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

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2334/MUM/2018
(Assessment Year: 2007-08)

Mrs. Renu Tikamdas Tharani, 1 Prabhat Building, 28 B Road, Churchagate, Mumbai - 400020 [PAN: AAXPT4838Q]	.....	**Appellant**
	Vs	
Deputy Commissioner of Income Tax, (International Taxation) 4(2)(1), Room No. 1708, Air India Building, Mumbai - 400021	.....	**Respondent**

Appearance

For the Appellant/Assessee	:	Shri Mukesh Advani
For the Respondent/Department	:	Shri Anil Sant

Date

Conclusion of hearing	:	17.08.2023
Pronouncement of order	:	30.10.2023

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 17/01/2018, passed by the Ld. Commissioner of Income Tax (Appeals)-58, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2007-08, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 26/03/2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

1. "On the facts and circumstances of the case, the order passed by

the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts. 2. On the facts and circumstances of the case, the learned CIT(A), has erred, both on facts.

2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the AO has erred in initiating the reassessment proceedings under Section 147, read with Section 148, as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

3. *(i) On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in law in confirming the action of the learned AO in reopening the assessment without there being any live nexus in the reasons recorded and the belief formed by the assessing officer.*

   (ii) On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that the reasons recorded by the learned Assessing Officer are without any prima facie evidence that the income has accrued or arisen in India which is a statutory requirement for reopening of the assessment.

4. *On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO without approval of the prescribed authority under the Act is bad in law and liable to be quashed.*

5. *(i) On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated for reassessment, the notice issued and the reassessment order passed under section 148 of the Act is bad and liable to be quashed as the same is barred by limitation.*

6. *On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that the re-initiation of the reassessment proceedings on the same basis on which the preceding AO has reopened the assessment are bad in law and the same are liable to be quashed.*

7. *On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings, in the absence of any allegation in the reasons recorded by the Assessing Officer regarding failure on the part of assessee to disclose fully and truly all material facts necessary for the computation of income, is bad in law.*

8. *On the facts and circumstances of the case, the learned CIT(A). has erred, both on facts and in law, in rejecting the contention of the assessee that, the assessment order having been framed on the basis of material collected at the back of the assessee, without providing adequate opportunity to the assessee to rebut the same and being in violation of principle of natural justice, is bad in law and liable to be quashed.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the AO and relying upon unauthentic information and documents and without giving opportunity of cross examination to the assessee.*

10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in refusing to admit the affidavit filed by the assessee in support of its contention.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in refusing to share the copy of interim remand report submitted by the AO during the appellate proceedings.*

12. *On the facts and circumstances of the case, the learned CIT(A), has erred, both on facts and in law, in concluding the appellate proceedings despite the fact that as per the assertion of the AO itself in the remand report that certain information from foreign tax jurisdiction crucial for the decision of the case was still awaited.*

13. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts in law in confirming addition of an amount of Rs.249,24,98,973/-on account of deposits in HSBC account, Switzerland.*

14. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts in law in ignoring the contention of the*

assessee that the LD. AO despite considering the peak balance of US$ 4,40,41,227.22 in AY 2006-07 had not excluded the said amount as per the peak balance in the A.Y. 2007-08 of US$ 5,62,47,590.

15. *On the facts and circumstances of the case, Id. CIT(A). has erred both on facts and in law in confirming the action of the AO in making the above said addition in the hands of the assessee in respect of the bank account in the name of GWU Investment Ltd. without there being any finding that the said amount has been earned or deposited by the assessee and the amount has not been distributed by the Trust to the assessee.*

16. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that Ld. AO has erred in shifting the negative onus on the assessee in respect of the deposit in the bank account outside India instead of bringing any material or evidence to support its allegation that the amount deposited in bank account outside India represents the income of the assessee chargeable to tax in India.*

17. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that income from a discretionary trust can be included in the hands of the individual only when it is actually received by the individual from the trust.*

18. *On the facts and circumstances of the case, learned CIT(A). has erred both on facts and in law in rejecting the contention of the assessee that as per provisions of Section 5(2) of the Income Tax Act in the case of a Non-Resident income which is received or is deemed to be received outside India or the income which accrues or arises or is deemed to accrue or arise outside India is not chargeable to tax in India.*

19. *On the facts and circumstances of the case, Id. A.O. has erred both on facts and in law in levying interest under section 234A, 234B and 234C of the Act.*

20. *The appellant craves leave to add, amend or alter any of the grounds of appeal".*

3. The relevant facts in brief are that information was received by

Government of India from the French Government in the form of a document (hereinafter referred to as 'Base Note') that some Indian nationals/residents have foreign bank accounts in HSBC Private Bank (Suisse) SA, Geneva (hereinafter referred to as 'HSBC Geneva') which were undisclosed to the Indian Tax Authorities. Base Note contained various details of account holders such as Name, Date of Birth, Place of Birth, Sex, Residential Address, Profession, Nationality along with the date of opening of the bank account in HSBC, Geneva and balance in certain years etc. In the case of the Appellant also, a Base Note was received by the Assessing Officer from the office of the DIT(Inv)-II, Mumbai, according to which the Appellant was beneficial owner of an account (BUP Code 5090178411) held in the name of GWU investments Ltd. maintained with HSBC, Geneva. As per the Base Note, the date of creation of the aforesaid account was 28/07/2004, and the peak balance for the Assessment Year 2007-08 mentioned in the Base Note was USD 5,62,47,590/-. On the basis of the same, re-assessment proceedings under Section 147 of the Act were initiated against the Appellant as notice, dated 31/10/2014, was issued under Section 148 of the Act. Reassessment proceedings under Section 143(3) read with Section 147 of the Act culminated into passing of Assessment Order, dated 26/03/2015, whereby the total income of the Appellant was assessed at INR 249,24,98,973/- after making an addition of INR 249,23,30,713/- *(USD 5,62,47,590/- @ INR 44.31 per USD as on 28/02/2007*) to the returned income of INR 1,68,260/- as per the return of income filed by the Appellant on 20/11/2007 in response to notice issued under Section 148 of the Act.

3.1. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order, dated 26/03/2015. Vide order, dated 17/01/2018, the CIT(A) partly allowed the appeal of the Appellant.

While deciding the appeal as aforesaid, the CIT(A) followed the order (also dated 17/01/2018) passed by the CIT(A) in appeal preferred by the Appellant/Assessee for the immediately preceding Assessment Year 2006-07 as the Assessing Officer had made similar additions on the basis of Base Note for the Assessment Year 2006-07.

3.2. Being aggrieved by the order dated 17/01/2018 passed by the CIT(A), the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above. The Appellant has challenged the validity of reassessment proceedings and the addition of INR 249,23,30,713/- on merits.

4. When the appeal was taken up for hearing, the Ld. Departmental Representative, at the outset, submitted that the appeal preferred by the Appellant/Assessee against the order of the CIT(A) for the Assessment Year 2006-07, which was followed by CIT(A) for the Assessment Year 2007-08, has been dismissed by the Tribunal, vide order, dated 16/07/2020, passed in ITA No. 2333/Mum/2018. The Ld. Departmental Representative submitted that identical submissions/contentions raised by the Appellant during appeal for the Assessment Year 2006-07 stand rejected by the Tribunal. In response, the Ld. Authorised Representative for the Appellant submitted that the Tribunal had vide order, dated 16/07/2020, passed in ITA No. 2333/Mum/2018, dismissed the appeal preferred by the Appellant for the Assessment Year 2006-07. However, for the Assessment Year 2007-08 also the additions have been made on the basis of Base Note. Therefore, there was possibility of duplicate addition of income/assets having been made by the Assessing Officer for the Assessment Year 2007-08 when compared with the income/assets which have already been brought to tax in the assessment framed for the Assessment Year 2006-07. The Ld.

Authorised Representative for the Appellant referred to base note analysis working for the Assessment Year 2006-07 and 2007-08 placed at page 7 of paper-book forming part of letter dated 05/04/2018 submitted by the Appellant before the Assessing Officer for giving effect to order passed by the CIT(A).

5. We have considered the rival submissions and perused the material on record including the decision of the Tribunal in the case of the Appellant for the Assessment Year 2006-07 [ITA No. 2333/Mum/2018, dated 16/07/2020].

5.1. On perusal of record, we find that the Appellant before us is an individual assessee. The Appellant filed original return of income for the Assessment Year 2007-08, dated 20/11/2007, physically filled on 27/11/2007 declaring income of INR 1,68,260/- and stating residential address as Flat No. 307, Embassy Erose, Ulsoor Road, Bangalore. The original return filed by the Appellant was not selected for regular scrutiny. Subsequently, on the basis of Information received by Government of India from the French Government in the form of Base Note showing that the Appellant was beneficiary of foreign Bank Account in the name of GWU Investments Ltd maintained with HSBC, Geneva which were undisclosed to the Revenue. The Base Note contained details of account holders such as Name, Date of Birth, Place of Birth, Sex, Residential Address, Profession, Nationality along with the date of opening of the bank account in HSBC, Geneva and balance in certain years etc. On the basis of the aforesaid information/details re-assessment proceedings were initiated vide notice dated 31/10/2014 issued under Section 148 of the Act for the Assessment Years 2006-07 and 2007-08 after recording identical reasons for the reopening of assessment. The reason for reopening the assessment for the Assessment Year 2007-

08 read as under:

> *"The case of THARANI RENU TIKAMDAS was centralized with the undersigned vide order u/s 127 of the IT Act 1961 bearing No. 45/Centralisation/CIT-IV/2013-14 dated 20.12.2013 Information has been received in respect of her from the office of DIT(Inv.). Bangalore. The information pertains to her having a bank account with HSBC Bank, Geneva bearing a number BUP_SIFIC_PER_ID -5090178411. From the said bank statement, it is seen that she is having a peak balance of USD 2355851.60 in the said account during the period 2006-07. The records of this office show that this amount has not been considered by her in her return of income and this income therefore has escaped assessment. This evidence has come into the possession of the undersigned; therefore, I have reason to believe that the income to the extent of at least USD 2355851.60 has escaped assessment within the meaning of para (d) to the Explanation 2 below section 147 of the Act."*

5.2. In response to notice issued under Section 148 of the Act, the Appellant filed submissions objecting to reopening of assessment proceedings and submitted that the original return filed by the Appellant be treated as the return filed in response to notice issued under Section 148 of the Act. The objections to reopening of assessment raised by the Appellant for the Assessment Years 2006-07 and 2007-08 were rejected by the Assessing Officer. Thereafter, the Assessing Officer proceeded to frame assessment under Section 147 read with Section 143(3) of the Act.

5.3. For the Assessment Year 2007-08, the order disposing of the objections was passed on 11/12/2014. Thereafter, the Assessing Officer issued notice, dated 11/12/2014, under Section 142(1) of the Act requiring the Appellant to furnish the documents/details specified therein. The relevant extract of the aforesaid notice issued under Section 142(1) of the Act read as under:

> *"2. If you are not filing a writ petition and are agreeable to proceed further in the case kindly produce the following:*
>
> *a) Base Note of the HSBC Account held by you in Geneva had already been provided to you on 10.12.2014. As per this base note bearing a number BUP SIFIC_PER_ID- 5090178411 you*

own an account in HSBC, Geneva. Kindly produce the bank statement of your HSBC, Geneva Account in original and provide the sources of deposits made in the said account.

b) As per Sec. 9 of the IT Act, all income accruing or arising, whether directly or indirectly, through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through the transfer of a capital asset situate in India are incomes that shall be deemed to accrue or arise in India. In view of this provision of law provide with material evidence as to how the deposits made by you in your HSBC, Geneva Account do no fall within the ambit of Section 9 of the Act."

5.4. In reply, the Appellant filed submission, dated 09/01/2015, along with letter of HSBC, Geneva, dated 05/9/2011 and 05/01/2015 wherein it was stated that the Appellant has not been an account holder of HSBC, Geneva during the last 10 years. GWU Investments Ltd. was the account holder with HSBC, Geneva. GWU Investments Ltd. used to be an underlying company of the Tharani Family Trust for which the Appellants was a discretionary beneficiary. This Trust was terminated and none of the assets deposited with them were distributed to the Appellant.

5.5. Since the Appellant neither produced the documents called for in the notice issued under Section 142(1) of the Act nor provided the consent waiver form for obtaining the bank statements of the accounts in HSBC, Geneva, the Appellant was asked, vide order-sheet noting dated 09/01/2015, to furnish the following details/documents:

a. Copy of the passport from the date of opening the account in HSBC, Genera till date including all the pages thereof.

b. Explanation above Appellant's address in India.

c. Details of source of deposits made in the HSBC, Geneva. Whether the amounts reflected in the Base Note have any source in India.

d. Details of address given by the Appellant to HSBC, Geneva while opening the account and thereafter, in case there was a change in address

e. Specify whether the Appellant had any assets (both moveable and immovable) in India either jointly or individually which were purchased or sold by the Appellant in the past and whether such proceeds from sales were deposited in the HSBC, Geneva account or any other account held by the Appellant.

f. In case your answer to the above questions are in the negative, provide your statement in an affidavit duly signed and notarized and sent it to the office of the undersigned.

5.6. However, the Appellant did not provide the above details/documents. Drawing adverse inference from the same by placing reliance of Section 114 of the Indian Evidence Act, 1872, the Assessing Officer concluded that that the money deposited in the HSBC, Geneva was undisclosed and sourced from India. Taking the peak amount as appearing in the statement forming part of the Base Note for the Financial Year 2006-07 as on February, 2007 *(reflected as Total en 02/2007 in the statement),* the Assessing Officer made addition of USD 56,247,590/- *[which translated to INR 249,23,30,713/- @Rs. 44.31 per USD being the exchange rate on 28.02.2007 as per RBI]* for the Assessment Year 2006-07 and assessed total income of the Appellant at INR 249,24,98,973/- vide Assessment Order dated 26/03/2015, passed under Section 143(3) read with Section 147 of the Act.

5.7. The Appellant preferred appeal before CIT(A) challenging the validity of reassessment proceedings as well as the addition made by the Assessing Officer on merits. The CIT(A) noted that identical grounds were raised by the Appellant in appeal for the Assessment Year 2006-07 arising from identical set of facts, the submissions made by the Appellant for the Assessment Year 2006-07 and 2007-08 were common and the appeals were also heard together based on the

aforesaid common submissions. Therefore, taking note of the fact that for Assessment Year 2006-07 identical grounds raised by the Appellant already stood adjudicated, the CIT(A) disposed of the appeal, vide order dated 17/01/2018, following the order passed in appeal for the Assessment Year 2006-07 holding as under:

> *"4. The grounds stand adjudicated in identical facts and circumstances for AY 2006-07. The submissions were common and case heard based on common submissions. In para 30 of the appellate order for AY 06-07 I had held that the Assessing Officer has approached the assessment correctly in assessing income as per the base note received from French Government. The same is held in identical manner in this AY also on account of reasons recorded in order in CIT(A), Mumbai/10080/2015-16 dated 17.01.2018. The grounds of appeal to that extent are so decided*
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> *5. Coming to quantum of income to be assessed the objection of appellant is that the addition is not correct. The AR of the appellant has produced an excel sheet to demonstrate same and prima facie there is a probability of duplication. This however is a matter of computation. Upon perusal of the base note it is seen that the entries are styled as if it is normal banking transaction with debit/credit entries tiltled "Mutual Fund". "Liquid assets", "Stocks, Structured Products", "Advances and Loans", "Bonds", "Fiduciary Deposits" etc... Nevertheless it is debit and credit entries. Since a finding is made that the income on the basis of information contained in the base note is assessible under Income Tax Act 1961, correct computation is necessary. The assessing officer can assess only such sums that fit into definition of sections 5(2) rw 8 r.w 9 rw 69, 69A, 69B, as applicable in the case, emanating from the base note. Any other computation will be incorrect. Further, according to appellant there is duplication over years and months within the year.*
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> *6. In view of discussion is para 5, the Assessing Officer is directed to assess only such sums, confining to information in base note and assessible under the provisions of Income- Tax Act 1961 and subject to other finding in this order. For this the Assessing Officer may direct assessee to furnish detailed computation and after examination of the same (if filed) decide on quantum of income to be retained considering the data contained in the base note and those emanating from the same. Any duplication including income/assets assessed in AY. 2006-2007 that had occurred, must be deleted. No order prejudicial to assessee should be passed without granting opportunity of being heard."*

5.8. Being aggrieved by the above order dated 17/01/2018, passed by the CIT(A), the Appellant is now in appeal before us. In effect, the Appellant had challenged the validity of reassessment proceedings and the addition made by the Assessing Officer on merits.

5.9. During the pendency of the present appeal, the appeal preferred by the Appellant against the order passed by the CIT(A) for the Assessment Year 2006-07 has been confirmed by the Tribunal vide order, dated 16/07/2020, passed in ITA No. 2333/Mum/2018. We have examined the aforesaid order of the Tribunal and find that the issue raised in the present appeal stand decided against the Appellant. For the Assessment Year 2006-07, the Tribunal had rejected the challenge to initiation of reassessment proceedings on the basis of Base Note and other information/details available with the Assessing Officer; approved the conclusions arrived at by the CIT(A) on merits of the addition and decline to interfere in the matter. Thus, confirming addition of INR 196,46,79,146/- made by the Assessing Officer. The relevant extract of the decision of the Tribunal for the Assessment Year 2006-07 (ITA No. 2333/Mum/2018, dated 16/07/2020) read as under:

> *"**Our analysis:***
>
> ***8.** As we have given our careful consideration to the rival contentions and the material on record in the light of applicable legal position, we have also taken of the factual matrix of this case. Here is an assessee who files her return of income, disclosing a meagre income of Rs. 1,70,800, giving a Bangalore address and files the income tax return a ward which was meant for resident assessees. Going by the facts placed by the assessee on record, which are also set out in the paper-book, the Bangalore property was sold in the year ended March 2003, but yet income tax return continued to be filed at that address. It is not clear as to what was the basis of filing the income tax return at Bangalore but then let's leave it at that for the time being. The income tax return filed by the assessee, a copy of which is placed before us at page 62 of assessee's paper-book, does not at all tick the status as "non-resident", but there is a clearly visible mark in the status as "resident". On these facts, the Assessing Officer, to whom this case was transferred as a result of order under section 127, notices that*

the assessee has a bank account, as per information in his possession, with HSBC Private Bank Geneva, bearing a number ***BUP_SIFIC_PER_ID- 5090178411*** *with a peak credit, during the relevant period, of a sum of more than US $3.97 crores equivalent to around Rs. 200 crores at that point of time. The base note, a copy of which is placed at pages 3 to 12 of assessee's paper-book, clearly shows* ***"Tharani Renu Tikamdas****" as* ***"beneficial owner/beneficiary"*** *of this account, that her date and place of birth are 10th May 1934 and Hyderabad (Pakistan) respectively, and that the account was opened on 28th July 2004. This note also shows, under the heading "personnes liees aux profile client" (which as simple google translation would show as meaning "people linked to customer profile"), GWU Investments Limited as with "power of administration". The overall "patrimoine max constaté sur la period" (which as simple google translation would show as meaning "max wealth observed during the period") on 02/2007 as US $ 5,62,47,590, but then that aspect of the matter is not relevant for this year. Suffice to note that the residential status of the assessee as shown in the income tax return was "resident", and definitely not "non-resident", that the peak credit at her disposal in this Swiss Bank account was over 11,500 times of her annual income, and that the assessee had admittedly not taken into account this account in her return of income. The claim of the assessee regarding her having a non-resident status in the relevant previous year came much after the reasons recorded, and, quite contrary to this claim, as our perusal of records shows, the assessee herself had claimed the residential status as "resident" in the income tax return. The Assessing Officer has to record his satisfaction about income escaping assessment as on the basis of material in his possession and on record as on the time of recording the reasons for reopening the assessment. A subsequent claim, which was not on record at the time of the reasons being recorded, cannot affect the correctness of these reasons, even though once this claim is made in the assessment proceedings, it will have to be examined on merits and it will have to be adjudicated as such in the outcome of the assessment proceedings. Nothing, therefore, turns on the facts not on record before the Assessing Officer as on the stage of recording the reasons of reopening the assessment. In any case, when the assessee herself is making an incorrect claim in the income tax return, she cannot claim that because the Assessing Officer believed the claim so made, and took initial steps on that basis, the Assessing Officer was in error in taking that path. Of course, all this does not affect the question of determination of her residential status on merits, but that is not the question as on now. The question is whether the Assessing Officer had reasons to believe income escaping the assessment, or not. It is also important to bear in mind the fact that at the stage of issuance of notice, the Assessing Officer is to only form a prima facie view. Explaining this principle, Hon'ble jurisdictional High Court, in the case of* ***Multi Commodity Exchange of India Ltd. v. Dy. CIT [2018] 91 taxmann.com 265 (Bom.)*** *[SLP dismissed as Multi*

Commodity Exchange of India Ltd. v. Dy. CIT [2019] 101 taxmann.com 13/260 Taxman 243 (SC)], has observed that ***"We find that the power of the Assessing Officer to reopen an assessment under section 147/148 of the Act on the basis of reasonable belief is not fettled or circumscribed, to be formed only on material found during a tax audit or with material found during examining a case of tax evasion. In fact the basis of fresh tangible material is unqualified i.e. the source of the material could be from any place, however, the only pre-condition is that on the basis of the material so found/obtained by the Assessing Officer, he himself must form a reasonable belief that income chargeable to tax has escaped assessment before issuing a notice for reopening. In fact the Apex Court has observed in Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 has observed that if the Assessing Officer for whatever reasons (material) has reason to believe that income chargeable to tax has escaped assessment then jurisdiction is conferred upon the Assessing Officer to reopen the assessment". As held by Hon'ble jurisdictional High Court, in the case of Multiscreen Media (P.) Ltd. v. Union of India [2010] 7 taxmann.com 38/324 ITR 54 (Bom.), "the expression "reason to believe" must obviously be that of a prudent person and it is on the basis of the reasons recorded by the Assessing Officer that the question as to whether there was a reason to believe that income has escaped assessment, has to be determined. At the same time, the sufficiency of the reasons for reopening an assessment does not fall for determination, at the stage of a reopening of assessment".*** *In the light of this legal position, in our considered view, based on the facts above i.e. credible information about existence of her account with HSBC Private Bank Geneva with a peak credit of around Rs. 200 crores in the relevant financial year- which is far disproportionate to her reported annual income and which is not taken into account in her return of income, the Assessing Officer was perfectly justified in holding the view that the income has escaped assessment.*

9. As regards the judicial precedents cited at the bar, all these cases deal with the situation in which the assessee was stated to be non-resident or when the re-assessment was done only for verification of some information. That's not the case here. The income tax return filed by the assessee, which was available at the time of recording the reasons for reopening the assessment, did not show the status of non-resident. The recording of reasons cannot thus be faulted. Whatever claim is made subsequently is required to be dealt with in the subsequent proceeding but it will not vitiate the validity of reasons recorded for reopening the assessment. The facts of the decision cited on the line of reasoning that cases of non-residents cannot be reopened on the basis of existence of foreign bank account, in any event, are not in pari materia inasmuch as in none of these cases the

assessee had filed the income tax return in the status of resident. As regards the decisions that reopening cannot be done for mere verifications, the present case is not a case which some general and vague information is received about the assessee, which may or may not lead to an income escaping assessment in the hands of the assessee, and which is thus required to be examined on merits, but of a very specific cogent information regarding a bank account, with complete details that is good enough for holding at least the prima facie view that income has escaped in the assessment in the hands of the assessee. The peak balance in the account, which has subsequently come to the knowledge of the Assessing Officer and on the basis of which reopening is done, is tens of thousand times more than annual income of the assessee.

10. We have also noted that the assessee had shifted to the United States only just seven days before the beginning of the relevant previous year, and it will be too unrealistic an assumption that within these seven days plus the relevant financial year what the assessee could have earned this huge amount of around Rs. 200 crores, which, at the rate at which she did earn in India in the last year, would have taken her more than 11,500 years to earn. Even if one goes by the basis, though the material on record at the time of recording reasons did not at all indicate so, that the assessee was a non-resident in this assessment year, which is, going by the specific submissions of the assessee, was admittedly first year of her "non-resident" status, it was wholly unrealistic to assume that the money at her disposal in the Swiss Bank account reflected income earned outside India in such a short period of one year. Viewed thus, whether the assessee was a resident in India in this year or not, the Assessing Officer would have been perfectly justified in holding the "prima facie" view that, de hors her new acquired non-resident status, the peak amount of US $ 3,97,38,122 "not being considered in her income tax return" shows that "income has escaped assessment" in the hands of the assessee. Be that as it may, since the assessee did not disclose the status of "non-resident" in the income tax return filed by the assessee any way, and the reasons recorded for reopening the assessment can only be on the basis of material on record or the information coming in the possession of the Assessing Officer- which indicated that the assessee was a "resident" in the relevant previous year, this aspect of the matter is wholly the sole and decisive factor leading to our conclusion about correctness of the reasons recorded for reopening the assessment.

***Our conclusions on validity of re-assessment proceedings**:*

11. In the light of the detailed reasons analyzed in the foregoing discussions, as also bearing in mind entirety of the case, in our considered view, the correctness of reopening of assessment, on the facts of this case and in the light of settled legal position, cannot be faulted with. We confirm the action of the authorities below on this point and decline to interfere in the matter.

Challenge to addition of Rs. 196.46 crores to the returned income

12. *We now turn to the question as to whether or not the learned CIT(A) was justified in upholding the addition in the hands of the assessee for Rs. 196,46,79,146, being an amount equivalent to US $ 3,97,38,122 at the relevant point of time, held by HSBC Private Bank, Geneva, Switzerland, in the name of Tharani Family Trust, of which the assessee was a beneficiary.*

The relevant material facts:
13.-22. xx xx

Our analysis on the merits of the impugned addition of Rs. 196,46,79,146/- in respect of assessee's account with HSBC Private Bank (Suisse) SA, Geneva

A: The backdrop
23.-26. xx xx

B. Trust structures employed by HSBC Private Bank
27.-33 xx xx

C: Hon'ble Bombay High Court on the assessee's declining such consent waivers

34. While on this aspect of the matter, it may also be useful to refer to a judgment of Hon'ble jurisdictional High Court on materially similar facts, wherein Their Lordships has disapproved and deprecated the conduct of the assessee in not signing the consent waiver form, in the judgment reported as ***Soignee R Kothari's Vs DCIT [(2016) 386 ITR 466 (Bom)*** *That was also a case in which the assessee, originally a resident in India, had migrated to the USA. The information by way of a 'base note' was received from the French Government, under the DTAA mechanism- as in this case, about existence of her bank account with the same bank, i.e. HSBC Private Bank (Suisse) SA, Geneva. In this case, around US $ 45 million were found to in the said bank account around the same time i.e. 2006, and assessee was one of the beneficiaries therein. It was in this backdrop that the assessment was sought to be reopened which was challenged in the writ petition before Hon'ble Bombay High Court. During the course of hearing of the writ petition, one of the argument advanced by the learned Additional Solicitor General, opposing the writ petition, was that Hon'ble High Court "****should not exercise its writ jurisdiction in favour of the petitioner as she has failed to sign the Consent Waiver Form"*** *When the assessee was asked to clarify this position, as noted by Their Lordships,* ***"On instructions of the Petitioner, the Learned Senior Counsel Mr. Pardiwalla informed us that her Uncle Mr. Dilip Mehta i.e the Executor of the Estate of late Mr. Ramniklal N. Mehta was also willing to sign a modified consent***

waiver form. Thus both the Petitioner and her uncle agreed to give a modified Consent Waiver Form in effect disputing being either the beneficiary or being the person who has authority to operate the account" but, as noted by Their Lordships, "on enquiry by the Revenue from HSBC, Geneva, it was learnt that a modified Consent Waiver Form would not enable the bank to give copies of the bank statement of A/c. No. 5091404580 since the Waiver would have to be provided without modifications". *Their Lordships then noted that neither the assessee has furnished the requisite information nor allowed the authorities to collect the information by giving unqualified consent waiver forms, and added that "**In the normal course of human conduct if a person has nothing to hide and serious allegations/questions are being raised about the funds a person would make available the documents which would put to rest all questions which seem to arise in the mind of the Authorities**. **The conduct on the part of the Petitioner and her uncle, in not being forthcoming, to our mind leads us to the conclusion that this is not a fit case where we should exercise our extra ordinary writ jurisdiction and/or interfere with the orders passed by the authorities under the Act. If a person has nothing to hide, we believe the person would have co-operated in obtaining the Bank Statements".** Quite interestingly, in this case, when all these things came out in the open, the petitioner sought leave to withdraw the petition, but even that prayer was rejected by observing that, **"It may be pointed out that just before giving our reasoned order, Mr. Nitesh Joshi, the learned Counsel appearing for the Petitioner sought permission to withdraw this Petition. We declined. This is particularly, so as after having taken up substantial time of the Court and only after we expressed our final view that we are dismissing the Petition, an attempt is made to withdraw the petition. This cannot be permitted".** That was a case in which even after the assessee was willing to sign a modified consent waiver form, Their Lordship disapproved the conduct of the assessee in no uncertain terms. Here is a case, in which the assessee has declined to sign the consent waiver form outright, and taken a stand that the question of signing the consent waiver form does not arise. Neither such a conduct can be appreciated, nor anyone with such a conduct merits any leniency.*

35. On the one hand thus, the assessee has not cooperated with the income tax authorities in obtaining the relevant information from HSBC Private Bank (Suisse) SA, Geneva, or rather obstructed the flow of full, complete and correct information from the said bank by not waiving her rights to protect privacy for transactions with the bank, and, on the other hand, the assessee has complained that the income tax authorities have not been able to find relevant information. Obviously, these things cannot go together.

D: Justification for adverse inferences when consent waivers are declined:

36. It is thus clear that when an assessee declines to give consent waivers about a bank information being collected, the assessee effectively stalls further investigation about the same. Declining consent waiver is, for all practical purposes, enforcing the right of privacy, and enforcing the right to privacy, in the course of an income tax investigation about a transaction, stalling obtaining full, complete and correct information about the same. The presumption thus has to be that such information, as in possession of the income tax department and in respect of which the assessee has declined 'consent waiver' for further probe, is correct, and that the assessee is consciously trying to stall further probe in the matter so as to prevent further information, prejudicial to the interests of the assessee, coming to the light. When an assessee seeks protection on account of the position that the income tax department has not conclusively proved the things against the assessee, the assessee also has to show that he contributed to the efforts for getting at the truth or at least that he did not stall the efforts of the income tax department to get at the truth. By not signing the consent waiver, the assessee ends up protecting the actual facts coming to the lights by enforcing his own privacy under the Swiss secrecy and data protection laws, and, therefore, he cannot claim protection of the position that the income tax department has not conclusively established the alleged facts. In such circumstances, in our humble understanding, the Assessing Officer has no choice but to draw an adverse inference. Of course, all the evidences furnished by the assessee are to be considered nevertheless, but, when such evidences turn out to be unreliable, inconclusive or insufficient, in our considered view, even adverse inference could indeed be justified.

E: The base note received about the assessee account with HSBC Private Bank (Suisse) SA, Geneva

37. Let us, in this light, look at the base note containing information received in respect of the assessee.

38. This note, titled "synthèse individuelle" (individual synthesis, in literal meaning, which refers to 'individual's profile') BUP, inter alia, sets out the following information:

Nom (name)	*:*	***Tharani***
Prénoms (first name)	*:*	***Renu Tikamdas***
Nationalité (Nationality)	*:*	***INDIA***
Date de naissance (date of birth)	*:*	***10-05-1934***
Sexe (sex)	*:*	***F***
Lieu de naissance (place of birth)	*:*	***Hyderabad/Pakistan***

Adresses de la personne physique
(Addresses of the natural person)

Mrs. Renu Tikamdas Tharani
1, Prabhat, 28, B Road, Churchgate
Mumbai 400 020 (Legal address)

Profils client lies a la personne
(Customer profiles linked to the person)

Nom du profil client	:	***GWU Investments Limited***
(customer profile name)		
Code profil client	:	***5091414771***
(customer profile code)		
Date création du proifil	:	***26-7-2004***
(creation date of profile)		
Date de clôture du profil	:	***non référence***
(closure date of profile)		*(no reference)*
Statut de profil	:	***Actif***
(profile status)		*(Active)*
nature de profil	:	***Nominatif***
(profile nature)		*(nominative, or nominal)*
Type de client	:	***société domiciliée***
(Profile type)		*(domiciled company)*
Lien personne/profil client	:	***Beneficial owner***
(Person/customer profile link)		
Détails du lien	:	***BENEFICIAL OWNERSHIP/BENEFICIARY***
(link details)		
Info Signatures	:	***non référence***
(Signature Information)		*(no reference)*
Correspondance	:	***envoyée au client***
(Correspondence)		*(sent to client)*

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personnes légales liées
(related legal persons)

nom-structure juridique	:	***THE THARANI FAMILY SETTLEMENT (5090278408)***
(code BUP)		
(name- legal structure)		
lieu de domiciliation	:	***non référence***
(place of domicile)		*(No reference)*
date de creation	:	***non référence***

(creation date)		*(No reference)*
Date de cloture	*:*	***non référence***
(closure date)		*(No reference)*
Adresses	*:*	***non référence***
(Address)		*(No reference)*

[The information given above in italics, in the smaller font size, is English translation of text- as obtained through google translation tool]

F: The factual position emerging in the light of the foregoing position, and our consideration to the stand of the assessee

39. The above base note also, under the heading 'autres personnes liés aux profils clients', information about "other people linked to customer profiles" which includes information about two other family trusts, namely 'Visions for the future' and 'The Children Hope Foundation', and HSBC International Trustees Limited, Cayman Islands branch, as also some other individuals- apparently family members. However, one common thread in all these seven persons linked to the customer profile, is GWU Investments Limited, as "profil ***clients concerns*** *(i.e. relevant customer profile).*

40. It is an interesting coincidence, coincidence if it is, that within a short time of the information about the above account coming to the possession of the Government of India, this account was closed. Whatever assets were being held in this bank account were thus transferred back to GWU Investments Limited, a company based in Cayman Islands- a tax haven where it is almost impossible to find out about beneficial owners of a corporate entity, as it is not having "a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of companies and partnerships", as very mildly put in a peer review report- as stated in Rahul Navin's "Information Exchange and Tax Transparency: Tackling Global Tax Evasion and Avoidance" (ISBN-10: 9350358891).

41. It must also be a coincidence, coincidence if it could be, that the process of covering the tracks did not stop with closure of the HSBC account. It is a further coincidence that even the GWU Investments Limited, after the disclosure in respect of account, was closed as its name is struck off from the records of Registrar of Companies, Cayman Islands. As a Cayman Islands Government notification, available in public domain at http://www.gov.ky/portal/pls/portal/docs/1/11574085.PDF, shows at pages 45 of 102, GWU Investments Limited no longer exists in the records of the Government of Cayman Islands.

42. Interestingly, however, even this trust stands terminated and nothing is now known about the trust. We have noted that the assessee has taken a plea that she has nothing to do with the funds in the HSBC Private Bank (Suisse) SA account, as she was only a

beneficiary of the Tharani Family Settlement Trust. The assessee is at least, by her own admission, a beneficiary of the trust but she is not in a position to throw any light about the trust or enlighten anyone about the trust structure. All she has submitted is that GWU Investments Limited is the company that runs the trust and she has no idea as to where the monies came in the possession of GWU Investments Ltd. In letter dated 7th March 2015, a copy of which is placed before us at pages 57-58 of the paper-book also, the submissions of the assessee was as follows:

> *With reference to your query on the date of last hearing held on 26th February, 2015, wherein you wanted to know the following facts:*
>
> *(1) Who is settlor of Tharani Family Trust, and*
>
> *(2) What are the sources of funds which are deposited*
>
> *in GWU Investments Ltd.To this, we would like to reiterate the fact that the assessee is neither a shareholder nor a director in GWU Investments Limited, which is an underlying company of Tharani Family Trust. Hence, the assessee is in no position to give you the details as to what are the sources of funds which are deposited in GWU Investments Ltd. Furthermore, she is also not signatory to the abovesaid account belonging to GWU Investments bearing number 1414771. In the light of the abovesaid facts, she is unable to provide you the abovesaid details.*
>
> *Moreover, the assessee is neither the settler nor a trustee of Tharani Family Trust, she is just a discretionary beneficiary of the above trust, wherein she has not received any assets or funds at the time of disbursement. She does not have any knowledge as to who is settlor of the trust. Finally, the trust has now been terminated, hence it will not be possible for us to obtain any information about the trust. We now enclose herewith letter from HSBC Private Bank (Suisse) SA dated 26/02/2015 which confirms the abovesaid facts.*
>
> *In light of the abovesaid facts, GWU Investments Ltd is a completely separate distinct entity in the eyes of law, and hence, under no circumstances, can anyone treat the bank account in the name of GWU Investments Ltd. as the bank account of the assessee and thereby tax the deposits in her hand. In light of the abovesaid facts, the return of income filed by the assessee is correct, and hence there is no reason for making any addition to the returned income.*
>
> *With this, we have submitted you all the details called for.*

42. To put a question to ourselves, is it an explanation which can be accepted by any reasonable person?

43. Let us also not lose sight of the fact, as we have noted earlier, that HSBC Private Bank even today publicly offers assistance, in trust structures, whereby you, as the settlor, ***transfer the legal ownership of your assets (which then become the trust assets) to the trustee, who manages and holds the assets for the benefit of the beneficiaries, and the beneficiaries may include you and your family". It is also proudly stated on the bank website itself that their "team is based across the globe and includes…….trust specialists, whose skills and experience form the basis of the service we provide".*** *We have also seen as to how the HSBC Private Bank (Suisse) SA has been indicted by several Governments worldwide and how it has even confessed to be being involved in money laundering.*

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

invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". *As Hon'ble Supreme Court has observed, in this case, "**..it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents".*** *As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and our call is to be taken not only in the light of the face value of the documents sighted by the assessee but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground realties. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that **"human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law".*** *This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, statements and letters and examining them, in a pedantic manner, with the blinkers on. The same has been the approach adopted by Hon'ble Supreme Court, in the case of Sumati Dayal (supra), wherein Their Lordships have, inter alia, disapproved acceptance of a claim of winning the appellant claims to have won in horse races a total amount of Rs. 3,11,831 on 13 occasions out of which 10 winnings were from Jackpots and 3 were from Treble events by Chairman of the Income-tax Settlement Commission, and observed that "**This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities". Their Lordships further observed that "Similarly the observation by the Chairman that if it is alleged that these***

tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence".

45. Viewed in the light of factual backdrop of the case, and in the light of the above legal position, no reasonable person can accept the explanation of the assessee. The assessee is not a public personality like Mother Terresa that some unknown person, with complete anonymity, will settle a trust to give her US $ 4 million, and in any case, Cayman Islands is not known for philanthropists operating from there; if Cayman Islands is known for anything relevant, it is known for an atmosphere conducive to hiding unaccounted wealth and money laundering, and that does not advance the case of the assessee. This is a jurisdiction which has double the number of companies than resident, most of which remain only on paper, and it will be no naïve to believe that these companies are located here, in a country with around 65,000 residents, for bona fide core activities, rather than the benefits of anonymity, secrecy and liberal tax laws. Cayman Island is one of the few jurisdictions in the world where public records of the beneficiaries of firms and companies, like GWU Investments Ltd., are not maintained, and it is only with effect from 2023, that is if the promises made by the Government of Cayman Islands can be believed at face value, that such public records will be maintained. That is an ideal situation, as on now, for holding the unaccounted monies through a web of proxy corporate entities. The only persons who are privy to vital information about these transactions are the persons who are privy to these transactions-maybe as owner, as settlor, as beneficiaries or as facilitators or even as accomplices in these manoeuvrings, and when they decline to share the correct information, and thwart further probe in the matter, investigations reach a cul-de-sac. The assessee before us is closely involved with the transaction and it is unconceivable that the assessee will have no direct knowledge of the owners of the underlying company and

settlors of the trust which has her, as she herself puts it, as beneficiary of such a huge amount. This inference is all the more justified when we take into account the fact that the assessee has been non-cooperative and has declined to sign the consent waiver. One of the arguments raised by the assessee, as set out in a chart showing arguments of the assessee- below paragraph 20 earlier in this order, that the assessee could not have performed the impossible act of signing consent waiver because she was not owner of the account is too naïve and frivolous to be even taken seriously. If the assessee was indeed not the owner of the account, there was all the more reason to sign the consent waiver form because it would have established that fact when the HSBC Private Bank (Suisse) Geneva was to decline the information on the basis of that consent waiver. A consent waiver signed by the assessee would have been infructuous in that case, and it could not have done any harm to the assessee. Consent waiver form does not prejudice the claim of the assessee that he does not own the account in question; all it does is, as can be seen from the extracts from consent waiver form format reproduced earlier, is that it waiver assessee's rights, if any, under the data protection and banking secrecy laws. The plea of the assessee, as noted earlier, is fit, if at all it is fit for anything, only to be rejected. It is only elementary that direct evidence of illegal transactions of the assessee, as indicated by Hon'ble Supreme Court in the case of Sumati Dayal (supra), ***"would be rarely available"*** *as such transactions* ***"take place in secret"****, and therefore, simply on the ground that such direct evidence is not brought on record by the revenue authorities, the assessee cannot go scot free. As observed by Hon'ble Supreme Court in the said case,* ***"it is upon the alleger to prove that it is so, ignores the reality"****. When we follow the path, as laid down by Hon'ble Supreme Court in the case of Sumati Dayal (supra), by* ***"considering surrounding circumstances and applying the test of human probabilities"*** *and donot take "a superficial approach to the problem", the inescapable conclusion is that the explanation of the assessee is only fit to be rejected. In the present case, there is even direct evidence available on record. As the base note categorically states, this is "****synthèse individuelle****" (individual synthesis, in literal meaning, which refers to 'individual's profile') and name of the person is Renu Tikamdas Tharani, and her address is under the heading* ***"Adresses de la personne physique****" (i.e. addresses of the natural person). In the heading* ***"Profils client lies a la personne"*** *(i.e. customer profiles linked to the person), GWU Investments Limited is shown as* ***Nom du profil client*** *(customer profile name) but then the same note shows* ***nature de profil*** *(i.e. profile nature) as Nominatif (nominative, or nominal) and that the Détails du lien (i.e. link details) between the individual and the company is that of* ***"beneficiary/beneficial ownership".*** *It is important to note that the reference to "link details" is in respect of customer profile name, which is stated to be GWU Investments Limited, and only an individual can be beneficiary of the company or beneficial owner of the*

company, and not the other way round. There is no reference to Tharani Family Trust at this stage and in this section of the base note. That comes at the fag end of the base note under the heading "personnes légales liées" (i.e. related legal persons). Clearly, therefore, the link details, or "détails du lien", are between the individual and GWU Investments Limited, and these link details clearly show that the assessee is a beneficiary and beneficial owner of the GWU Investments Ltd.

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

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

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

48. As regards the question of income which can be brought to tax in the hands of the assessee being a non-resident and certain errors in computations on account of duplicity of entries etc., we have noted that the learned CIT(A) has given certain directions which we have reproduced below paragraph 18 of this order, and neither these directions are challenged nor any infirmities are shown therein. Obviously, therefore, there is no occasion, or even prayer, for interference in the same.

*49. As we part with the matter, we have a couple of observations to make. The first observation is that we must add that though the hearing in this case was concluded on 28th January, 2020, in view of Covid-19 lockdown in Mumbai city- which is, for all practical purposes, still continuing, with limited functionality of our office, the order is being pronouncement today on 16th July, 2020. However, in the light of a coordinate bench decision in the case of **DCIT Vs. JSW Limited***

[2020] 116 taxmann.com 565[Mum], *the period of lockdown is to be excluded in computation of 90 days period. As further noted in the said order, Hon'ble Bombay High Court has observed that* ***"while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March, 2020 continues to operate shall be added and time shall stand extended accordingly"*** *and the said order continued to operate till 15th July, 2020. Viewed thus, this order is being passed within the permissible time limit in terms of Hon'ble High Court's directions. The second point is that this decision cannot be an authority for the proposition that wherever name of the assessee figures in a base note from HSBC Private Bank (Suisse) SA Geneva, an addition will be justified in each case. The mere fact of an account in HSBC Private Bank (Suisse) SA Geneva, by itself, cannot mean that the monies in the account are unaccounted, illegitimate or illegal. The conduct of the assessee, actual facts of each case and the surrounding circumstances are to be examined, on merits, and then a call is to be taken about as to whether the explanation of the assessee merits acceptance or not. There cannot be a short cut and one size fits all approach to this exercise.*

Our conclusions on correctness of addition of Rs. 196.46 crores in relation to HSBC Private Bank (Suisse) SA, Geneva

50. In view of the above discussions, and for the detailed reasons set out above, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter. The impugned addition of Rs. 196,46,79,146, in respect of assessee's account with HSBC Private Bank (Suisse) SA, Geneva, is thus confirmed."

5.10. The issues raised in appeal for the Assessment Year 2007-08 are identical to the issue raised in appeal for the Assessment Year 2006-07. Admittedly, the identical issues raised in both the Assessment Year arise from the same factual matrix. Common submissions were made before the CIT(A) for both the assessment years. For the Assessment Year 2007-08, the CIT(A) had followed the order passed by the CIT(A) in appeal for the Assessment Year 2006-07 which has since been confirmed by the Tribunal. Therefore, respectfully following the above decision of the Tribunal disposing of identical issues raised by the Appellant in the case of the Appellant for the Assessment Year 2006-07 and adopting the reasoning given therein, we confirm the action of CIT(A) upholding the validity of

reassessment proceedings and decline to interfere in the order passed by the CIT(A). As regards the submissions of the Appellant that the addition made by the Assessing Officer had resulted in taxation of same income twice since the addition has been made on the basis of peak balance without taking into consideration the amount already brought to tax for the Assessment Year 2006-07 in the hands of the Appellant is concerned, we note that the CIT(A) had already issued directions to the Assessing Officer in paragraph 5 & 6 of the order impugned to delete any duplicate addition of income/asset already assessed for the Assessment Year 2006-07 after verification. As per the directions issued by the CIT(A) the Assessing Officer may direct the Appellant to furnish detailed computation. When so directed, the Appellant would be at liberty to file detailed computation showing duplicate addition on account of income/asset already brought to tax in the hands of the Appellant for the Assessment Year 2006-07. The Assessing Officer shall examine such duplicate additions, and if satisfied, shall delete the same as per the order passed by the CIT(A). In view of the aforesaid we do not find any infirmity in the order passed by the CIT(A) and therefore, decline to interfere with the same. All the grounds raised by the Appellant in the present appeal are dismissed. We note that the Appellant had also raised Additional Ground vide letter dated 24/08/2022 alleging that the time limit for passing the order by the Assessing Officer to give effect to the directions given by CIT(A) has lapsed. However, in our view the Additional Ground raised by the Appellant neither arises from the order, dated 17/01/2018, passed by the CIT(A) impugned by way of present appeal, nor were the facts relevant to adjudication of the Additional Ground were available on record when the same was raised. For both the aforesaid reasons, the Additional Ground raised by the Appellant is not admitted and

dismissed.

6. In result, the present appeal preferred by the Assessee is dismissed.

Order pronounced on 30.10.2023.

Sd/-	***Sd/-***
(Prashant Maharishi)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.10.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai