

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3331 & 3332/Mum/2019
(A.Ys: 2009-10 & 2010-11)

Shri Amit Mangilal Jain 2 nd Floor, Arkade House, Atmaram Sawnt Marg, Kandivali (E), Mumbai – 400101.	Vs.	ACIT – 33(1) 103, 1 st Floor, Eastern House, Nariman Point, Mumbai – 400021.
PAN/GIR No. : AABPJ0925G		
Appellant	..	Respondent

ITA No. 4158 & 4159/Mum/2019
(A.Ys: 2009-10 & 2010-11)

ACIT – 33(1) 103, 1 st Floor, Eastern House, Nariman Point, Mumbai – 400021	Vs.	Shri Amit Mangilal Jain 2 nd Floor, Arkade House, Atmaram Sawnt Marg, Kandivali (E), Mumbai – 400101.
PAN/GIR No. : AABPJ0925G		
Appellant	..	Respondent

Assessee by :	Shri Naresh Jain, Shri Mahaveer Jain & Ms. Charmi Shroff .AR
Revenue by :	Shri Krishna Kumar.DR

Date of Hearing	25.07.2022
Date of Pronouncement	10.08.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the two cross appeals filed by the assessee and revenue for the A.Y 2009-10 & 2010-11 against the separate orders of the Commissioner of Income Tax (Appeals)-45 Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

1.1 Since the issues in these two cross appeals are common and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall take up ITA No. 3331/Mum/2019 for the A.Y 2009-10 as a lead case and facts narrated. The assessee has raised the following grounds of appeal:

1. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in confirming the action of the Ld AO of re-opening the assessment by issuing notice u/s. 147 which was merely based on information received from Investigation Wing and statement recorded of Shri Akshay Doshi u/s. 131. Confirming the initiation of reassessment proceedings, in absence of any failure on the part of appellant to disclose material facts necessary for assessment, is bad in law and consequently the reassessment order needs to be quashed.

2. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, Ld CIT(A) erred in confirming the reopening proceedings

inspite of the fact that the objections against reopening of the assessment raised by the appellant were not rejected by the Ld AO in a meaningful manner. The Ld CIT(A) ought to have quashed the reassessment proceedings and consequential assessment order.

3. The appellant company craves leave to add, to amend, alter, delete and/or modify the above grounds of cross-objections on or before the final hearing.

1.2 At the time of hearing, the Ld.AR has raised the additional grounds of appeal as under:

1. That the CIT(A) erred in facts and in law, in issuing reopening notice u/s 147 of the Act without appreciating the fact that in the case of search and seizure of third party, AO is duly bound to initiate proceedings u/s 153C in case of person relating to whom some material is found. Thus, action of the Ld. AO in initiating the proceedings u/s 148 instead of Sec. 153C is Null & void and deserves to be set aside.

1.3. The Ld. DR has no serious objections for admission of additional ground of appeal filed by the assessee. Accordingly we admit the additional ground of appeal and heard.

2. The brief facts of the case are that the assessee is an individual and proprietor of M/s Arkade Creations engaged in the business as real-estate developer. The assessee has filed the return of income for the A.Y

2009-10 on 25.09.2009 disclosing a total income of Rs. 26,24,185/-. Subsequently the case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act on 20.12.2011 determining a total income of Rs.32,05,523/-. Subsequently, the assessment was reopened based on the information as per the reasons recorded on 22.02.2016 by issuing a notice u/s 148 of the Act on 28.03.2016. In compliance to notice, the assessee has filed the return of income on 21.07.2016 disclosing a total income of Rs.26,24,185/- and the notice u/s 143(2) of the Act was issued. The assessee has filed a letter dated 29.09.2016 raising objections on the issue of notice u/s 148 of the Act. Whereas the objections are dealt in detailed by the Assessing Officer(A.O.) and were disposed off on 17.10.2016.

3. Further in compliance to scrutiny notice, the Ld.AR of the assessee appeared from time to time and furnished the details and the case was discussed. The A.O. has reopened the assessment based on the information of search and seizure conducted by DGIT (Inv), Mumbai and the AO has referred the information at Para 3.1& 3.1.1 of the order read as under:

3.1. Gist of information received from the investigation Wing on 22.03.2016 is as follows:

i. "Search was carried out in the case of Bhoomi Group and Shri Akshay Doshi, Director of the Bhoomi Group has admitted that the digital data found during the course of search represents the cash transactions executed and the same have not been recorded in regular books of accounts.

ii. A ledger containing data namely Bridgeland (Humau) has been found during the course of search proceedings and Shri Akshay J Doshi has submitted that these transactions have been executed to acquire land in Kandivali for the purpose of TDR generation and Shri Amit M. Jain, being one of the partner in the project has made capital contribution in the cash as follows: TOTAL The amount so invested in cash as capital contribution is undisclosed income of

F.Y.	Amt. (Rs.)
2008-2009	6,80,00,000/
2009-2010	2,50,00,000/
Total	9,30,00,000/

The amount so invested in cash as capital contribution undisclosed income of Shri Amit M. Jain

3.1.1. On the basis of the information passed, reasons have been recorded and once all the approvals were in place, notice U/'s 148 has been issued on 28.03.2016, thereby reopening the assessment. This notice U/s 148 was duly served on the assessee on 29.03.2016. The reason recorded being as under:

"As a result of Search and Survey action conducted by the Investigation Wing, Mumbai, information has been received from DDIT(Inv.) Unit 3(4), Mumbai that Shri Amit Mangilal Jain in the capacity of partner has introduced capital in cash amounting to Rs. 6,80,00,000/-.

This capital introduction in cash is nothing but money generated out of undisclosed income of Shri Amit Mangilal Jain. As such, it is also failure on the part of the assessee to make full and true disclosure of these material facts in the relevant assessment year, as far as the above issue is concerned. Therefore, I have a reason to believe that the income of Rs. 6,80,00,000/- has escaped assessment within the meaning of Section 147 of the Income Tax Act."

4. The A.O. has received the details and information, were the search and survey action was carried at M/s Ekata & Bhoomi Group on 05.10.2015, and during the course of search action incriminating data of M/s Bhoomi group has been found relating to cash transactions executed by the Bhoomi Group with different parties and was in digital form. The data relating to cash transactions is maintained in journal and posted later in ledger and the transactions are not part of regular books of accounts. The revenue has recorded statement of M/s Bhoomi Group Director Mr. Akshy Doshi in post search statement u/s 131 of the Act dated 28.12.2015 and the modus operandi of cash transactions recorded. The A.O on verification of ledger

account, find the capital contribution by Shri Amit Jain in the F.Y 2008-09 of Rs. 6.8 crores , F.Y 2009-10 of Rs. 2 Crores, F.Y 2010-11 of Rs. 50 lakhs total aggregating to Rs. 9.30 crores. The disputed issue in this year being A.Y 2009-10, where there is a capital contribution of Rs.6.8 crores. The A.O has referred to the ledger account received from the DDIT (Inv) Mumbai at Para 3.2.4 on the cash transactions between 19-12-2005 to 26-11-2010. The revenue to confirm the transactions conducted survey on the assessee on 23.09.2016 and the relevant questions/answers in the course of survey u/s 133A of the Act were referred in the assessment order.

5. The A.O. has dealt on the various aspects and observed that the assessee has given ignorance to the fact of account owned by Bridgeland(Humau) and projects at other places and the cash transactions. Further the A.O. has recorded the statement of Shri Akshay Jayantilal Doshi placed at Para 3.4 of the order and also opportunity to cross examine was provided. Finally the A.O. has considered the various facts, circumstances, retraction statement of the director and the information filed on record and relied

on the judicial decisions and the observations/findings pertaining to introduction of cash transactions in the F.Y.2008-09 aggregating to Rs.6.80 crores and the statements recorded on the on-money and came to a conclusion referred at page 17 Para 4 and 5 of the order as under:

4. Before concluding, it will not be out of place to discuss the issue of reopening of assessment of the joint venture AOP by ACIT Central. Circle 6(2), Mumbai. On the basis of statements recorded during the course of survey proceedings of Shri Amit Mangilal Jain and statements recorded during the post survey proceedings of Shri Akshay Doshi and cross examination provided to Shri Amit Mangilal Jain, I was duty bound to pass the information to the assessing officers of the Joint Ventures of Arkade Bhoomi Developers and Arkade Bhoomi Enterprise. This was done in the interest of revenue with reason that the inference so drawn from the information could be utilized in any pending assessments which were getting barred by limitation on 31.12.2016. Further, on the basis of this information passed, the DCIT Central Circle 6(2), Mumbai has arrived to a reasoning which is sufficient enough for her to reopen the assessment. During the course of re-assessment proceedings, the assessing officer will reach to a finality whether the addition is required to be made in the hands of AOP or not. There is no need to jump to the conclusion that since, the assessment of the AOP has been reopened, the unaccounted cash does not belong to the assessee but belongs to the Joint Venture. In the foregoing paras, it has been clearly proved and a conclusion has been drawn that the unaccounted cash of Rs.

6,80,00,000/- belongs to the assessee only and not to any one else.

5. It is worth to mention here, that order U/s 143(3) of the I. T. Act, has been passed on 20.12.2011, assessing income at Rs. 32,05,523 /-. However, the assessee has filed income of Rs. 26,24,185/- on 21.07.2016, in response to notice U/s 148 of the Act. The total income for arriving income u/s 143(3) r.w.s. 147 is being taken at Rs. 32,05,523 /- as assessed on 20.12.2011 as against total income of Rs. 26,24,185 /- declared in return of income filed in response to notice U/s 148.

6. The A.O has made addition of Rs. 6.80 crores contribution of the assessee as unaccounted transactions and assessed the total income of Rs. 7,12,05,520/- and passed the order U/sec143(3) r.w.s 147 of the Act dated 30.12.2016.

7. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee at Para 3.1 of the order and findings of the A.O and has upheld the validity of the reassessment proceedings and dismissed the ground of appeal of the assessee. In respect of disputed issue of cash contributions of the assessee aggregating to Rs. 6.8 crores to wards projects, the CIT(A) has dealt on the findings of the AO and the assessee submissions

referred at Para 5.1 and discussed elaborately in the order on the aspects of ledger account and the directors statement on capital contribution, which is liable to tax in the hands of the AOP and also the later statement/ explanation of source of cash as per the digital ledger and the said cash was generated on sale of flats and shops in two other joint ventures in the status of A.O.P. and directed the A.O. to delete the addition and allowed this ground of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee and the revenue have filed the appeal before the Hon'ble Tribunal.

8. At the time of hearing, the Ld. AR has made submissions on the validity of the assessment and also on the additional ground of appeal and submitted that the reopening of the assessment u/s 147 is bad in law as it was the case of search and seizure of third party and the AO is bound to issue notice u/s 153C of the Act in case of a person relating to material found, therefore the A.O. initiating proceedings u/sec148 instead of U/sec153C of the Act is null and avoid. Further contended that the Reassessment proceedings U/sec 148 of the Act shall not be applicable and

assessee is bound by the provisions U/sec 153C of the Act which the AO has erred in not considering the facts and made the addition. The Ld.AR supported the submissions with the paper book and decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A) on the validity of the reassessment proceedings.

9. We heard the rival submissions and perused the material on record in respect of validity of reassessment proceedings. The contention raised by the Ld. AR that the search and seizure operations took place and certain incriminating documents have been found and the A.O is bound to issue the notice u/s 153C of the Act and not U/sec147 of the Act therefore the proceedings are illegal and in valid. The Ld. DR submitted that the A.O. has dealt on the facts, law, objections filed by the assessee and followed the procedure and the CIT(A) has confirmed the action of the A.O. on the validity of reassessment at Page 7 Para 3.2 to 3.6 as under:

3.2 true that assessment was made in this case u/s 143(3) and the reopening is beyond 4 years and the proviso section 147 applies for reopening. However if he proviso to

section 147 does not bar reopening if the condition is satisfied as laid down. This is not a case where some unverified information or tax evasion petition was forwarded to the AO. Search action was carried out in the case of Ekta & Bhoomi group of cases on 05.10.2015, during which certain digital data in the form of a ledger was found in a Sony laptop. Statement of one of the Director Shri Akshay Jayantilal Doshi was recorded in which he stated that the ledger relates to cash transactions in connection with purchase of Bridge Land(Humau) in Kandivali for the purpose of TDR generation. The land was identified with Humau in brackets as the middleman for the land was one Humau Chandiwala as explained by Sh. Doshi. It is this credible information obtained during the search, which was forwarded by the investigation wing to the AO. The investigation wing is a part of the tax department and is a specialized arm established for investigation. There was no necessity for the A.O to duplicate the investigation to bring further information at his level for the same facts before reopening of the case. The only question to be seen is whether there is relevant material on which a reasonable person could have formed requisite belief.

3.3 AO has reproduced the gist of the information received in the assessment order and the reasons recorded for reopening based on the tangible material received by him. Perusal of the reasons recorded clearly shows that the AO has applied his mind on the material received by him and he had reason to believe that income had escaped assessment. It is further noted that the factual information of cash investment in Bridge Land(Humau) in Kandivali was within the knowledge of the appellant which was not disclosed in the return of income filed. Thus, definitely the appellant had suppressed material facts relevant of

investment in the said land. It is trite law that for reopening the assessment, the A.O has to merely form 'reason to believe that income has escaped assessment'. The reassessment proceedings allow the appellant to rebut the reasons recorded for reopening of the assessment. It is also noticed that the AO supplied reasons recorded to the assessee and the assessee filed objections on the same. The AO also disposed of the objections. The argument of the assessee is that the assessing officer completely ignored the objections filed by the assessee and also failed to apply his mind to any of the facts or material presented by the assessee.

3.4 Whether those facts stated in material are true or not, is not the concern at the stage of reopening. This is so because the formation of belief by the Assessing Officer is within his subjective satisfaction -refer Supreme Court's decision in the cases of ITO vs. Select Dalurband Coal Company Pvt. Ltd. (1996) 217 ITR 597, 599 (SC) and Central Province Manganese Ore Company Ltd. vs. ITO (1991) ITR 662, 666 (SC). The action u/s.147 is possible despite complete disclosure of material facts if there is any escapement of assessment proceedings vide Praful Chunilal Patel, Vasant Chunilal Patel vs. ACIT (1999) 236 ITR 832, 840 (Guj), Stock Exchange vs. ACIT (1997) 227 ITR 906 (Guj) and ITO vs. LabjmaniMewal Das (1976) 103 ITR 437 (SC). Reliance is further placed on the following judgments:

1) Rohilkhand Educational Charitable Trust vs. CCIT and Others 365 ITR 233 (All.) wherein the Hon'ble High Court held AO should have relevant and credible material with him to form requisite reason to believe that income of assessee has escaped assessment. Material available on record has rational connection and relevant bearing on such formation of belief for issuing valid notices for re

assessment - sufficiency or correctness of material was not to be considered at this stage.

2) Sun Pharmaceuticals Industries Ltd. Vs. DCIT 353 ITR 474 (Guj.) where the Hon'ble High Court held that formation of belief by AO is essentially within his subjective satisfaction - at the stage of issue of notice, only question is whether there was relevant material on which reasonable person could have formed requisite belief.

3.5 When an income liable to tax has escaped assessment in the original assessment proceedings due to oversight and inadvertence or a mistake committed by the original Assessing Officer, subsequently, while verifying the records Assessing Officer can start escapement assessment proceedings. Further, there is a legal proposition accepted by various Courts that reassessment proceeding is permissible even if the information is obtained after proper investigation from the materials on record or from any enquiry or research into facts or law. There is a plethora of judgement that such information need not be from external source vide CIT and anr. vs. Rinku Chakraborty 56 DTR 227 (Kar) and KalyanjiMavji and Company vs. CIT 102 ITR 287 (SC). It is also pertinent to mention that for reopening of completed assessment u/s.148, tangible material need not be from outside the return of income. It can be obtained from the return of income or evidences on record itself. The reference may be had of ACIT vs. Kanga & Company (2010) - TIOL 464 ITAT Mumbai. It is also relevant to mention that information obtained in assessment proceedings of subsequent year, can also be utilized for reopening of the completing assessment refer Raymond Woolens Mills Ltd. vs. ITO and Other 236 ITR 34 (SC) and Revathy C.P. Equipment Ltd. vs. DCIT AND ors. 241 ITR 856 (Mad).

3.6 In the present case, however, there is information obtained by conducting search action in Bhoomi Group. Information was that the assessee's name was found as one of the investor in the Bridge Land in Kandivali and this information was tangible based on which the AO had reason to believe that income had escaped assessment. The proviso does not apply because the said information was not disclosed by the assessee in the return filed or during the original assessment. In the light of these facts, I do not find any merit in the contention of the appellant. This ground of appeal is dismissed and the reopening of the assessment is upheld.

10. We find that the provisions of Sec153A/153C of the Act are the special provisions dealing exclusively in the search cases and whereas the provisions of section 147 of the Act are invoked to all the types of escapement of income were the A.O. has recorded the satisfaction and has reason to believe. The Ld.DR submitted the relevant portion of statement of Shri Akshay Doshi recorded u/sec131 of the Act dated 28-12-2015 & 4-01-2016 and the assessee was provided the opportunity of cross examination of Shri.Akshay doshi in the course of assessement proceedings and complete statement recorded U/sec131 of the Act and cross examination statement made on 26-10-2016 placed at page 8 to 16 of the revenues factual paper book. We find the CIT(A) has considered the facts,

provisions of law and judicial decisions and observed that in the case of search in Bhoomi group, the incriminating material was found, where the assessee is one of the investors in the land and it was not disclosed by the assessee in the original return of income or during original assessment U/sec143(3) of the Act. We find the statements recorded above are linked with the assessee's undisclosed income and these facts were not disclosed in the return of income filed u/sec148 of the Act. The A.O. found that the assessee is one of the investors/partners along with the others to acquire the land for TDR generation which cannot be disputed and was admitted in the post-search statement by the director and the assessee was provided the benefit of cross-examination of the director to test-check the authenticity of the transactions. We, considering the material information and the statements recorded, do not find merit in this ground of appeal and uphold the decision of the CIT(A) on the validity of re-assessment and dismiss the grounds of appeal, including the additional ground raised by the assessee.

11. As the facts and circumstances in this appeal are identical to ITA No. 3331/Mum/2019, A.Y 2009-10 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for this case also. Accordingly, the grounds of appeal including the additional ground of appeal raised by the assessee are dismissed.

ITA No. 4158/Mum/2019, A.Y 2009-10

12. The revenue has raised the following grounds of appeal:

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the assessee had introduced cash to the extent of Rs. 6.8 crores and the source of which remained unexplained and also the fact that the assessee has credited this amount and were it not for the search action conducted by the department. the assessee would have continued to reap the benefits from this transaction."*

2. *"On the facts and in the circumstances of the case and in law, the source of the cash has not been conclusively explained by the assessee and merely attributing the introduction of the Rs. 6.8 crores to the amounts offered to tax by the AOPS without any nexus established is unacceptable as it is mere conjecture."*

3. *"The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

4. *"The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

13. At the time of hearing, the Ld. DR submitted that the CIT(A) erred in granting the relief and failed to appreciate that the assessee has introduced the cash and it was not reflected in the regular books of accounts and it was pertaining to the purchase of land to the share of the assessee and irrespective of the facts, the CIT(A) has wrongly considered the assessee contribution as the attribution of cash offered by the AOP in their assessments and no nexus is established or proved. Further, the CIT(A) is not clear to which assessment year the said amount has to be taxed and prayed for allowing the revenue appeal. Contra, the Ld. AR supported the order of the CIT(A) on the disputed issue and submitted that the CIT(A) has granted relief as the cash introduced was part of AOP transactions.

14. We heard the rival submissions and perused the material on record. The sole grievance of the revenue that the CIT(A) has erred in granting the relief by directing the A.O to delete the addition of cash on the basis that it has been offered in the AOP. The

contentions of the Ld. DR that there is no mapping/ nexus of the transaction with the AOP fund flow. At this juncture, we considered it appropriate to refer to the findings of the CIT(A) at page 19 Para 5.9 to 5.10 which is read as under:

5.9 A careful reading of the above replies shows that the amounts appearing in the said ledger can be divided into two parts. Amounts received till 02.08.2006 and the amounts received from 29.06.2007. The amounts found received till 02.08.2006 are 'share of Amit Mangilal Jain towards capital contribution/expenses reimbursement for the said expenses of slum clearance'. The amounts received after that date i.e from 29.06.2007, where from new total have started are out of sale proceeds of projects executed by the AOPS, in which the assessee was also a partner for 50% with Akshay Doshi and Ajay Mehta for balance 50%. The amounts up to 02.08.2006 add up to Rs.2,90,00,000 which was received from Amit Jain as partner's contribution and the balance is Rs.3,90,00,000 was received as share of Amit Jain from sale of JV projects. Therefore the AO's argument can be applied for Rs.2,90,00,000 and the same is liable to be confirmed out of the Rs.6,80,00,000 added by the AO. However, as the amounts appearing in ledger are given date wise. Even if the amounts in ledger are treated as the income of the assessee, they belong to different assessment years i.e. Rs.75,00,000 is taxable in AY 2006-07, Rs.2,15,00,000 is taxable in AY 2007 08, Rs.1,05,00,000 is taxable in AY 2008-09 and the balance Rs.2,85,00,000 is taxable in AY 2009-10. Therefore only Rs.2,85,00,000 was received in AY 2009-10 and taxable for the instant assessment year.

5.10 Further, it is also seen that the same amount of cash appearing in the said ledger is owned up by the AOPs and filed the returns admitting the said amounts in response to 153C notices issued by DCIT Central Circle 6(2). The AO of the assessee after recording statement of Sh. Akshay Doshi on 26.10.2016, also informed the DCIT, Central Circle 6(2) Mumbai regarding the cash generated in the joint ventures projects by the AOPS viz. Arkade Bhoomi Developers and Arkade Bhoomi Enterprise. The DCIT Central Circle 6(2) issued 153C notices to the AOPS. In response the AOPS filed returns declaring the income earned in cash in the returns filed in response to the notices. It is also seen that the assessments have been completed by the DCIT Central Circle 6(2) accepting the returns filed showing the additional income relating to the on money earned in cash. It is a different technical matter because of non-availability of time for reopening the notices were not issued by the jurisdictional AO, DCIT, Central Circle 6(2) for A.Y.2009-10. However, the fact remains that the source for the cash invested on behalf of/as a contribution of the assessee was the on money generated in the other projects, where the assessee was a partner and the same is liable to be taxed in the hands of AOPs, which has been accepted by the department in the assessments of the said AOPs. Therefore, the same amount cannot be taxed in the hands of the assessee, which amounts to double taxation. Further, the AO brushed aside the explanation given by the assessee without bringing any other corroborative document on record and without finding fault with the explanation and disproving the evidences filed by the assessee. Therefore, the addition does not stand the test of appeal and the AO is directed to delete the addition. Assessee gets relief, the Ground of appeal allowed.

15. The Ld. AR has been emphasizing that the CIT(A) has considered the facts that the amount of contribution of the assessee invested is land / project is part of the assessee share as a partner and has been taxed in the hands of the AOP and was accepted by the revenue. Whereas the Ld.DR submitted that there is no such acceptance by the revenue in respect of the transactions in the AOP and the A.O. has elaborately dealt on the statements of the directors recorded in search and survey operations and material information and the provisions of the Act and made addition in the current financial year. When a query was raised to the Ld. AR to explain how this amount was reflected in the AOP, the Ld.AR solely relied on the findings of the CIT(A) in granting relief dealt in the above paragraphs and could not substantiate with any cogent evidence or material information. The contentions of the Ld.AR are that though there is no mapping/ correlation of each entries with the A.O.P funds individually but the said money is part of the search proceedings and which has been taxed in the case of AOP. Further on the specific query from the Bench to the Ld. AR to explain/ demonstrate how it was reflected in the books of

accounts of the AOP ,the submissions of the Ld.AR are not satisfactory and could not support with any cogent evidences and repeatedly mentioned that it is part of A.O.P taxable Funds.

16. We find that the CIT(A) has passed an order considering the fact that the cash invested as contribution by the assessee in the capacity as partner is liable to taxed in the hands of the AOP but these facts are without any supporting evidences nor from the material information filed to explain how the transactions are routed. Basically the CIT (A) should have verified how the transactions have been reflected in the AOP on case to case basis but not on the general assumptions/ presumptions before granting the relief. Accordingly, we found the CIT(A) has only considered the facts of the scrutiny assessment and the assessee submissions and there is no finding on the facts that how the money has been disclosed in the AOP. We considering the overall facts, circumstances and provisions of law, and to meet the ends of justice shall provide one more opportunity to the assessee to substantiate with evidences and mapping of entries between the assessee and the AOP books of accounts

and the statements duly supported with the material evidences. Accordingly, we restore this disputed issue to the file of the CIT(A) to adjudicate afresh on merits as discussed above and allow the grounds of appeal of the revenue for statistical purposes.

ITA 4159/Mum/2019, A.Y 2010-11

17. As the facts and circumstances in this appeal are identical to ITA No. 4158/Mum/2019, A.Y 2009-10 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for this case also. Accordingly, the grounds of appeal of the revenue are allowed for statistical purposes.

18. In the result, the appeals filed by the assessee are dismissed and the appeals filed by the revenue are allowed for statistical purposes.

Order pronounced in the open court on 10.08.2022.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 10.08.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai