

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.952/Del/2018
Assessment Year: 2009-10

With

ITA No.953/Del/2018
Assessment Year: 2011-12

With

ITA No.954/Del/2018
Assessment Year: 2012-13

With

ITA No.955/Del/2018
Assessment Year: 2013-14

With

ITA No.956/Del/2018
Assessment Year: 2014-15

With

ITA No.957/Del/2018
Assessment Year: 2015-16

ACIT, Central Circle-1, New Delhi	Vs.	Sh. Kamlesh Gupta, C-4, Maharani Bagh, New Ashram, New Delhi
PAN :ABCPG9838M		
(Appellant)		(Respondent)

With

ITA No.626/Del/2018
Assessment Year: 2009-10

With

ITA No.627/Del/2018
Assessment Year: 2010-11

With

ITA No.628/Del/2018
Assessment Year: 2011-12

With

ITA No.629/Del/2018
Assessment Year: 2012-13

With

ITA No.630/Del/2018
Assessment Year: 2013-14

With

ITA No.631/Del/2018
Assessment Year: 2014-15

With

ITA No.632/Del/2018
Assessment Year: 2015-16

Sh. Kamlesh Gupta, C-4, Maharani Bagh, New Ashram, New Delhi	Vs.	DCIT, Central Circle-1, New Delhi
PAN :ABCPG9838M		
(Appellant)		(Respondent)

Assessee by	Sh. Niraj Jain, CA
Department by	Sh. Sanjay Gupta, Sr. DR

Date of hearing	26.10.2022
Date of pronouncement	23.01.2023

ORDER

PER SAKTIJIT DEY, JM:

This is a bunch of 13 appeals relating to the same assessee. While, there are cross appeals for assessment years 2009-10, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, the appeal filed for assessment year 2010-11 is by the assessee. However, all these appeals arise out of separate orders of learned Commissioner of Income Tax (Appeals)-23, New Delhi. Since, the

issues involved in all these appeals are more or less identical, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

ITA No.952/Del/2018
(Revenue's Appeal for AY: 2009-10)

2. At the outset, we will deal with Revenue's appeal for assessment year 2009-10, being ITA No.952/Del/2018.

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his return of income on 31.07.2009 declaring total income of Rs.44,85,870/-. A search and seizure operation under section 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted in case of the assessee and other related persons on 03.12.2014. In pursuance to such search and seizure operation proceedings under section 153A of the Act was initiated against the assessee. In response to the notice issued under section 153A of the Act, the assessee requested the Assessing Officer to treat the return of income originally filed under section 139 of the Act as return of income filed in pursuance to notice under section 153A of the Act. From the information available on record, the Assessing Officer noticed that to ascertain investment made by

the assessee in a company, namely, M/s. Waberten Ltd. incorporated in British Virgin Islands (BVI), FT and TR reference was sent to the competent authorities of BVI by Investigation Wing. From the information and copies of relevant documents received from the competent authorities of BVI, it was found that M/s. Waberton Ltd. was incorporated in BVI on 13th July, 2006. Another company, viz., M/s. Execorp Pvt. Ltd., provided Director Services to M/s. Waberton Ltd. at the request of the assessee, pursuant to Nominee Service Agreement, dated 22nd September, 2006. It was further noticed, M/s. Sharecorp Ltd. held one share in the company as nominee of the assessee pursuant to the Nominee Service Agreement. These facts were revealed from the documents sent by BVI Authorities which included letter sent by M/s. ShareCorp Ltd. to the assessee and the Nominee Service Agreement. It was further revealed that Nominee Service Agreement was signed by the assessee as the principal and letter from M/s. ShareCorp Ltd. also acknowledged the assessee as the Principal. Thus, from the aforesaid facts and information received from BVI Authorities, the Assessing Officer formed an opinion that the assessee is real Director, owner and shareholder of M/s. Waberton Ltd. The assessee, however, contested the claim of the

department by submitting that he is not the real owner of the company but the real owner is one Sh. Deepak Kashinath Bhagat, who has executed a power of attorney in favour of the assessee. The Assessing Officer, however, was not convinced with the submissions of the assessee. He also alleged that the onus is entirely on the assessee to establish that he is not the owner of the M/s. Waberton Ltd. Further, he alleged that despite being given several opportunities during post search inquiry as well as in course of assessment proceeding, the assessee failed to produce any document, including the power of attorney stated to have been given by Sh. Deepak Kashinath Bhagat to establish that he is not the real owner of M/s. Waberton Ltd.

4. On the contrary, the Assessing Officer observed, the documents in possession of the department established beyond doubt that the assessee is the owner of M/s. Waberton Ltd. He further observed that the BVI based company M/s. Waberton Ltd. had net assets worth of US\$ 5,511,466 in 2011 and US\$ 5,515,457 in 2010, which translates to around Rs.24.83 crores in 2011 and 24.34 crores in 2010, as per exchange rate prevailing on the relevant dates available in website www.exchangerates.org.uk. In the aforesaid premises, the

Assessing Officer called upon the assessee to prove that he is not the beneficial owner of the BVI based company. Further, from the information received from BVI Authorities, it was found that M/s. Waberton Ltd. had opened one bank account with Deutsche Bank AG of Singapore and another account with UBS AG of Singapore. On analyzing the bank statements of these two bank accounts provided by the BVI Authorities, it was found that M/s. Waberton Ltd. had invested in bonds and equities and several transactions had taken place through the bank accounts. Based on these information, the Assessing Officer issued a show-cause notice to the assessee to explain, why the amount of Rs.24.83 crores, being unaccounted investment of the year, should not be added to the income of the assessee. Further, the Assessing Officer called upon the assessee to furnish details regarding initial investments supposed to have been made by the assessee in acquiring M/s. Waberton Ltd. and the profits earned by the said company since its inception in financial year 2006-07 to financial year 2014-15 in the form of duly certified/audited balance sheet, profit and loss account, auditor report, Income Tax Return etc.

5. In reply to the show-cause notice issued by the Assessing Officer, the assessee again totally denied the allegation that he is

the owner of M/s. Waberton Ltd. In reply to the questionnaire issued by the Assessing Officer, the assessee submitted point-wise reply as under:

1. *Waberton Limited is a company incorporated in British Virgin Islands (BV) on 13.07.2006.*
2. *M/s Waberton Limited has its registered office at Portcullis Trust Net Chambers, P.O. Box 3444, Road Town, Tortola, British Virgin Islands.*
3. *It is a foreign company duly registered under the provisions of The BVI Business Companies Act, 2004.*
4. *Under section 27 of The BVI Business Companies Act, 2004, the company M/s Waberton Limited is a separate legal entity.*
5. *The Company M/s Waberton Ltd. has issued, subscribed and paid up equity capital of one ordinary share of the nominal value of USD1 which is held in the name of Sharecorp Ltd.*
6. *M/s E'xecorp Ltd: provided Directorial services to M/s Waberton Limited under the Provisions of Article 55 of the Memorandum and Articles of Association of the Company*
7. *The company M/s Waberton Limited operated following bank accounts:-*
 - i) *Account No. 8046971 with Deutsche Bank AG of Singapore.*
 - ii) *Account No. 158864 with (AS AG of Singapore.*

The bank accounts were opened and operated by the directors of the Company under their own signatures.”

6. As regards the net assets and investments of M/s. Waberton Ltd., the assessee submitted that the investments were sourced out of initial corpus received from Sh. Deepak Kashinath Bhagat, an USA resident and the investments in financial securities were

made by M/s. Waberton Ltd. from these funds. Further, in response to the query of the Assessing Officer to furnish complete details regarding source of deposits in foreign bank account and other income like, interest income, gain on investment etc., the assessee submitted that M/s. Waberton Ltd. is a separate legal entity and the assessee has nothing to do with the bank statements and the portfolio of the said company in his individual capacity. Further, the assessee submitted, since M/s. Waberton Ltd. is a foreign company under the provisions of section 2(23)A of the Act incorporated outside the territorial jurisdiction, provision of section 4 of the Act would not apply to the said company. The assessee further submitted, the control and management of affairs of the company M/s. Waberton Ltd. is wholly outside India. Therefore, as per section 6 of the Act, it does not have a residence in India. Hence, no part of its income is accruing or arising directly or indirectly through any business connection in India, or through any property in India or through any asset or source in India or through the transfer of capital asset situated in India. Thus, the provisions of section 9 of the Act regarding income deemed to accrue or arise in Indian will not apply. In

support of his contention, the assessee relied upon a number of judicial precedents.

7. The Assessing Officer, however, did not find merit in the submissions of the assessee and concluded that the investments and assets of M/s Waberton Ltd. are undisclosed investment of the assessee. On perusing the portfolio statement and bank statements of M/s. Waberton Ltd., the Assessing Officer noticed that as on 01.04.2008, there was opening balance of Rs.21,42,60,898/-. Thus, the Assessing Officer held that the said opening balance represents the undisclosed investment of the assessee in the form of securities, term deposits, bank balance. Accordingly, he added the amount of Rs.21,42,60,898/- to the income of the assessee by treating it as undisclosed investments under section 69 of the Act. Further, the Assessing Officer found that in course of search and seizure operation, it was discovered that the bank account in the name of M/s. German Homeopathic Distributors Pvt. Ltd., a sister concern of the assessee, maintained in Bank of India, was not reflected in the books of account. He found that in case of M/s. German Homeopathic Distributors Pvt. Ltd., GP rate of 18.23% was applied on total undisclosed sale of Rs.12,29,52,447/- relating to assessment

years 2009-10 to 2015-16 and accordingly additions were made in the respective assessment years. He observed, in the appellate order passed in the case of M/s. German Homeopathic Distributors Pvt. Ltd. for assessment years 2009-10, learned Commissioner (Appeals) has directed to make additions at the hands of the assessee in different assessment years as under:

<i>Asstt. Year</i>	<i>Local medicines sales</i>	<i>Discount</i>	<i>Net sales of local medicines after reducing</i>	<i>G.P. rate</i>	<i>Additions directed to be made by worthy CIT(A) in the hands of Sh. Kamlesh</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>4 = 2 - 3</i>	<i>(5) -</i>	<i>(6)</i>
2009-10	21,95,180	1,54,297	20,40,883	9.11%	1,85,924
2010-11	88,97,660	3,89,412	85,08,248	9.11%	7,75,101
2011-12	1,41,72,765	9,48,797	1,32,23,968	9.11%	12,04,703
2012-13	2,26,86,064	20,00,481	2,06,85,583	9.11%	18,84,457
2013-14	2,83,98,538	45,11,593	2,38,86,945	9.11%	21,76,101
2014-15	3,55,66,486	41,05,141	3,14,61,345	9.11%	28,66,129
2015-16	1,10,35,754	3,37,708	1,06,98,046	9.11%	9,74,592
<i>Total</i>	<i>12,29,52,447</i>	<i>1,24,47,429</i>	<i>11,05,05,018</i>	<i>9.11%</i>	<i>1,00,67,007</i>

8. Following the directions of learned Commissioner (Appeals), the Assessing Officer added an amount of Rs.1,85,924/- to assessee's income on account of profit from undisclosed sales appearing in the bank account of M/s. German Homeopathic Distributors Pvt. Ltd. Against the assessment order so passed, the assessee preferred an appeal before learned first appellate authority on various grounds.

9. In course of appellate proceedings, the assessee made detailed submissions reiterating the stand taken before the

Assessing Officer. Most of the grounds raised by the assessee were dismissed by learned first appellate authority. He also rejected assessee's claim that M/s. German Homeopathic Distributors Pvt. Ltd. is a separate legal entity and the assessee is not the beneficial owner of the investment and assets of M/s. Waberton Ltd.

10. However, as regards the merits of the addition of Rs.21,42,60,898/- made under section 69 of the Act, learned Commissioner (Appeals) observed that as per Assessing Officer's own admission, this amount represents opening balance as on 01.04.2008. Referring to the provisions of section 69 of the Act, learned Commissioner (Appeals) observed, the investments covered under section 69 are necessarily required to be made in the financial year immediately preceding the assessment year. Thus, he held that since, the investments under consideration are shown as closing balance as on 31.03.2008 and opening balance as on 01.04.2008, these were not made in financial year 2008-09. Thus, he held that the provisions of section 69 of the Act would not be applicable. Accordingly, he deleted the addition of Rs.21,42,60,898/- while observing that the Assessing Officer is

free to consider the taxability of the same in the appropriate assessment year.

11. We have considered rival submissions and perused the materials on record. As rightly observed by learned Commissioner (Appeals), under section 69 of the Act any investment made in the financial year immediately preceding the assessment year, for which, the assessment is being made, if remains unexplained, the Assessing Officer can add the amount as unexplained investment. As per the admitted factual position, the amount added under section 69 of the Act by the Assessing Officer represents the opening balance of investment as on 01.04.2008, i.e., the first day of the financial year preceding the assessment year under dispute. Thus, it is patent and obvious, the investments were not made in the financial year relevant to the assessment year under dispute. That being the case, addition under section 69 of the Act could not have been made. Therefore, we do not find any infirmity in the decision of learned Commissioner (Appeals). Ground raised is dismissed.

12. In the result, the appeal is dismissed.

ITA No. 626/Del/2018
(Assessee's Appeal for AY: 2009-10)

13. The effective grounds raised by the assessee are as under:

1. *That the order of learned Commissioner of Income Tax (Appeals) is had in law as well as on the facts and in the circumstances of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) in paragraph 4.3 of the order while discussing the facts of the case has erred in noting that the appellant had submitted a chart showing details of securities/deposits and balance as per portfolio as on 30.04.2008 whereas the said chart was submitted at the behest of learned Assessing Officer under his directions.*
3. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that the assessment was barred by limitation and was without jurisdiction.*
4. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that he was not the real director of the company M/s Waberton Ltd. which is a separate legal entity (foreign company incorporated in British Virgin Islands) being managed and controlled by its independent directors duly appointed under the Memorandum of Association and as per law.*
5. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that he was not the beneficial owner of the foreign company M/s Waberton Ltd without bringing on record any material to establish that the consideration for investment in M/s Waberton Ltd was provided directly or indirectly by the appellant.*
6. *That the learned Commissioner of Income Tax has erred in not considering the contention of the appellant that the addition of Rs. 21,42,60,898/- was not based on any incriminating material found/seized/impounded during the course of search.*
7. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the legal position that a company is a separate legal entity different from its shareholders.*
8. *That the learned Commissioner of Income Tax (Appeals) has erred in dismissing the contention of the appellant that he was not asked by the Assessing officer to provide POA given by Sh. Deepak Kashinath Bhagat in the assessment proceedings.*

9. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the finding of the Assessing Officer that 'the investment and assets of M/s Waberton Ltd. are undisclosed investment made by the assessee' rejecting the contention of the appellant that the shareholder and company are separate entities.*
10. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the action of Assessing officer in treating the appellant as the owner of M/s Waberton Ltd, a foreign company, without appreciating the settled legal position that a company is separate legal entity different from its shareholders.*
11. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the action of Assessing Officer in considering the income earned by M/s Waberton Ltd. in the hands of the appellant on the ground that appellant had not disclosed to the RBI or the Income Tax authorities of being the owner of sole single share of M/s Waberton Ltd. and thus concluding that the theory of a company being regarded as a separate legal entity fails bringing in picture the theory of lifting of corporate veil without appreciating that corporate veil had not been lifted by the Income tax authorities nor any procedure for lifting the corporate veil was followed.*
14. As could be seen from the grounds raised, except ground no. 6, all other grounds are not on merits of the addition made, but on peripheral and ancillary issues. In ground no. 6, which is on merits, the assessee has raised the issue that the addition could not have been made in absence of any incriminating material seized in course of search and seizure operation. While deciding the issue on merits, learned Commissioner (Appeals) has deleted the addition made under section 69 of the Act on a different reasoning. While deciding Revenue's appeal in ITA No.952/Del/2018 challenging such decision of learned

Commissioner (Appeals), we have upheld the decision of learned Commissioner (Appeals) by dismissing the appeal. Since, the deletion of addition has already been upheld, though, for a different reason, the grounds raised have become academic, at least in this appeal. Inasmuch as, in course of hearing, no argument has been made by the parties. Hence, these grounds do not require adjudication.

15. In addition to the main grounds, the assessee has raised the following additional grounds:

“That the ld. AO has failed in his duty u/s 157 of the Income Tax Act, 1961 is not notifying to the assessee by an order in writing, the determined loss of Rs.2,43,23,659/- from trading of bonds and securities mentioned in para 8.1 of the assessment order.”

16. As could be seen from the ground raised, assessee's grievance is, the Assessing Officer, having determined loss from trading of bonds and securities, should have acted in accordance with section 157 of the Act and notified the assessee by order in writing the amount of loss computed by him for the purpose of carry forward and set off. In our view, this ground is also of academic nature, hence, do not require adjudication.

17. Thus, the appeal, having become infructuous, is dismissed.

ITA No.627/Del/2018
(Assessee's Appeal for AY: 2010-11)

18. The effective grounds raised by the assessee are as under:

1. *That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and' in the circumstances of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) in paragraph 4.3 of the order while discussing the facts of the case has erred in noting that the appellant has furnished the chart showing details of income/loss on trading of securities, dividend income and interest income on account of trading and investment activities of M/s Waberton Ltd. whereas the said chart was submitted at the behest of learned Assessing Officer under his directions.*
3. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that the assessment was barred by limitation and was without jurisdiction.*
4. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that he was not the real director of the company M/s Waberton Ltd. which is a separate legal entity (foreign company incorporated in British Virgin Islands) being managed and controlled by its independent directors duly appointed under the Memorandum of Association and as per law.*
5. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the contention of the appellant that he was not the beneficial owner of the foreign company M/s Waberton Ltd without bringing on record any material to establish that the consideration for investment in M/s Waberton Ltd was provided directly or indirectly by the appellant.*
6. *That the learned Commissioner of Income Tax (Appeals) has erred in rejecting the legal position that a company is a separate legal entity different from its shareholders.*
7. *That the learned Commissioner of Income Tax (Appeals) has erred in dismissing the contention of the appellant that he was not asked by the Assessing officer to provide POA given by Sh. Deepak Kashinath Bhagat in the assessment proceedings.*

8. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the finding of the Assessing Officer that 'the investment and assets of M/s Waberton Ltd. are undisclosed investment made by the assessee' under section 69 of the Income Tax Act, 1961.*
9. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the action of Assessing officer in treating the appellant as the owner of M/s Waberton Ltd, a foreign company, without appreciating the settled legal position that a company is separate legal entity different from its shareholders.*
10. *That the learned Commissioner of Income Tax has erred in not considering the contention of the appellant that the addition of Rs. 89,20,290/- (income earned by M/s Waberton Ltd.) was not based on any incriminating material found/seized/impounded during the course of search.*
11. *That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 89,20,290/- being income earned by M/s Waberton Ltd. in the hands of the appellant ignoring the settled legal position that a company is a separate legal entity and at the same time not setting off the said amount of Rs.89,20,290/- against the loss of Rs.2,43,23,659/- determined by the learned Assessing Officer in the assessment order for AY 2009-10 which was ought to have been brought forward and set off as per the case made by the learned Assessing Officer.*

19. At the outset, we propose to decide ground no. 10, which is on merits of the addition made of Rs.89,20,290/-

20. Briefly the facts are, for this assessment year, the assessee filed his return of income on 27.07.2010 declaring total income of Rs.47,57,130/-. As discussed earlier, with reference to FT & TR reference sent to the competent authorities of BVI by Investigation Wing, information was received indicating that the assessee is a shareholder of M/s. Waberton Ltd. Following the

approach adopted in assessment year 2009-10, the Assessing Officer held that the assessee is a beneficial owner of M/s. Waberton Ltd. and the investments in portfolio securities and foreign bank accounts are sourced from assessee's investment. Based on certain information furnished by the assessee in pursuance to the query raised, the Assessing Officer estimated the income on trading of securities, dividend income and interest income at Rs.89,20,290/-, which is approximately equivalent to 4.7% of the return on average investment. Accordingly, he added back the amount of Rs.89,20,290/- to the income of the assessee. The assessee contested the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) did not find any merit in them. Accordingly, he sustained the addition.

21. Before us, the primary contention of the assessee is, the addition made is not based on any incriminating material found as a result of search and seizure operation conducted under section 132 of the Act. Therefore, he submitted, in absence of

any incriminating material, the addition cannot be made. In support of such contention, learned counsel relied upon the following decisions:

1. CIT VS Kabul Chawla, (2016) 380 ITR 573

2. *Meeta Gutgutia Vs. CIT*, [2017] 395 ITR 526

22. Learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

23. We have considered rival submissions and perused the materials on record. A careful reading of the respective orders of Departmental Authorities make it clear that the disputed addition was purely based on information received from foreign jurisdiction in pursuance to FT and TR reference made by the Investigation Wing of the Department. In fact, there is nothing on record to suggest that the disputed addition is based on any incriminating material found as a result of search. Even, learned Departmental Representative fairly submitted before us that the addition is based on the information received from foreign jurisdiction in pursuance to FT and TR reference. That being the case, as per the ratio laid down by the Hon'ble jurisdictional High Court in the decision cited before us by the learned counsel for the assessee, in case of unabated assessments no addition can be made in a

proceeding under section 153A of the Act in absence of any incriminating material found as a result of search and seizure operation. In view of the aforesaid ratio laid down by the Hon'ble Jurisdictional High Court, we delete the addition of Rs.89,20,290/- This ground is allowed.

24. Since, the addition has been deleted; the other grounds having become academic are not required to be adjudicated.

25. In the result, the appeal is allowed, as indicated above.

ITA No.628/Del/2018
(Assessee's Appeal for AY: 2011-12)

And

ITA No.953/Del/2018
(Revenue's Appeal for AY: 2011-12)

26. As discussed earlier, based on information received from competent authorities of BVI, the Assessing Officer made addition in respect of profit and loss from sale of security shares investments in different assessment years relating to M/s Waberton Ltd. by treating the assessee as a beneficial owner. In the impugned assessment year, the Assessing Officer added an amount of Rs.93,46,303/-. The assessee contested the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) found that

purely on suspicion, the Assessing Officer has concluded that there is return of 4.7% per annum on trading of securities, dividend income etc. He observed, when the Assessing Officer is making a particular allegation, the onus is entirely on him to prove that the assessee has received return on investments outside books. Referring to a chart furnished by the assessee in course of assessment proceeding, learned Commissioner (Appeals) observed that in the year under consideration, the income which can be assessed on account of trading of securities, dividend and interest income is to the tune of Rs.39,29,412/-. Thus, he directed the Assessing Officer to delete the balance addition of Rs.54,16,891/-.

27. We have considered rival submissions and perused the materials on record. While deciding identical issue in assessee's appeal in ITA No.627/Del/2018, we have held that the addition having been made without any incriminating material found as a result of search and seizure, is unsustainable. Facts being identical, the decision taken therein will apply mutatis and mutandis to this appeal also. Accordingly addition is deleted.

28. In ground no. 13, the assessee has challenged addition of Rs.1,40,410/-, being 50% share in profit earned by M/s. Adelmara Pharma GmbH, a German company.

29. Briefly the facts are, in course of assessment proceeding, the Assessing Officer found that during search and seizure operation conducted in case of the, assessee it came to the notice of the department that the assessee has remitted 15,000 EURO for equity investment in M/s. Adelmara Pharma GmbH. It was further found that as per notarized shareholders' agreement dated 02.11.2010, the assessee gifted 50% shareholding in M/s. Adelmara Pharma GmbH to his son. It was further found that the assessee and his son are the only shareholders of the company, each holding 50% of the shares. He further, found that the assessee is a signatory in the bank account opened in the name of the company in Germany. Though, the Assessing Officer alleged that the assessee did not furnish bank statement of M/s. Adelmara Pharma GmbH, however, he accepted that the assessee furnished copies of balance-sheets/profit and loss accounts of the company. From the balance-sheet and profit and loss account, the Assessing Officer noticed that the company has shown profit in different assessment years and the profit shown in assessment

years 2011-12 is Rs.2,80,820/-. Noticing this, the Assessing Officer called upon the assessee to explain, why 50% of the profit earned should not be treated as income of the assessee. Though, the assessee objected to the proposed addition, however, rejecting the explanation of the assessee, the Assessing Officer added 50% of the profit amounting to Rs.1,40,410/- at the hands of the assessee. Learned Commissioner (Appeals) confirmed the addition.

30. We have considered rival submissions and perused the materials on record. As could be seen from the assessment order, the Assessing Officer has treated 50% of the profit earned by M/s. Adelmara Pharma GmbH, a company incorporated in Germany as the income of the assessee. From the submissions made by the assessee and materials placed on record, it is noticed that M/s. Adelmara Pharma GmbH is assessed to corporate tax, trade tax as well as Income Tax in Germany since its inception and is paying taxes in Germany under the provisions of German Law in respect of its income. A no dues certificate issued by German Tax Authorities was also furnished before learned Commissioner (Appeals). The fact that the company has not issued any dividend to the shareholders is not disputed by the Revenue. Therefore, the

company being a separate legal entity, the income earned by the company is taxable at its hands. In fact, the materials on record show that the company has discharged its tax liability in Germany. Therefore, the income of the company cannot be taxed at the hands of the assessee.

31. In view of the aforesaid, we delete the addition of Rs.1,40,410/-. In view of our decision on merits, the other grounds having rendered academic, are not required to be adjudicated.

32. In the result, assessee's appeal is partly allowed.

33. In so far as Revenue's appeal is concerned, the only ground raised is against partial relief granted by learned Commissioner (Appeals) on account of return on investment made in M/s. Waberton Ltd. While deciding identical issue in assessee's appeal in ITA No. 628/Del/2018, we have deleted the addition sustained by learned Commissioner (Appeals). The same principle applies in this case also. Accordingly, grounds raised are dismissed.

34. In the result, Revenue's appeal is dismissed.

ITA No.629/Del/2018
(Assessee's Appeal for AY: 2012-13)

And

ITA No.954/Del/2018
(Revenue's Appeal for AY: 2012-13)

35. The grounds raised in these appeals, both by the assessee and the Revenue are identical to grounds raised in ITA No. 628/Del/2018 & 953/Del/2018. While, deciding these appeals in the earlier part of the order, we have deleted the addition sustained by learned Commissioner (Appeals), since, such addition was not based on any incriminating material found as a result of search. Following our decision therein, we delete the addition. The only other issue on merits raised by the assessee in ground nos. 13 and 14 relates to addition of an amount of Rs.2,68,688/- being 50% share in the profit earned by M/s. Adelmara Pharma GmbH. While deciding identical issue in assessee's appeal being ITA No.628/Del/2018 in ground nos. 13 & 14, the addition has been deleted. The decision taken therein will apply mutatis mutandis to these appeals as well. Accordingly, these grounds are allowed. The other grounds raised by the assessee having become academic do not require adjudication.

36. In the result, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

ITA No.630/Del/2018
(Assessee's Appeal for AY: 2013-14)
And
ITA No.955/Del/2018

(Assessee's Appeal for AY: 2013-14

37. The only issue on merits in assessee's appeal, as raised in ground nos. 11 and 12, relates to the addition of Rs.1,92,852/- being 50% share in profit earned by M/s. Adelman Pharma GmbH. While deciding identical issue in assessee's appeal in ITA No. 628/Del/2018 in the earlier part of the order, we have deleted the addition for the reasons discussed therein. The decision so taken will apply mutatis mutandis to these grounds as well. Accordingly, addition is deleted. These two grounds are allowed. All other grounds raised by the assessee, having become academic, do not require adjudication.

38. The only issue in Revenue's appeal relates to deletion of Rs.1,02,45,502/- made on account of return on investment made by M/s. Waberton Ltd. While deciding identical issue in other appeals filed by the assessee and the Revenue hereinbefore we have deleted such addition. Facts being identical, our decision therein will apply mutatis mutandis. Accordingly, ground raised by the department is dismissed.

39. In the result, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

ITA No.631/Del/2018

(Assessee's Appeal for AY: 2014-15)

And

ITA No. 956/Del/2018

(Revenue's Appeal for AY: 2014-15)

40. One of the issues on merits raised by the assessee corresponding to only issue raised in Revenue's appeal relates to addition made/deleted on return of investments made by M/s. Waberton Ltd. While deciding identical issue in the appeals filed by the assessee and Revenue in preceding assessment years, we have deleted the addition on the reasoning that the additions were not based on any incriminating material found as a result of search. The decision taken therein will apply mutatis mutandis to these appeals as well. Accordingly, the additions sustained by learned Commissioner (Appeals) is deleted. Ground no. 11 raised by the assessee is allowed, whereas, Revenue's ground is dismissed.

41. In ground no. 13, the assessee has raised the issue of addition of Rs.1,92,852/- being 50% share in profit of M/s. Adelman Pharma GmbH. While deciding identical issue in appeal filed by the assessee we have held that the addition is not sustainable. Following our decision therein, we delete the

addition. This ground is allowed. All other grounds raised by the assessee having become academic do not required adjudication.

42. In the result, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

ITA No.632/Del/2018
(Assessee's Appeal for AY: 2015-16)

And

ITA No.957/Del/2018
(Revenue's Appeal for AY: 2015-16)

43. The first issue arising for consideration in Revenue's appeal relates to deletion of addition of Rs.1,12,31,211/- made on account of return on investments made by M/s. Waberton Ltd. Admittedly, this is the year of search, hence, regular assessment was made under section 143(3) of the Act. Therefore, the Assessing Officer is not restricted in making additions based only on incriminating material found as a result of search. As could be seen from the facts on record, the Assessing Officer made the addition by estimating the return at 4.7% on the market value on investments as on 01.04.2014. While deciding the issue, learned Commissioner (Appeals) deleted the addition as it was made purely on estimate basis.

44. Having considered rival submissions and perused the materials on record, we find, learned first appellate authority has

given a categorical factual finding that the estimate of return on investment at 4.7% per annum is purely the imagination of the Assessing Officer disregarding the evidences furnished by the assessee. As could be seen from the observations of learned Commissioner (Appeals), the bank statements and portfolio statements received from BVI Authorities do not in any manner demonstrate that M/s. Waberton Ltd. had actually earned any income on the investments in this assessment year. The aforesaid factual finding of learned Commissioner (Appeals) could not be controverted by the Revenue. That being the factual position emerging on record, we do not find any reason to interfere with the decision of learned Commissioner (Appeals). Accordingly, we uphold the deletion of addition of Rs.1,12,31,211/-

45. The next issue which arises for consideration in both the appeals relates to additions sustained by learned Commissioner (Appeals) in respect of unexplained jewellery.

46. Briefly the facts are, in course of search and seizure; jewelleryes were found in the premises of the assessee. In the block assessment proceeding in case of assessee's daughter, Smt. Anjalee Agarwal, the addition of Rs.12,39,166/- was made in assessment year 2015-16 on account of unexplained investment

in jewellery weighing 500.646 gms. As observed by the Assessing Officer, while deciding the appeal in case of Smt. Anjalee Agarwal, the First Appellate Authority directed the Assessing Officer to consider the issue of balance jewellery weighing 208 gms. at the hands of the assessee. Based on such direction of learned Commissioner (Appeals), the Assessing Officer treated the value of unexplained jewellery weighing 208 gms. amounting to Rs.5,04,030/- as unexplained investment in jewellery by the assessee, added back to the income of the assessee. Similarly, in case of assessee's son, Sh. Kahan Gupta, learned Commissioner (Appeals) directed the Assessing Officer to consider the issue of jewellery, wherein, 113.134 gms. amounting to Rs.36,87,110/- was added at the hands of the assessee. Accordingly, the Assessing Officer added back the amount of Rs.36,87,110/- to the income of the assessee. While deciding the issue in appeal, learned Commissioner (Appeals), on verifying the facts and materials on record, found that the assessee had enough cash available with him from his homeopathy medicine distribution business conducted through German Homeopathy Distributors Pvt. Ltd., hence, had enough cash available for acquiring the jewellery. Thus, he held that source of investment in jewellery

stood explained. Accordingly, he deleted the addition of Rs.4,04,034/- and Rs.36,87,810/-.

47. Having considered rival submissions, we find that before learned Commissioner (Appeals), the assessee had explained that he had sufficient cash availability with him to invest in jewellery. On verifying the facts on record, learned Commissioner (Appeals) had found that from the homeopathy medicine distribution business, the assessee had cash transaction of a substantial amount of more than Rs.10 crores, which was available with the assessee for investing in jewellery. Further, he has recorded a factual finding that weight of gold jewellery disclosed in Wealth Tax Return is more than the weight of jewellery found and seized during the search and seizure operation. The aforesaid factual finding of learned Commissioner (Appeals) could not be controverted by Revenue. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on the issue. Accordingly, ground raised by the Revenue is dismissed.

48. The only other surviving issue on merits arising in assessee's appeal relates to addition of Rs.1,69,920/- being 50% share in profit earned in M/s. Adelmara Pharma GmbH. While

deciding identical issue in appeals filed by the assessee in the earlier part of the order, we have deleted the addition. The decision taken therein by us will apply mutatis and mutandis to this appeal as well. Accordingly, the addition made is deleted. All other grounds raised by the assessee, being of academic nature, do not require adjudication.

49. In the result, Revenue's appeals are dismissed, whereas assessee's appeals are partly allowed.

50. To sum up, the appeals are decided as under:

1.	ITA No.952/Del/2018	Revenue's Appeal	AY: 2009-10	Dismissed
2.	ITA No.953/Del/2018	Revenue's Appeal	AY: 2011-12	Dismissed
3.	ITA No.954/Del/2018	Revenue's Appeal	AY: 2012-13	Dismissed
4.	ITA No.955/Del/2018	Revenue's Appeal	AY: 2013-14	Dismissed
5.	ITA No.956/Del/2018	Revenue's Appeal	AY: 2014-15	Dismissed
6.	ITA No.957/Del/2018	Revenue's Appeal	AY: 2015-16	Dismissed
7.	ITA No.626/Del/2018	Asessee's Appeal	AY: 2009-10	Partly Allowed
8.	ITA No.627/Del/2018	Asessee's Appeal	AY: 2010-11	Partly Allowed
9.	ITA No.628/Del/2018	Asessee's Appeal	AY: 2011-12	Partly Allowed
10.	ITA No.629/Del/2018	Asessee's Appeal	AY: 2012-13	Partly Allowed
11.	ITA No.630/Del/2018	Asessee's Appeal	AY: 2013-14	Partly Allowed
12.	ITA No.631/Del/2018	Asessee's Appeal	AY: 2014-15	Partly Allowed
13.	ITA No.632/Del/2018	Asessee's Appeal	AY: 2015-16	Partly Allowed

Order pronounced in the open court on 23rd January, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 23rd January, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi