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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.7789/Mum/2019
(A.Y. 2010-11)

ITO-13(2)(1) Room No. 147, 1st Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020	Vs.	M/s Samriddhi Finvest Advisory Services Pvt. Ltd., 2nd Floor, May Building, 297/299/301, Princess Sreet, Near Marine Lines Flyover, Mumbai - 400002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCD9469K		
Appellant	..	Respondent

C.O. 60/Mum/2021
(A.Y. 2010-11)

M/s Samriddhi Finvest Advisory Services Pvt. Ltd., 2nd Floor, May Building, 297, Princess Sreet, Near Marine Lines Flyover, Mumbai - 400002	Vs.	ITO-13(2)(1) Room No. 147, 1st Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCD9469K		
Appellant	..	Respondent

Appellant by :	k. Shivaram Sr. Adv. & Neelam Jadhav
Respondent by :	B.K. Bagchi

Date of Hearing	29.03.2022
Date of Pronouncement	31.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The captioned appeal and the Cross Objection for A.Y. 2010-11 have been heard together and a consolidated order is being passed for the sake of convenience and brevity. The revenue has raised the impugned grounds before us:

"1 On the facts and circumstances of the case and in law, the Ld.CI F(A) has erred in deleting the addition of Rs.1,60,02,000/- without appreciating the fact that the documentary evidence found during the search are sufficient evidence to draw a presumption regarding a transaction found entered in the seized document in terms of section 106 of the Evidence Act.

2 On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.1,60,02,000/- without appreciating the fact that the Director of M/s. SDPL had admitted in his statement recorded u/s.132(4) of the Act, dated 01.12.2012 that the company has taken 'On Money' on account of sale of flats and such on money received has not been recorded in regular books of accounts of M/s. SDPL.

3 On the facts and circumstances of the case and in law, the LcI.CIT(A) has failed to appreciate the settled position of law that where direct evidences is not available or possible one has to fall back on the circumstantial evidence and apply the test of human probabilities.

4 On the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to consider the provisions of the I.T. Act, 1961 that even under the Act, there is a presumption u/s.292C of the I.T. Act, 1961 that the contents of the books of account and other documents are true and such books of account/documents belongs to such person who is searched u/s,132 of the I.T. Act, 1961.

5 The appellant prays that the order of Ld.CTT(A)'s on the above ground be set aside and that of the Assessing Officer be restored.

6. The appellant craves leave to add, amend or Liter all or any of the grounds of appeal which may be necessary."

2. The fact in brief is that return of income declaring total income of Rs.4,32,236/- was filed on 29.09.2010. Subsequently, the case of the assessee was reopened by issuing of notice u/s 148 of the Act dated 29.03.2017. In response to the notice u/s 148 of the Act, the assessee filed return of income on 16.11.2017 declaring total income of Rs.4,32,240/-. Notice u/s 143(2 of the Act was issued on 23.2017. The case of the assessee was reopened after receiving information from the A.O of M/s Sheth Developer Pvt. Ltd. that the assessee has booked two flat Nos. 2202 & 2302 in the building project 'Vasant Pearl' Mumbai, developed by M/s Sheth Developer Pvt. Ltd. As per the information M/s Sheth Developer Pvt. Ltd. had received Rs.79,63,200/- and Rs.80,38,800/- in the form of cash from the assessee. It is also stated that receiving of cash was admitted by Shri Ashwin Sheth, director of M/s Sheth Developer Pvt. Ltd. in his statement recorded u/s 132(4) of the Act. During the course of reassessment proceeding the A.O issued notice u/s 133(6) of the Income Tax Act to M/s Sheth Developer Pvt. Ltd. regarding detail of cash received from the assessee during F.Y. 2009-10 for sale of Flat No. 2202 and 2302 in the above referred project. In response, M/s Sheth Developer Pvt. Ltd. informed vide letter dated 15.12.2017 that it has received an amount of Rs.7,50,000/- towards Flat No. 2202 and Rs.7,50,000/- towards No. 2302 and also furnished copies of books of account etc. However, the A.O stated that assessee had failed to produce any denial letter from M/s Sheth Developer Pvt. Ltd. against receiving of cash of Rs.1,60,02,000/- for purchase of flat No. 2202 & 2303 and treated the alleged amount as unexplained investment u/s 69 of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition of Rs.16,00,200/- made by the A.O. The relevant part of the decision of CIT(A) is reproduced as under:

12. Decision :-

I have considered the facts of the case and submissions made by the appellant. According to the Assessing Officer, certain loose papers were found in the office of M/s Sheth Developers P Ltd during the search on 04.10.2012. On being confronted with the loose papers, Mr. Ashwin Sheth had admitted in his statement dated 01.12.2012 that these were on-money received from various clients in cash which was outside the books of accounts. On the basis of this evidence, the Assessing Officer made addition of Rs 1,60,02,0007- in the hands of the assessee.

The appellant has booked two flats in the building 'Vasant Pearl' being no. 2302, 23rd Floor, Vasant Pearl and flat No. 2202, 22nd floor, Vasant Pearl, CIS No.- 104-A, Village- Dindoshi, A4-Plot, Malad (E), Mumbai. The appellant has submitted a copy of Allotment Letter dated 26.02.2010 for both the flats. A reference to the same would show that the assessee has booked such flat 2302 for Rs. 1,26,00,0007- (Rs. One Crore Twenty Six Lacs) and the assessee has booked fiat 2202 for Rs 1,26,00,000/- (Rs. One Crore Twenty Six Lacs).

A perusal of the allotment letter shows that there is an earnest deposit of Rs 7,50,000/- required to be paid to the builder. The appellant has duly paid the amount of Rs 7,50,000/-. The payment was made by account payee cheque. The payment is reflected in the appellant's bank statement. The payment is reflected in the appellant's Balance Sheet. The remaining payments are to be made stage wise based on the completion of construction. According to the appellant, this allotment has been transferred by the assessee to (1) Divyam Saraf and (2) Krishnam Saraf during the year. Thus, effectively, no allotment was remained with the assessee during the year. The advance towards flat transferred in the name of Divyam Saraf and Krishnam Saraf were reflected in the Balance Sheet of the appellant as on 31.03.2010.

The appellant submits that the statement of Mr. Ashwin Sheth dated 01.12.2012 was never provided to it during the Assessment Proceedings. The appellant requested for the statement in its submission dated 14.12.2017 and 21.12.2017. Hence, the evidence in the statement cannot be used against the appellant. Further, an opportunity of cross examination of Mr Ashwin Sheth requested vide letter dated 14.12.2017 and 21.12.2017 was not given. The Assessing Officer has not given copy of statement of Mr. Ashwin Sheth to the appellant. The Assessing Officer has not granted opportunity of cross examination of Mr. Ashwin Sheth to the appellant. Thus, the Id Assessing Officer has violated the principles of natural justice.

Further, a reference to the Valuation Reports of the flats shows that they were worth around Rs.1 Cr as per stamp duty rates. However, the cost of

acquisition is much higher around Rs 1.26 Cr. This shows that both the flats were purchased at a rate higher than the stamp duty value. Hence, there is no question of the assessee giving any on-money to the builder. The assessee has purchased both the flats at market rates by account payee cheque and there appears to be no additional amount paid to the builder in view of the facts available on record.

The Assessing Officer has at para 8, page 6 of the Assessment Order mentioned the fact that there is no denial of cash being received by M/s Sheth Developers Pvt. Ltd in its reply to the notice u/s 133(6) of the Act dated 06.12.2017. M/s Sheth Developers Pvt Ltd in their letter to the Assessing Officer dated 15.12.2017 have categorically stated that they have received Rs 7.5 lakhs towards flat No 2202 and Rs 7.5 lakhs towards fiat no 2302. They have enclosed their bank statement highlighting the receipt of Rs 7.5 lakhs. The same tallies with the appellant's bank statement showing payment of Rs 7.5 lakhs. In the reply to notice u/s 133(6) of the Act, M/s Sheth Developers Pvt Ltd have nowhere admitted that they have received cash from the appellant. Further, coming to factual analysis of the issue, as per common practice followed in the market a nominal amount will be paid at the time of allotment and installments will be paid based on the progress of the work. Here, as per the Assessing Officer the appellant in addition to Rs. 7.5 lacs at also made huge payment which is almost equivalent to 75% of the total cost of the flat but, it has been submitted that no construction work was commenced at all, leave alone 75% of the work, which should have been completed to match the 75% of the amount which the appellant may have paid. Presuming that there was on many payments were involved, it would be in proportion to the payment. In the appellant's case as per A.O. the letter of allotment dated 26.02.2010 mentions that the installments shall be paid as per the schedule. It appears that the construction was not commenced, only the extent of amount alleged to have been give i.e. around 75% of the total agreement amount from the above finding also that is no justification from the amount that was paid. The appellant also produced copy of the valuation report and wherein it has been mentioned that the project got delayed and it was likely to be completed in 2022 only. Thus, the finding of the Id Assessing Officer that M/s Sheth Developers have not denied that cash was received from the appellant company is baseless.

On legality of the issue the appellant submitted that the entire case was reopened based on certain loose papers found during the search of M/s Sheth Developers Pvt. Ltd on 04.10.2012. Various Courts have held that the evidentiary value of loose papers is less.

In the case of Common Cause & others v Union of India (WP 505 of 2015) dated 11.01.2017, it was alleged that based on certain loose papers found in Sahara and Birla searches, that amounts in cash were paid to various politicians. The Supreme Court observed that in decision of the Apex Court in C.B.I, versus V.C. Shukla (1998 (3) SCC 410), it was submitted that it is open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. Such entries have been held to be prima facie not even admissible. The Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of

papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible. The Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The Supreme Court observed that in Beni v. Bisan Dayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties.

Following the above rulings, the Supreme Court held that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. Considering the aforesaid principles which have been laid down, the Court was of the opinion that the materials in question are not good enough to constitute offences to direct the registration of F.I.R. and investigation therein.

The AR also submitted that, the case of ACIT v Ms. Katrina Rosemary Turcotte [2017] 87 taxmann.com 116 (Mumbai - Trib.), is applicable to the facts of the appellant's case the brief facts are, in the course of assessment proceedings, the Assessing Officer on the basis of material seized from a third party i.e., from the computer and mobile back up of Ms. Sandhya Ramchandran, was of the view that the assessee charges one and half times in cash over and above her remuneration in cheque. It was found that as per the evaluation sheet found from the computer of Ms. Sandhya Ramchandra, assessee is earning 28% of the reported income in cash. Accordingly, he made addition of Rs. 32,65,574. The CIT(A) deleted the addition. On Revenue's appeal, the assessee's Counsel argued that:

- *The said document was not found from the assessee.*
- *The author of the document was not examined.*
- *Ms. Sandhya Ramchandra, in the statement recorded from her expressed her unawareness with regard to the facts mentioned in the said documents as she was not an employee of Matrix at the relevant time.*

- *Even an affidavit has been filed on behalf of Matrix denying any cash payment to the assessee*
- *Therefore, the learned Authorised Representative submitted, without any evidence brought on record, the addition cannot be made on loose sheet / dumb documents, that too on the basis of estimation / extrapolation.*

The Hon'ble ITAT held that the Assessing Officer has not brought on record any clinching evidence on the basis of any enquiry made by him to demonstrate that the assessee has actually received any cash as per the evaluation sheet from Matrix. Therefore, in the absence of any direct evidence demonstrating that the assessee had received cash payment from Matrix, as shown in the evaluation sheet, no addition can be made merely on presumption and surmises and on estimate basis.

The appellant also brought to my notice, the jurisdictional decision in the case of Anil Jaggi vs. ACIT 89 taxmann. Com 266 Mumbai ITAT dated 20.12.2017. The relevant portion of the decision is as under:-

> *14. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O. on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s. Lakeview developers. We have perused the facts of the case and the material available on record on the ji basis of which the addition of Rs. 2.23 crore had been made in the hand of the assessee. We have further deliberated on the material place don record and the contentions of the Id. A.R. to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s. Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchse of property under consideration is based on the contents of the pen drive which was seized from the residence of an expenses-employee of Hiranandani group. WE have perused the print out of the pen drive (Paga 42 of APB) and find ourselves to be in agreement with the view of the Id A.R that though against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is mentioned alongwith the details of the property purchased by him, viz. Flat no. 2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipts of 'on money[1], who had paid the money, to whom the money was paid, date of agreement and who had prepared the details, as a result whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjan Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjan Hiranandani in his statement recorded on oath in the course of the Search & Seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on-money received on sale of fiats, which was offered as additional income under Sec. 132(4) and thereafter offered as such for tax in the petition filed before the settlement commission. We are of the considered view that there is substantial force in the contention of the Id. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjan Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inferences as regards the investment made by the*

assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for purchase of the property under consideration when pitted against the 'market value[1] fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hand of the assessee. we thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for concluding that the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O. as regards payment of "on money" of Rs. 2.23 crores by the assessee for purchase of Flat No. 2501 from M/s. Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained, we thus are unable to subscribe to the view of the lower authorities and set aside the order of the CIT(A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee. 15. The appeal of the assessee is allowed".

As per the above, the Hon jurisdictional Mumbai Tribunal in the case of Anil Jaggi vs ACIT 89 taxmann.com 266 (Mum) have held that genesis of conclusion of Assessing Officer that assessee had paid 'on money' for purchase of property under consideration was based on contents of pen drive which was seized from residence of an ex-employee of Hiranandani group. Whether mere admission of amounts recorded in pen drive as additional income by falling short of any such material which would inextricably evidence payment of 'on money' by assessee would not lead to drawing of adverse inference as regards unexplained investment made by assessee for purchase of property. Also in the case of ACIT vs Ms. Katrina Rosemary Turcotte 87 taxmann.com 116 (Mum) have held that Assessing Officer on basis of documents seized in course of search carried out in case of 'S', an employee of 'Matrix', made addition to assessee's income on account of cash expenditure incurred in purchase of house. On facts, in absence of any direct and clinching evidence indicating incurring of cash expenditure for purchasing house, impugned addition could not be made on mere presumption and surmises.

In view of all the above factors, the addition made on account of on money allegedly received from sale of flats is hereby deleted. In view of the above,

Ground No 3 of the appeal is hereby allowed. The appellant is entitled to relief of Rs.1,60,02,000/-."

4. During the course of appellate proceedings before us the ld. D.R contended that ld. CIT(A) is not justified in deleting the impugned addition in spite of the fact that director of M/s SDPL had admitted in his statement of receiving of on money on account of sale of flats to the assessee.

On the other hand, the ld. counsel has vehemently contended that A.O neither provided the copy of statement nor given any opportunity of cross examination in reassessment proceedings. The assessee has produced document before the A.O as evidence of making only cheque payment. The ld. Counsel also referred the letter dated 15.12.2017 received by the A.O from M/s Sheth Developer Pvt. Ltd. as discussed supra in this case. The ld. Counsel has placed reliance on the order of ld. CIT(A).

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, during the course of assessment the AO added the amount of Rs.1,60,00,000/- u/s 69 of the I.T. Act, on the basis of statement of M/s Sheth Developer Pvt. Ltd. during the search on 04.10.2012 that on money was received outside the books of accounts. The assessee has explained with relevant supporting evidences that allotment of these flats has been transferred by it to the following persons i.e (i) Divyam Saraf & (ii) Krishan Saraf during the year. It was also explained that assessee had only paid an earnest deposit of Rs.7,50,000/- for each flat by cheque which was duly reflected in the allotment letter. The transferring of the two flats in the name of Divyam Saraf and Krishan Saraf were duly reflected in the balance sheet of the

assessee as on 31.03.2010. It is undisputed fact that neither the statement of Mr. Ashwin Sheth stated dated 01.12.2012 was provided to the assessee nor the cross examination was provided to the assessee. All these facts were discussed in the finding of the ld. CIT(A) as reproduced supra in this order. The assessee has also filed copy of allotment letter in the paper book furnished during the course of appellate proceedings. In the allotment letter it is specifically mentioned at serial No. 2 that assessee has to pay Rs.7,50,000/- being the earnest money and to pay the remaining amount of Rs.1,26,00,000/- for flat No. 2202 at different stages of construction of the property i.e Plinth Podium1, P-2 Slab to 25 slab then top slab, plaster, flooring & possession etc, in the same manner the payment schedule is also given for another flat No. 2302 in the allotment letter totaling to Rs.1,26,00,000/-. The assessee has also submitted along with documentary evidences that construction work was stopped on the direction of the Hon'ble Bombay High Court. Due to stoppage of work the agreement with the builder was not registered. The assessee has placed copies of supporting documents in the paper book. The assesse has also filed valuation report showing that the total cost price of the flat was more than the value determined as per stamp valuation authority. Because of litigation there was uncertainty in the completion of the project. Assessee has also produced copy of valuation report wherein it has been mentioned that the project got delayed and it was likely to be completed in 2022 only. In the light of the above fact and circumstances and detailed finding of the ld. CIT(A), we find no infirmity in the decision of ld. CIT(A), therefore, all the grounds of appeal of the revenue stand dismissed.

6. The appeal of the revenue is dismissed.

C.O. No.60/Mum/2021

"1. Reopening is bad in law:

1. The Learned Assessing officer failed to appreciate that, the provisions of the section 147 read with section 148 is not applicable when the assessment is to be reopened on the basis of search proceedings initiated in the case of search initiated on third party, due to specific provision u/s.153C of the Act which starts with notwithstanding anything contained in section 139, 147, 148 etc hence the reassessment is bad in law and liable to be quashed.

2. Without prejudice to above, the Learned Assessing Officer erred in issuing the notice under section 148 for reopening of assessment on Divyam Financial Consultancy Pvt. Ltd. (Old name) instead of Samriddhi Finvest Advisory Services Pvt. Ltd., further notice was issued on wrong address. As the service of notice was not proper consequently the reassessment order is bad in law and liable to be quashed.

3. Without prejudice to above, the statement recorded u/s.132(4) of Shri Aswhin Sheth was not provided and without giving an opportunity for cross examination in the course of assessment proceedings as well as appellate proceedings, as the respondent vide letter dt.14/12/2012 and 21/12/2012 requested for the same. Hence, without giving an opportunity of cross examination, reassessment is bad in law and liable to be quashed.

4. The responded craves leave to add, amend, alter or delete any or all the above grounds of appeal.

Ground No. 1:

7. In support of its cross-objection the assessee submitted that provision of the Section 147 read with section 148 of the act not applicable when the assessment is to be reopened on the basis of search proceedings due to specific provisions u/s 153C of the Act. Reliance was placed in the case of G. Koteshwara Rao V. DCIT (2015) 64 taxmann.com 159 (Visakhapatnam Trib).

8. Heard both the sides and perused the material on record. The case of the assessee was reopened on the basis of information received from DCIT,CC-4(2), Mumbai as discussed supra in this order. The A.O has

recorded reason to believe that amount of Rs.1,60,02,000/- has escaped assessment within the meaning of provision of Sec. 147 of the Act. It is noticed that pursuant to search conducted at premises of M/s Sheth Developer Pvt. Ltd. no seized materials was handed over to the A.O of the assessee by the A.O of M/s Sheth Developer Pvt. Ltd. The Hon'ble High Court of Madras in the case of Karti P. Chidambaram V. Pr. DIT(Inv.) vide 128 taxmann.com 116 (Madras) held that since initially only information about search was provided to jurisdictional A.O, action under section 153C could not be initiated as procedure mandates handing over all the seized material to the A.O. In the light of the above facts and findings we do not find merit in this ground of cross objection of the assessee, therefore, the same stand dismissed.

Ground No. 2 & 3 of Cross Objection:

9. It is reported in the assessment order that notice u/s 148 of the I.T. Act was issued to the assessee on 30.03.2017 at 403, Kundan Apartment, Vinayak Nagar Road, Bhayander West Thane. The assessee submitted that notice was not received. The assessee submitted that the registered office of the company was changed to 701, Corporate Avenue, Sonawala Road, Goregaon East (Mumbai) vide Board Resolution dated 18.04.2015.

The assessee had made an application to the Income Tax PAN Service Unit for change of address. The Income Tax PAN Service Unit made the necessary changes and issued a revised PAN Card in June, 2015. Therefore, vide letter dated 22.06.2015, the assessee had requested the originally assessed ITO-12(1)(3), Mumbai to transfer the case record to the correct A.O since the address was changed. From 22.06.2015 the jurisdiction of the assessee company vests in Mumbai

not in Thane. The assessment order for A.Y. 2013-2014 dated 26.02.2016 was passed by the ITO-13(2)(1), Mumbai and assessment order for A.Y. 2014-2015 dated 20.07.2016 was also passed by ITO 13(2)(1) Mumbai.

10. Heard both the sides and perused the material on record. Without reiterating the facts, it is undisputed fact as discussed supra that assessee was issued revise PAN card on change of address in June, 2015 and vide letter dated 22.06.2015 the assessee has informed the A.O to transfer the case records to the correct A.O due to change of address. Consequently, the assessment orders for A.Y. 2013-14 to A.Y.2014-15 were passed by the A.O on 26.02.2016 and 20.07.2016 having jurisdiction on the basis of change of address. Even return for A.Y. 2016-17 was filed on the new address on 30.08.2016 before issuing of notice u/s 148 of the Act. These facts demonstrate that prior to issue of notice u/s 148 of the Act, the new address was already on record with the A.O. The ld. Counsel has placed reliance on the decision of the Hon'ble High Court of Chhattisgarh, Ardent Steel Ltd. Vs. ACIT 405 ITR 422 (Chhatisgarh) that issue of notice at old address in spite of change in the official record by updating PAN data base is held to be bad in law. The ld. Counsel referred the case of Hon'ble Bombay High Court in the case of Haljeet Suraprakash Girotra V. UOI (2019) 266 taxman 29 (Bom) (HC) wherein held that mere issue of notice u/s 148 is not sufficient service is essential. If the postal authorities return the notice unserved, the Department has to serve under Rule 127 (2) using one of the services of address (PAN, Bank Address etc.). The failure to do so renders the reassessment proceedings invalid.

In the case of the assessee the A. O could not substantiate with supporting evidences that notice issued u/s 148 of the act was served on the assessee, in spite of the fact that necessary address changes has already been effected in PAN, ROC and assessment records as discussed above in this order. Therefore, we allow this ground of cross objection of the assessee that in absence of service of notice, reopening of assessment was invalid.

11. Ground No. 3 of the cross objection has already been discussed while adjudicating the appeal of the Revenue at Para 5 of this order that opportunity to cross examination was not provided to the assessee.

12. In the result, the Cross Objection of the assessee is partly allowed.

13. In the result, the appeal of the revenue is dismissed as well as the Cross Objection filed by the assessee is partly allowed.

Order pronounced in the open court on 31.05.2022

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 31.05.2022
PS: Rohit

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai