in case of CIT **vs. Kabul Chawla [2015] 61 taxmann.com 412 [Delhi], Hon'ble Kolkata ITAT in the case of Sri. Bishwanath Garodai vs. DCIT[2016] 76 taxmann.com 81 (Kolkata • Trib.) and Kolkata** ITAT in the case of **Smt Yamini Agarwal vs. DCIT [2017] 83 taxmann.com 209 (Kolkata - Trib.)** is also not applicable to the facts of the **case. Consequently completion of assessment vide order dated 27.03.2015 and in adding an amount of Rs.** 27.99.45.7297- **as unexplained money u/s. 69A of the Act in proceedings u/s. 153A of the Act is held to be valid.**

5.7 Consequently ground no 1 taken by the assessee **is rejected**."

8. The Ld. A.R. submits that a search action u/s 132(1) of the Act was carried out in the case of the assessee on 08.08.2011 and return of income u/s 139(1) of the Act was filed on 16.10.2006. The ld AR submits that the time limit for issue of notice u/s 143(2) of the Act expired on 31.10.2007 meaning thereby that no assessment was pending for the instant assessment year as on the date of search. The ld AR vehemently submits that the impugned year, being a non-abated assessment year, addition in the instant year could be made

only if any incriminating material is found during the course of search. The ld AR reiterated that no incriminating material was found during the course of search and hence no addition could be made by the Assessing Officer in absence of incriminating material. The ld AR, referring to the order of ld. CIT(A), submits that at Para 5.4 of his order, the ld CIT(A) has rejected this contention of the assessee by holding that even the base note as received from French authorities, statement of the assessee recorded u/s 132(4) of the Act at the time of search on 08.08.2011 and material gathered in post search proceedings like HSBC Bank (Suisse) SA Geneva's letter and the Addl. DIT (Inv.) Mumbai's letter to HSBC Bank (Suisse) SA Geneva constitute incriminating materials to make addition in the hands of the assessee. The ld AR submits that accordingly ld. CIT(A) held that the addition is based on incriminating documents found during the course of search and deserved to be upheld.

9. On the findings of ld. CIT(A) that the base note received from the French authorities constituted incriminating material, the ld AR submits that for making addition in respect of unabated assessment years, the incriminating material must be found during the course of search. The ld AR submits that it is admitted fact that the base note was available with the department prior to the date of search and was the sole reason for conducting search in the case of the assessee. The ld AR argued that the information received from French Government in the form of base note with regard to undisclosed bank accounts in HSBC Bank Geneva was the basis for conducting search. The ld AR therefore contends that hence, the base note is not an evidence found during the course of search. In order to

support the said contentions, the ld AR placed reliance on the following judicial pronouncements wherein on similar facts involving search pursuant to HSBC bank account information, the coordinate benches of the Tribunal have held that base note does not constitute incriminating material found during the course of search and hence no addition can be made in respect of unabated years:

i) DCIT v. Arun Kumar Mehta (ITA No. 2477/Mum/2018) dated 06.09.2019
ii) **Shri Bishwanath Garodia, v. Deputy Commissioner of Income Tax (ITA No. 853/Kol/2016) dated 21.09.2016**
iii) Smt. Yamini Agarwal v. D.C.I.T., Central Circle-3(3) (ITA No. I.T.(SS)A Nos.97 & 98/Kol/2015) dated 19.04.2017

9. The ld AR also submits that statement of assessee recorded u/s 132(4) of the Act during the course of search can not be considered as incriminating materials found during the course of search and thus the findings of ld CIT(A) that statement of assessee recorded during the course of search constitutes incriminating material is contrary to law. It is vehemently submitted by the ld AR that statement recorded during the course of search cannot be considered as incriminating evidence found during the course of search and relied on the order of the coordinate bench in the case of Dy. CIT v. Shivali Mahajan & Others in ITA No. 5585/Del/2015) dated 19.03.2019 wherein it has been held that statement recorded during search is not an incriminating material. The ld AR submits that statement on a standalone basis would not constitute incriminating evidence found during course of search. The ld AR argues that, in fact, the statement can never be said to be found during the course of the search as the

same is always obtained during the course of search. The ld AR also contends that it would be pertinent to note that, in the present case, the assessee has denied any transactions with HSBC bank in his statement recorded u/s 132(4) of the Act. Hence, in the present case, the contents of the statement are also not incriminating and addition can not be based on the statement recorded u/s 132(4) of the Act. The ld AR also submits that needless to add that apart from the requirement that the material must be found during the course of search, there are two more requirements viz. i)material must be incriminating and ii) addition must be based on such material. The ld AR submits that none of the conditions are satisfied in the present case. It is further submitted by the ld AR that as per the provisions of S. 132(4) of the Act, statement can be recorded only if any money and bullion etc are found from the possession of assessee. In the present case, no money, bullion etc were found from the possession of the appellant during the course of search, hence the recording of statement itself is illegal as it is contrary to the provisions of S. 132(4) of the Act.

10. Arguing on the third finding of the ld CIT(A) that material gathered in post search proceedings also constitute incriminating material, the ld. AR submits that that material gathered in post search proceedings like HSBC Bank (Suisse) SA Geneva's letter, which was furnished suo mottu by the assessee and the Addl. DIT (Inv.) Mumbai's letter to HSBC Bank (Suisse) SA Geneva seeking information, cannot be construed as incriminating material found during the course of search for making addition. In defense of his arguments, the ld

AR relied on the decision of Hon'ble Madras High Court in the case of CIT vs. PK Ganeshwar (308 ITR 124).

11. The ld AR submits that the letter from the HSBC bank was furnished by the assessee on its own and not pursuant to any inquiry by the search team. Further, this letter corroborates and confirms the stand of the assessee and hence is not be said to be incriminating, certainly not the material based on which addition could be made. The ld AR contends that the letter of ADIT is merely an inquiry letter and can not be considered an evidence. The subsequent reply of HSBC bank again supports the case of the assessee. The ld. AR argued that the post search evidences are neither incriminating nor found during the course of search and therefore addition made based on such materials may kindly be deleted.

12. Finally the ld AR summing up his arguments submits that, in the present case, no incriminating material/evidence is found during the course of search and therefore no addition can be made in absence of any incriminating materials in the unabated assessment year. In defense of his arguments the ld counsel of the assessee relied on the decision of Hon'ble Bombay high court in the case of CIT v. All Cargo Global Logistics Ltd (374 ITR 645) wherein it has been held that, in respect of unabated years, no addition can be made if no incriminating material is found during the course of search. The ld AR prays that in view of the above, the addition made by the Assessing Officer and upheld by CIT(A) in respect of the impugned year which is a unabated year is bad in law and may be deleted since it is not based on any incriminating material

found during the course of search.

13. Per Contra, the Ld. D.R. strongly opposes the contentions and arguments made by the Ld. A.R. on the jurisdictional issue by submitting that the various decisions relied upon by the Ld. A.R. in support of his averments and arguments are not applicable to the facts of the case and are clearly distinguishable on facts. The Ld. D.R. submits that the decisions rendered by the High Courts were distinguishable on facts as the issue of undisclosed deposits in HSBC Swiss bank accounts were not before the Hon'ble High Courts. As regards the other decisions of the tribunal relied by the Ld. A.R. in support of his arguments, the Ld. D.R. submits that the same are not accepted by the Revenue and have been challenged before the higher judicial forums and have also not attained finality so far. As regards the decision of Maxopp Investment Ltd. Vs CIT (2018) 402 ITR 640 (SC), the Ld. D.R. submits that several propositions by tribunal and the Hon'ble High Court were changed by the Apex Court and therefore the decisions by the tribunals and High Courts are amenable to change. The Ld. D.R. submits that there is no definition of incriminating material in the Act and while framing assessment under section 153A of the Act, there is no implicit or explicit requirement of any incriminating seized material during the course of search. The ld DR argues that the provisions of section 153A of the Act contemplates the assessment of total income including the income if any from incriminating material which can not be construed to mean that the undisclosed income discovered during post search operation can not be brought to tax in the unabated assessment years. The Ld. D.R. submits that it appears to be illogical conclusion

that no addition can be made in the assessment framed under section 153A of the Act without any incriminating or seized material even if during the post search or during assessment proceedings, some incriminating materials have come to the notice of the AO. The Ld. D.R. further submits that section 153A of the Act starts with non obstante clause and is a complete code in itself and therefore the notice under section 153A of the Act has to be issued in any case even to the unabated assessment year , if the search is conducted. The Ld. D.R. submits that in view of these facts the contentions of the Ld. A.R. that no incriminating material was found during the search is devoid of truth and merit. The Ld. D.R. in defence of his arguments relied on the decision of B. Kishore Kumar vs. DCIT 62 taxman.com 250(Mad) wherein it has been held that a statement recorded during search also constitutes a material for making addition. The Ld. D.R. submits that the department was in a possession of base note, the contents whereof were corroborated during the course of search. The Ld. D.R. submits that assessee denied the information in the base note but all the particulars of the assessee were matching with the base note such as name, date of birth, place of birth, sex, residential address, profession, nationality along with date of opening of account in HSBC Bank (Suisse) SA Geneva. The Ld. D.R. submits that at the time of search the assessee was fully aware of these facts viz. the bank statements and trust, however, deliberately denied these facts. The Ld. D.R. stresses the point that assessee refused to sign the consent waiver form and it became impossible for the revenue authorities to investigate the matter further. The Ld. D.R. submits that by refusing to sign

the consent waiver form it is proved unequivocally that assessee was hoarding its black money in the Swiss Bank accounts which were beyond the reach of the tax authorities even though during the course of recording of statement under section 132(4) of the Act, the assessee denied all these facts and information of HSBC bank accounts in which he was a beneficial owner. The Ld. D.R. submits that the base note contained the correct particular of assessee's assets that are held abroad in the Swiss Bank as all the information contained therein were correct and exactly matching. The Ld. D.R. finally submits that the order of Ld. CIT(A) may kindly be affirmed on this issue by upholding assessment framed under section 153A of the Act on a proper and valid incriminating material gathered by the authorities during as well as post search.

14. We have heard the rival submissions of both the parties and perused the material on record including the orders of authorities below and various decisions cited by both the sides. We note that the department has received information in the form of base note from French government under DTAA containing information that assessee is beneficiary of foreign bank accounts in HSBC Bank (Suisse) SA Geneva, Switzerland. It is undisputed that during the course of search proceedings on the assessee no incriminating materials in respect of assessee being a beneficial owner of bank accounts in HSBC Bank (Suisse) SA Geneva, Switzerland were found. The assessee also denied in the statement recorded under section 132(4) of the Act that he was beneficial owner of the foreign bank accounts held in HSBC Bank by 4 companies as mentioned elsewhere in this order. In the instant case, the assessee filed the return of

income under section 139(1) of the Act on 16.10.2006 whereas the search was conducted under section 132(1) of the Act on 08.08.2011. Thus the time limit for issue of notice under section 143(2) of the Act expired on 31.10.2007 meaning thereby that no assessment was pending for the instant year on the date of search and therefore the present assessment year has not abated. It is also a settled position of law that any addition in a non abated assessment year can only be made on the basis of incriminating material found during the course of search and not otherwise. We find that during the course of search no such incriminating material was found by the search team. We have also perused the order of Ld. CIT(A) wherein Ld. CIT(A) has noted that the addition made by the AO was based upon incriminating documents in the form of base note as received from French authorities under DTAA, statement of assessee recorded under section 132(4) of the Act during search and material gathered in post search proceedings like HSBC Bank (Suisse) SA Geneva letter and Additional DIT(Inv.) Mumbai's letter to HSBC Bank (Suisse) SA Geneva etc. Now the issue before us whether the base note or statement recorded during search u/s 132(4) of the Act or material gathered during post search proceedings constitute incriminating materials found during search or not. We have perused the facts on records and after analyzing them in the light of various decisions of tribunal and Hon'ble High Courts we opine that such materials/evidences can not be said to found during the course of search. We further find merits in the contentions of the assessee that materials has to be found during search and it has to be incriminating which was not the case before us. Therefore,

we are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue. We note that base note was available with the revenue authorities before the date of search and search was, in fact, carried out on the basis of said base note and therefore same can not be construed or considered as incriminating evidence found during the course of search in order to make the addition in an unabated assessment year. The case of the assessee is supported by the following three decisions of the coordinate benches of the tribunal:

- In the case of DCIT vs. Arunkumar Mehta (supra) wherein the co-ordinate bench of the Tribunal has held as under:

> "6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We have also carefully considered case laws relied upon by both the parties.We find that an identical issue had been considered by the co-ordinate bench of ITAT, Mumbai 'A' Bench in assessee own case for AY 2006-07 in ITA No. 3712/Mum/2017, where the Co-ordinate Bench, after considering relevant facts and also by following the decision of Hon'ble Bombay High Court, in the case of CIT vs Murali Agro Product. Ltd, deleted additions made by the AO. The relevant findings of the Tribunal are as under:
>
> > "16. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The facts born out from the record clearly established that assessment for the impugned assessment year is unabated as on the date of search i.e. 25/08/2011, because the assessment for the impugned assessment year was completed u/s 143(1) of the Act, and the time limit for issue of notice u/s 143(2) of the Act, had been expired on 30/09/2007. It is an admitted fact that during the course of search in the case of the assessee, no incriminating material was found in respect of undisclosed bank account maintained at HSBC Bank, at Geneva in the name of Ruby Enterprises Inc. and White Cedar Investment Ltd. Although, certain incriminating material and undisclosed asset was found during the course of search in respect of silver articles and gold jewellery received from various people on the occasion of engagement of grandson of the assessee and the assessee hasaccepted undisclosed income in respect of silver articles and gold jewellery for AY 2012-13 but it is true that nothing was found in respect of HSBC Bank account. From this, it is abundantly clear that nothing was found and seized during the course of search in respect of HSBC Bank account under the name of Ruby Enterprises Inc and White Cedar

> Investment Ltd. This fact has been admitted by the AO in assessment order at para 7.1 on pages 12 and 13. Further, the assessee has denied having any bank account with HSBC Bank (Suisse) SA Geneva. In fact, the assessee claims to have not aware of facts and contents in Base Note received from the French Government under DTAA between two countries…….
>
> ……
>
> 18. In the above legal background, if you examine the facts of the present case, we found that the assessment for the impugned assessment year is unabated as on the date of search, which is because the assessment for the impugned year has been completed u/s 143 (1)of the Act, and the time limit for issue of notice u/s 143(2) was expired much before the date of search i.e. 25/08/2011. It is also an admitted fact that the addition made by the AO is not supported by any incriminating material found as a result of search. In fact, the AO made additions on the basis of 'Base Note' received by the government of India under exchange of information between French Government and Indian Government under the provisions of DTAA, and said Base Note was received prior to search. The sole reason for conducting search in the case of the assessee is information received from French Government in the form of Base Note with regard to undisclosed bank account in HSBC Bank Geneva. Therefore, we are of the considered view that the additions made by the AO is merely based on Base Note which is not found as a result of search or requisition and consequently the additions made by the AO in assessment order passed u/s 153A of the Act, consequent to search, in absence of any incriminating material found as a result of search is bad in law and liable to be deleted. This legal proposition is supported by the decision of the jurisdictional High Court of Bombay in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd vs CIT (supra), where the court held that no additions can be made in respect of assessments which have become final if no incriminating material is found during the course of search. This legal proposition is further supported by the decision of division bench of the Hon'ble Bombay High Court in the case of Murali Agro Products Ltd vs CIT (2014) 49 taxman.com 72, wherein it was held that no additions can be made in respect of unabated assessment which have become final, if no incriminating material is found during the course of search. This legal proposition is further reiterated by various High Courts, including the jurisdictional High Court in the case of CIT vs Gurinder Singh Bawa 386 ITR 483(Bom), where it was held that once an assessment has attained finality for a particular year i.e. it is not pending, then the same cannot be subject to tax in proceedings under section 153A of the Act."

- Similar ratio has been laid down in the case of Shri Biswanath Garodia vs. DCIT (supra). The operative part whereof is reproduced as under:

"2…….. During the course of search, books of account, jewellery, etc. were found besides some cash. The statement of the assessee was recorded under section 131 of the Act, wherein he admitted of having maintained a Bank Account in HSBC Bank (Suisse) SA Geneva, Switzerland. He also admitted that the said Bank Account was opened on 07.06.1999 and his wife Smt. Usha Garodia was an authorized person to operate the said account maintained in his name. He further accepted that the money deposited in the said account represented the proceeds of his export business and agreed to pay income-tax, if any, due thereon. He also pointed out that the said Bank Account was closed sometime ago and there was no balance in the said account on the date of recording of his statement……..

8 We have considered the rival submissions and also perused the relevant material available on record……..

11. Keeping in view the discussion made above, we hold that the additions as finally made to the total income of the assessee on account of transactions reflected in the Bank account of the assessee with HSBC Bank (Suisse) SA Geneva, Switzerland and income relating thereto for both the years under consideration are beyond the scope of section 153A as the assessments for the said years had become final prior to the date of search and there was no incriminating material found during the course of search to support and substantiate the said addition. The said additions made for both the years under consideration are, therefore, deleted allowing the relevant grounds of the assessee's appeals"

- In the case of Yamini Agarwal vs. DCIT (supra) the co-ordinate bench of the Tribunal has also held that specific information received from HSBC from French Government with regard to HSBC account at Geneva, Switzerland can not be considered incriminating material found at the time of search. The operative part is as under:

"23. It is not in dispute before us that with respect to the additions made during the course of assessment proceedings u/s.153A of the Act, there was no incriminating material found at the time of search and that the AO while concluding the assessment u/s.153A of the Act dealt with the HSBC Bank Account at Geneva, Switzerland on receipt of specific information from sources, which are not disclosed but admittedly not found or discovered as a result of search conducted u/s.132 of the Act on the Assessee……

24. We are of the view that the proposition canvassed by the learned counsel for the Assessee finds support from the various decisions cited by him…….We are of the view that the view expressed by the Hon'ble Bombay High Court and the Hon'ble Delhi High Court has to be followed being views in favour of the Assessee, in the facts and circumstances of the present case.

25. We therefore hold that the scope of the proceedings u/s.153A in respect of assessment year for which assessment have already been concluded and which do not abate u/s.153A of the Act, that the assessment

> will have to be confined to only incriminating material found as a result of search……"

After taking into account the facts of the instant case and the decisions of the coordinate benches as discussed above, we are inclined to set aside the findings of the Ld. CIT(A) on this issue and hold that base note as received from the French authorities is not an incriminating material and therefore addition made on the basis of base note can not be sustained.

15. We also note that Ld. CIT(A) has held that the statement recorded of the assessee under section 132(4) of the Act during the search on 08.08.2011 constituted the incriminating material. In our considered opinion, the findings of the ld CIT(A) that statement recorded during search constitutes incriminating material is also not correct as the same can not be said to be found during the course of search but is recorded to elicit more information/explanation of the searched person on the incriminating documents/gold/jewellery found during search. Therefore after perusing the material on record and considering rival contentions and also the decisions cited before us, we are of the considered view that a statement recorded during the course of search can not be considered an incriminating material in order to make addition in an unabated assessment year. The case of the assessee is supported by the decision of the co-ordinate bench of the Tribunal in the case of DCIT vs. Shivali Mahajan & others (supra). The relevant paras are reproduced below:

> "3……. During the course of search, statement of Shri Lalit Mahajan i.e., the assessee in appeal No.5590/Del/2015 was recorded, in which, he admitted of cash investment by him and other family members in respect of booking of space in Indirapuram Habitat Centre……
> 4. ……..

7. Learned DR, on the other hand, stated that during the course of search of Aerens Group who is the builder and developer of Indirapuram Habitat Centre…….. That the statement under Section 132(4) has a legal sanctity and that by itself constitutes an evidence and addition can be made on the basis of assessee's statement……

8. ……..

9. We have carefully considered the arguments of both the sides and perused the material placed before us. After considering the facts of the case and the rival submissions, we find that in these appeals, following two questions arise for our consideration :

(i) Whether any material found in the search of any other person than the assessee in appeal can be considered in the assessment under Section 153A of the assessee.

(ii) Whether the addition can be made only on the basis of statement given by the assessee during the course of search.

…….

16 Now, coming to question No.2, we find that this issue is also covered by the decision of Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra) and Best Infrastructure (India) (P.) Ltd. (supra).In the case of Harjeev Aggarwal (supra), Hon'ble Jurisdictional High Court considered the evidentiary value of the statement recorded during the course of search. The relevant portion is paragraph 19, 20 & 24, which are reproduced below for ready reference :-……..

17. Thus, Hon'ble Jurisdictional High Court has held "The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations". Their Lordships further observed "However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation". In paragraph 24, their Lordships have mentioned about the prevailing practice of extracting statement by exerting undue influence or coercion by the search party. Though the above decision in the case of Harjeev Aggarwal is with reference to the meaning of undisclosed income u/s 158BB of the Income-tax Act, however, in our opinion, the above observation of Hon'ble Jurisdictional High Court would be squarely applicable while considering the evidentiary value of the statement while making the assessment u/s 153A

18. In the case of Best Infrastructure (India) (P.) Ltd. (supra), Hon'ble Jurisdictional High Court reiterated in paragraph 38 "Fifthly, statements recorded under Section 132(4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal".

16. Therefore, on this count also, we are not in agreement with the conclusion drawn by the Ld. CIT(A). In our considered view the statement recorded under section 132(4) of the Act

can not be considered as incriminating material found in the course of search.

17. We also note that Ld. CIT(A) has also held that material gathered in post search proceedings such as HSBC Bank (Suisse) SA Geneva letter and Additional DIT(Inv.) Mumbai's letter to HSBC Bank (Suisse) SA Geneva also constitute incriminating material. In this case, we note that the assessee has suo-motto furnished before the revenue authorities in post search proceedings the HSBC Bank (Suisse) SA Geneva letter. Besides, the Additional DIT (Inv.) Mumbai wrote a letter to HSBC Bank (Suisse) SA Geneva seeking clarification during post such investigation whether such letter as furnished by the assessee was issued by HSBC Bank Geneva or not. This view of the Ld. CIT(A) also appears to be totally contrary to law and can not be accepted. The case of the assessee finds support from the decision of Hon'ble Madras High Court in the case of CIT vs. PK Ganeswar (supra) wherein the Hon'ble High Court has held that no addition can be made on the basis of material gathered during post search investigation in an unabated assessment year. In this case, the assessee has furnished a letter from HSBC Bank (Suisse) SA Geneva on his own before the tax authorities which certainly, in our view, does not constitute an incriminating material on the basis of which addition could be made in the hands of the assessee. Therefore, this is an undisputed position of law that in case of unabated assessment year, no addition can be made in absence of any incriminating material found during the course of search. The view is supported by the decision of Hon'ble Jurisdictional High Court in the case of CIT v. All Cargo Global

Logistics Ltd (supra) wherein it has been held that no addition can be made if no incriminating material was found during the course of search in an unabated assessment year which has attained finality on the date of search. The decisions cited by the ld DR were also perused carefully and find them not applicable to the facts before us.

In view of the above facts and circumstances of the case and various decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition. The ground No.1 is allowed.

18. The issue raised in ground No.2 by the assessee is against the confirmation of addition of Rs.27,99,45,729/- by Ld. CIT(A) as made by the AO in respect of deposit in HSBC Bank accounts of Laptis Trading Ltd. and Sulay Trading Ltd. under section 69A of the Act.

19. The facts qua the addition on merit as raised by the assessee in this ground of appeal have already been discussed hereinabove while dealing with the jurisdictional issue. However, the same are briefly discussed for the sake of convenience and ready reference. The AO made the addition on the basis of peak balance during the year in the HSBC foreign bank account of M/s. Sulay Trading Ltd. of USD 2,43,134.65 and M/s. Laptis Trading Ltd. of USD 2,41,40,846. The AO has added the entire peak in the case of M/s. Sulay Trading Ltd. which worked out to Rs.1,07,14,944/- whereas only 25% of the peak in the case of M/s. Laptis Trading Ltd. was added to the income of the assessee by the AO which worked out to

Rs.26,92,30,785/- thereby making an aggregate addition of Rs. 27,99,45,729/-. These additions have been made by the AO under section 69A of the Act on the ground that assessee is a beneficiary/beneficial owner of the bank accounts held in HSBC Bank (Suisse) SA Geneva, Switzerland by these two Pvt. Ltd. Companies. In order to make the addition, the AO has primarily relied on the information shared by French Sovereign Government in the form of base note and also the non singing of consent waiver form which deprived the revenue to get the requisite information from HSBC Bank (Suisse) SA Geneva in respect of the assessee assets.

20. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after taking into account various contentions and arguments of the assessee by observing and holding as under:

> "6.18 I have considered the reply of the assessee in this regard and do not agree with the same. In the light of the above discussed facts and facts of the case, it is noticed that assessee had admitted at all time that all the personal details such as name, address, date of birth, passport no. mentioned in the base note are correct, while denying the other information in the same base note that he was beneficial owner of such accounts, which is against Indian Evidence Act. It may be stated that despite various opportunities given to the assessee, he has failed to furnish any details of the Foreign Bank accounts or cooperate with the AO. Also, on being confronted with the Base Note containing the details / information received from French Authorities, the assessee has not furnished any details and has remained elusive and evasive in his replies. He also questioned the authenticity and evidentiary value of the information received by the Government of India from French authorities under DTAA but refuses to sign the consent waiver form so that further information could be gathered from the HSBC Bank.
>
> 6.19. The arguments taken by the assessee have been considered but are found to be untenable. The points emerging from assessee's reply may be summarized as below:-
>
> > (a) Assessee has filed a HSBC letter dated 26.08.2011 stating that the assessee does not have any banking relationship with them, in his support of the claim of denial of existence of bank account.

(b) Assessee has claimed that a piece of paper was shown wherein his name allegedly appeared in the information of such account. However, the source of which was not disclosed to the assessee.
(c) The only argument given by the assessee is that the information with the department is unsigned and not authentic and is a stolen data.

6.20 As per section 61 of Indian Evidence Act, 1872, "the contents of documents may be proved either by primary or by secondary evidence" And as per section 65(a), secondary evidence may be given to the existence, condition or contents of a document in the following case:-

"When the original is shown or appears to be in the possession of power - of the person against whom the document is sought to be proved, or of any person out of reach of or not subject t to, the process of the court or of any person legally bound to produce it and when, after the notice mentioned in section 66, such person does not produce it"

6.21. The burden of proving a fact which is especially within the knowledge of the assessee is upon the assessee. The information received by the Govt. of India is found to be true and genuine, even then if the assessee, in particular, claims that this does not apply to him and he does not have any such account, then burden to prove tis claim is upon him and which he could not discharge.

6.22 With respect of purportedly HSBC letter dated 26.11.2011, it may be mentioned that during the course of post-search investigation, a letter was written by the Addl. DIT(inv.) Mumbai to the bank authorities at Geneva to confirm that the letter was written by the and that the contents of the letter are correct. In reply the bank authorities (Geneva) replied that the letter was indeed written by them, but they refused to divulge further information citing bank secrecy laws. Accordingly, in order to further investigate the matter, the proposal to FT & TR Division of CBDT, New Delhi was sent to carry out necessary enquiries in this case. The information received from foreign tax authorities clearly indicate that the assessee was a beneficial owner of the bank accounts in the names of the company Laptis Trading and Sulay Trading and that these companies were being controlled through the Beal Trust and the Fiduciary Equity Trust AG. Not only this the documents received clearly indicate that the assessee was added as one of the beneficiaries . How can the assessee deny such an information, as shared by the foreign tax authorities. All these details have been shared with the assessee vide letter dated 08.09.2020 but he has failed to file any satisfactory reply, regarding the ownership of the said bank accounts.

6.23 In view of the above facts the contentions of the assessee that the said HSBC bank accounts do not relate to him or he was not beneficial owner of the said bank accounts can not be accepted. Voluminous evidence and confirmation by foreign tax authorities clearly indicate that the assessee was beneficial owner of the said bank accounts. On being specifically confronted assessee in his answer to Q.No.28 sworn statement recorded on oath u/s. 131 of the ac dated 24.7.2013 simply stated " I am not aware of the same" . This is nothing but an evasive reply and the assessee does not want to divulge information in his special knowledge. Therefore various contentions of the assessee in this regard are rejected.

6.24 Further as mentioned in the purported HSBC letter confirming that based upon review of their records they have found no indication that assessee has visited HSBC Pvt. Bank (Suisse) SA to open the accounts. In this regard, it is learnt from the HSBC website itself and as per general principal Standard Operating Procedure (SOP), it is not always necessary to visit a particular country to open a bank account. Therefore, in the light of above observations and the reply of the HSBC Bank (Suisse) SA Geneva Bank to the letter of Investigation Wing, Mumbai wherein they refused to divulge further specific information whether there were accounts in the names of Sulay Trading Ltd and Laptis Trading Ltd and whether the assessee was beneficial owner of the same, citing bank secreacy laws, the contention of the assessee is held to be devoid of any merits.

6.25 It may be once again emphasized that the above information was received under Article 28 of the Convention between the Govt. of India and the Govt. of France for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on income and on capital dated 28thsep. , 1992 and the assessee just can not summarily disown the contents when his personal details are correct and accepted by him.

6.26 With respect to main argument given by the assessee that the information with the department is unsigned and is a stolen data, it is important to mention at the outset that assessee himself on his sworn statements has accepted that all the personal details mentioned in the Base Note received from French authorities such as name, address, date of birth , profession are correctly reflected and pertain to him. Preponderence of probability clearly indicates that a single entry from the said account, if accepted, then whole of the account is accepted. Accordingly there is not an iota of doubt that the assessee is the owner / beneficiary of this account.

6.27 Further, During the course of enquiries conducted by the Investigation Wing, Mumbai, many assesses have already accepted that they own the bank accounts as mentioned in the Base Notes, received from the same source, related to the assessee. Certain assessees have paid the taxes also on the amount mentioned in the Base Note against their undisclosed bank account in HSBC Bank (Suisse) SA Geneva, Various assessees have submitted the statements of their accounts in HSBC Bank (Suisse) SA Geneva also. However the present assessee is holding back and is not willing to pay taxes even when there is overwhelming evidence against him.

6.28 In various other cases, where assessees were denying out rightly that they have such undisclosed bank account in HSBC Bank. Geneva were required to fill up the consent waiver form and they did it. In response to the consent waiver form sent to the HSBC Bank. Geneva, the bank has sent them their bank account statements and CD. The assessees submitted these bank statement and CDs to the Income Tax Department. This confirms that even in those cases where assessees were denying the ownership of such undisclosed bank account also, they did cooperate with the department, but the assessee has time and again failed to do so.

6.29 Further as per the published media reports about the undisclosed foreign bank account in HSBC Bank (Suisse) SA Geneva, the name and other personal details alongwith the deposit amount etc, of Shaunak Jitendra Parikh was reported. On being confronted, in his sworn statement, he assessee has remained elusive and evasis in his reply. However, it is pertinent to note that the details including Names. Address. Profession, etc, reported in the media are the same as mentioned in the Base Note. On being asked, the assessee in his answer to question Nos. 22 & 23 of sworn statement recorded u/s. 131 of the Act, dated 16/02/2015, has stated that these media reports are nothing but allegation and Base Note shown to him is unauthenticated and the assessee once again reitereated doubts about the authenticity of base notes and Media Reports. On perusal, the inference may be Profession, Amount of Deposit etc are the same reported in two independet sources, one being Independent Media Report and second being the Base Note received from Frech Authorities under DTAA.

6.30 It may also be relevant to see that various countries have also taken action on the basis of such information which is discussed as below:

(i) France

In 2009, the French tax authorities obtained information taken by a bank employee from HSBC Bank (Suisse) SA Geneva containing 2005-2007 client data. At first, HSBC said that fewer than ten clients were effected, Subsequently, they reprorted that the information taken concerned 24,000 bank accounts of 79,000 people formo vaious countries, including 8,231 French taxpayers. The Italian tax authorities were said to have been proveded to the Spanish tax authorities. A copy of the naterial was sent by the French authorities to the Swiss attorney-General, sho that the Swiss authorities could advise HSBC Bank (Suisse) SA Geneva of accounts that had been disclosed to the French authorities. This sparked voluntary disclosures by French taxpayers. A figure of EUR500 million collected to the end of 2009 was quoted, with more expected.

(ii) Canada

The Canada Revenue Agency (CRA) went to court twice in 2008 to attempt to compel a Canadian Bank-owned broker (RBC Dominion Securities) to provide information about clients with an interest in Liechtein bank accounts, in early 2010, a third court application by the CRA was reported.The CRA has publicised its attempts to obtain information form UBSand from the Swiss authorities about Canadians with UBS Swiss accounts (total estimated at CADS.6 billion). There are no reports of succes, despirte CRA threats of litigation. However, the publicity has generated many voluntary disclosures.In early 2010, the CRA asked the French tax authorities to share the information taken from HSBC Bank (Suisse) SA Geneva (see France below). There is no published information about whether France complied. The CRA has been in dispute with a Canadian bank (Scotiabank) since 2002 in an attempt to obtain information about Canadian Taxpayear investing in a CAD1.1 billion offshore fund to avoid tax. 120 investorts were indentified by the CRA, but they are seeking 60 more, to

'verigy their compliance.' Scotiabank's Irish subsidiary refused to provide information to the CRA. The Canadian parent said it could not force its subsidiaries to provide information, which is surprising.

(ill) Germany

In 2006, an employee of a major Liechenstein bank (LTD Group) stole a geart deal of bankig information about its foreign customers, including about 1,400 German taxpayers. The German authorities paid EUR4.2 millon or perhaps EUR5 million (reports vary) for the information and arranged for the thief to obtain a new ientity. The German authorities paid EUR4.2million or perhaps EUR5 million (reports vary) for the information and arranged for the thief to obtain a new identity. The German authorities either sold or gave relevant information to some treaty partners and investigated informatio concerning German taxpayers banking in Liechtenstein. In April 2010. it was reported that Germany had completed 200 investigations of a tatal of 588 opened and had recoverd EUR200 million to date. If the assessee indeed does not have any bank account in Switzerland then he should have discharged his onus by giving Consent Waiver Form whereby if no documents are sent from Swiss bak to the assessee. if would establish assesse's claim. The assessee was also showcaused as to why prosecution u/s. 276 D and penalty u/s. 271(1)(c) should not be levied. Still the assessee adopted dilly dallying tactics with the hope that no meaningful investigation would be carried out.

6.31. In the instant case also, a Base Note is received, like the cases in other countries. He is the beneficial owner as per the base note. The base note contains assessee's all the personal details; including his Name, Date of Birth, place of Birth, Sex, Residential Address, Profession, Passport Number, Nationlity along with the date of opening of the bank account in HSBC Bank (Suisse) SA Geneva and amount of balance in the particular year as mentioned in the document. However, still the assessee is denying the ownership of his account.

6.32 The assessee has also argued that he was not given a copy of the base note, which is violation of law of natural justice. In this connection I would like to clarify that the assessee has been confronted to the base note on four occasions, firstly at the time of search on 08.08.2011 and subsequently during the asessment proceedings by the AO , on three different occasions, when his statement was being recorded on oath u/s 131. These facts are also well documented in the assessment order in the case of the asessees. Further entire base note has een reproduced by the AO in the body of the assessment order in para 7. Thus this contention of the assessee is also rejected.

6.33 The assessee has also taken the plea that provisions of sec 69A are not applicable in this case. However I am unable to agree with such a contention. The credits appearing in the bank accounts with the HSBC Bank (Suisse) SA Geneva, in the names of Sulay Trading and Laptis Trading Ltd.,

will be treated as the credits in assessee's own accounts, in the special circumstances like the present one, as the assessee is the beneficial owner of such accounts, as per the Base Note. Further as per information gathered from British Virgin Islands and the States of Jersey, also the assessee was the beneficial owner as discussed in foregoing paras. Therefore the plea of the assessee in this regard is also rejected.

6.34. As per the infrmation received from the Government of British Virgin Islands and the Government of States of Jersey, Jai Ketan Parekh, Shanak Parekh, Raj H Parekh and Milan Parekh were beneficiaries of the Companies Sulay Trading Ltd and Laptis Trading Ltd, through the Beal Trust. A copy of Instrument of Trust in the name of the Beal Trust dated 26/03/1997 was shared with the assessee. Also a copy of the deed of addition of beneficiaries dated 07/09/2007, executed by the Fiduciary Equity Trust AG, Geneva, Switzerland and supplement to deed dated 26.03.1997, by ABN Amro Trust Company(Jersey) in which names of Jai Ketan Parekh, Shanak J Parekh, Milan K Parekh and Raj H Parekh have been added as beneficiaries. It has been mentioned that the deed will be governed by the Laws of Jersey, was also shared, clearly nailing the assessee in this regard. Further the deed of appointment and indemnity dated 5/12/2007 executed in between Fiduciary Equity Trust, Geneva Switzerland and HSBC Trustees Singapore and supplement to Trust Deed dated 26.03.1997 by ABN Amro Trust Company, Original Trustees known as the Beal Trust, and a Deed of Retirement of dated 14.09.2006 made between the original Trustees and appointed trustees and in supplement to Trust deed dated 07.09.2007 (Deed of addition of Beneficiaries as above) was also shared. Besides a Deed of addition of beneficiaries dated 28/08/2009, executed by the Equity Trust Fiduciaries and Supplement to deed dated 26.03.1997 and original trustees known as the Beal Trust and deed dated 14.09.2006, deed dated 07.09.2007 and dated 05.12.2007 as above, was also shared. This shows that the assessee was repeatedly trying to conceal the things by layering and changing the constitution of controlling trusts, adding and deleting names of the beneficiaries.

6.35 The assessee has also argued that as he was added as a beneficiary only as on September 7th, 2007, no addition could be made in its hands for A.Y. 2006-07 and 2007-08. However I am unable to agree with such a contention of the assessee. The above transactions are quite complex and involves various layers. The assessee is changing the names of trusts and companies so frequently so as to close the trail. The trusts are getting merged in other trusts or taken over by other trusts as mentioned by the assessee itself in letter dated 16.10.2020. For example the Beal Trust was settled by Raju Navin Chandra Shah on 26.03.1997 through ABN Amro Trust Company. ABN Amro was later acquired by Equity Trust (Jersey) and was later acquired by TMF Group, In between HSBC Trust Singapore was also part of the above trusts and transactions. Further the beneficiaries are being added and being removed quite frequently. So there is a particular design to it. However I would like to refer to the Base Note again in this regard which clearly says that the assessee opened the said bank account (creation date)

on 29.06.1998. It further says that the details were last modified as on 22.12.2004. It also contains personal details of the assessee like Passport No, address etc.. Then it mentions lien personnel or connection of the person with the profile client as "Beneficial Owner". Thereafter it talks about profile client/customer related to the individual against which name of the company Sulay Trading Ltd is clearly mentioned. These details conclusively establish that the assessee was beneficial owner of the said bank account of Sulay Trading ltd. Alongwith his brothers Raj, Milan and Shaunak, whose names are also mentioned in the said base note. Thereafter the Base note talks about the IBAN No of this account as CH13 0868 9050 8762. The balance in the said account as on December 2005 was USD 2,41,763 and as on December 2006 as USD 2,45,764. Further it talks about another company Laptis Trading Ltd as profile client and balances in the said account (CH 81 0868 9050 9110 7398) AS ON December 2005 as USD 2,38,66,326 and as on December 2006 as USD 2,98,91,844. This proves beyond doubt that the present assessee was a beneficial owner of the said accounts all along from 1998 onwards and not from September 7, 2007. The complex web of companies and Trusts created by the assessee just to hide the above information may not help the assessee. Consequently this contention of the assessee is also rejected.

6.36 The assessee has also claimed that he received no profits or benefits or no distribution was made to him. However this is not the correct position. As per Deed of appointment and Indemnity dated 5th December, 20,300,000 US Dollars were set apart by trustees to be distributed among beneficiaries. Admittedly as per the assessee itself, he has retired only in the year 2009. So he has enjoyed such distribution. In fact the complete bank accounts are not in possession of the Income Tax Department, so as to verify as to how much amount has gone to individual beneficiaries over a period of time.

6.37 Necessary information as received from Foreign Governments as above, has been shared with the assessee and he has failed to controvert the same. In view of the above, it has been proved beyond doubt that the assessee was actually beneficiary of the said HSBC accounts along with his brother and cousins, as mentioned above.

6.38 As per sec 61 of Indian Evidence Act, the contents of documents may be proved either by primary or the secondary evidence and as per sec 65 , secondary evidence may be given to the existence when original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved and when after / notice u/s 66 the person does not produce it. Since the original document is in possession of a bank outside the jurisdiction of the government of India and the bank has refused to part with the information and the assesee is not cooperating by signing a consent waiver form, the Base Note is being considered as the existence of a document. Further as per sec 11 of evidence Act, when many other persons have accepted the contents of the Base Note, it becomes valid even in the case of the present assessee. The burden of proving a fact which is specially within the knowledge of the assessee is upon the assessee, which he has failed to discharge.

6.39 In this regard, I would also like to rely upon the recent judgment of Hon'ble ITAT Mumbai dated 18th July 2020, in the case of Ms. Renu Tharani for A.Y. 2005-06 (ITAT No.)Where in the Hon'ble ITAT Mumbai observed that if an individual puts impediments hi the carrying out of a tax evasion and black money hoarding enquiry in the foreign banks, then Income Tax Department will have the power to add that money under scrutiny in the person's taxable income& thus upheld addition of Rs. 196 Cr made by the AO, on identical facts in the hands of that person. The main issue in this case relates to addition of Rs 196,46,79,1467-. The AO made addition as the assessee failed produce any evidence with regard to the source and genuineness of transactions. The submission of the assessee that she was a beneficiary owner of the Tharani Family trust for which M/s GWU Investments Ltd, Cayman Islands was an underlying company and managing the account, was not supported by any evidence. The assessee did not give consent waiver to facilitate the AO to obtain information directly from the Bank. Further, the assessee was not even aware of that who was the settlor of the Trust. In absence any evidence, the AO made the addition which was confirmed by the CIT(A) confirmed the stand of the AO with observation that the assesse failed to discharge her onus. The CIT(A) also relied upon the order of Hon'ble Bombay High Court in the case of Soignee R Kothari vs. DOT which deals with impact of refusal to sign consent waiver.

6.40 The Hon'ble ITAT considered all the facts put forth by the Departmental Representative and also the reference made by the DR with regard to the modus operand! of the HSBC Bank which publicly offers assistance assist in trust structures so as to enable the settlor to transfer the legal ownership of its assets to the trustee, who manages and holds the assets for the benefit of the beneficiaries. The ITAT also discussed various issues such as the evidentiary value of the base note utilsed for making addition; conduct of the assessee, who closed account immediately after information was received by GOI and transferred the assets to the underlying company M/s GWU Investments Ltd, Cayman Islands. The company and the Trust were also closed subsequently by the assessee so that no track remains traceable. The ITAT further observed that the assessee is closely involved with the transaction and it is inconceivable that the assessee has no direct knowledge of the owners of the underlying company and settlers of the trust which has her as the beneficiary of such a huge amount. The ITAT applied the principles of human probabilities and held that the explanation of the assessee was fit to be rejected and that direct evidence of illegal transactions would be rarely available as transactions take place in secret, and therefore, simply on the ground that such direct evidence is not brought on record by the revenue authorities, the assessee cannot go scot free. Apart from discussing above facts, the ITAT observed that the principles laid down by Hon'ble Supreme Court in the case of Estate of HMM Vikramsinhu of Gonda which was relied upon by the assessee **has no relevance hi the present context and thus distinguished the Hon'ble Supreme Court decision in the case of Vikkram Singh ji as relied upon by**

the assessee. The relevant portion of the ITAT's order is reproduced as under:

> 44. The assessee states that she is neither a shareholder nor a director in GWU Investments Ltd. That's not even in dispute. GWU Investments Ltd is a Cayman Islands entity, and it needs no special knowledge to know that, more as a rule rather than as an exception, the Cayman Island entities are owned by nominees of the beneficial owners. The operations carried out by these entities, are mainly to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These offshore entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities. Nothing, therefore, really turns on the assessee not being a director or shareholder of the GWU Investments Ltd. The relevant question is whether she is beneficial owner of the said company or not. HSBC documents show that she is the beneficial owner, and there is nothing, save and except for self-serving statements of the assessee and contents of some unverified and uncorroborated letter of functionary of HSBC Private Bank- which has been indicted in several parts of the world for colluding with unscrupulous tax evaders and money launderers, to controvert that position. It is also inconceivable that a Rs 200 crore beneficiary in a trust will not know about who has settled that trust. Similarly, while dealing with Cayman Island entities, living in denial about beneficial ownerships, and confining to legal ownerships, is preposterous. The claim of the assessee, about a thing which is not in the knowledge of the Assessing Officer and further investigations about which are stalled by the assessee, is to be examined in the light of real life probabilities and the very act of the assessee, in stalling the further probe, works against the assessee. The assessee may have something to say and some evidences to file. These evidences and statements cannot always be accepted at the face value without application of mind about their reliability. A conscious call is to be taken, in a fair and objective but a realistic, manner about reliability of such evidence. As observed by Hon"ble Supreme Court, in the case of CIT Vs Durga Prasad More [(1971) 82ITR 540 (SC)], "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". As Hon'ble Supreme Court has observed, in this case, ".At is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make selfserving statements in documents either

executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and our call is to be taken not only in the light of the face value of the documents sighted by the assessee but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground realties. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, statements and letters and examining them, in a pedantic manner, with the blinkers on. The same has been the approach adopted by Hon"ble Supreme Court, in the case of SumatiDayal Vs CIT[(1995) 214 ITR 801 (SC)], wherein Their Lordships have, inter alia, disapproved acceptance of a claim of winning the appellant claims to have won in horse races a total amount ofRs. 3,11,831 on 13 occasions out of which 10 winnings were from Jackpots and 3 were from Treble events by Chairman of the Income Tax Settlement Commission, and observed that "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities". Their Lordships further observed that "Similarly the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with

the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence".

45. Viewed in the light of factual backdrop of the case, and in the light of the above legal position, no reasonable person can accept the explanation of the assessee. The assessee is not a public personality like Mother Terresa that some unknown person, with complete anonymity, will settle a trust to give her US S 4 million, and in any case, Cayman Islands is not known for philanthropists operating from there; if Cayman Islands is known for anything relevant, it is known for an atmosphere conducive to hiding unaccounted wealth and money laundering, and that does not advance the case of the assessee. This is a jurisdiction which has double the number of companies than resident, most of which remain only on paper, and it will be no naive to believe that these companies are located here, in a country with around 65,000 residents, for bonafide core activities, rather than the benefits of anonymity, secrecy and liberal tax laws. Cayman Island is one of the few jurisdictions in the world where public records of the beneficiaries of firms and companies, like GWU Investments Ltd, are not maintained, and it is only with effect from 2023, that is if the promises made by the Government of Cayman Islands can be believed at face value, that such public records will be maintained. That is an ideal situation, as on now, for holding the unaccounted monies through a web of proxy corporate entities. The only persons who are privy to vital information about these transactions are the persons who are privy to these transactions-maybe as owner, as settlor, as beneficiaries or as facilitators or even as accomplices in these manoeuvrings, and when they decline to share the correct information, and thwart further probe in the matter, investigations reach a cul-de-sac. The assessee before us is closely involved with the transaction and it is unconceivable that the assessee will have no direct knowledge of the owners of the underlying company and settlors of the trust which has her, as she herself puts it, as beneficiary of such a huge amount. This inference is all the more justified when we take into account the fact that the assessee has been non-cooperative and has declined to sign the consent waiver. One of the arguments raised by the assessee, as set out in a chart showing arguments of the assessee-below paragraph 20 earlier in this order, that the assessee could not have performed the impossible act of signing consent waiver because she was not owner of the account is too naive and frivolous to be even taken seriously. If the assessee was indeed not the owner of the account, there was

all the more reason to sign the consent waiver form because it would have established that fact when the HSBC Private Bank (Suisse) Geneva was to decline the information on the basis of that consent waiver. A consent waiver signed by the assessee would have been infructuous in that case, and it could not have done any harm to the assessee. Consent waiver form does not prejudice the claim of the assessee that he does not own the account in question; all it does is, as can be seen from the extracts from consent waiver form format reproduced earlier, is that it waiver assessee"s rights, if any, under the data protection and banking secrecy laws. The plea of the assessee, as noted earlier, is fit, if at all it is fit for anything, only to be rejected.

It is only elementary that direct evidence of illegal transactions of the assessee, as indicated by Hon'ble Supreme Court in the case of Sumati Dayal (supra), "would be rarely available" as such transactions "take place in secret", and therefore, simply on the ground that such direct evidence is not brought on record by the revenue authorities, the assessee cannot go scot free. As observed by Hon'ble Supreme Court in the said case, "it is upon the alleger to prove that it is so, ignores the reality". When we follow the path, as laid down by Hon"ble Supreme Court in the case of Sumati Dayal (supra), by "considering surrounding circumstances and applying the test of human probabilities" and donot take "a superficial approach to the problem", the inescapable conclusion is that the explanation of the assessee is onfy fit to be rejected. In the present case, there is even direct evidence available on record. As the base note categoricalfy states, this is "synthese individuelle" (individual synthesis, in literal meaning, which refers to ..individual's profile") and name of the person is Renu Tikamdas Tharani, and her address is under the heading "Adresses de la personne physique" (i.e. addresses of the natural person). In the heading "Profils client lies a la personne" (i.e. customer profiles linked to the person), GWU Investments Limited is shown as Nom du profil client (customer profile name) but then the same note shows nature de profil (i.e. profile nature) as Nominatif (nominative, or nominal) and that the Details du lien (i.e. link details) between the individual and the company is that of "beneficiary/beneficial ownership". It is important to note that the reference to "link details" is in respect of customer profile name, which is stated to be GWU Investments Limited, and onfy an individual can be beneficiary of the company or beneficial owner of the company, and not the other way round. There is no reference to Tharani Famify Trust at this stage and in this section of the base note. That comes at the fag end of the base note under the heading "personnes legales liees" (i.e. related legal persons). Clearfy, therefore, the link details, or "details du lien", are between the individual and GWU Investments Limited, and these link details clearly show that the assessee is a beneficiary and beneficial owner of the GWU Investments Ltd.

46. While we have noted the claim of the assessee that she is a discretionary beneficiary of Tharani Family Trust, that fact does not find mention in the base note. As we have clearly analyzed above, the base note shows that the assessee was beneficial owner or beneficiary of GWU Investments Ltd. We may add that in the remand report filed by the Assessing Officer, there is a reference to some unsigned draft copy of the trust deed having been filed before him but neither this deed is authentic nor is it placed before us in the paper-book. The assessee has not submitted the trust deed or any related papers but merely referred to a somewhat tentative claim made in a letter between one Mahesh Tharani, apparently a relative of the assessee and the HSBC Private Bank (Suisse) SA-an organization with a globally established track record of hoodwinking tax authorities worldwide. All that this letter, addressed to one Mahesh Tharani, states is "As per the request of director, we hereby confirm that, GWU Investments Ltd was holder of the account 1414771. According to our records GWU Investments Ltd. Used to be an underlying company of the Tharani Famify Trust for which Mrs. Renu Tharani was a discretionary beneficiary. To the best of our knowledge, The Tharani Family Trust was terminated and none of the assets deposited with HSBC Private Bank (Suisse) SA were distributed to Mrs. Renu Tharani". It is not clear as to how is the director, and of which company; if Mahesh Tharani was a director of GWU Investments Ltd, when he could share this letter, he could have as well shared the information. If he is not the director, he would have at least known the director because director requested the Bank to provide this information to Tharani. Nothing is clear, nor does the assessee throw any light on the same. Be that as it may, this letter does not show deny, nor show any material to controvert, what is stated in the base note Le. GWU Investments Ltd and the assessee are linked as beneficial owner. There is no dispute that account was in the nominal name of GSW Investments Ltd but the question is who is the natural person beneficial owner thereof. As for the Trust, there is no corroborative evidence about the statement, but nothing turns thereon as well. The assessee being discretionary beneficiary owner of the trust, and beneficial owner of the underlying company, is not mutually exclusive anyway but the claim of the assessee being a discretionary beneficiary of the trust is without even minimal evidence. There is another letter from HSBC Private Bank (Suisse) SA to the assessee which states that "Further to your request, we hereby confirm that you, Mrs Renu Tharani, are not the holder nor, to the best of our knowledge, the beneficial owner of any account opened in the books of HSBC Private Bank (Suisse) SA. However, you are a discretionary beneficiary of a trust called the Tharani family Trust for which HSBC Guyerzeller Trust Company, acts as trustee. No bank account is maintained in the name of the trustee, and we confirm that you are not, nor have your even been, an authorized signatory on the bank account held in the name of the

trust's underlying company". As for the first statement made in this letter, it does not show why the base note records assessee as the beneficial owner of the company, and how does the bank reconcile these two conflicting positions taken. As regards the assessee being a discretionary beneficiary, nothing turns on it anyway for the reasons we have discussed earlier in this paragraph. As for assessee not being authorised signatory for GWU Investments Ltd, that is not even the case of the assessee or the position taken in the base note. An HSBC entity, i.e, HSBC Guyerzeller Trust Company, being a trustee for Tharani Family Trust shows that if it was indeed desired by the assessee, trust deed would have been available with the HSBC entity. Its a also a coincidence that with all this available information, neither the assessee asks for the trust deed nor does the HSBC share the same. On the contrary, assessee, in one of the communications to the Assessing Officer, specifically states her inability to furnish the same. What these letters state may have some truth- half truth or technical truth, but then these qualified truths are only different forms of falsehood in entirety. There is something seriously amiss in all this; something is rotten in the State of Denmark. There is a series of coincidences, right from the HSBC account being closed after the information contained in the base note coming out and to the underlying company being removed from the name of Register of Companies in Cayman Island, right from assessee living in complete denial about any knowledge about a HSBC Private Bank (Suisse) SA account in her name to her lack of information about the company which is holding US $ 4 million for her, and, despite assessee being purportedly so clean in her affairs, her thwarting any efforts of the income tax department to get at the truth by declining to sign the consent waiver form. It is wholly un-understandable as to how can assessee, on one hand, seek to treat a cleverly worded private letter from HSBC Private Bank (Suisse) SA as gospel truth, and, on the other hand, effectively stall, by declining consent waiver and by stating half truths- even if her statements have an element of truth, the Assessing Officer obtaining direct information from the same organization. There is no meeting ground in this approach. In any case, for the reasons set out above and as evident from the base note, the assessee is beneficial owner of GWU Investments Ltd, Cayman Islands. There is nothing to controvert this fact stated in the base note, and since the assessee has declined consent waiver in this case, the assessee cannot decline correctness of the details obtained from the HSBC Private Bank (Suisse) SA.

47. As regards the repeated references to Hon"ble Supreme Court"s judgment in the case of Estate of HMM Vikramsinhji of Gonda (supra), it is important to understand that it was a case in which a discretionary trust was settled by the assessee and the limited question for adjudication was taxability of income of the trust, after the death of the settlor and in the hands of the beneficiary. It was in this context thatHon"ble Supreme Court held that the question of

taxation in the hands of the beneficiary arises only when he receives the money because, as Their Lordships noted, "A discretionary trust is one which gives a beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or appfy for his benefit, such part of the income as they think fit. The trustees must exercise their discretion as and when the income becomes available, but if they fail to distribute in due time, the power is not extinguished so that they can distribute later. They have no power to bind themselves for the future. The beneficiary thus has no more than a hope that the discretion will be exercised in his favour." These observations have no relevance in the present context. Firstly, neither there is any trust deed before us, nor the question before us pertains to taxability of income of the trust. Secondly, beyond a mention in the base note as a personnes legales liees" (i.e. related legal persons), there is no evidence even about existence, leave aside nature, of the trust. Thirdly, the point of taxability here is beneficial ownership of GWU Investments Ltd, a Cayman Island based company, by the assessee. Finally, even if there is a dispute about the alleged trust, the dispute is with respect of taxability of funds found with the trust and the source thereof. Clearly, therefore, the issue adjudicated upon in the said decision has no relevance in the present context. The very reliance on the said decision presupposes that the assessee was discretionary beneficiary simplicitor of a discretionary family trust, and nothing more- an assumption which is far from established on the facts of this case."

6.41 It may be stated that the facts of the case of Ms. Renu Tharani are identical to that of the case of the assessee.Ms. RenuThadani was also a beneficial owner of bank account with HSBC Bank (Suisse) SA Geneva, which the controlled through a trust GWU investments. Mrs. Thadani's personal details like passport number, name, address were found with the bank account. She also did not cooperate with Indian Tax authorities in investigation and thus put impediments, like the present case. Therefore the ratio of this decision is directly applicable.

6.42 Similarly in the case of Soignee R Kothari Vs DCIT Central Circle 8(3) Mumbai. the Hon'ble Bombay High Court dismissed the writ petition of the assessee on the grounds that the assessee failed to sign the " consent waiver form" and also failed to cooperate with the tax authorities. The Hon'ble Court observed as under :

> "Neither the Petitioner nor her uncle i.e. Executor of the Estate of late Ramniklal N. Mehta is ready to obtain the necessary statement either directly or through U/s. White Cedar from HSBC Bank (Suisse) SA Geneva in respect ofA/c. No. 5091404580 by exercising or causing to be exercised the limited authority to instruct White Cedar to apply for and

obtain the requisite information. In the normal course of human conduct if a person has nothing to hide and serious allegation/questions are being raised about the funds a person would make available the document which would put to rest all questions which seem to arise in the mind of the Authorities. The conduct on the part of the Petitioner and her uncle, in not being forthcoming, to our mind leads us to the conclusion that this is not a fit case where we should exercise our extra ordinary writ jurisdiction and/ or interfere with the orders passed by the authorities under the Act. If a person has nothing to hide, we believe the person would have co-operated in obtaining the Bank account."

Ratio of the above judgment of the Hon'ble Jurisdictional High court is clearly applicable to the facts of the present case as in this case too, the assessee has failed to sign the " consent waiver form".

6.43 Further the Hon'ble ITAT Delhi in the case of Win Chadha(A.Y. 1987-88 TO 1999-2000), under identical circumstances, held as under:

(i) Unlike criminal proceedings where the charge has to be proved beyond doubt, income-tax proceedings are quasi-judicial Tax Liability in cases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of probabilities; (ii) In clandestine transactions, it is impossible to have direct evidence or demonstrative proof of every move and when the assessee is not forthcoming with proper facts and chooses to be elusive and evasive, the AO has no choice but to take recourse to v estimate. The only caveat is that it should be reasonable and based on material available on record. It should not be perverse or based merely on conjectures.

(iii) If statement of a sovereign Govt. is not acceptable as reliable evidence in Indian tax proceedings, no case of cross-border tax evasion can ever be detected or proved. No burden can be cast on the AO in impossible terms.

(iv) It is the duty of the Revenue Authorities to be mindful of clues and coincidences and bring them to logical conclusions, otherwise clandestine tax evasion through shady economic deals, will go undetected, as appears to be the order of the day. India is neither a tax haven nor a banana republic;

(v) The I.T Dept was carrying out investigations in difficult circumstances ascribable to the sensitive nature of inquiries, their ramification on national politics and public perception. It was very difficult to get information and documents and to examine concerned links due to the premeditated

surreptitious comer up of transactions and smokescreen corporate jugglery;

(vi) There, is no presumption in law that the AO is supposed to discharge on impossible burden to assess the tax liability by direct evidence only and to establish the evasion beyond doubt as in criminal proceedings. He can assesses on considerations of material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/evidence available on record;

(vii) Though the original documents were not given to the assessee (despite demand), no inference can be raised that the contents are fabricated or incorrect because the evidence was obtained by lawful means. Questioning their contents or veracity in income tax proceedings will amount to disb3elieving the whole system. The assessee has not claimed that the documents are false or fabricated;

(viii) As regards the burden of proof, if the AO comes across material indicating accrual or receipt of income in the hands of the assessee, he is empowered to investigate the matter and ask relevant questions. The AO's burden is initial in nature. Thereafter, the assessee has to give a proper explanation and disclose facts which are in this exclusive knowledge. The assessee has no option to remain selective, elusive, evasive or restrained in disclosure. After such explanation, the AO has to ascertain the correctness of the assessee's submissions on the basis of material available on record, the surrounding circumstances, the conduct of the assessee, the preponderance of probabilities and the nature of incriminating information/ evidence available with him.

(ix) Pointed out that inaction to take action against the others "may lead to a non-existent undesirable and detrimental notion that India is a soft state and one can meddle with its tax laws with impunity."

The raio of the above decision of Hon'ble ITAT is also clearly applicable to the facts of the present case.

6.44 As per the Base Note, with respect to the Bank account in the name of Sulay Trading Ltd., since the percentage/share of the director is niether known nor told by the assessee, the full amount of the peak balance is to be added in the hand of assessee for the year under consideration. However, in case of Laptis Trading Ltd, since percentage/share of the account were mentioned in the base note against, therefore the proportinate addition i.e. 25% of ht peak balance is to be made in the instant year. In case of Olga Ltd & Blackberrey international Ltd, since the amount balance were shown as NIL, at this point no addition is to be made at this point. The figures are worked out as under:

6.45 As per Base Note, with respect to the Sulay Trading Ltd. Bank account, since the percentage/share of the director in niether known nor told by the assessee, the full amount of the peak balance is to be added in the hand of assessee for the year under consideration. However, in case of Laptis Trading Ltd, since percentage/share of the account were mentioned in the base note against, therefore accordingly the proportinate addition i.e 25% of ht peak balance is to be made in the instant year. In case of Olga Ltd & Blackberrey international Ltd, since the amount balance were shown as NIL, at this point no addition is to be made at this point. The figures are worked out as under:

Rs. No	Name of the Assesse e	BUP SIFIC P ER_ID	Name	Account No. /Code Profile Client	Addition in Dollars, peak balance of the year	
					2006-07	2007-08
1	Shri Jay Ketan Parikh	BUP 5090144519	(i) Sulay Trading Ltd, (ii) Laptis Trading Ltd.	50913204 91 50913162 22	2,43, 134.65 60,35,211.50	2,629.55 14,37, 749. 62
Total					62,78,346.15	14, 40,379.27
exchange value in ruppes term at exchange rant of Rs. 44.61					27,99,45,729	6,42,53,894

6.46. Therefore, respectfully following decision of Hon'ble ITAT Mumbai in the case of Renu Thadani dated 18.07.2020, the addition of Rs. 27,99,45,729/- made by the AO u/s. 69A of the Act being deposits in Foreign bank accounts with HSBC Bank (Suisse) SA Geneva is upheld.

6.47 Consequently, grounds no. 2 and 3 taken by the assessee are rejected."

21. The Ld. A.R. submits, at the outset, that the AO has made the addition on the ground that assessee is beneficial owner/beneficiary of HSBC bank accounts and it was not the case of the AO that assessee was the owner of the bank accounts. The ld AR submits that during the course of the proceedings before CIT(A), some documents were received by the Department from the Government of virgin Islands & Jersey,

which were made available to the assessee vide letter of CIT(A) dated 08-09-2020. The ld AR submits that the A.O. had made addition based on the 'base note' whereas the CIT(A) has confirmed the same based on this information received from foreign government. The AR refers to the letter of the CIT(A) dated 08-09-2020 and also the enclosed information/details which are filed at page 17 to 50 of the paper book. Further, ld AR stated that the CIT(A) has also taken in to consideration a letter dated 16-10-2020 filed at page 72 of the paper book addressed by the trustee, TMF group. Referring to the letter, the ld AR submits that it is relevant to note that the letter of TMF group has been produced by the assessee and the same has been taken on record and considered by the CIT(A) at page 56 of the appellate order and the information contained in this letter is in conformity with the information independently obtained by the Department from the foreign government. The ld AR refers to these documents and analyzed the contents to prove his averments that whatever information/details are contained in these letters/documents do not in any manner prove that assessee is beneficial owner of the HSBC bank accounts. The ld AR refers to the following documents to prove his averments to the effect that assessee was not the beneficiary during the year under consideration and therefore there is no question of making any addition in his hands in the instant assessment year:

a. Letter of Government of Virgin Islands dated 19-05-2017 (page 18 ofpaper book)

b. Instrument of Trust dated 26-03-1997 (page 23 of paper book)

c. Deed of Appointment, Retirement and Indemnity dated 14-09-2006 (page 36 of paper book)

d. Deed of addition of beneficiaries dated 07-09-2007 (page 37 of paper book)

e. Deed of Appointment and Indemnity dated 05-12-2007 (page 41 of paper

book)

f. Deed of Addition of beneficiary dated 28-08-2009 (page 45 of paper book)

g. Letter of TMF group dated 16-10-2020 (page 72 of paper book)

22. The ld AR submits that it is relevant to note that each of the Trust documents, forwarded by the Sovereign Government of Virgin Island and Jersey, refers to all earlier chain of the documents entered into thereby ruling out any possibility of having any other unknown document/missing document whereby assessee could have been appointed as beneficiary during any prior period than what has been stated in these letters. The ld AR argues that based on the above, it can be concluded that , at the highest, the assessee was added as a beneficiary to 'The Beal Trust' vide supplemental deed on 07.09.2007 only and therefore prior to this deed, assessee had nothing to do with the said trust whatsoever. The ld AR prays that in view of these facts, no addition can be made in the assessment year under consideration. The ld AR submits that based on the information provided by CIT(A), it is conclusively proved that assessee had no connection or control over the trust or its investments or its distribution prior to 07.09.2007 and thus, any addition made in assessment year prior to AY 2008-09 is grossly incorrect and deserves to be deleted as any arguments in support of such addition could be only presumptive assumptive and not based on any evidence, direct or circumstantial. Further, in response to the letter of appellant's legal counsel dated 25.09.2020, TMF Services S.A, the trustees of the aforesaid "The Beal Trust" provided their reply vide letter dated 15.10.2020 giving chronology of the events that occurred and most importantly, shedding light on

relationship of the assessee with the Trust and the companies mentioned in the base note. The ld AR submits that this letter is of utmost importance as it brings out the facts correctly which are in line with the information/details provided by the CIT(A). It states that in October 2009, appellant was removed from the list of beneficiaries of the Trust. The ld AR further emphasized that the said letter also explicitly clarifies that no approval from the assessee was sought to either add or remove him from the list of beneficiaries.

23. The ld AR further argues that it may be noted that now the information has been directly received by the department from abroad and has far more evidentiary value than 'base note'. The ld AR also submits that based on this, it can be concluded that appellant never received any distribution from the Trust and the companies, in any manner whatsoever. The ld. Draws our attention towards the judgment of Apex Court in case of Estate of Late HMM Vikramsinjhi of Gondal (363 ITR 679) wherein it was held that the income not distributed to the beneficiaries cannot be assessed in the hands of the beneficiaries. The ld AR submits that addition cannot be made in the hands of an individual who is neither an owner nor a beneficiary nor a beneficial owner of such bank account during the year under consideration. In his defence , the ld counsel relies upon the decision of Hon'ble Mumbai bench of the Tribunal in the case of Yashovardhan Birla vs. DCIT (W.T.A. No. 02 to 08/Mum/2020) (Pg no 168 of P.B. 2). In this case bank balance in the offshore companies which were governed by the trustees of the irrevocable discretionary trusts in which assessee was one of the beneficiaries were treated by the AO to

be that of the assessee. The Hon'ble ITAT held that actual legal ownership has to be considered rather than deemed ownership. It further held that even though in KYC compliance the assessee is mentioned as the beneficiary, the same does not take away the ownership of bank accounts from the companies and trust and the bank accounts can never be said to be belonging to the assessee.

24. On the issue non signing of consent waiver form and non cooperation of the assessee with the department by not signing the consent waiver form, the ld AR submits that the consent waiver form, which the assessee was asked to sign by the A.O., proceeded on the premise that the assessee has an account with HSBC bank. The printed consent waiver form required the assessee to declare that he is owner/beneficiary of the bank account. It also required the assessee to obtain consent of other persons like trustee etc. The ld AR submits that the assessee has consistently denied having any bank account with HSBC bank and hence it would not be correct to sign the consent waiver form. The ld AR submits that a detailed submission, pointing out the reasons as to why the form could not be signed, was furnished before the Assessing Officer copy of which is placed at Pg no 7 to 11 of the P.B.

25. The ld AR argues that in any case, the department has now in its possession the copy of trust deed and complete chain of documents concerning changes in the trustees, beneficiaries etc. The purpose of consent waiver form is to procure all the relevant documents. It is submitted that in light of the fact that the source documents have been received by the department,

the issue of consent waiver form loses its relevance.

26. Without prejudice to the aforesaid two fold contentions and strictly in alternate, if the relief is not granted on the aforesaid contentions, the ld AR prays that following further contentions of the appellant may kindly be adjudicated. First contention is that the assessment was made in violation of principles of natural justice. The ld AR submits that during the entire assessment proceedings, the copy of the base note, the sole document based on which addition has been made by the A.O., has not been made available to the appellant. The base note has been alleged to be received by the Government of India from the French Government under DTAA between India and France, the veracity of which is in serious doubt. Further, various other documents and evidences mentioned in the assessment order and based on which adverse inferences have been drawn against the appellant have not been provided to the appellant. The ld AR submits that assessee made repeated requests to the CIT(A) for providing these documents, the list of which has been reproduced by the CIT(A) page 52, 53 of order. However, the CIT(A) has not commented on request in respect of providing these documents. As regards the copy of the base note, the CIT(A) has held that the same was shown to the appellant while recording his statement. It is submitted that appellant ought to have been provided with the copy of the base note, which is very vital document as per the Department, so as to enable the appellant to effectively defend his case. Admittedly, no prejudice would have been caused to the Department. Similarly, action of the Department in not providing or even showing other documents as stated herein

above has caused serious breach of principles of natural justice.

27. It was stated that the appellant came to know for the first time that the name of Mr. Mahendra Parikh, assessee's uncle, is figuring in the documents now provided by the CIT(A). A time was sought to seek clarification of Mr. Mahendra Parikh, who is aged 82 years and is residing at Dubai. The need for granting some more time has been elaborated in the said letters which are part of the paper book and the same is not repeated here for the sake of brevity. Suffice to say that the correctness of reasons for adjournment have not been disputed by the CIT(A).However, without acceding to the request of the assessee, the CIT(A) passed the order on 19.10.2020, which is in violation of principles of natural justice. The assessee has since obtained a letter dated 29.10.2020 from Mr. Mahendra Parikh, assessee's uncle, stating that the HSBC bank accounts were opened in name of companies belonging to one 'The Beat Trust' and the said trust was created by his friend. It further states that the name of assessee, along with other three individuals, were added as beneficiary of the said trust without their knowledge and no distribution was made to the assessee. Most importantly, Mr. Mahendra Parikh has confirmed that all the benefits and interests in the said trust belonged to him. The assessee has filed the said letter as an additional evidence before the Hon'ble Tribunal. Apart from this, the Trustee of the above referred trust has also given updated letter dated 05-02-2021, which is very relevant to the issue under consideration. It is submitted that for the detailed reasons mentioned in the above covering letter, the additional evidence may kindly be

admitted by Your Honours.

28. The Ld. D.R., on the other hand, heavily relied on the orders of authorities below and submits that there is no merit in the arguments of the Ld. A.R. that the assessee had never visited Geneva in order to open bank account in HSBC Bank (Suisse) SA Geneva. The Ld. D.R. submits that there is no need of going to Geneva for opening a bank account in HSBC. The Ld. D.R. submits that the assessee is a beneficiary and not primary account holder of the said bank accounts. The Ld. D.R. submits that it is a secret and clandestine process of quietly parking the money in the foreign countries and making person who is the owner of money as beneficiary so that these funds could ultimately go to the individuals/entities who are shown as beneficiaries. The Ld. D.R. submits that the companies which are holding the bank accounts in HSBC Bank (Suisse) SA Geneva were so frequently changed that it is not possible for the Revenue Authorities to conduct inquiries into the matter. The Ld. D.R. also argues that in case of tax evasion and black money matters, the standard of evidences have to be lowered as we can not have the same standard at par with the other crimes like murder, dacoity and rape etc. Controverting the contentions of the Ld. A.R. on stolen data from Swiss bank, the Ld. D.R. submits that though these datas were leaked from the bank but the same was a reliable information and piece of evidence since it contains the exact details mentioning the exact particulars about the assessee. Therefore it does not matter whether the data is stolen or not or is officially supplied. The Ld. D.R. submits that the base note contains the minute details about the beneficiaries and therefore, how the same could be said to be

bogus data. The Ld. D.R. submits that had the assessee signed the consent waiver form, the Revenue Authority could have found out the truth behind the curtain. In defense of his arguments, the Ld. D.R. relies on the decision of Renu Tharani v. DCIT ITA No. 2333/Mum/2018 dated 16.07.2020 and submits that since the facts of the present case are similar to the impugned case, therefore the order of Ld. CIT(A) may kindly be sustained. The Ld. D.R. finally submits that the whole modus operandi which is adopted by the assessee to park the black money is so complex and intricate and also the fact that the assets are in foreign country, it is very difficult for the Revenue Authority to conduct the enquiry and dig out the truth. Under these circumstances, the Ld. D.R. submits that the addition as made by the AO and affirmed by the Ld. CIT(A) may kindly be upheld.

29. In the rejoinder the ld. A.R submits that the department has placed reliance upon the order of the Hon'ble Tribunal in the case of Renu Tharani v. DCIT (Supra) which is distinguishable on facts. The ld AR submits that in the said case, the trust deed was not on record whereas in the present case, all the documents concerning the trust are on record of the department. Thus, the complete details about the trustees and beneficiaries are on record. Further, Hon'ble Tribunal in the said case has also emphasized that facts of each case have to be seen while deciding the issue.

30. Accordingly, it is submitted that the above decision of the coordinate bench would not be applicable to the facts of the present case. In fact, the subsequent order of the Mumbai

bench of the tribunal in the case of Yashovardhan Birla (supra) is more appropriate and applicable to the facts of the case. Accordingly, it is submitted that the addition sustained by the CIT(A) may kindly be deleted.

31. We have heard the rival submissions of both the parties and perused the material on record including the impugned orders of the lower authorities and decisions cited by both sides. We note that during the appellate proceedings before the Ld. CIT(A), numerous documents were received from foreign government which were also made available to the assessee by Ld. CIT(A) vide letter dated 08.09.2020. All these documents have been referred by the Ld. A.R. in his submissions and arguments as discussed supra. For the sake of ready reference these are listed along with the contents therein as under:

a) Letter of Government of Virgin Islands dated 19-05-2017 (page 18 of paper book)
   - Laptis Trading is owned by The Beal Trust. The said Trust has been formed by Mr. Raju Navinchandra Shah.
   - The beneficiaries of The Beal Trust are (i) Milan Parikh (ii) ShaunakParikh (iii) Jay Parikh (iv) Raj Parikh (v) Mahendra Parikh (vi) Care Britain and (vii) Feed the Children (Europe).
   - Out of the above, first four are appellants before Your Honours, fifth is uncle of the appellants and rest two are charitable organisations.

b) Instrument of Trust dated 26-03-1997 (page 23 of paper book)
   - The Beal Trust has been formed on 26-03-1997 with ABN Amro as Trustee.
   - The beneficiaries were (i) Care Britain and (ii) Feed the Children (Europe).

c) Deed of Appointment, Retirement and Indemnity dated 14-09-2006 (page 36 of paper book)
   - The full document is not available but based on the subsequent documents it is evident that on this day ABN Amro retired as a Trustee and Equity Trust has been appointed as Trustee.

d) Deed of addition of beneficiaries dated 07-09-2007 (page 37 of paper book)
   - As per the recital, on 14-09-2006, Equity Trust had been appointed as a

Trustee in place of ABN Amro.

- (i) Milan Parikh (ii) Shaunak Parikh (iii) Jay Parikh and (iv) Raj Parikh have been appointed as beneficiaries.
- It may be noted that the appellant has been appointed as beneficiary for the first time on 07-09-2007, which date falls beyond the end of the previous year.
- .

e) Deed of Appointment and Indemnity dated 05-12-2007 (page 41 of paper book)

- An amount of USD 2.30 million was appointed to the beneficiary, HSBC Trustee, Singapore.
- This also happened much after the end of the relevant previous year.

f) Deed of Addition of beneficiary dated 28-08-2009 (page 45 of paper book)

- Mahendra Parikh has been appointed as beneficiary of the Trust.

g) Letter of TMF group dated 16-10-2020 (page 72 of paper book)

- Equity Trust has been merged with TMF group
- The Beal Trust has been formed on 26.03.1997 by one Mr Raju Navinchandra Shah of Israel and the trustee was ABN Amro.
- 100% share capital of four companies including Sulay Trading Ltd and Laptis Trading Ltd is held by The Beal Trust.
- On 14th September,2006, Equity Trust has been appointed as trustee
- On 07-09-2007 Milan Parikh, Shaunak Parikh, Jay Parikh and Raj Parikh have been appointed as beneficiary.
- On 28-08-2009, Mahendra Parikh has been appointed as beneficiary
- In October 2009, Milan Parikh, Shaunak Parikh, Jay Parikh and RajParikh have been removed from the list of beneficiaries.
- Milan Parikh, Shaunak Parikh, Jay Parikh and Raj Parikh have not received any distribution from the trust.

32. Upon perusal of all the above documents, we note that each of the Trust documents, received from Government of virgin Islands & Jersey, contains reference to all earlier chain of the documents. We also note that the assessee has filed some documents before the revenue authorities which were counter verified by the revenue independently and found them correct. We have perused all these documents supplied by the foreign government to the Indian counter part and letter from government of Virgin Island dated 19.05.2017 and we find

that Laptis Trading Co. Ltd is owned by Beal Trust and the trust has been formed by Mr. Raju Navinchandra Shah with beneficiary namely Milan Parikh, Shaunak Parikh, Jay Parikh, Raj Parikh, Mahendra Parikh, Care Britain and Feed the Children (Europe). Of the above beneficiaries, the first 4 are appellants before us and 5th is uncle of the various appellants and the remaining two are charitable organizations. Similarly, the instrument of trust dated 26.03.1997 with ABN Amro as trustee with two beneficiaries namely Care Britain and Feed the Children (Europe) and deed of appointment, retirement and indemnity dated 14.09.2006 which is filed at page No.36 of the paper book were perused and we find that that ABN Amro retired as trustee and equity trust has been appointed as trustee. We further note from deed of addition of beneficiaries dated 07.09.2007, a copy of which is filed at page No.37 of the paper book that ABN Amro was replaced by equity trust as trustee and the 4 appellants including the assessee before us namely Mr. Milan Kavinchandra Parikh, Mr. Shaunak Jitendra Parikh, Mr. Raj Hiten Parikh & Mr. Jay Ketan Parikh have been appointed as beneficiaries. It is important to note at this stage that the assessee is appointed as beneficiary for the first time on 07.09.2007 which apparently and undoubted after the end of the previous year under consideration. We also note that this chain or chronology of events as unfolded by the various documents sent by the Sovereign Government of Virgin Island & Jersey to the Indian counter part that assessee was never a beneficiary prior to the 07.09.2007. Further, vide deed of appointment and indemnity dated 05.12.2007, a copy of which is filed at page No.41 of the paper

book, an amount of USD 20.3 million was appointed/earmarked to the beneficiary HSBC trustee, Singapore. We note that this earmarking of funds also happened after the close of the financial year in question. We further note that vide deed of addition of beneficiary dated 28.08.2009 Mahendra Parikh the uncle of four appellants before us was appointed as beneficiary of the trust. Finally, comes the letter of TMF group dated 16.10.2020, a copy of which is filed at page No.72 of the paper book, which evidenced all the correspondences/documents as discussed above and some additional facts/documents as under:

- Equity Trust has been merged with TMF group
- The Beal Trust has been formed on 26.03.1997 by one Mr Raju Navinchandra Shah of Israel and the trustee was ABN Amro.
- 100% share capital of four companies including Sulay Trading Ltd andLaptis Trading Ltd is held by The Beal Trust.
- On 14th September,2006, Equity Trust has been appointed as trustee
- On 07-09-2007 Milan Parikh, Shaunak Parikh, Jay Parikh and Raj Parikhhave been appointed as beneficiary.
- On 28-08-2009, Mahendra Parikh has been appointed as beneficiary
- In October 2009, Milan Parikh, Shaunak Parikh, Jay Parikh and RajParikh have been removed from the list of beneficiaries.
- Milan Parikh, Shaunak Parikh, Jay Parikh and Raj Parikh have not received any distribution from the trust.

33. Thus, on the basis of above set of documents as supplied by Ld. CIT(A) to the assessee vide its letter dated 08.09.2020, we observe that assessee was added as a beneficiary to Beal Trust

vide deed of addition of beneficiary dated 07.09.2007 and prior to this date the assessee had nothing to do with the trust. We also note that on the basis of letter of TMF group that the assessee has been removed as beneficiary w.e.f. October 2009. After taking into the account these undisputed facts in entirety and considering the various documents as placed by the assessee before us as have been discussed hereinabove, we find that the assessee was never a beneficiary prior to 07.09.2007 and also post October 2009. Based on the said information and facts, we are quite convinced with the contentions of the Ld. A.R. that no addition can be made in the year under consideration as the assessee was not a beneficiary during the year under consideration. We observe that the assessee was not the owner of the foreign bank account. He was added as beneficiary on 07.09.2007 and ceased to be beneficiary w.e.f. October 2009. We have also perused the decision relied upon by the Ld. D.R in the case of Renu Tharani vs. DCIT (supra) and find that the facts of the said case are distinguishable than that of the assessee's case. We note that in that case the trust deed was not on record whereas in the instant case all the documents were before the Revenue Authorities. We also note that in the case of Renu Tharani vs. DCIT (supra) the Tribunal has made an observation that it can not be a general proposition that wherever name of the assessee figures in base note from HSBC Bank (Suisse) SA Geneva, an addition will be justified in each case. The co-ordinate bench of the Tribunal noted that an account in HSBC Bank by itself can not be taken to mean that money in the account is unaccounted, illegitimate and illegal. The co-ordinate bench of the Tribunal noted that in each case, the facts and the surrounding circumstances are to be examined on merit and

then a call has to be taken about as to whether the explanation of the assessee merits acceptance or not and there can not be a short cut or one size fits of approach to this exercise. Besides, the revenue could not prove that any distribution was done. In view of the above facts and circumstances, we are inclined to set aside the finding of the Ld. CIT(A) and direct the AO to delete the addition made under section 69A of the Act of Rs.27,99,45,729/-. Consequently ground no. 2 is allowed.

34. The issue raised in ground No.3, 4 & 5 are in support of ground No.1 & 2 and needs no separate adjudication.

35. In the result, the appeal of the assessee is allowed.

ITA No.1956/M/2020 A.Y. 2007-08, ITA Nos.1957 & 1958/M/2020 A.Ys 2006-07 & 2007-08 and ITA Nos.1959 & 1960/M/2020 A.Ys 2006-07 & 2007-08

36. The issue involved in these appeals is identical to the one as decided by us in ITA No.1955/M/2016 for A.Y. 2006-07 hereinabove. Therefore, our decision in ITA No.1955/M/2016 for A.Y. 2006-07 would , mutatis mutandis, apply to these appeals as well. Accordingly the appeals of the assessees are allowed.

37. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 07.04.2021.

Sd/-	**Sd/-**
(Amarjit Singh)	**(Rajesh Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 07.04.2021.

* 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.