

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.15/RPR/2020

निर्धारण वर्ष / Assessment Year : 2011-12

Sona Power Private Limited
35/75, Punjabi Colony,
Katora Talab, Raipur-492 001 (C.G.)
PAN : AALCS4829F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central-2, Raipur.

.....प्रत्यर्थी / Respondent

Assessee by : S/sshri Salil Kapoor, Tarun Chanana,
Advocates & Praveen Jain, CA

Revenue by : Shri Debashish Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 04.01.2023

घोषणा की तारीख / Date of Pronouncement : 27.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-3, Bhopal dated 18.11.2019, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (for short 'the Act') dated 28.12.2018 for assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ground 1: That on the facts and in the circumstances of the case, the notice u/s.148 of the Income Tax Act, 1961 issued by the Assistant Commissioner of Income Tax, Central 2, Raipur is bad in law and all proceedings conducted pursuant thereto are void ab initio.

2. Ground 2: That on the facts and in the circumstances of the case, the learned assessing officer had no reason to believe or had formed no belief regarding the escapement of income of the assessee and has issued notices u/s.147 merely on the basis of information supplied by allied officer and on the basis of suspicion, surmises and conjectures.

3. Ground 3: That on the facts and in the circumstances of the case the learned assessing officer erred in rejecting the objection to the assumption of the jurisdiction by the learned assessing officer.

4. Ground 4: That assessee Company is yet to start commercial operation, no Income, whether taxable or exempt, has been earned and no expenses have been incurred of revenue nature, there is no question of assessee earning undisclosed income. Thus, addition made is bad in law, against law of natural justice, uncalled for and may kindly be deleted.

5. Ground 5: That on the facts and in the circumstances of the case the learned assessing officer erred in holding that the shareholder of the appellent company had no credit worthiness.

6. Ground 6: That on the facts and in the circumstances of the case the learned assessing officer erred in holding that the investor of M/s Sona Power were shell companies or non existent companies.

7. Ground 7: That on the facts and in the circumstances of the case addition made in the hands of assessee for Share Application Money received is contradictory to the contention taken by the department in the cases of Share Applicants. Thus addition made by AO and sustained by CIT(A) is bad in law and may kindly be quashed.

8. Ground 8: That on the facts and in the circumstances of the case the learned assessing officer erred in relying on statement of third parties, without supplying the said statements to the assessee and without providing the assessee with the opportunity to cross examine such witness.

9. Ground 9: That on the facts and in the circumstances of the case the learned assessing officer erred in holding that the issue price of shares of the appellant company defies all logic when such shares have been issued at a reasonable price.

10. Ground 10: That on the facts and in the circumstances of the case the learned assessing officer erred in holding that no documents for allotment of shares were maintained by the appellant company and that the appellant company has violated the provisions of the Companies Act and Income Tax Act, 1961 in this regard.

11. Ground 11: That on the facts and in the circumstances of the case Ld. AO has erred in appreciating the findings made in scrutiny assessment of assessee for the AY 2012-13, 2013-14 & 2014-15. Thus addition is bad in law and may kindly be deleted.

12. Ground 12: That on the facts and in the circumstances of the case the learned assessing officer erred in holding that the appellant company failed to discharge it's obligation to establish the identity, creditworthiness and genuineness of the amount received by it from share holder companies.

13. Ground 13: That on the facts and in the circumstances of the case the learned assessing officer erred in making addition of Rs.38,30,50,000/-u/s.68 of the Income Tax Act, 1961 and the same should be deleted.

14. Ground 14: That on the facts and on the circumstance of the case, Ld. AO has erred in hypothetically assuming commission of Rs.1,91,525/- on share application money received during the year as unexplained cash Credit u/s.68 of the Income tax Act. The addition is bad in law and may kindly be deleted.

15. Ground 15: That on the facts and in the circumstances of the case the learned assessing officer has erred in completing the assessment without reference to any seized document pursuant to search at the premises of the assessee.

16. Ground 16: That on the facts and in the circumstances of the case the learned assessing officer erred in completing the assessment based on suspicion, surmises and conjectures.

17. Ground 17: That on the facts and in the circumstances of the case appeal dismissed by the CIT(A) rejecting the plea of the assessee without considering the evidences filed before AO and additional evidences filed before Ld. CIT(A). Thus addition made by AO and sustained by CIT(A) is bad in law and may kindly be quashed.

18. The appellant craves leave to add, amend, alter and delete the ground(s) of appeal at time of hearing the appeal.”

2. Succinctly stated, the assessee company which had yet not started its business operations during the year under consideration had filed its return of income for A.Y. 2011-12 on 31.03.2012, declaring an income of Rs. Nil. Search and seizure operations under Sec. 132 of the Act were conducted at the various premises of Sona (Bhatia) Group, Raipur on 24.05.2017 and the business premises of the assessee company were also covered in the said proceedings.

3. Information was received by the A.O from the Assistant Director of Income Tax (Inv.)-1, Raipur, wherein referring to the statements of S/shri Khuspal Singh Bhatia and Sameer Das Gupta (dummy directors of Kolkata based companies) recorded u/s.132(4) of the Act; and those of S/sh. Narendra Jain (entry operator) and his staff member Shri. Champak Mandal recorded by the Investigation Wing, Kolkata, it was, inter alia, intimated that

the assessee company, viz. M/s. Sona Power Private Limited during the Financial Year 2010-11 was in receipt of share capital/premium of Rs.38,30,50,000/- from certain Kolkata based paper/shell companies. On the basis of the aforesaid information the A.O initiated proceedings u/s 147 of the Act in the hands of the assessee company. Notice under Sec. 148 of the Act, dated 27.03.2018 was issued to the assessee company. The assessee company in compliance filed its return of income on 13.04.2018, declaring an income of Rs. Nil (i.e. as originally returned).

4. The assessee company after complying to the notice issued under Sec. 148 of the Act, dated 27.03.2018 applied for a copy of the “reasons to believe” on the basis of which proceedings under Sec. 147 of the Act were initiated in its case. Copy of the “reasons to believe” were made available by the A.O on 02.05.2018. The assessee company vide its letter dated 31.05.2018 objected to the validity of the jurisdiction that was assumed by the A.O for initiating proceedings in its case under Sec. 147 of the Act, which were disposed off by the A.O vide a speaking order dated 23.08.2018 (as culled out in the body of the assessment order).

5. During the course of the assessment proceedings, it was observed by the A.O that the assessee company during the year under consideration i.e. A.Y. 2011-12 had claimed to have received an amount of Rs. 38,30,50,000/- as share capital/premium from the following 9 Kolkata based companies :

F.Y. in which amount credited	Name of the company from which amount received	Amount (Rs.)
2010-11	Accurate ashray Pvt. Ltd	2,50,00,000
	Consistent Vinimay Pvt. Ltd.	1,50,00,000
	Nawab Vyapaar Pvt. Ltd.	6,06,00,000
	Puja Tie-up Pvt. Ltd.	2,29,00,000
	Vikash Tradecom Pvt.Ltd.	7,34,00,000
	Muskan Dealers Pvt. Ltd.	4,41,00,000
	Puja Dealcom Pvt. Ltd.	11,98,50,000
	Sethia Services Pvt. Ltd.	2,12,00,000
	Maharaja Tradecom Pvt. Ltd.	10,00,000
	Total	38,30,50,000

The A.O after deliberating at length on the modus operandi that was adopted by bogus/shell companies to provide accommodation entries was of the view that the assessee company in garb of receipt of share application money/share capital from the aforementioned paper/shell companies had in fact laundered its unaccounted income. It was observed by the A.O that as per the discreet inquiries carried out in the course of the pre-search investigations the aforementioned share applicant companies were neither found available at the addresses that were provided by them in their respective returns filed with the registrar of companies (ROC) nor were they carrying out any actual business. It was further observed by the A.O that though during the course of the aforesaid search and seizure proceedings survey proceedings under Sec. 133A of the Act were initiated in the hands of the aforesaid shareholder companies but as the said companies were not found available at their respective addresses, therefore, the authorization of

survey in their cases could not be executed by the authorized officers. It was observed by the A.O that the current and past directors of the shareholder companies in their respective statements that were recorded on oath under Sec. 132(4) of the Act, both during search and post search investigations, had failed to come forth with any explanation about the unavailability of the aforesaid companies at their respective registered office addresses. The A.O after culling out the statements of the directors of the shareholder companies that were recorded on oath during the course of the search and seizure proceedings under Sec. 132(4) of the Act was of the view that the assessee company had routed its unaccounted income in the garb of share application money/share capital that was claimed to have been received from the aforementioned paper/shell companies. The A.O was of the view that the unjustified raising of high pitched premium by the assessee company on the shares allotted to the subscriber companies in itself fortified the fact that it had merely camouflaged the laundering of its unaccounted income in the garb of receipt of share application money/share capital. The A.O in order to support her aforesaid conviction had also referred to the abysmally low returned income and the poor financials of the shareholder companies, which as per her clearly ruled out their creditworthiness to make huge investments in the assessee company. The A.O after analyzing the multi-layered rotation of funds inter se the various paper/shell share subscriber companies along with their respective bank accounts observed

that they were following a typical method of money transfer to give a color of genuineness to the unaccounted money that was routed through their various bank accounts. In order to support her aforesaid observation the A.O, inter alia, referred to an instance where cash deposits made in the proprietorship concern of Sh. Manoj Mandal, an infamous accommodation entry provider, were transferred after bifurcating/splitting through a colorable arrangement to Kolkata based shell/paper companies from where the said funds had finally reached the coffers of the actual/ultimate beneficiary. It was further observed by the A.O that though the assessee company through private placement had during the year claimed to have allotted shares at a substantial amount of premium to a number of Kolkata based companies, but the fact that there was neither any material which would reveal that it had while allotting such shares scrupulously followed the rules/procedure prescribed under law nor had maintained the statutory records at its registered office, viz. 35/75, Punjabi Colony, Katora Talab, Raipur in itself was a strong circumstantial evidence which proved the falsity of its claim of having received genuine share application money/share capital from the aforementioned companies. It was observed by the A.O that the fact that neither the share allotter nor the share allottee had bothered to follow the basic statutory requirements involved in allotment of shares through private placements in itself fortified the fact that the funds received in the form of share capital/premium were artificially arranged. The A.O in

order to support her aforesaid conviction also referred at length to the *modus-operandi* that was adopted by the Kolkata based shareholder companies for sale/issue/transfer of their shares. The A.O further in her attempt to unfold the artificial arrangement of funds by the Kolkata based share applicant companies for making investments in the assessee company had on an exemplary basis referred to an instance of purchase of shares of one such share subscriber company, viz. Nawab Vyapaar Private Limited by a group entity of the assessee company, viz. Sona Beverages Private Limited. It was observed by the A.O that on the one hand Sona Beverages Private Limited (supra) had in F.Y.2010-11 purchased at par the shares of one of the shareholder company, viz. Nawab Vyapaar Private Limited (supra), while for at the same time the latter had liquidated its stock of shares/investments in the same year at a substantial amount of premium for arranging funds to make an investment of Rs.6.06 crore with the assessee company. On the basis of her aforesaid deliberations the A.O held a strong conviction that the assessee company through a dummy/shell arrangement had laundered its unaccounted income in the garb of receipt of bogus share capital/premium from the aforementioned paper/shell companies. For the sake of clarity the reasons given by the A.O for concluding as hereinabove as culled out by her in the body of the assessment order are reproduced as under :

“From the discussions made in the forgoing paragraphs, following facts have emerged :

- (i) The companies who have purchased the shares had no business operation or existence.
- (ii) Non-justification of high prices on which the stocks have been traded.
- (iii) The physical activity reported on the websites of these companies who have purchased the Shares are written activity wholesale on a fee of contract basis. [Includes commission agents, commodity brokers and auctioneers and all other wholesalers who trade on behalf and on the account of others.]
- (iv) The creditworthiness of companies who have purchased the shares is suspicious.
- (v) The statement of many directors these Kolkata companies were recorded and most of them in their statement admitted that they were either dummy directors or were not aware of any business activity of the company or merely a signing authority. Many other directors are not traceable at their last known address. The middleman involved in the whole process is yet to be established.
- (vi) The documents related purchase/transfer of shares i.e. Share Transfer Register, Share Issue Register, Share Certificate have not been found from any of the premises of Investee company or from where investment received. No submission made by any of the party regarding above related documents. Shri Satpal Singh Bhatia, Director M/s Sona Power Pvt Ltd in his statement recorded u/s 132(4) of I T Act 1961 stated that he has no knowledge of these documents.
- (vii) Bank accounts of Kolkata based companies were opened in Punjab National Bank, Raipur and Dena Bank, Rajnandgaon.
- (viii) Statements of Dummy Directors shows that, it was an arrangement/sham Transaction to garb unaccounted income of Sona (Bhatia) Group to introduced in the books of account of companies through colorable device i.e. Share Capital/Share Premium.”

6. It was further observed by the A.O that some of the directors of the share subscriber companies were found to be under the control of certain accommodation entry providers, viz. (i) S/ssh. Kali Kant Chowdhury, Arihant Jain and Chandresh Kumar Jain, directors were under the control of an infamous entry operator, viz. Sh. Narender Kumar Jain; and (ii) Sh.

Sandeep Sharma, director was under the control of infamous entry providers, viz. S/sh. Anant Sharma and Janardan Chokhani. It was also observed by the A.O that the names of all the 9 share subscriber companies from whom the assessee company had claimed to have received share capital/premium during the year under consideration figured in the list of paper/shell companies which were involved in providing accommodation entries.

7. The A.O in order to verify the identity, creditworthiness and the genuineness of the transactions pertaining to receipt of share application money by the assessee company from the aforesaid 9 tainted companies issued notices under Sec. 133(6) of the Act, dated 15.10.2018 to all of them which, however, were returned by the postal authorities with the remarks “Not known”.

8. The A.O issued commission under Sec. 131(1)(d) of the Act, dated 15.10.2018 to the following A.O’s having jurisdiction over the case of the aforesaid share subscriber companies :

Sr.No.	Name of the Company	AO
1.	Accurate Ashray P Ltd.	Ward 10(4) Kolkata
2.	Consistent Vinimay P Ltd.	Ward 9(3) Kolkata
3.	Maharaja Tradecom P Ltd.	Ward 1(2) Kolkata
4.	Muskan Dealers P Ltd.	Ward 10(4) Kolkata
5.	Nawab Vyapar P Ltd.	Ward 6(3) Kolkata
6.	Puja Dealcom P Ltd.	Ward 10(4) Kolkata
7.	Puja Tie-up P Ltd.	Ward 10(4) Kolkata
8.	Sethia Services P Ltd.	Ward 5(4) Kolkata

As is discernible from the assessment order the ITO, Ward-10(4), Kolkata who was having jurisdiction over the case of 5 investor companies, viz. (i) Accurate Ashray P Ltd.; (ii) Muskan Dealers P Ltd.; (iii) Puja Dealcom (P) Ltd.; (iv) Puja Tie-up P Ltd.; and (v) Vikash Tradecom P Ltd., had vide his letter dated 07.12.2018 furnished his report wherein the details provided by him as regards the aforesaid investor companies are culled out as under :-

Sr.No.	Name of the Company	Particulars																		
1.	Accurate Ashray P Ltd.	<p>(i). that the investor company had no physical existence at the address provided.</p> <p>(ii) that as per records the aforesaid company was engaged in the business of trading in shares & securities and granting of loans</p> <p>(iii) that scrutiny assessments/processing of the returns of income of the said company during A.Y. 2011-12 to A.Y. 2018-19 was as under :</p> <table border="1" data-bbox="788 1256 1422 1771"> <thead> <tr> <th data-bbox="788 1256 967 1312">Assessment Year</th> <th data-bbox="967 1256 1422 1312">Order passed</th> </tr> </thead> <tbody> <tr> <td data-bbox="788 1312 967 1397">2011-12</td> <td data-bbox="967 1312 1422 1397">Order u/s. 147 r.w.s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td data-bbox="788 1397 967 1458">2012-13</td> <td data-bbox="967 1397 1422 1458">Order u/s. 143(1) of the I T Act, 1961 passed</td> </tr> <tr> <td data-bbox="788 1458 967 1514">2013-14</td> <td data-bbox="967 1458 1422 1514">Order u/s. 143(1) of the I T Act, 1961 passed</td> </tr> <tr> <td data-bbox="788 1514 967 1570">2014-15</td> <td data-bbox="967 1514 1422 1570">Order u/s. 143(1) of the I T Act, 1961 passed</td> </tr> <tr> <td data-bbox="788 1570 967 1626">2015-16</td> <td data-bbox="967 1570 1422 1626">Order u/s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td data-bbox="788 1626 967 1682">2016-17</td> <td data-bbox="967 1626 1422 1682">Order u/s. 143(1) of the I T Act, 1961 passed</td> </tr> <tr> <td data-bbox="788 1682 967 1738">2017-18</td> <td data-bbox="967 1682 1422 1738">Order u/s. 143(1) of the I T Act, 1961 passed</td> </tr> <tr> <td data-bbox="788 1738 967 1771">2018-19</td> <td data-bbox="967 1738 1422 1771">The return filed.</td> </tr> </tbody> </table> <p>(iv)that the details of audited financial statements of the aforesaid company for the</p>	Assessment Year	Order passed	2011-12	Order u/s. 147 r.w.s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)	2012-13	Order u/s. 143(1) of the I T Act, 1961 passed	2013-14	Order u/s. 143(1) of the I T Act, 1961 passed	2014-15	Order u/s. 143(1) of the I T Act, 1961 passed	2015-16	Order u/s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)	2016-17	Order u/s. 143(1) of the I T Act, 1961 passed	2017-18	Order u/s. 143(1) of the I T Act, 1961 passed	2018-19	The return filed.
Assessment Year	Order passed																			
2011-12	Order u/s. 147 r.w.s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)																			
2012-13	Order u/s. 143(1) of the I T Act, 1961 passed																			
2013-14	Order u/s. 143(1) of the I T Act, 1961 passed																			
2014-15	Order u/s. 143(1) of the I T Act, 1961 passed																			
2015-16	Order u/s. 143(3) of the I T Act, 1961 passed (copy of order enclosed)																			
2016-17	Order u/s. 143(1) of the I T Act, 1961 passed																			
2017-18	Order u/s. 143(1) of the I T Act, 1961 passed																			
2018-19	The return filed.																			

	<p>F.Y. 2010-11 to F.Y. 2017-18 were furnished/provided as under :</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>No documents available</td> </tr> <tr> <td>2015-16</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </tbody> </table> <p>(v) that the details of all bank accounts/statements of the aforesaid company for the period 01.04.2010 to 31.03.2018 were furnished/provided as under</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>No documents available</td> </tr> <tr> <td>2015-16</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </tbody> </table> <p>(vi) that as regards the source of investment out of which investment had been made by the aforesaid company for acquiring the shares of the assessee company it was stated in the report so filed by the A.O as under :</p> <p>“No Original scrutiny assessment in this case was made in A.Y. 2011-12 and the same year has been re-opened with information of receiving money out of sale of investment but actually no money has been received M/s Annapurna Tracom Pvt. Ltd. during the year as confirmed by the DDIT (Inv.) Unit-2(1), Kolkata later on. However, A.Y. 2015-16 was in scrutiny through CASS and on going through the schedule of Investment. It is seen hat investment in shares of Indian companies raised from</p>	Assessment Year	Available records/documents	2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	No documents available	2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available	Assessment Year	Available records/documents	2011-12	All bank statements (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	No documents available	2015-16	All bank statements (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available
Assessment Year	Available records/documents																																				
2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																																				
2012-13	No documents available																																				
2013-14	No documents available																																				
2014-15	No documents available																																				
2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																																				
2016-17	No documents available																																				
2017-18	No documents available																																				
2018-19	No documents available																																				
Assessment Year	Available records/documents																																				
2011-12	All bank statements (copy enclosed)																																				
2012-13	No documents available																																				
2013-14	No documents available																																				
2014-15	No documents available																																				
2015-16	All bank statements (copy enclosed)																																				
2016-17	No documents available																																				
2017-18	No documents available																																				
2018-19	No documents available																																				

		Rs.5,57,13,000/- to Rs. 25,80,50,000/- during the year.”																												
2.	Muskan Dealers P Ltd.	<p>(i). that the investor company had no physical existence at the address provided.</p> <p>(ii) that as per records the aforesaid company was engaged in the business of trading in shares & securities and granting of loans</p> <p>(iii) that scrutiny assessments/processing of the returns of income of the said company during A.Y. 2011-12 to A.Y. 2018-19 was as under :</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Order passed</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.</td> </tr> <tr> <td>2012-13</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2013-14</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2014-15</td> <td>Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2015-16</td> <td>Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2016-17</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2017-18</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2018-19</td> <td>The return filed.</td> </tr> </tbody> </table> <p>(iv) that the details of audited financial statements of the aforesaid company for the F.Y. 2010-11 to F.Y. 2017-18 were furnished/provided as under :</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> </tbody> </table>	Assessment Year	Order passed	2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.	2012-13	Order u/s. 143(1) of the IT Act, 1961 passed	2013-14	Order u/s. 143(1) of the IT Act, 1961 passed	2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)	2015-16	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)	2016-17	Order u/s. 143(1) of the IT Act, 1961 passed	2017-18	Order u/s. 143(1) of the IT Act, 1961 passed	2018-19	The return filed.	Assessment Year	Available records/documents	2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)
Assessment Year	Order passed																													
2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.																													
2012-13	Order u/s. 143(1) of the IT Act, 1961 passed																													
2013-14	Order u/s. 143(1) of the IT Act, 1961 passed																													
2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)																													
2015-16	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)																													
2016-17	Order u/s. 143(1) of the IT Act, 1961 passed																													
2017-18	Order u/s. 143(1) of the IT Act, 1961 passed																													
2018-19	The return filed.																													
Assessment Year	Available records/documents																													
2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																													
2012-13	No documents available																													
2013-14	No documents available																													
2014-15	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																													

		<table border="1"> <tr> <td>2015-16</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </table> <p>(v) that the details of all bank accounts/statements of the aforesaid company for the period 01.04.2010 to 31.03.2018 were furnished/provided as under</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2015-16</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </tbody> </table> <p>(vi) that as regards the source of investment out of which investment had been made by the aforesaid company for acquiring the shares of the assessee company it was stated in the report so filed by the A.O as under :</p> <p>“No Original scrutiny assessment in this case was made in A.Y. 2011-12 and the same year has been re-opened with information that the assessee company receipt money out of sale of un-quoted shares which were kept in stock-in-trade. In balance sheet of A.y. 2011-12 it is shown that the assessee company had paid share application money of Rs. 4,55,50,000/- during the year. For A.Y. 2014-15 was in scrutiny through CASS and on going through the schedule of Investment. It is seen that the assessee company has shown in opening balance as investment of Rs. 4,38,00,000/- in M/s Sona Power Pvt. Ltd.”</p>	2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available	Assessment Year	Available records/documents	2011-12	All bank statements (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	All bank statements (copy enclosed)	2015-16	All bank statements (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available
2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																											
2016-17	No documents available																											
2017-18	No documents available																											
2018-19	No documents available																											
Assessment Year	Available records/documents																											
2011-12	All bank statements (copy enclosed)																											
2012-13	No documents available																											
2013-14	No documents available																											
2014-15	All bank statements (copy enclosed)																											
2015-16	All bank statements (copy enclosed)																											
2016-17	No documents available																											
2017-18	No documents available																											
2018-19	No documents available																											
3.	Puja Dealcom P Ltd.	<p>(i). that the investor company had no physical existence at the address provided.</p> <p>(ii) that as per records the aforesaid company was engaged in the business of</p>																										

		<p>trading in shares & securities and granting of loans</p> <p>(iii) that scrutiny assessments/processing of the returns of income of the said company during A.Y. 2011-12 to A.Y. 2018-19 was as under :</p> <table border="1" data-bbox="788 562 1426 1111"> <thead> <tr> <th>Assessment Year</th> <th>Order passed</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.</td> </tr> <tr> <td>2012-13</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2013-14</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2014-15</td> <td>Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2015-16</td> <td>Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2016-17</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2017-18</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2018-19</td> <td>The return filed.</td> </tr> </tbody> </table> <p>(iv) that the details of audited financial statements of the aforesaid company for the F.Y 2010-11 to F.Y. 2017-18 were furnished/provided as under :</p> <table border="1" data-bbox="788 1317 1426 1778"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2015-16</td> <td>Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </tbody> </table> <p>(v) that the details of all bank accounts/statements of the aforesaid company for the period 01.04.2010 to</p>	Assessment Year	Order passed	2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.	2012-13	Order u/s. 143(1) of the IT Act, 1961 passed	2013-14	Order u/s. 143(1) of the IT Act, 1961 passed	2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)	2015-16	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)	2016-17	Order u/s. 143(1) of the IT Act, 1961 passed	2017-18	Order u/s. 143(1) of the IT Act, 1961 passed	2018-19	The return filed.	Assessment Year	Available records/documents	2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available
Assessment Year	Order passed																																					
2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.																																					
2012-13	Order u/s. 143(1) of the IT Act, 1961 passed																																					
2013-14	Order u/s. 143(1) of the IT Act, 1961 passed																																					
2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)																																					
2015-16	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)																																					
2016-17	Order u/s. 143(1) of the IT Act, 1961 passed																																					
2017-18	Order u/s. 143(1) of the IT Act, 1961 passed																																					
2018-19	The return filed.																																					
Assessment Year	Available records/documents																																					
2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																																					
2012-13	No documents available																																					
2013-14	No documents available																																					
2014-15	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																																					
2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																																					
2016-17	No documents available																																					
2017-18	No documents available																																					
2018-19	No documents available																																					

		<p>31.03.2018 were furnished/provided as under</p> <table border="1" data-bbox="790 392 1422 685"> <thead> <tr> <th>Assessment Year</th> <th>Available records/documents</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2012-13</td> <td>No documents available</td> </tr> <tr> <td>2013-14</td> <td>No documents available</td> </tr> <tr> <td>2014-15</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2015-16</td> <td>No documents available</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </tbody> </table> <p>(vi) that as regards the source of investment out of which investment had been made by the aforesaid company for acquiring the shares of the assessee company it was stated in the report so filed by the A.O as under:</p> <p>“No Original scrutiny assessment in this case was made in A.Y. 2011-12 and the same year has been re-opened with information that the assessee company receipt money out of sale of un-quoted shares which were kept in stock-in-trade. In balance sheet of A.y. 2011-12 it is shown that the assessee company had paid share application money of Rs. 12,16,00,000/- during the year. For A.Y. 2014-15 was in scrutiny through CASS and on going through the schedule of Investment. It is seen that investment in shares of Indian companies raised from Rs. 2,54,43,110/- to Rs. 1,40,28,110/- during the year.”</p>	Assessment Year	Available records/documents	2011-12	All bank statements (copy enclosed)	2012-13	No documents available	2013-14	No documents available	2014-15	All bank statements (copy enclosed)	2015-16	No documents available	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available
Assessment Year	Available records/documents																			
2011-12	All bank statements (copy enclosed)																			
2012-13	No documents available																			
2013-14	No documents available																			
2014-15	All bank statements (copy enclosed)																			
2015-16	No documents available																			
2016-17	No documents available																			
2017-18	No documents available																			
2018-19	No documents available																			
4.	Puja Tie-up P Ltd.	<p>(i). that the investor company had no physical existence at the address provided.</p> <p>(ii) that as per records the aforesaid company was engaged in the business of trading in shares & securities and granting of loans</p> <p>(iii) that scrutiny assessments/processing of the returns of income of the said company during A.Y. 2011-12 to A.Y. 2018-19 was as under :</p>																		

Assessment Year	Order passed
2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on in the issue of investment made by M/s Puja Tie Up Pvt. Ltd. in the M/s Sona Power Pvt. Ltd. Please forward the assessment order of M/s Sona Power Pvt. Ltd. For A.Y. 2011-12 on which the fate of the M/s Puja Tie Up Pvt. Ltd. depends.
2012-13	Order u/s. 143(1) of the IT Act, 1961 passed
2013-14	Order u/s. 143(1) of the IT Act, 1961 passed
2014-15	Order u/s. 143(1) of the IT Act, 1961 passed
2015-16	Order u/s. 143(1) of the IT Act, 1961 passed
2016-17	Order u/s. 143(1) of the IT Act, 1961 passed
2017-18	Order u/s. 143(1) of the IT Act, 1961 passed
2018-19	The return filed.

(iv) that the details of audited financial statements of the aforesaid company for the F.Y. 2010-11 to F.Y. 2017-18 were furnished/provided as under :

Assessment Year	Available records/documents
2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)
2012-13	No documents available
2013-14	No documents available
2014-15	No documents available
2015-16	No documents available
2016-17	No documents available
2017-18	No documents available
2018-19	No documents available

(v) that the details of all bank accounts/statements of the aforesaid company for the period 01.04.2010 to 31.03.2018 were furnished/provided as under

Assessment Year	Available records/documents
2011-12	All bank statements (copy enclosed)
2012-13	No documents available
2013-14	No documents available

		<table border="1"> <tr> <td>2014-15</td> <td>No documents available</td> </tr> <tr> <td>2015-16</td> <td>All bank statements (copy enclosed)</td> </tr> <tr> <td>2016-17</td> <td>No documents available</td> </tr> <tr> <td>2017-18</td> <td>No documents available</td> </tr> <tr> <td>2018-19</td> <td>No documents available</td> </tr> </table> <p>(vi) that as regards the source of investment out of which investment had been made by the aforesaid company for acquiring the shares of the assessee company it was stated in the report so filed by the A.O as under :</p> <p>“In the case as per records, funds received from M/s Sandalwood Tie Up Pvt. Ltd Of Rs. 31,00,000/-, M/s Debdaru Vinimay Pvt. Ltd. of Rs.17,00,000/-, M/s Sanmukh Vincom Pvt. Ltd. of Rs.88,00,000/-, M/s Nawab Vyapaar Pvt. Ltd. of Rs. 48,00,000/- and M/s Narottarnka Trade & Vyapaar Pvt. Ltd. of Rs. 45,00,000/- during the F.Y. 2010-11.”</p>	2014-15	No documents available	2015-16	All bank statements (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available				
2014-15	No documents available															
2015-16	All bank statements (copy enclosed)															
2016-17	No documents available															
2017-18	No documents available															
2018-19	No documents available															
5.	Vikash Tradecom P Ltd.	<p>(i). that the investor company had no physical existence at the address provided.</p> <p>(ii) that as per records the aforesaid company was engaged in the business of trading in shares & securities and granting of loans</p> <p>(iii) that scrutiny assessments/processing of the returns of income of the said company during A.Y. 2011-12 to A.Y. 2018-19 was as under :</p> <table border="1"> <thead> <tr> <th>Assessment Year</th> <th>Order passed</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.</td> </tr> <tr> <td>2012-13</td> <td>The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.</td> </tr> <tr> <td>2013-14</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> <tr> <td>2014-15</td> <td>Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2015-16</td> <td>Order u/s. 144) of the I T Act, 1961 passed (copy of order enclosed)</td> </tr> <tr> <td>2016-17</td> <td>Order u/s. 143(1) of the IT Act, 1961 passed</td> </tr> </tbody> </table>	Assessment Year	Order passed	2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.	2012-13	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.	2013-14	Order u/s. 143(1) of the IT Act, 1961 passed	2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)	2015-16	Order u/s. 144) of the I T Act, 1961 passed (copy of order enclosed)	2016-17	Order u/s. 143(1) of the IT Act, 1961 passed
Assessment Year	Order passed															
2011-12	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.															
2012-13	The proceedings of re-assessment u/s.148 of the I T Act, 1961 are going on which will be barred on 31.12.2018.															
2013-14	Order u/s. 143(1) of the IT Act, 1961 passed															
2014-15	Order u/s. 143(3) of the IT Act, 1961 passed (copy of order enclosed)															
2015-16	Order u/s. 144) of the I T Act, 1961 passed (copy of order enclosed)															
2016-17	Order u/s. 143(1) of the IT Act, 1961 passed															

		2017-18	Order u/s. 143(1) of the IT Act, 1961 passed																	
		2018-19	The return filed.																	
	(iv) that the details of audited financial statements of the aforesaid company for the F.Y. 2010-11 to F.Y. 2017-18 were furnished/provided as under :																			
	<table border="1"> <thead> <tr> <th data-bbox="783 577 963 636">Assessment Year</th> <th data-bbox="963 577 1431 636">Available records/documents</th> </tr> </thead> <tbody> <tr> <td data-bbox="783 636 963 719">2011-12</td> <td data-bbox="963 636 1431 719">Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td data-bbox="783 719 963 801">2012-13</td> <td data-bbox="963 719 1431 801">Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td data-bbox="783 801 963 837">2013-14</td> <td data-bbox="963 801 1431 837">No documents available</td> </tr> <tr> <td data-bbox="783 837 963 871">2014-15</td> <td data-bbox="963 837 1431 871">No documents available</td> </tr> <tr> <td data-bbox="783 871 963 954">2015-16</td> <td data-bbox="963 871 1431 954">Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)</td> </tr> <tr> <td data-bbox="783 954 963 987">2016-17</td> <td data-bbox="963 954 1431 987">No documents available</td> </tr> <tr> <td data-bbox="783 987 963 1021">2017-18</td> <td data-bbox="963 987 1431 1021">No documents available</td> </tr> <tr> <td data-bbox="783 1021 963 1041">2018-19</td> <td data-bbox="963 1021 1431 1041">No documents available</td> </tr> </tbody> </table>	Assessment Year	Available records/documents	2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2012-13	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2013-14	No documents available	2014-15	No documents available	2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available	
Assessment Year	Available records/documents																			
2011-12	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																			
2012-13	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																			
2013-14	No documents available																			
2014-15	No documents available																			
2015-16	Audited financial statement, Balance Sheet and Profit & Loss A/c (copy enclosed)																			
2016-17	No documents available																			
2017-18	No documents available																			
2018-19	No documents available																			
	(v) that the details of all bank accounts/statements of the aforesaid company for the period 01.04.2010 to 31.03.2018 were furnished/provided as under																			
	<table border="1"> <thead> <tr> <th data-bbox="783 1272 963 1330">Assessment Year</th> <th data-bbox="963 1272 1431 1330">Available records/documents</th> </tr> </thead> <tbody> <tr> <td data-bbox="783 1330 963 1364">2011-12</td> <td data-bbox="963 1330 1431 1364">All bank statements (copy enclosed)</td> </tr> <tr> <td data-bbox="783 1364 963 1397">2012-13</td> <td data-bbox="963 1364 1431 1397">All bank statements (copy enclosed)</td> </tr> <tr> <td data-bbox="783 1397 963 1431">2013-14</td> <td data-bbox="963 1397 1431 1431">No documents available</td> </tr> <tr> <td data-bbox="783 1431 963 1464">2014-15</td> <td data-bbox="963 1431 1431 1464">No documents available</td> </tr> <tr> <td data-bbox="783 1464 963 1498">2015-16</td> <td data-bbox="963 1464 1431 1498">All bank statements (copy enclosed)</td> </tr> <tr> <td data-bbox="783 1498 963 1532">2016-17</td> <td data-bbox="963 1498 1431 1532">No documents available</td> </tr> <tr> <td data-bbox="783 1532 963 1565">2017-18</td> <td data-bbox="963 1532 1431 1565">No documents available</td> </tr> <tr> <td data-bbox="783 1565 963 1570">2018-19</td> <td data-bbox="963 1565 1431 1570">No documents available</td> </tr> </tbody> </table>	Assessment Year	Available records/documents	2011-12	All bank statements (copy enclosed)	2012-13	All bank statements (copy enclosed)	2013-14	No documents available	2014-15	No documents available	2015-16	All bank statements (copy enclosed)	2016-17	No documents available	2017-18	No documents available	2018-19	No documents available	
Assessment Year	Available records/documents																			
2011-12	All bank statements (copy enclosed)																			
2012-13	All bank statements (copy enclosed)																			
2013-14	No documents available																			
2014-15	No documents available																			
2015-16	All bank statements (copy enclosed)																			
2016-17	No documents available																			
2017-18	No documents available																			
2018-19	No documents available																			
	(vi) that as regards the source of investment out of which investment had been made by the aforesaid company for acquiring the shares of the assessee company it was stated in the report so filed by the A.O as under:																			
	“No original scrutiny assessment in his case was made in A.Y. 2011-12 & A.Y. 2012-13 and the																			

		<p>same years have been re-opened with information that the assessee company receipt money out of sale of un-quoted shares which were kept in stock-in-trade. In the balance sheet of A.Y. 2011-12 & A.Y. 2012-13, it appears that the assessee company has not shown any investment during the years. For A.Y. 2015-16 was in scrutiny through CASS and on going through the schedule of investment. It is seen that investment in shares of Indian companies raised from Rs. 17,72,18,750/- to Rs.17,76,33,750/- during the year.”</p>
--	--	--

9. That as the assessee company had in the course of assessment proceedings failed to comply with the notice issued under Sec. 142(1), dated 02.05.2018, therefore, the A.O issued summons under Sec. 131 of the Act calling upon it to produce certain specific documents in order to substantiate its claim of having raised genuine share application money/share capital from the aforesaid tainted share subscriber companies. As the assessee company failed to comply with the summons issued under Sec. 131 of the Act, therefore, on a reference made by the A.O to the JCIT(Central), Raipur penalty under Sec. 272A(1)(c) of the Act was imposed on it.

10. The A.O in the absence of the requisite details having been made available by the assessee company carried out further enquiries and downloaded the annual reports of the aforesaid investor companies. It was observed by the A.O that almost all of the said companies were located in Kolkata and in majority of cases they shared a common address. Apart from

that, it was observed by the A.O that even those companies whose address was other than that of Kolkata had their origin in Kolkata and the subsequent change of their address was on account of acquisition of such jamakharchi companies by their beneficiaries. The A.O analyzed the authorized/subscribed capital of the aforesaid investor companies by way of a chart reproduced at Page 49-50 of his order. It was, inter alia, observed by the A.O that members of the assessee group were taken up as directors in some of the aforesaid paper/shell investor companies and they along with the old name sake directors remained on the board of directors. It was further observed by the A.O that the directors of the aforesaid companies were further directors in multiple Kolkata based companies which had an identical pattern of shell companies. It was observed by him that some of the companies in which the directors were further directors happened to be the investor companies. Considering the circuitous nature of setup of the aforementioned investor companies, it was further noticed by the A.O that some of the directors of the said companies were either entry operators or were being controlled by some operator. The A.O culled out the details as regards the directors of the investor companies a/w the details of the other paper/shell companies in which they were directors at Page 51-58 of his order.

11. On the basis of verifications it was gathered by the A.O that the aforesaid investor companies were Kolkata based paper/shell companies which shared the typical pattern of low share capital, high reserves and surplus, matching investments, low or no income, equivalent expenditure resulting in low or no profits and insignificant financials. The A.O after perusing the financials of the aforesaid investor companies observed that their reserves and surplus matched with a corresponding equivalent value of investments in the beneficiary companies or other shell companies. It was further observed by him that the nature of expenditure booked by the aforesaid investor companies in neither of the case revealed any going concern. It was observed by the A.O that the bank statements of the investor companies only revealed transactions of receipt of funds which was followed by immediate transfer of the said funds either on the same day or the next day. The A.O considering the aforesaid factual matrix was of the view that the only purpose of the investor companies was to transfer funds in order to facilitate routing of the unaccounted money of the beneficiaries. The A.O culled out the peculiar extracts of the financial statements of the aforesaid investor companies, as under :

S.No	Investor	FY	Share capital	Reserve & Surplus	Investment	Income/tur nover	Profit (PBT)
1	Accurate Ashray P Ltd.	2010-11	5,218,000	256,003,931	76,305,721	102,634,000	1,960
2	Consistent Vinimay P. Ltd.	2010-11	4,330,000	211,604,244	15,642,248	32,598,470	2,490

3	Maharaja Tradecom P Ltd.	2010-11	6,827,000	336,453,086	5,228,808	7,463,610	290
4	Muskan Dealer P Ltd.	2010-11	3,126,080	148,276,434	56,406,279	291,630,599	27,212
5	Nawab Vyapar P Ltd.	2010-11	3,124,700	148,258,771	120,389,275	327,054,075	13,988
6	Puja Dealcom P Ltd.	2010-11	3,384,050	160,943,252	131,983,488	533,567,026	17,227
7	Puja Tieup P Ltd.	2010-11	3,232,160	153,531,748	30,408,746	554,208,351	37,541
8	Sethia Services P Ltd.	2010-11	1,660,000	31,357,556	2,049,130	518,529	142,550
9	Vikash Tradecom P Ltd.	2010-11	3,657,130	174,299,370	94,464,128	400,422,172	24,740

12. The A.O after considering the aforesaid facts as were gathered by him both in the course of the search proceedings as well as on the basis of independent enquiries, therein, vide his 'Show Cause Notice' (SCN), dated 29.11.2018 a/w the requisite data in a CD (as an annexure) called upon the assessee company to put forth an explanation as to why the share application money/share capital received from the aforesaid 9 paper/shell companies may not be treated as its unaccounted income and brought to tax in its hands. Although the assessee company in its attempt to impress upon the A.O that it was in receipt of genuine share application money/share capital from the aforementioned share applicant companies placed on his record certain documentary evidence, viz. (i). copy of share application forms; (ii) allotment advices; (iii) financial statements of the investor companies a/w copies of their returns of income for the year under

consideration i.e. A.Y. 2011-12; (iv) copies of PAN cards; (v) bank statements of the investor companies highlighting the transactions under consideration; (vi) certificate of incorporation of the investor companies; (vii) articles of association, memorandum of association of the investor companies; (viii) copies of share certificates; (ix) copies of the directors reports; (x) copies of the assessment orders of the investor companies; (xi) affidavits from the directors of the investor companies; and (xii) certificates of the bankers of the investor companies, but the A.O neither found favour with the explanation of the assessee company that it was in receipt of genuine share application money/share capital from the aforesaid 9 tainted Kolkata based share subscribers companies nor was inspired by the aforesaid documentary evidence which it had pressed into service in order to buttress its said claim. The A.O observing that the assessee company had failed to substantiate on the basis of documentary evidence that it was in receipt of genuine share application money/share capital from the aforesaid investor companies, thus, was of the view that the facts involved in the case revealed beyond doubt that the introduction of the funds in question was managed by the assessee company by round tripping its funds. Further, the A.O considering the fact that the investor companies had neither carried out any feasibility study or valuation prior to making the respective investments nor despite holding substantial stake in the assessee company had ever participated in its management or were in receipt of any dividend income on

their substantial investments, held a strong conviction that the assessee company had merely laundered its unaccounted money in the garb of share application money/share capital that was claimed to have been received from the aforementioned investor companies. As regards the claim of the assessee company that in case of some of the investor companies scrutiny assessments had been framed, it was observed by the A.O that as the factum of money laundering through the aforesaid investor companies had surfaced only pursuant to search operations conducted on the assessee group, therefore, no weightage could be given to the assessments which were framed by the A.O's in the case of the investor companies *de hors* any actual verification and investigation on the issue in hand. The A.O on the basis of her exhaustive deliberations dubbed the transactions of receipt of share application money/share capital by the assessee company from the aforesaid 9 share subscriber companies as a colorable device that was adopted by it to camouflage the real transactions and facilitate infusion of its unaccounted money in the garb of share application money/share capital. Accordingly, the A.O after relying on a host of judicial pronouncements was of the view that the assessee company had failed to establish the identity and creditworthiness of the investor companies as well as the genuineness of the respective transactions of receipt of share application money/share capital of Rs. 38.30 crores (approx.), and thus, held the same as unexplained cash credits under Sec. 68 of the Act.

Accordingly, the A.O vide his order passed under section 143(3) r.w.s. 147 of the Act, dated 28.12.2018 assessed the income of the assessee company at Rs. 38.32 crores (approx.).

13. The assessee being aggrieved with the assessment order carried the matter in appeal before the CIT(Appeals), who not finding favor with the multi-facet contentions advanced by the assessee company, both as regards the validity of the assessment order passed under Sec. 147 r.w.s. 143(3) of the Act, dated 28.12.2018 as well as the merits of the case thus, upheld the assessment order. Apropos the validity of the assessment order passed by the A.O u/s.143(3) r.w.s. 147 of the Act the CIT(Appeals) was not inclined to subscribe to the contentions of the assessee and observed as under:

“4.1 Ground No.1, 2, 3, 4, 9, 10, 11 & 14:- Through these grounds of appeal, appellant has challenged the legality of assessment order passed u/s 147 r.w.s. 143(3) of the Act. The AO during the course of search assessment proceedings observed that the assessee has bogus transactions/investment with the dummy/bogus concerns. Therefore, notice u/s 148 of the Act was issued on 27.03.2018 after recorded reasons for re-opening of the case. In reply various objections were raised by the Ld AR of the appellant, however, the AO has disposed off all the objections raised by the appellant. Thus, the AO has followed due procedure before framing order u/s 147 rws 143(3) of the Act and has also obtained necessary approval from concerned authorities. In view of the above, the plea raised by the appellant has no merits and is therefore, rejected. Therefore, appeal on these grounds is Dismissed.”

As regards the merits of the case the CIT(Appeals) after deliberating on the issue in hand, i.e. addition of Rs.38.30 crore (approx.) that was made by the A.O u/s.68 of the Act upheld the same by observing as under:

“4.1.3 I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. From the perusal of the details/document filed by the appellant, it is clear that the lenders were not having any business activity. They were

having meager income from which it is clear that it was paper/shell companies of meager means and engaged in giving accommodation entries to the beneficiaries in the garb of share capital including share premium (high).

4.1.4 Onus was on the appellant to prove genuineness of the transactions shown by them but they failed to do so. The above mentioned companies were not doing any business activities and these were engaged in giving accommodation entries. In this regard, judgements of Hon'ble Delhi High Court in the cases of CIT Vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del) and CIT Vs. N.R.portfolio Pvt. Ltd. (2014) 264 CTR 258 (Del) are relied upon. Further, the judgement of Hon'ble Kolkata High Court in the case of Rajmandir Estate Pvt. Ltd. (2016) reported in 70 Taxmann.com 124 (Cal) and the judgement of ITAT, 'D' Bench, Mumbai in ITA no.1835/Mum/2014 dated 24.8.2016 in the case of Royal Rich Developers Pvt. Ltd. are also relied upon. In view of above facts, I am of the considered view that this is not sufficient to discharge the onus cast on the appellant as contemplated u/s.68 of the Act just-giving addresses and PAN of the companies concerned when the AO has doubted the creditworthiness/capacity of the company having meager means and known sources of income to have invested huge amount in lending. The genuineness of the transaction were also doubted by the AO wherein the lenders did not have any business/project in hand and is merely a persons of meager means, as it is brought on record that these lenders are persons of meager means declaring nominal income and his Balance Sheet/statement of affairs revealed that he have otherwise insignificant assets other than investment in the appellant. Section 68 of the Act cast onus on the appellant to satisfy the ingredients of Section 68 to establish the identity and creditworthiness of the creditors and to establish, the genuineness of the transactions. Once appellant filed the basic details such as name and address of creditor, PAN, income tax return, confirmation and bank statement, the initial onus gets discharged but since, the AO has doubted the creditworthiness of the lender and genuineness of the transaction as per the reasons cited and set out above, the onus shifts back to the appellant company to offer an explanation to the satisfaction of the AO as contemplated u/s 68 of the Act which could have been discharged by producing the lenders before the AO so that truth behind the smokescreen could have been unraveled by the AO by interrogating them. The burden/onus is cast on the appellant and the appellant is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. The fact remains that the appellant is private

limited company, for which the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the lenders and genuineness of the transaction. In view of the above discussion, I am of the considered view that merely submission of the name and address of the lenders, income tax returns, Balance Sheet/statement of affairs of the lenders and bank statement is not sufficient as the AO is to be satisfied as to their identity and creditworthiness as well as to the genuineness of the transaction entered into. The alleged lenders were not found to be in existence and thus, the onus shifts back to the appellant to produce the lenders before the AO and if the appellant falters, the additions can be made u/s 68 of the Act. Section 68 of the Act has been amended by Finance Act, 2012 w.e.f. 01-04-2013 whereby the onus is cast upon the appellant to justify the source of share capital including share premium, to explain the source of the source of raising the share capital including share premium which has been held to be clarificatory in nature. In the present case, the appellant could not prove the identity and credit worthiness of the alleged lenders and the genuineness of the share capital including share premium. Being company, it was therefore, viable and proper and duty on the part of the appellant to Trove genuineness of the transaction but the fact remains that the appellant could not prove the same. The lenders were having nominal income. This company is having very insignificant amount of income for the period under consideration and hence their creditworthiness is also not established. The M.P. High Court held in the case of CIT v. Rathi Finlease Ltd wherein considering the judgment of Hon'ble Supreme Court in the case of CIT v Steller Investment and the judgment of Hon'ble Supreme Court in the case of Lovely Export Ltd., Hon'ble High Court has held that each and every transaction of share application money involving application of provisions of section 68 in matter of contribution of share application/share capital and whether this onus on the assessee has been discharged or not has to be appreciated on totality of evidences available on record and surrounding facts and circumstances of the case. The creditworthiness or genuineness of transactions depends on whether the parties are related or known to each manner or mode by which parties approached each other, whether transaction was entered into through written documentation to protect investment whether investor professes and was an angel investor, quantum of money, creditworthiness of recipient, object and purpose for which payment/investment was made, etc. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The lenders are not having creditworthiness to invest to the tune of Rs.38,30,50,000/-. The lender companies are hardly earning any income to invest such an amount as share capital including share premium to the appellant. Therefore, it is held that transaction is not genuine. These companies

have no creditworthiness, financial worth or regular resources to justify, short term borrowings. The appellant has not discharged the genuineness of the transaction. The appellant has not established the ingredients of section 68 of the I.T. Act. Therefore, the credit is not acceptable. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to ensure that the subscriber had made genuine investment. In the following cases ITAT, Indore bench and other Judicial Authority held as under:-

1. Assessee has to establish identity of subscribers to share capital and prove their creditworthiness and genuineness of transaction; furnishing of income-tax file numbers may not be sufficiency to discharge the burden — CIT v. Nivedan Vanijya Niyojan Ltd. [2003] 130 Taxman 153 (Cal.).

2. Share Application Money -- Addition is called for — Assessee obtained loan and also received share application money — AO doubted the identity, genuineness and creditworthiness of these credits — AO made addition for same u/s. 68 — CIT(A) held that the ingredients of section 68 are not satisfied . However, in one of the cases, CIT(A) held that addition, shall be made substantively in the hands of assessee and protectively in the hands of alleged investors in terms of ITAT Judgement in Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore) — HELD — Assessee has not established the ingredients of section 68; credits cannot be accepted — Also, in Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore), it was found that additions has already been made in the hands of investor — In the present case, assessee is unable to establish the ingredients of section 68 — Addition is called for. Pramila Investment and Finance Ltd. v. ITO (2013) 22 ITJ 149 (Trib. — Indore).

3. Share Application Money — Assessee has not discharged the genuine of the transaction — Additions justified — Share Application money — The AO noticed that bank statement furnished during the original assessment proceedings was fabricated and misled the AO. The AO found that the Assessee had adopted unfair practice by adducing false evidence to get undue advantage of giving colour of genuineness to bogus entries through fabricated bank accounts — The AO held that the said companies had no creditworthiness, financial worth or regular resources to justify their subscription of share capital money — The assessee has not discharged the genuine of the transaction and therefore, the AO made additions — The Delhi High Court held that the Assessee has not discharged the onus satisfactorily and therefore, the additions made by AO was justified

— Against the decision of Delhi High Court, SLV has been dismissed by the Supreme Court. N. Tarika Property Invest. (P.) Ltd. v. CIT (2016) 27 ITJ 149 (SC) : (2015) 12 STD 17 : (2014) 227 Taxman 373.

4. Share Application Money — Identity and creditworthiness not proved — Share application — Assessee received share application money from "MPFPL" — Identity of said company was not proved — HELD — Addition u/s. 68 shall be made. Sag Plastic Industries Pvt. Ltd v. ITO (2012) 20 ITJ 103 (Trib. Indore).

5. Share Application Money — In case of Pvt. Ltd. Company, even transaction through cheque some more evidence required to prove genuine investment — Share Application Money — It was held by the Delhi High Court that in case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call money, dividends, warrants, etc. have to be sent and the relationship remains a continuing one. Therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain un-served and uncompiled. As a general proposition, it would be improper to universally hold that the assessee cannot plead that they had received money, but could do nothing more and it was for the AO to enforce shareholders' attendance in spite of the fact that the shareholders were missing and not available. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to show that the subscribers had made genuine investment — SLP against this decision of Delhi High Court has been dismissed. Navodaya Castle (P) Ltd. v. CIT (2015) 25 ITJ 552 (SC) : (2015) 12 STD 463: (2015) 230 Taxman 268.

6. Share Application Money — There is evidence and material to show that subscriber was paper company and not a genuine investor — Share application money — It was held by the Delhi High Court that Certificate of incorporation, PAN etc. are relevant for purchase of identification, but have their limitation when there is evidence and material to show that the subscriber was paper company and not a genuine investor — SLP against this decision of Delhi High Court has been dismissed. Navodaya Castle (P) Ltd. v. CIT (2015) 25 ITJ 552 (SC) : (2015) 12 STD 463: (2015) 230 Taxman 268.

7. Share Capital and Loan — Assessee not able to establish identity of investor — Merely filing PAN, IT returns, Certificate of incorporation, Balance Sheet etc. do not establish the identity — Share Capital and Loan — "HCL" and "OTIL" had subscribed in shares

of assessee company — In some cases, "HCL" and "OTIL" had given loans to assessee company — AO required assessee to prove transaction — Assessee furnished various documents to prove the transaction — On inquiry, the companies were found to be non-existent — Noticed issued to them were returned unserved — HELD — Assessee is not able to establish identity of investors — Merely filing PAN, IT returns, Certification of incorporation, Balance Sheet etc. do not establish the identity of subscribers or produce them — Addition u/s. 68 shall be made. Agrawal Coal Corporation P. Ltd v. Addl. CIT (2011) 18 IV 717 (Trib. — Indore) : (2012) 135 ITD 270: (2011)142 TTJ 409: (2012) 13 ITR(7) 531.

8. Share Premium — Rs.10 share subscribed at a premium of Rs.90 per share — In first year it is doubtful — Established that transaction is not genuine — Credits in form of share premium are not acceptable — Share Premium — First year of business — Assessee issued shares having face value of Rs.10 per share at a premium of Rs.90 per share — Assessee contended that the premium was received based on the vast experience of promoter of 30 years; and also that the investors were known to him — Letter sent by AO to these parties were returned unserved — AO himself visited Kolkotta, from where the money was received, but the parties were not traceable at the address — AO also visited bank and verified that the amounts had been deposited immediately before issue of cheques for investment in shares — Shares were brought back at a low price in next year — HELD — It is pertinent to note that in the first year, how could the assessee manage such share application on a premium of Rs.90 without doing any business or without creating goodwill — AO has conducted detailed inquiry, which establish that the transaction is not genuine — Credits in form of share premium are not acceptable. Vaibhav Cotton Pvt. Ltd. v. ITO (2012) 20 ITJ 422 (Trib.-Indore).

Following the decision of above Judicial Authorities, it is held that the lender companies are paper company without any means.

The appellant company was obliged to prove:-

- (a) The identity of the alleged lenders.
- (b) The creditworthiness of the lenders.
- (c) The genuineness of the transactions.

But it is clear from the facts as discussed above that the appellant could not prove the same, therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the AO was justified to make addition u/s 68 of the IT Act. Further, in various case across India it has been observed that commission is also paid for acquiring bogus share capital and premium. Hence, the AO was

justified in adopting commission @ 0.05%. Therefore, the AO was fully justified in making addition on account of unexplained cash credit u/s.68 of the Act. Thus, addition made by the AO amounting to Rs.38,32,41,525/-(38,30,50,000/- + Rs.1,91,525/-) is Confirmed. Therefore, appeal on these grounds is Dismissed.”

14. The assessee being aggrieved with the order of the CIT(Appeal) has carried the matter in appeal before us.

15. We have heard the Learned Authorized Representatives of the both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

16. The Ld. AR at the very outset of the hearing of the appeal challenged the validity of the assessment framed by the A.O u/s.143(3) r.w.s. 147 of the Act dated 28.12.2018 on the basis of his two-fold contentions, viz. (i) that pursuant to search conducted on 24.05.2017 on the assessee company u/s.132 of the Act, the assessment which though was to be framed u/s.153A of the Act had wrongly been framed by the A.O vide his order passed u/s.143(3) r.w.s 147 of the Act, dated 28.12.2018; AND (ii) alternatively, as the impugned “reasons to believe” forming the very basis for reopening of the assessee’s case u/s.147 of the Act were based on a borrowed satisfaction of the Investigating Wing, Raipur, therefore, the assumption of jurisdiction and framing of the consequential assessment by

the A.O vide his order passed u/s.143(3) r.w.s. 147 dated 28.12.2018 was also on the said count not sustainable in the eyes of law. The Ld. AR in order to buttress his claim that the assessment in the case of the assessee company ought to have been framed u/s.153A of the Act took us through the said statutory provision. It was submitted by the Ld. AR that vide the Finance Act, 2017, w.e.f. 01.04.2017 the scope of an assessment u/s.153A of the Act subject to satisfaction of certain pre-conditions was extended to a period up to ten assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted u/s 132 of the Act or books of account, other documents or any assets were requisitioned u/s.132A of the Act after the 31st day of May, 2003 (but on or before the 31st day of March, 2021). The Ld. AR took us through the “4th proviso” to section 153A of the Act. It was averred by the Ld. AR that where the A.O, inter alia, pursuant to a search initiated u/s.132 of the Act was in possession of books of account or other documents or evidence which revealed that the income of the assessee, represented in the form of asset, which had escaped assessment amounts to or is likely to amount to fifty lac rupees or more in an assessment year falling beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search was conducted, then the assessment has to be mandatorily framed u/s.153A of the Act. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the non-

obstante clause used in sub-section (1) of Section 153A of the Act i.e. *“Notwithstanding anything contained in Section 139, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated u/s.132 after the 31st day of May, 2003 (but on or before 31st day of March, 2021)....”* clearly ousted the applicability of the provisions of section 147 along with all other sections which regulated the service of notice, obtaining of sanction, time limit for initiation of proceedings and the statutory time limit provided for framing of an assessment or re-assessment under the latter statutory provision. It was submitted by the Ld. AR that the overriding effect of the clearly worded section 153A over the provisions of section 147 and such other provisions which aided/facilitated the framing of an assessment or re-assessment under the said provision made it clear beyond any doubt that the assessment in the case of an assessee who was subjected to search u/s.132 of the Act was mandatorily to be framed under the said statutory provision. In sum and substance, it was the claim of the Ld. AR that once the conditions envisaged in Section 153A of the Act were satisfied then the A.O was divested of his jurisdiction to frame the consequential assessment u/s. 147 of the Act. The Ld. A.R had on the basis of his aforesaid contentions tried to impress upon us that the assessment framed in the present case by the A.O vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 28.12.2018 was liable to be quashed for want of valid assumption of jurisdiction on his part. Taking us through the “4th proviso”

to Section 153A of the Act, it was submitted by the Ld. AR that the requisite conditions therein contemplated were fully satisfied in the case of the assessee company for A.Y.2011-12. Elaborating on his aforesaid contention, it was the claim of the Ld. AR that a perusal of the “reasons to believe” that were recorded by the A.O for initiating the impugned proceedings u/s.147 of the Act revealed that he, inter alia, was in possession of the statements recorded u/s.132(4) of the Act of the directors of two share subscriber companies from whom share application money/share capital was claimed to have been received by the assessee company, viz. (i) Shri Khushpal Singh Bhatia, director of M/s. Muskan Dealers Pvt. Ltd. (from whom share application money/share capital received : Rs.4.41 crore); and (ii) Shri Sameer Das Gupta, director of M/s. Puja Dealcom Pvt. Ltd.(from whom share application money/share capital received : Rs.11,98,50,000/-). It was further submitted by the Ld. AR that the “trial balance” of the assessee company for the year under consideration i.e. 01.04.2010 to 31.03.2011 was found and seized during the course of the search proceedings and the same was marked as a seized document, viz. LPS-23-Page 26-27. Our attention was drawn by the Ld. AR to the aforesaid seized document, LPS-23-Page 26-27. The Ld. AR took us through a letter issued by the ADIT (Inv.)-1, Raipur, dated ..02.2018 addressed to the DCIT/ACIT-Circle-2, Raipur, vide which the copies of the statements of the aforementioned persons, viz. S/shri Khushpal Singh Bhatia and Sameer Das Gupta were made available to the

A.O. Our attention was drawn by the Ld. AR to the assessment order wherein statements (relevant extract) of the aforementioned persons recorded u/s.132(4) of the Act in the course of the search proceedings conducted on the assessee company on 24.05.2017 were culled out by the A.O. Carrying out a conjoint reading of the aforesaid statements a/w. the “reasons to believe”, Page 288-289 of APB, it was submitted by the Ld. AR that the A.O at the time of framing of assessment had, inter alia, relied on the statements of the aforementioned persons for arriving at a *belief* that the share application money/share capital received by the assessee company from the companies in which the said respective persons were directors was its unaccounted money that was routed back to its coffers by round tripping its funds. It was submitted by the Ld. AR that as the A.O for initiating the impugned proceedings u/s.147 of the Act had, inter alia, acted upon the statements of the aforementioned persons recorded u/s.132(4) of the Act, therefore, the said statements were beyond doubt an “evidence” in his possession. The Ld. AR in order to buttress his aforesaid claim had drawn our attention to sub-section (4) of Section 132 of the Act. It was submitted by the Ld. A.R that sub-section (4) of Section 132 contemplated that any statement made by a person during the course of search or seizure proceedings may thereafter be used in evidence in any proceedings under the Act. It was, thus, the claim of the Ld. AR that the respective statements of the aforementioned dummy directors of the share subscriber companies

was clearly in the nature of an “evidence” within the meaning of Clause (a) of the “4th Proviso” to Section 153A of the Act. It was submitted by the Ld. AR that the “trial balance” for the period 01.04.2010 to 31.03.2011 i.e. for the year under consideration which was seized during the course of the search proceedings, viz. LPS-23-Page 26-27 therein revealed that the share application money/share capital received from the aforesaid share applicant companies was represented by corresponding assets, i.e., land, loan and advances, deposits, investments and bank account. Referring to the definition of the term “asset” as contemplated in the “Explanation 2” of the “4th Proviso” to Section 153A of the Act, it was submitted by the Ld. AR that as the A.O was in possession of the aforesaid evidences/documents which revealed that the unaccounted income of the assessee company that was substantially more than the threshold amount of Rs. 50 lakh (as provided in the “4th proviso”) had escaped assessment; and the said unaccounted income was represented by underlying assets, viz. deposits in bank account (PNB A/c), land (leasehold), deposits, and loans and advances (asset) (as was revealed from the “trial balance” of the assessee company for the period 01.04.2010 to 31.03.2011 that was seized in the course of search proceedings and was marked as LPS-23-Page 26-27), therefore, the assessee had cumulatively satisfied the pre-conditions set-out in the “4th proviso” of Section 153A of the Act. To sum up, it was the claim of the Ld. AR that going by the inferences which were drawn by the A.O (as could be gathered from

the copy of the “reasons to believe”) a/w. the facts discernible from the seized “trial balance” LPS-23-Page-26-27, it was proved beyond doubt that as per the evidences/documents in his possession the unaccounted income of the assessee company that was substantially more than Rs. 50 lakh (supra), which during the relevant assessment year was represented in the form of underlying assets, viz. deposits in bank A/c (PNB), land (leasehold), deposits, investments, and loans and advances (asset), had escaped assessment. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that now when the requisite conditions contemplated in the “4th Proviso” to Section 153A of the Act were cumulatively satisfied by the assessee company, therefore, the A.O was obligated to have framed assessment in its case for the said “relevant assessment year” i.e A.Y 2011-12 under Section 153A of the Act.

17. Alternatively, it was submitted by the Ld. AR that now when the A.O had in the “reasons to believe” observed that the share capital capital/premium of Rs.38,30,50,000/- received by the assessee company from 9 paper/shell companies was its unaccounted income for the year under consideration i.e. A.Y.2011-12, therefore, it stood proved to the hilt that the requisite conditions contemplated in the “4th proviso” to Section 153A were satisfied and assessment in its case could have only been framed u/s.153A of the Act. Our attention was once again drawn by the Ld. AR to

sub-section (1) of Section 153A, which categorically provided a non-obstante clause on the basis of which the operation of Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153 in the case of a person who had been subjected to search u/s.132 of the Act; or where books of account, other documents or any assets were requisitioned u/s.132A of the Act after the 31st May, 2003 (but on or before the 31st day of March, 2021) was jeopardized. The Ld. AR vehemently stressed upon the word “shall” used in sub-section (1) of Section 153A of the Act. It was the claim of the Ld. AR that now when the requisite conditions contemplated in the “4th Proviso” to Section 153A of the Act stood satisfied, then the A.O remained under a statutory obligation to have framed the assessment u/s.153A of the Act for the relevant assessment year i.e. A.Y.2011-12. It was submitted by the Ld. AR that as the A.O had traversed beyond his powers and illegally assumed jurisdiction u/s.147 of the Act, therefore, the assessment framed by him u/s.143(3) r.w.s 147 dated 28.12.2018 could not be sustained and was liable to be struck down on the said count itself. The Ld. AR in support of his claim that now when as per mandate of law assessment in the case of the assessee company was mandatorily to be framed u/s.153A of the Act, then, the same by no means could have been made by the A.O u/s.147 r.w.s. 143(3) of the Act had pressed into service the judgment of the Hon’ble High Court of Madhya Pradesh in the case of Ramballabh Gupta Vs. Assistant Commissioner of Income Tax, (2007) 288 ITR 347 (MP). Also reliance was

placed by the Ld. AR on the order of the ITAT, Mumbai in the case of State Bank of India Vs. Deputy Commissioner of Income Tax, Circle-2(2), Mumbai, ITA Nos. 5420 & 5421/Mum/2011 and those of the ITAT, Vishakhapatnam in the case of Smt. Samanthapudi Lavanya Vs. ACIT, Central Circle, Vijayawada (2021) 127 taxmann.com 188 (Vishakhapatnam-Trib) and G. Koteswara Rao Vs. DCIT, Central Circle-1, Vishakhapatnam (2015) 64 taxmann.com 159 (Vishakhapatnam-Trib) and that of ITAT, Amritsar in the case of ITO Vs. Arun Kumar Kapoor (2011) 16 taxmann.com 373 (Amritsar).

18. Alternatively, it was submitted by the Ld. AR that the impugned assessment framed by the A.O u/s.143(3) r.w.s. 147 dated 28.12.2018 could even otherwise not be sustained. Elaborating on his aforesaid contention, it was the claim of the Ld. AR that as the A.O had initiated proceedings u/s.147 of the Act on the basis of a borrowed satisfaction of the Investigating Wing, therefore, the very assumption of jurisdiction on his part for initiating the impugned proceedings was clearly devoid and bereft of any force of law. It was submitted by the Ld. AR that the A.O i.e. ACIT, Circle-2, Raipur had merely acted upon the directions and dictates of the ADIT (Inv.), Raipur for initiating proceedings u/s.147 of the Act and while arriving at the impugned belief at the time of recording the “reasons to believe” had failed to apply her independent mind. The Ld. AR in order to buttress his aforesaid claim had taken us through a letter dated ..02.2018 issued by the ADIT (Inv.)-1, Raipur

to the DCIT/ACIT, Circle-2, Raipur, Page 263-265 of APB. Taking us through the contents of the aforesaid letter, it was submitted by the Ld. AR that the ADIT (Inv.)-1, Raipur, had therein clearly directed the A.O to reopen the case of the assessee company on the basis of information that was unearthed in the course of the search proceedings conducted u/s.132 of the Act on 24.05.2017 on Sona Group (Bhatia Group). The Ld. AR specifically took us through Para 5 of the aforesaid order. Also, the Ld. AR took us through a letter dated 26.03.2018 issued by the ACIT, Circle-2, Raipur to the ADIT(Inv.)-1, Raipur, wherein the latter was intimated by the A.O that the case of the assessee company in compliance to the direction received from the office of the ADIT(Inv.)-1, Raipur was reopened u/s.147 of the Act, Page 292-293 of APB. On the basis of the aforesaid facts, it was the claim of the Ld. AR that though the assessment in the case of the assessee company could have only been framed u/s.153A of the Act, but even otherwise as the very assumption of the jurisdiction by the A.O for initiating proceedings u/s.147 of the Act was not based on any independent application of mind on her part, therefore, the impugned order so passed *de hors* valid assumption of jurisdiction could even otherwise not be sustained and was liable to be struck down. The Ld. AR in order to fortify his contention that reopening of an assessment by the A.O merely on the basis of information received from the Investigating Wing i.e., in absence of any independent application of mind cannot be sustained had relied on the judgments of the

Hon'ble High Court of Delhi in the cases of Signature Hotels (P) Ltd. Vs. ITO, (2011) 338 ITR 51 (Delhi); SABH Infrastructure Ltd. Vs. ACIT, (2017) 398 ITR 198 (Delhi); Pr. CIT-6 Vs. Meenakshi Overseas (P) Ltd. (2017) 395 ITR 677 (Delhi); and Pr. CIT-4 Vs. G & G Pharma India Ltd. (2016) 384 ITR 147 (Delhi). Also support was drawn from the judgments of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. Shodiman Investments Pvt. Ltd (2020) 422 ITR 337 (Bom); and Gateway Leasing (P) Ltd. Vs. ACIT, (2020) 426 ITR 228 (Bom) and that of the Hon'ble High Court of Gujarat in the case of Kantibhai Dharamshibhai Narola v. DCIT (2021) 436 ITR 302 (Guj).

19. The Ld. A.R further submitted that the A.O had grossly erred in referring to the statements of S/sh. Narendra Jain and Champak Mandal, which as discernible from record were recorded in the course of some survey proceedings conducted by the department in the case of Shri. Narendra Jain (supra) way back on 11.04.2014. It was averred by the ld. A.R that a perusal of the statements (extracts) of the aforementioned persons did not in any way make any reference to the assessee or the share subscriber companies from whom share application money/share capital was received during the year. It was submitted by the ld. A.R that the A.O despite specific written requests had failed to make available the copies of the complete statements of the aforementioned persons, viz. S/sh. Narendra Kumar Jain and Champak Mandal. It was further submitted by the ld. A.R that though the

assessee company in the course of the assessment proceedings had specifically requested the A.O to allow cross-examination of the aforesaid persons but its said request was turned down by her for the reason that the same was not necessary. Ld. A.R in order to fortify his aforesaid claim took us through Page 72 - Para 15.4 of the assessment order, wherein the A.O had declined the request of the assessee company for allowing a cross-examination of the aforementioned persons, viz. S/sh. Narendra Jain and Champak Mandal on the ground that the same was not deemed to be necessary. The ld. A.R in order to support his claim that the declining of the assessee's specific requests for cross-examination of the aforementioned persons, viz. S/sh. Narendra Jain and Champak Mandal had divested it of its innate statutory right to defend its case and was in flagrant violation of the principles of natural justice, had relied on the judgment of the Hon'ble Supreme Court in the case of M/s Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II, C.A No. 4228 of 2006 (SC) dated 02.09.2015 and those of the Hon'ble High Court of Delhi in the case of CIT Vs. Ashwani Gupta (2010) 322 ITR 396 (Del) and CIT Vs. SMC Share Brokers Ltd. (2007) 288 ITR 345 (Del).

20. Adverting to the merits of the case, it was the claim of the Ld. AR that both the lower authorities had erred in recharacterizing the receipt of genuine share application money/share capital by the assessee company

from the aforementioned share subscriber companies as an unexplained cash credit u/s. 68 of the Act. Although the Ld. AR had tried to impress upon us that no adverse inferences as regards the authenticity of the assessee's claim of having received genuine share capital/premium from the aforementioned share subscriber companies were liable to be drawn, but after arguing for some time he did not carry his said contentions any further.

21. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the proceedings u/s.147 of the Act were initiated in the case of the assessee company on the basis of post search investigation and information gathered in the course of survey proceedings conducted on the share subscriber companies, therefore, the A.O remaining well within his jurisdiction had validly framed the assessment vide his order passed u/s.147 r.w.s. 143(3) of the Act dated 28.12.2018. In sum and substance, it was the claim of the Ld. DR that as the A.O on the basis of post search investigation/survey action had arrived at a bonafide *belief* that the income of the assessee company chargeable to tax had escaped assessment, therefore, no infirmity did emerge from the assumption of jurisdiction by her for initiating proceedings u/s.147 of the Act in the hands of the assessee company. Rebutting the claim of the Ld. AR that the proceedings u/s.147 of the Act were initiated on the basis of a borrowed satisfaction, it was the

claim of the Ld. DR that a bare perusal of the “reasons to believe” revealed beyond any doubt that the A.O on the basis of information which was received from the Investigating Wing a/w. independent investigations conducted by her had after due application of mind arrived at a bonafide *belief* that the income of the assessee company chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. On the basis of his aforesaid contention it was the claim of the Ld. DR that the A.O remaining well within the scope of her jurisdiction had validly initiated proceedings in the case of the assessee company u/s.147 of the Act and passed the consequential assessment order u/s.147 r.w.s. 143(3) of the Act dated 28.12.2018. The Ld. DR relied on the judgments of the Hon’ble Apex Court in the case DCIT Vs. Zuari Estate Development & Investment Co. Ltd. (2015) 373 ITR 661 (SC) and Central Provinces Manganese Ore Vs. ITO (1991) 191 ITR 662 (SC) and that of the Hon’ble High Court of Gujarat in the case of Sameer Gulabchand Shah, HUF Vs. ITO, Ward-1(3) (2021) 131 taxmann.com 42 (Gujarat).

22. Rebutting the claim of the Ld. DR that the proceedings u/s.147 of the Act were initiated by the A.O not on the basis of seized material but on the basis of independent material, the Ld. AR once again took us through the “reasons to believe” that formed the very basis for initiation of proceedings u/s.147 of the Act. It was submitted by the Ld. AR that the A.O had acted

upon the information and statements of S/shri Khushpal Singh Bhatia and Sameer Das Gupta that were made available to her by the ADIT (Inv.)-1, Raipur vide his letter dated ../02/2018, Page-3 of APB. The Ld. A.R in order to substantiate his aforesaid claim carried out a conjoint reading of the aforesaid letter dated ../02/2018 (supra) and the “reasons to believe”. It was submitted by the Ld. AR that the “reasons to believe” clearly referred to the search and seizure operations that were conducted u/s 132 of the Act on Sona Group (Bhatia group) on 24.05.2017, and the fact that the material unearthed during the course of the said search proceedings had revealed that the assessee company a/w. its other group entities in the garb of share capital/premium had laundered their unaccounted income. Our attention was drawn by the Ld. AR to the fact that the copies of the statements of the aforementioned persons, viz., S/shri Khushpal Singh Bhatia and Sameer Das Gupta that were recorded u/s.132(4) of the Act in the course of the search proceedings conducted on the assessee company were thereafter made available by the ADIT (Inv.)-1, Raipur as an “annexure” to its aforesaid letter dated ../02/2018. Adverting to the statements of the S/shri Narendra Jain and Champak Mandal referred by the ADIT(Inv.)-1, Raipur in its letter dated ../02/2018, a mention of which was made by the A.O in her “reasons to believe”, it was submitted by the Ld. AR that a perusal of the said respective statements revealed that the same were recorded way back on 11.04.2014. Our attention was drawn by the Ld. AR to the statements

(extracts) of both the aforesaid persons that were recorded on 11.04.2014 in the course of some survey proceedings conducted u/s.133A of the Act at the premises of Shri. Narendra Jain (supra). It was submitted by the Ld. AR that in the statements of neither of the aforesaid persons there was any reference of the assessee company or the share applicant companies from whom it was in receipt of share application money/share capital. Taking us through the letter dated ../02/2018 of the ADIT (Inv.)-1, Raipur, it was submitted by the Ld. AR that he had therein, inter alia, categorically observed that the quantification of the amount of Rs.38.30 crore (approx.) received as share capital/premium by the assessee company from the paper/shell companies was done on the basis of documents seized and other records. It was submitted by the Ld. AR that as the very basis of the *belief* of the A.O that the assessee company had received share application money/share capital from paper/shell companies was the information that was received by him from the ADIT(Inv.)-1, Raipur, which in turn as stated by the latter was based on the material unearthed during the course of search and seizure operation conducted u/s.132 of the Act on 24.05.2017 on Sona Group (Bhatia Group), therefore, the A.O was statutorily bound to have framed the assessment u/s.153A and could not have in a whimsical manner done so u/s.147 of the Act.

23. Considering the issue in hand in the backdrop of the contentions advanced by the Id. Authorized Representatives of both the parties, we find that the adjudication of the same would require answering the following issues stemming therefrom:

(1) Whether or not in a case where a search is initiated under section 132 of the Act, and the assessee for the “relevant assessment year” (i.e the extended period of 4 assessment years) had cumulatively satisfied the pre-conditions set-out in the “4th proviso” of Section 153A of the Act, the assessment has to be mandatorily framed by the A.O u/s. 153A of the Act?

(2) Whether in a case where a search is initiated u/s.132 of the Act, and the framing of the assessment or reassessment falls within the realm of Section 153A of the Act, then can the A.O frame such assessment or reassessment u/s.147 of the Act?

(3) What all are the pre-conditions set out in the “4th proviso” to Section 153A of the Act, and as to whether or not the assessee company had cumulatively satisfied the same for the “relevant assessment year” i.e. A.Y.2011-12?

(4) Whether or not the A.O was right in law and facts of the case in relying on the statements of Shri Narendra Jain (Entry operator) and his staff member, Shri Champak Mandal that were recorded by the Investigating Wing, Kolkata for drawing adverse inferences in the hands of the assessee company without making available copies of their complete statements and allowing it an opportunity to cross-examine the said persons despite persistent requests?

24. As the assessee has assailed the validity of the assessment framed by the A.O u/s.147 r.w.s. 143(3) dated 28.12.2018, inter alia, on the ground that though the A.O had pressed into service the statements of the aforementioned persons, viz. S/sh. Narendra Jain and Champak Mandal,

both for initiating proceedings u/s 147 of the Act; as well as for drawing adverse inferences as regards the authenticity of the transactions of raising of share application money/share capital by the assessee company, but had despite specific requests by the latter neither made available the complete copies of their statements nor allowed their cross-examination, therefore, we shall first deal with the said material aspect.

25. As observed by us hereinabove the Ld. AR had drawn our attention to the copy of the “reasons to believe”, Page 288-289 of APB, which therein revealed that the statements of the aforementioned persons, viz. Shri Narendra Jain (entry operator) and his staff member Shri Champak Mandal that were recorded by the Investigation Wing, Kolkata was referred to and acted upon by the A.O for arriving at a *belief* that the assessee company in the garb of receipt of share capital/premium had laundered its unaccounted money. After obtaining a copy of the “reasons to believe” on 02.03.2018, the assessee had vide its letter dated 31.05.2018 raised its objections to the validity of the jurisdiction that was assumed by the A.O for reopening of its case u/s.147 of the Act and had, inter alia, sought for the copies of the statements of the aforementioned persons. On a perusal of the records, it transpires that the A.O vide its letter dated 23.08.2018 had declined the assessee’s request for making available copies of the statements of the aforementioned persons, viz. S/Shri Narendra Jain (Entry operator) and

Champak Mandal for the reason that the same were confidential in nature. At the same time, the A.O had made available to the assessee company the relevant extracts of the statements of S/Shri Narendra Jain and Champak Mandal. The assessee company considering the fact that proper inferences could not be drawn from extracts of the statements of the aforementioned persons that were made available by the A.O, thus, vide its letter dated 21.12.2018 had brought the said fact to his notice and requested him to make available complete copies of the statements of the said respective persons. In order to drive home his aforesaid claim that proper inferences could not be drawn on the basis of extracts of the statements of the aforesaid persons, the assessee had categorically submitted before the A.O that as the extract of the Question no. 18 with respect to the statement of Shri Narendra Kumar Jain as was made available made a reference to the reply given by the said person in response to Question no. 17 which was not made available, therefore, it was impractical to comment on the details mentioned in Question no. 18. Apart from that it was the claim of the assessee that no nexus could be established between the relevant extracts of the statements of the aforementioned persons and adverse inferences which were sought to be drawn against it. In fact, it was submitted by the assessee company that as only extracts of the statements of the aforementioned persons were made available to it, therefore, the probability that the other part of the respective statements which were withheld by the A.O may contain some element

which was contradictory to the portion/extract as was being referred to for drawing adverse inferences did exist and could not be ruled out. For the sake of clarity the request of the assessee company seeking copies of the complete statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal vide its letter dated 21.12.2018 is culled out as under (relevant extract):

“2. Your honor has merely provided extract of Statement of said Shri Narendra Kr. Jain and Shri Champak Mondal on 18.12.2018. Disclosure of part of the testimony is not justified. **Full statement has not been provided to us. Proper inference cannot be drawn with the extract provided by your honor.** There is very strong possibility that other part of the statement may contain some element which are contradictory to the portion/extract shared by your honor.

4. Your honor has given extract of Question No.18 w.r.t. statement of Shri Narendra Kr. Jain. The said question refers to reply given in response to Question 17. **Without having access to details of Question 17 and balance portion of the statement it is impractical to comment on details mentioned in Question 18.**”

(emphasis supplied by us)

26. Apart from that the assessee vide its aforesaid letter dated 21.12.2018 (supra) had specifically submitted before the A.O that as it was in no way related/acquainted with Shri Narendra Jain, therefore, no adverse inferences be drawn without facilitating a cross-examination of the said person. We find from a bare perusal of the aforesaid letter dated 21.12.2018 (supra) that the assessee had specifically stated before the A.O that now when the statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal were recorded by the Investigation Wing, Kolkata, therefore, no adverse inferences be drawn by him by merely

referring to their respective statements and without carrying out their personal examination; as well as allowing an opportunity to the assessee to cross-examine them. For the sake of clarity, the request of the assessee seeking cross-examination of the aforementioned persons vide its letter dated 21.12.2018 (supra) is culled out as under (relevant extract):-

“1. Your honour has referred to the statement of one shri Narendra Kr. Jain and Shri Champak Mondal recorded on 11.04.2014 by Investigation Wing, Kolkata. Apparently, your honour is relying on the statement recorded by some other officers and your honour has not examined the purported witness yourself. Thus no negative inference should be drawn against the assessee without examining the said persons by your honor herself.

3. Assessee does not have any relation with the said Shri Narendra Kr. Jain nor is he known to the assessee, thus, no negative presumption may be drawn on the basis of any comment made by him without being cross examined by the assessee.

5. We find that there is no nexus between the statement given and the adverse inference being sought to be drawn against us. If such is the case your honor may kindly allow the assessee to cross examine the purported witness.

8. Prayer :-

It is prayed that the assessee be provided with an opportunity to cross examine the said persons who have allegedly made the statements on the basis of which adverse inference is being sought to be drawn against the assessee. It is our most humble submission that no reliance be placed on such statements without self examining the purported witness and providing the assessee an opportunity to cross examine the said witness sought to be relied upon by your honor.”

(emphasis supplied by us)

27. Although the assessee had vide its letter dated 21.12.2018 (supra) specifically came forth with its two fold requests, viz. (i) that complete copies of the statements of the aforementioned persons viz. S/Shri Narendra Jain

(Entry operator) and Champak Mandal be made available; and (ii) that an opportunity to cross-examine the aforementioned persons who were in no way related/acquainted with it be made available; before drawing of any adverse inferences on the basis of their statements which were recorded by the Investigation Wing, Kolkata, the A.O, however, did not yield to the same. We find from a perusal of the assessment order that the A.O had dispensed with the requirement of making available copies of the complete statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal. Also, as is discernible from the record, the A.O had declined the assessee’s request for allowing a cross-examination of the aforesaid persons, viz. S/Shri Narendra Jain and Champak Mandal for the reason that the same as per her was not deemed to be necessary. The relevant extracts of the assessment order revealing the aforesaid factual position are culled out as under:

“15.2 The assessee company was provided the relevant extract of the statements of Narendra Jain and Champak Mondal.....”

15.3

15.4 The assessee company was supplied the statements of Narendra Jain and Champak Mandal. As far as cross examination is concerned the same was deemed being not necessary.....”

On the basis of the aforesaid facts it transpires that neither the A.O despite specific request had made available to the assessee complete copies of the statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal; nor facilitated a cross-examination of the said persons

for the reason that she was of the view that the same was not deemed to be necessary.

28. We have given a thoughtful consideration and are unable to persuade ourselves to subscribe to the refusal by the A.O of the assessee's request for copies of the complete statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal that were, inter alia, acted upon both for initiating proceedings u/s 147 of the Act as well as for drawing of adverse inferences as regards the receipt of share application money/share capital by the assessee company. Also, we are unable to concur with both the lower authorities who had declined the assessee's specific written request for allowing an opportunity to cross-examine the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal, both of whom were stated to be not unrelated/not acquainted with the assessee company. Although it is a matter of fact borne from record that the A.O had made available to the assessee company extracts of the statements of the aforementioned persons, i.e to the extent the same as per her were relevant to its case, but the same in our considered view could by no means be held to be sufficient. We, say so, for the reason that as pointed out by the assessee company in its letter dated 21.12.2018 it was impractical to comment on the details mentioned in the extracts that were made available to it by the A.O, for the reason that the same referred to the balance portion of the statements which were never

made available. Also, we find substance in the claim of the assessee that proper inferences could not be drawn in the absence of complete details as there could be strong possibility that the remaining part of the statements that were withheld by the A.O might have contained some element which would be in contradiction of the extract/portion made available to the assessee. Be that as it may, we are of the considered view that a blind reliance on the statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal that were not even recorded by the A.O but by the Investigation Wing, Kolkata, and that too without making available to the assessee the complete copies of the statements of the said persons would by no stretch of imagination be held to be justified. We would at this stage not hesitate to observe that making available extract/portion of the statements of the aforementioned persons would be nothing better than eyewash. As the statements of the aforementioned persons had, inter alia, been pressed into service by the A.O not only the stage of initiating proceedings u/s 147 of the Act, but was also carried further for drawing of adverse inferences as regards the share application money/share capital received by the assessee company, therefore, in our considered view it was obligatory on the part of the A.O to have made available complete copies of the same specifically when the assessee had vide its letter dated 21.12.2018 (supra) requested for it. Our aforesaid view is all the more fortified by the fact that the assessee in the absence of the balance portion of the statements

of the aforementioned persons that were withheld by the A.O had in a clear and unequivocal terms expressed its inability to comment on the details mentioned in the extracts made available to it. On the basis of our aforesaid observations, we are of a strong conviction that the A.O before pressing into service the statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal and drawing adverse inferences therefrom, ought to have made available complete copies of their statements to the assessee company.

29. Adverting to the claim of the Ld. AR that the A.O by declining the assessee's specific written requests for allowing of cross-examination of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal i.e. third parties who were in no way related/acquainted to the assessee company, had acted in a flagrant violation of the basic tenements of the principles of natural justice, we find substance in the same. As observed by us hereinabove, the assessee company vide its letter dated 21.12.2018 (supra) had specifically requested the A.O for facilitating a cross-examination of the aforementioned persons whose statements were pressed into service by her both for initiating proceedings u/s 147 of the Act; as well as for drawing of adverse inferences as regards the authenticity of the transactions of receipt of share application money/share capital in its hand. It was specifically stated before the A.O that as the statements of the

aforementioned persons were not recorded by him but by the Investigation Wing, Kolkata, therefore, no adverse inferences be drawn without carrying out a personal examination of the said persons and allowing their cross examination to the assessee company. Also, as noticed by us hereinabove, it was categorically stated by the assessee that as no nexus could be established between the statements of the aforementioned persons and the adverse inferences which were sought to be drawn by referring to the same, therefore, a cross-examination of the aforementioned persons was indispensably required. Although the assessee had specifically requested the A.O for allowing a cross-examination of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal, but we find that the same was declined by her for the reason that the same as per her was not deemed to be necessary. We are absolutely unable to comprehend as to how a cross-examination of the third party whose statements had been pressed into service for drawing of adverse inferences in the hands of the assessee company could have been declined by the A.O. In our considered view the refusal to allow a cross-examination of the aforementioned persons is beyond doubt a flagrant violation of the basic tenements of the principles of natural justice.

30. Our aforesaid view that the A.O was obligated to have facilitated to the assessee a cross-examination of the aforementioned persons whose

statements were, inter alia, pressed into service by her both for initiating proceedings u/s 147 of the Act; as well as for drawing adverse inferences as regards the authenticity of the transactions of receipt of share application money/share capital by the assessee company is supported by the judgment of the **Hon'ble Supreme Court** in the case of **M/s. Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II, C.A No.4228 of 2006 (SC) dated 02.09.2015**. In the aforesaid case the Tribunal had upheld the rejection by the lower authorities of the assessee/appellant's request for allowing a cross-examination of the dealers whose statements were relied upon by the adjudicating authority while passing its order by observing as under:

“6. The plea of no cross examination granted to the various dealers would not help the appellant case since the examination of the dealers would not bring out any material which would not be in the possession of the appellant themselves to explain as to why their ex factory prices remain static. Since we are not upholding and applying the ex factory prices, as we find them contravened and not normal price as envisaged under section 4(1), we find no reason to disturb the Commissioners orders.”

On appeal, the Hon'ble Apex Court was of the view that the failure on the part of the adjudicating authority to allow the assessee an opportunity to cross-examine the aforementioned persons whose statements were made the very basis of the impugned order was a serious flaw which rendered the order as nullity inasmuch as it amounted to violation of the principles of natural justice. It was observed by the Hon'ble Apex Court that though the assessee had requested for an opportunity to cross-examine the

aforementioned persons but the said requests were turned down by the adjudicating authority. Considering the fact that the Tribunal had upheld the orders of the lower authorities which had turned down the assessee's request for a cross-examination, the Hon'ble Apex Court held the order of the Tribunal as totally untenable. Referring to the observations of the Tribunal that cross-examination of the persons concerned would not serve any purpose, the Hon'ble Apex Court was of the view that it was not for the Tribunal to have taken recourse to any guess work as to for what purposes would have been served by the assessee appellant by carrying out cross-examination. For the sake of clarity, the relevant observations of the Hon'ble Apex Court are culled out as under:

“We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.

We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal.”

31. Our aforesaid view that cross examination of a person whose statement is relied upon by the A.O for drawing of adverse inferences is statutorily required to be facilitated to the assessee is also supported by the judgment of the **Hon’ble High Court of Delhi** in the case of **Commissioner of Income Tax Vs. Ashwani Gupta (2010) 322 ITR 396 (Delhi)**. It was observed by the Hon’ble High Court that as the A.O had, inter alia, failed to facilitate cross-examination of the person whose statement was relied upon by him for drawing of adverse inferences in the hands of the assessee, then such failure would amount to denial of an opportunity and would be fatal to the proceedings. The Hon’ble High Court while concluding as hereinabove had observed as under:

“Once there is a violation of the principles of natural justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following the approach adopted by us in SMC Share Brokers (supra), we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration.”

(emphasis supplied by us)

32. Also a similar view had been taken by the Hon’ble High Court of Delhi in the case of **Commissioner of Income Tax Vs. SMC Share Brokers Ltd. (2007) 288 ITR 345 (Delhi)**. It was observed by the Hon’ble High Court that in the absence of cross-examination of a person on the basis of whose statement proceedings had been launched in the hands of the assessee, no adverse inferences could have validly been drawn.

33. On the basis of the facts involved in the case before us read a/w. the aforesaid settled position of law, we are clear in our mind that the A.O had grossly erred in law and facts of the case, both in withholding the copies of the complete statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal; and also by refusing to allow their cross-examination to the assessee despite its persistent requests for the same. Although the Ld. AR by drawing support from the aforesaid judicial pronouncements had tried to impress upon us that the failure on the part of the A.O to facilitate cross-examination of the aforementioned persons; and also making available complete copies of their statements would be fatal to the validity of the assessment in hand, but we are unable to persuade

ourselves to subscribe to his aforesaid contention. Admittedly, as observed by us hereinabove, the failure on the part of the A.O to make available complete copies of the statements a/w. facilitating a cross-examination of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal is a serious flaw and is in fact a flagrant violation of basic tenements of the principles of natural justice, but the same in our considered view would not on such standalone basis render the assessment framed by the A.O as nullity. As the failure on the part of the A.O to facilitate a cross-examination of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal; and also make available complete copies of their statements would have undeniably made it impractical for the assessee company to defend its case and rebut the adverse inferences which the A.O would have drawn by pressing into service the statements of the aforementioned persons, therefore, in our considered view the matter in all fairness would require to be revisited by the A.O. We, thus, in all fairness by adopting a balanced approach restore the matter to the file of the A.O for re-adjudication after making available complete copies of the statements of the aforementioned persons, viz. S/Shri Narendra Jain and Champak Mandal and facilitating their cross-examination to the assessee company.

34. As we have restored the matter for fresh adjudication to the file of the A.O in terms of our aforesaid observations, therefore, we refrain from dealing

with the other contentions advanced by the ld. A.R before us, both as regards the validity of the jurisdiction that was assumed by the A.O for initiating proceedings u/s.147 of the Act; as well as those qua the merits of the case, which the assessee would be at a liberty to raise before the lower authorities in the course of de-novo proceedings. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

35. In the result, appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 27th March, 2023
#####SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Raipur (C.G)
4. The Pr. CIT, Central Bhopal (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.