IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA Nos.190 to 191/SRT/2023

Assessment Year: (2011-12 to 2012-13)
(Physical Hearing)

Shrifal Impex Private Limited, No.504, 5th Floor, H. No.6/B/1739-1380, Parshwa Complex Thoba Sheri, Mahidharpura, Surat – 395003.	**Vs.**	The ITO, Ward-2(1)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAOCS4409E**		
(Appellant)		**(Respondent)**

आयकर अपील सं./ITA No.250/SRT/2023

Assessment Year: (2014-15)

Shrifal Impex Private Limited, No.504, 5th Floor, H. No.6/B/1739-1380, Parshwa Complex Thoba Sheri, Mahidharpura, Surat – 395003.	**Vs.**	The ITO, Ward-2(1)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAOCS4409E**		
(Appellant)		**(Respondent)**

Appellant by	Shri Mehul Shah, CA
Respondent by	Shri Airiju Jaikaran, CIT(DR)
Date of Hearing	13/10/2023
Date of Pronouncement	29/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned three appeals filed by the assessee, pertaining to different Assessment Years (AYs) 2011-12, 2012-13 and 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), [in short "the ld. CIT(A)"], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No. 191/SRT/2023 for AY.2012-13, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by assessee as per "lead case", in ITA No.191/SRT/2023, are as follows:

> *"1. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in issuing notice u/s 148 of the Act and passing the assessment order u/s 143(3) r.w.s 147.*
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> *2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.1,92,19,31,021/- being disallowance on account of bogus purchase.*
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> *3. It is therefore prayed that the assessment u/s 143(3) r.w.s 147 may please be quashed and the additions made by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*
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> *4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course hearing of the appeal."*

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a Private Limited Company and has filed its return of income for A.Y.2012-13 on 21/09/2012 declaring total income at Rs.2,09,220/-. Subsequently, the case was selected for scrutiny and assessment order was passed u/s 143(3) of the Act on 31/03/2015 at returned income. In this case, information has been received dated 19.03.2018 from DDIT (Inv), Unit-1, Surat from this report it is found that information was received by the Pr. DIT(Inv.), Surat from DRI, regarding over in import / under invoicing in export with indication of money being stashed abroad in the case of Shrifal Pvt. Ltd. and Sudarshan Diamond Pvt Ltd. Physical verifications was also conducted by the office of the DDIT(Inv.)Unit-1 ,

Surat as well as the jurisdictional DRI. During physical verification the declared premised, did not belong to the company concerned as the same were on rent, no business activity being conducted from these premises and the same were merely used for address purpose for purpose of obtaining IEC and for bank purpose. It is very clear from the report by the DRI that no actual business activity was carried out by any of these two business concerns. All the transactions carried out were merely paper transactions only. Further two bank accounts of Stated Impex Pvt. Ltd., ING Vysya vis-a-vis A/c. No.550011039935 and A/c. No.200012860011 with Indusind Bank Ltd. were identified. The A/c. No.220011039935 with ING Vysa Bank Ltd. was operational from the period 16/07/2010 to 10/01/2017. During this period the said account was credited by way of RTGS / Transfer from various companies by total amount of Rs.249,31,54,699/- out of this, credit amount of Rs.89,71,14,561/- pertains to the F.Y.2011-12 relevant to A.Y.2012-13. After receipt of the muds through RTGS/Transfer, the same was utilized for funding various other firms/companies. Further it is also reported that the funds were also utilized for sending remittances to the overseas concern of amount of Rs.136,71,11,115/- for the period F.Y.2010 to F.Y.2016-17. Out of this, an amount of Rs.3,92,9,328/- was remitted to overseas concern for the F.Y.2011-12 relevant to AY 2012-13. The amount so received in this account from the various concerns viz. M/s. Astha Gems, M/s. Kesharia Diam Pvt. Ltd., M/s. Mery Impex, M/s. Kartik Diamond Pvt. Ltd, M/s. Gravity Impex Pvt. Ltd., M/s. Rajan Gems, M/s. Rajeshwari Gems Pvt. Ltd., M/s. Delight Gems & M/s. Arihant Exim, etc. All the accounts were credited by the way of tags RTGS/Transfer.

5. It is pertinent to mention here that Shrifal Impex Pvt. Ltd. was holding another A/c. No.200012860011 with Indusind Bank Ltd. was operational from the period from 2/02/2012 to 26/12/2014. During this period the said A/c. was credited by way of RTGS/Transfer from various companies by total amount of Rs.269,91,23,994/-, out of this, credit amount of Rs.30,11,85,000/- pertains to the F.Y.2011-12 relevant to A.Y.2012-13. Further it was also reported that apart from above, the funds were also utilized for sending remittances to the overseas concern of amount of Rs.160,80,30,210/- from this account from 20/03/2012 to 08/08/2013. The amount so received in this account from the various concerns viz, M/s. Shubh Impex, M/s Aadishwar Diamond Pvt. Ltd., M/s. Ganga Gems, M/s. Kothari Impex, M/s. Mexy Impex, M/s. Dhankober Exports Pvt. Ltd., M/s. Kesharia Diam Pvt. Ltd., M/s. Rajan Gems, M/s. Abhishek Gems Pvt. Ltd., M/s. Sangara Impex, M/s. Rajat Diamond Exim Pvt. Ltd., M/s. Keshav Diamond Pvt. Ltd., etc. All the accounts were credited by the way of huge RTGS/Transfer. On perusal of return of income filed for A.Y.2.012-13, it is noticed, that the company has shown to have been made total sales of Rs.202,45,41,899/-and total purchase of Rs.192,19,31,021/-. As per the report of DRI as well as DDIT (Inv.), Unit-1, Surat, the assessee was not doing any actual business. Therefore, the above transactions are nothing but only paper transactions. Further as reported, the assessee has filed the income tax return regularly but no genuine business activity was noticed at the addressed provided. In view of the above, transactions shown in the return of income is nothing but only accommodation entries and therefore purchase of Rs.192,19,31,021/- is nothing but bogus purchase only.

6. In view of the above, the case was re-opened u/s. 147 of the IT Act and notice u/s. 148 of the Act was issued to the assessee on 30/03/2019. In response to notice u/s. 148 of the Act the assessee filed its return of income on 26/04/2019 declaring total income at Rs.2,09,220/-. The assessee was provided copy of reasons recorded for reopening of case vide letter dated 25/05/2019 and notice u/s 143(2) of the IT Act dated 04/07/2019 issued to the assessee. Assessee vide letter dated 03/08/2019 filed objection against reopening of ease. Notice u/s. 142(1) of the Act along with annexure was issued on 27/08/2019 and requested to submit the compliance *on* or before 05/09/2019. Subsequently, objection filed by the assessee *vide* letter dated 03/08/2019 has been disposed of on 04/09/2019 by rejecting the same and requested to comply the notice issued earlier to furnish the details. In response to notices issued the assessee has not submitted any reply. Again, Notice u/s 142(1) of the Act issued on 04/09/2019 and requested to furnish the details called for on or before 09/09/2019. In response to, was requested on 10/09/2010 to adjourn the case and vide letter dated 11/09/2019, case was adjourn till 20/09/2010. Assessee vide letter dated 20/09/2019 submitted partly details in response to notice u/s 142(1) of the Act. Thereafter, notice u/s 142(1) of the Act issued to the assessee on 18/10/2019 requesting to furnish the details called for on or before 23/10/2019. In response to, no compliance made by the assessee on stipulated time. Therefore, show cause notice issued to the assessee on 05/11/2019 and requested to submit the reply on or before 12/11/2019. In response to, assessee vide letter dated 12/11/2019 submitted the details. During the course of assessment, proceedings, this office has issued Notices U/s, 133(6) of the IT Act on **14/11/2019** to various following third parties whom transactions were claimed to be made:

Sr. No.	Name of the concern whom notice	Status of reply	Findings

	issued U/s, 133(6) of the Act		
1.	S. K. International	No reply received	
2.	Vitrag Enterprises	No reply received	
3.	Vishal Oversee	No reply received	
4.	Varshit Enterprises	No reply received	
5.	Varan Industries Ltd	No reply received	
6.	S.K. Universal Pvt Ltd	No reply received	
7.	Sify Impex	No reply received	
8.	Shyam Diamond Pvt. Ltd	No reply received	
9.	Shree Charbhuja Diamond Pvt Ltd	No reply received	
10.	Shri Sai Jewels Pvt Ltd.	No reply received	
11.	Sanjivani Gerns Pvt. Ltd	No reply received	
12.	Raghukul Diamonds Pvt Ltd	No reply received	
13.	Radha Enterprises	No reply received	
14.	Nikhil Gems Pvt. Ltd	No reply received	
15.	Matrix Diamonds Pvt. Ltd	No reply received	
16.	Madhav Gems Pvt Ltd	No reply received	
17.	Laxrai Enterprises	No reply received	
18.	Khushi Gems Pvt. Ltd.	No reply received	
19.	Keshariya Diam Pvt. Ltd.	No reply received	
20.	Infinity Gems	No reply received	
21.	Gravity Impex	No reply received	
22.	G. Diam Jewels	No reply received	
23.	Vikas Dharntiehand Birawat	No reply received	
24.	Yashvi Gems Pvt. Ltd.	No reply received	
25.	Sudarshan Diamond Pvt. Ltd.	No reply received	
26.	Subhlaxmi Diamonds Pvt. Ltd	No reply received	
27.	Nakoda Exim Pvt. Ltd	No reply received	
28.	Bhavya Gems	No reply received	
29.	Anmol Diamonds	No reply received	
30.	Akshit Intpex Pvt. Ltd.	No reply received	
31.	Aadishwar Diamond Pvt. Ltd.	No reply received	

7. Further, during the course of assessment proceedings spot inquiry was conducted through inspector regarding business activities **of** the assessee company. In his report, the-Inspector has submitted that on inquiry it is found; that nobody stated that any business activities has been-ever seen in the name of Shrifal Impex Pvt Ltd. Presently, in the premise (as shown by the as its address) stock and share trading concern in **the** name of Mangal Keshav (DBN Investment) is doing its business since 5 years.

8. Further, on perusal of Return of Income filed by the assessee for A.Y.2018-19, it is noticed that the assessee has shown the same address i.e. 504, 5th Floor, H.No.6B/1379-1380, Parshwa Complex, Thoba Sheri, Mahidharpura, Surat, Further, on perusal of return of income it is found that the assessee has shown sales at Rs.4,54,30,968/-. It is contrary to the fact as reported by the inspector (report dated 22/12/2017) of Investigation Wing that on, the said address that the Shrifal Impex Pvt. Ltd. is never known at this address. In view of the above facts, a show cause notice was issued to the assessee on 22/11/2010 and was requested to furnish its reply on or before 27/11/2019. The Show-cause notice issued on. 22/11/2019 is reproduced hereunder:

> *"Kindly refer to the notice u/s 148 of the IT. Act issued to you on 30.03.2019.*
>
> *2. In the case of assessee company i.e. Shrifal Impex* Pvt. *Ltd.* an *information has been received from DDIT(Inv-1), Surat enclosing reference received from DRI regarding over invoicing in import under invoicing in* export *with indications of money being stashed abroad. DDIT(Inv)- 1, Surat.*
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> *On perusal of enquiry report, it is* found in *your case that during the year under consideration, i.e. AY 2013-14 relevant to A.Y. 2014-15 in your bank account No.550011039935 maintained with ING Vysva bank was credited by Rs.89,71,14,561/- and bank A/c No. 200012860011 maintained with Indusind Bank was credited of Rs.30,17,85,000/-, this fund was utilized for sending remittances to the overseas supplier concern which were rerouted to domestic firms and funding for various other firms/companies. The amount received in ING Vysya bank a/c from various firm including M/s. Astha Gems, M/s. Kesharia Diam Pvt. Ltd.,, M/s. Mery Impex, M/s. Kartik Diamond Pvt. Ltd., M/s. Gravity Impex Pvt. Ltd., M/s. Bajan Gems, M/s, Rajeshwari Gems Pvt. Ltd,, M/s. Delight Gems and M/s. Arihant Exim etc. and overseas supplier to whom remittances was sent is M/s Global Pascific corporation Limited, Hong Kong. The amount received in Indusind Bank from various concern M/s Shuba Impex, M/s Aadishwar Diamond Pvt. Ltd., M/s Ganga Gems, M/s Kothari Impex, M/s Mery Impex, M/s Dhankuber Exports Pvt. Ltd., M/s Kesharia Diam Pvt, Ltd., M/s Rajan Gems, M/s Abhishek Gems Pvt. Ltd., M/s San yam Impex, M/s Rajat Diamond Exim Pvt. Ltd., M/s Keshav Diamond Pvt. Ltd. etc. and utilized for sending the remittances to the overseas supplier firm viz, M/s Global Pacific corporation Limited, Hong Kong and the remaining funds are re-routed to the domestic firms.*

Ongoing through the aforesaid report it is observed that the assesses *could not be located on the registered address i.e. on 504, 5th floor H.No 6B/1379-1380, Parshwa complex, Thoba Sheri Mahidharpura, Surst-395003. Jurisdictional DRI conducted enquiry at the declared premises of the assessee and found that the premises did not belong to the firm concerned as the same were on rent, no business activity being conducted from this* premise *and the* same was *merely used for address purpose for purpose of obtaining IEC and for bank purpose.*

During the course of investigation, the inspector of Investigation wing of Income Tax Department Surat, visited the address of the i.e. on 504, 5th floor H. No 6B/1379- 1380, Parshwa complex, Thoba Sheri Mahidharpura, Surat- 395003 and he has reported that own inquiry in that area it is gathered that the assesses is never known at above address further it is observed that this address *belongs to M/s Shyam lasers (Diamond job work by Shri Prabhatbhai Navadia) which is being run on rent since 10-11 years. The Owner of business premise Shri Nareshbhai Bhikahabhai Patel who has also stated that he has never given to this premise to Shrifal Impex Pvt. Ltd and Sudarshan Diamond Pvt. Ltd. Further, during the course of assessment proceedings Inspector of this Ward* a/so *visited the above place i.e., on 504, 5th floor H. No SB/1379-1380, Parshwa complex, Thoba Sheri Mahidharpora, Surat- 395003.*

From the above it is apparent the assesses *has not conducted business activity from these premises and the same were merely used for address purpose of obtaining IEC and for bank* purpose, *Mil the transactions carried out merely paper transactions only. It* is *also investigated by DRI that address mentioned in IEC, i.e. office no. 104, Auto Commerce House, 1st Floor, Opp. Jyoti Studio, Hana Chowk, Mumbai was occupied by the assessee for table space on rental basis for short span of time only. No actual business was* carried *out at the said premises too.*

During the course of assessment proceedings inspector of *this office was deputed make field enquiry about the business and whereabouts of your company. Accordingly, field enquiry was carried out by the Inspector of Oils office. In the course of enquiry the fact as mentioned in DRI report as well as in report of investigation wing has confirmed that assesses is not doing any real business activity from addresses mentioned in its return of Income.*

In view of the above discussion it is evident that your company is non genuine company and involved in mere fictitious entry and not doing any actual business.

The your company has shown to have total sales of Rs.2,02,45,41,899/- and purchase of Rs.192,19,31,021/- in its return of income. As narrated above the your company was not carried out business activity, the purchase shown in the return of income to the tune of Rs.1,92,19,31,021/- is nothing but bogus purchase only.

Further, after various notices issued, you have submitted partly details vide letter dated 12/11/2019 in response to notice u/s 142(1) of the Act.

> ***You are requested to show cause*** *as to why the purchases during the year should not be treated as bogus accommodation entries and accordingly, as to why books of accounts should not be rejected u/s 145(3) of the Act, considering that above mentioned entries in purchases and sales were made with the moto of providing accommodation entries. It is also found that funds are raised through fictitious sales/purchase. In view of the above facts you are show caused as to why am amount of Rs.1,92,19,31,021/- should not added to your income.*
>
> *You* are *therefore requested to produce the above mentioned details on* ***27/11/2019 at 11:30 AM****. Please note if nothing has been submitted within stipulated time, it is presumed that you have nothing to say in this regard, to the case of failure to comply with this notice, the undersigned shall be compelled to complete the assessment proceedings on the of the record available with this office without intimation to you."*

9. In response to the above mentioned show-cause notice, AR of the assessee has submitted its reply vide letter dated 27/11/2019. The reply submitted by the assessee is as under:

> *We are submitting the reply to the above stated notice. Our submission should be considered with the conjoint reading and in line with the objections raised, earlier submissions made in the case and reply to show cause notice made on 12/11/2019 for show cause notice no. ITBA/AST/F/147(SCN)/2019-201019811891(1) Dt. 05/11/2019.*
>
> ***In Para 2 of the show cause notice***
>
> *Four good self has stated that "In the case of assessee company i.e. Shrifal Impex Pvt. Ltd. an information has been received from DDIT(Inv)-1, Surat enclosing reference received from DM regarding over invoicing m import/ under invoicing in export with indications of money being stashed abroad. DDIT(Inv)-1, Surat."*
>
> ***<u>Reply:</u>*** *As stated above in the notice it is worthwhile to mention that "In the information been received by your honour from DDIT(Inv)-1, Surat a reference received from DRI is enclosed regarding over invoicing in import/ under invoicing in export with indications of money being stashed abroad."*
>
> *The assessee has continuously demanded the copy of information relied upon for the rebuttal of the same. But your office has not provided, the copy of information which is the very basis of the reopening to the assessee.*
>
> *While disposing of the objections raised your good self has stated that "In this regard, it is stated that this is the Departmental internal procedure and confidential matter, Hence, it could not be provided to you. However, the copy of approval accorded by the Pr. CIT-2, Surat for re-opening the assessment of the assessee is provided to you and enclosed herewith."*

The documents by which the assessee is seriously being affected and which are the sole basis of addition, is recorded/ framed on the back of the assessee and not allowing them to put forth their case by countering the is seriously a violation of principle of natural justice, ***[26 ITR 775 (SC),125 TTR 713 (SC),*** *29 DTR 287 (Pune), 10 SOT 319 (Hyd) (TM)]*

The report of the DRI as stated by you is with regards to the over invoicing in import or under invoicing in export, does not say anything about genuineness of business of the It at the most can suppress the profits of the and has no more consequential bearings on the case.

Your honour had proposed to make the additions solely relying on the information received from DRI, Mumbai and Ahmedabad. The Investigating authority provided the information only on the basis of general statements of third parties recorded at back of the assessee whose copies had not been provided to the for confrontation. Further, since the statements of third parties as well as any tangible material which has been relied upon has not been provided despite of several specific requests we are unable to comment on the same and confront the same. Any specific information is provided in the same or it is general in nature and does not specify any specific incriminatory material against the assessee cannot be commented on. Nor any sort of assessee's involvement in any non-genuine bills or any other non genuine transactions is being proved by your office. You honour is once again requested to provide a copy of the alleged piece of contrary material and documentary evidences that is being used against the assessee. Also, your honour is requested to provide the copies of "As statements of the parties and allow the assessee an opportunity of cross examination of such parties.

The Hon'ble Apex Court and jurisdictional High Court in the cases of Andaman Timber Industries v. Comm. of Central Excise (CM Appeal No.4288/2006), H. R v. ACIT (Bom), Kishandchand Chellaram vs. CIT (125 FFR 713 (SC), CIT vs. JMD *Communications Pvt Ltd (320 ITS 17(St)(SC), R.W. Promotions Pvt Ltd vs. ACIT (Bom-HC), Sunil Aggarwal 64 taxmamt.com 107 (Del-HC)**.** Had decided that the statements of other parties cannot be relied unless an opportunity of cross examination is provided to the aggrieved party, thus the addition proposed to be made by Ld. AO solely relying on the statements is absolutely erroneous.*

In any case, the addition/disallowance cannot be made merely on relying on the observation of DDIT(Inv), Unit -1, Swat and other authorities;

The heavy onus is cast on the assessing authority to justify, with documentary evidence, to prove the alleged bogus purchases and/or of the non-genuine business transactions. In absence of the contrary credible documentary evidence, accordingly the proposed addition would be seriously is unjustified. ***(92 TTJ 726 (Ahd), 31 DTR 456 (Jp), 141 TTJ 305 (Del), 10 DTR 281 (Jp);***

In ***CIT v. Sunita Dhaddha SLP(Civil) No.9432/2018 dt. 28/03/2018 (SC)*** *"The honourable Supreme Court held that if the AO wants to rely upon*

documents found with the third parties, the presumption u/s 292C against the assessee is not available. As per the principles of natural justice, the MO has to provide the evidence to the assessee & grant opportunity of cross examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The violation of natural justice renders the assessment void. The Dept. cannot be given second chance."

Your good self has further stated that *"On perusal of enquiry report, It is found in your case that during the year under consideration, i.*e. *F.Y. 2013-14 relevant to AY. 2014-15 in your bank account No. 550011039935 maintained with M.G Vysya bank was credited by Rs 89,71,14,561/- and bank A/c No. 200012860011 maintained with Indusind Bank was credited of Rs.30,17,85,000/-, this fund was utilized for sending remittances to the overseas supplier concern which were rerouted to domestic firms and funding for various other firms/companies. The amount received in MG Vysya bank a/c from various firm including M/s, Astha Gems, M/s. Kesharia Diam Pvt. Ltd., M/s. Mery Impex, M/s. Kartik Diamond Pvt. Ltd., M/s. Gravity Impex Prt. Ltd., M/s. Rajan Gems, M/s. Rajeshwari Gems Pvt. Ltd., M/s. Delight Gems and M/s. Arihant Exim etc. and overseas supplier to whom remittances was sent is M/s Global Pascific corporation Limited, Hong Kong. The amount received in Indusind Bank from various concern M/s Shubh Impex, M/s. Aadishwar Diamond Pvt. Ltd., M/s Gangs Gems,. M/s Kothari Impex, M/s Mery Impex, M/s Dhankuber Exports M, Ltd,, M/s Kesharia Diam Pvt, Ltd,, M/s -R&jan Gems, M/s. Abishek Gems Pvt Ltd., M/s Sangam Impex, M/s Rajat Diamond Exim Pvt. Ltd, M/s Keshav Diamond Pvt Ltd. etc. and utilized for sending the remittances to the overseas supplier firm viz. M/s Global Pacific corporation Limited, Hong Kong and the remaining funds are re-routed to the domestic firms.*

<u>Reply:</u> As *stated above in the notice it is worthwhile to mention that* none *of the enquiry report has been shared with the assessee to counter the same or to put forth their case.*

Your good self in the notice has mentioned that the on perusal of the enquiry report, it m found *that during the year under consideration, F.Y.2013-14 relevant to A.Y. 2014-15 but the* case *has been reopened for the Financial Year 2011-12 relevant to Assessment Year 2012-13. Hence the challenges the validity of enquiry report if any, the copy of which Ms not been supplied to the assessee.*

The assesses has submitted details of all the bank accounts maintained by them in reply dated 20/09/2019 which covers both the accounts stated above and copy of bank accounts has been submitted with reply dated 12/11/2019, m copies were *earlier not asked for. The assessee company is engaged* in *the genuine business of imports and trading of diamonds and related goods. The assessee had regularly filed its return of income and its entire business has been accepted as genuine m all assessments done form your office. The assessee had regularly maintained the audited books of accounts, bills, statements and vouchers (copies furnished on record) and there is no fault*

found in such audited books of accounts, documents, etc. The bank accounts and their transactions are duly accounted in the books of accounts and are audited by a qualified chartered accountant.

The assesses company In the original assessment proceedings as well as reassessment proceedings has submitted Audit Report and Audited Balance Sheet and Trading Profit & loss A/c along with all the annexures, Party wise details of purchases along with their address, Purchase Register, Party details of sales along- with their address and sales register which .covers all the parties, whom with the transactions has been made.

The assessee on furnishing the above stated documents had thoroughly discharged its onus to prove the genuineness of the business transactions and purchases and payments made thereon.

The parties covered are duly accounted and receiving the sum from the debtors and making payment to the creditors is not an act to avoid the tax liabilities. There is no any evidence famished to the assesses to counter the same that ***fund was utilized for sending remittance to the overseas supplier concern which were rerouted to domestic firms and funding for various other firms/companies.*** *If your good self is having such kind of material information same should be furnished to the assessee for their counter submissions for the sake of natural justice.*

Your good self has further stated that "Ongoing through the aforesaid report it is observed that the assessee could not be located on the registered address i.e. on 504, 5th floor H.No SB/1379-1380, Parshwa complex, Thoba Sheri Mahidharpura, Surat- 395003, jurisdictional DRI conducted enquiry at the declared premises of the assesses and found that the premises did -not belong to the firm concerned as the same were on rent, no business activity being conducted from this premise and the same was merely used for *address purpose for purpose of obtaining IEC and for bank purpose. During the course of investigation, the inspector of Investigation wing of Income Tax Department Surat, visited the address of the assessee Le. on 504, 5th floor H.No 6B/1379-1380, Parshwa complex, Thoba Sheri Mahidharpura, Smmt-395003 and he has reported that own inquiry in that area it is gathered that the assessee is never known at above* address *further it is observed that this address belongs to M/s Shyam lasers (Diamond job work by Shri Prabhubhei Navadia) which is being ran on rent since 10-11 years. The Owner of business premise Shri Nareshbhai Shikahabhai Patel who has also stated that he has never given to this premise to Shrifal Impex Pvt. Ltd. and Sudarshan Diamond Pvt. Ltd. Further, daring the course of assessment proceedings Inspector of this Ward also visited the above place i.e. on 504, 5th floor H.No 6B/-1379-1380, Parshwa complex, Thoba Sheri Mahidharpum, Surat- 395003."*

Reply: *stated above in the notice it is a fact that the said premises "504, 5th floor H. No 6B/1379-1380, Parshwa complex, Thoba Sheri Mdudhaipura,* Surat- *395003", is on rent. The rent deed for the year has been executed in the name of the directors of the company namely Shri Sanjay V. Jain and*

Vijay V. Jain, Copy of the rent agreement is being famished to your good self as ***Annexure-I.***

The statements or presumption of report of DRI and Inspector of Investigation Wing of Income Tax contradicts each other. As stated by your good self the report of DRI says ***"that the premises did not belong to the firm concerned as the same*** **were** ***on rent"*** *and the report of the Inspector of Investigation Wing of Income Tax contains that* ***"assessee is never known at above address".*** *Since the address was rented to the directors of the company there may be the case that company's name is not known over there.*

Your good self has further stated that *"During the course of assessment proceedings inspector of this office was deputed make field enquiry about the business and whereabouts of your company. Accordingly, field enquiry was* carried *out by the Inspector of this office. In the course of enquiry the fact as mentioned in DRI report as well as in report of investigation winy has confirmed that assesses is not doing any real business activity from addresses mentioned in its return of Income."*

Reply: *stated above "inspector of this office was deputed make field enquiry about the business and whereabouts of your company," No such report has been made available to the assessee to counter the same which would amount to serious violation of principle of natural justice.*

assesses has in the mode of closing down its business since last three years and any enquiry made after 01.04.2016 will result in futile as the business does not remained, operative in full fledged manner.

The assessee would like to further submit as under:
Submissions:

The assessee company is engaged in the genuine business of imports and trading of diamonds and related goods. The assessee *had regularly filed its return of income and its entire business has been* accepted as *genuine in all assessments done form your office. The assessee had regularly maintained the books of accounts, bills, statements and vouchers (copies furnished on record) and there is no fault found in such audited books of accounts, documents, etc. and therefore the allegation* slated in *show cause that the is not engaged in genuine business is devoid of merits;*

In support of the fact, that the assessee company is engaged into genuine *business activities, the understated documents are relied upon:-*

a) Party wise details of purchases along with their address (Annexure -A,);
b) Party wise details of sales along with their address (Annexure - B);
c) Purchase register (Annexure - C);
d) Sale register (Annexure - D);
e) Bank statements (Annexure - E),
f) Stock register (Annexure - F),

g) Audited balance sheet and. tax audit report (Annexure - G)
h) Copy of Rent Agreement (Annexure - I)

The on furnishing the above stated documents had thoroughly discharged its onus to prove the genuineness of the business transactions and purchases and payments made thereon. In case any contrary documents are *available on record, then, the copies of such documents may kindly be provided to the assessee for rebuttal M various communications made to your office the same has been demanded but has not been provided for the rebuttal of the same,* ***[28 ITR 775 (SC), 125 TTR 713 (SC), 29 DTR 267 (Pune), 10 SOT 319 (Hyd) (TM)};***

2. Rebuttal to allegation made by DRI

As *regards the allegations made by DRI that the assessee had not conducted genuine business from its premises and consequential allegations made in your various notices the assessee humbly submits as under:*

a. The entire show cause notice dated 14/08/2017 issued by DRI is a mere *notice catting for the information and explanation from the and other parties and such show cause notice cannot be considered as a final order. Therefore, reliance cannot* be *placed by the IT authorities on mere relying on the show cause notice issued by DRI which is subject to adjudication and final order. The assessee, in reply to such DRI's show had furnished its reply on 11/09/2017 (copy enclosed as annexure - H)* and *had disproved the entire allegations made by DRI. The DRI till date had not passed any order against the assessee and such fact could be verified by your office by issuing the notice u/s. 133(6) to the DRI's office;*

b. The entire show cause notice issued by DRI on 14/8/2017 does not pertain to the period *of impugned assessment. The allegations in DRI's show cause notice is that the assessee had made 2 import transactions on 06/09/2012 and 30/08/2012 which pertains to Asst years 2013-14. The alleged information of imports pertaining- to A.Y. 2013-14 would not hold any adverse bearing to the impugned year (A.Y. 2012-13);*

c. The had retracted to all Ms earlier statements and denied all the allegations on Sting the reply furnished before Addl. Commissioner of Customs on 11/09/2017 (copies enclosed);

d. The DRI had not doubted about the genuineness of the business activities of the assessee, however had alleged that the assessee had not carried the import business from the premises which had been registered under Import Export Code (IEC). The mere dispute about imports made from the premises registered under the IEC code would not mean that the entire business of the assessee is not genuine. As per pages no. 11 (para so. 11.2), page no. 31 (para 37.9), page no. 32 (para 37.15), page no. 45 (para 40.5), page no. 48 (para 40.60) and page no. 62 (para 50) of the DRI show cause, the DRI had disputed about only 2 consignments of imports dated 06/09/2012 and 30/08/2012 (pertaining to AY.2013-14) and there is absolutely no dispute, in

respect of imports and other purchases made during impugned year and other years;

e. The statements of Shri San/ay Jain and others would also not have adverse bearing to *the assessee for impugned year since the said directors stated that the 2 disputed import transactions were made on profits. The said director had never stated that the other imports of business of the assessee are non-genuine;*

f. The allegation that Shri Vijay Kotbari is the mastermind pertains only to the 2 disputed, import transactions since the funds to import such 2 transactions were *provided by him and such person and other persons, at no stretch of imagination, could be held as the controller of the entire business of the assesses.*

g. As *the DRI's show cause notice dated 14/08/2017 is a mere preliminary show cause which is subject to adjudication and is not the final order and* since *the assesses had famished its reply on disputing the allegations and retracting the statements and since the final order had not been passed against the-assesses as on date and moreover since the dispute raised by DRI pertains only to 2 import 'transactions relating to A.Y. 2013-14, thus the entire business of the assessee could not be held as non-genuine and therefore the serious allegations made in the show cause notice is devoid of merits;*

3. ***Without prejudice****, the* assessee *submits that the concept of real income be adopted and only the profits embedded in .the disputed purchase could be brought to tax. The proposed additions of entire disputed purchases would be seriously unjustified and would result into a high pitch assessment since there exists corresponding sales against the disputed purchase. The assessee is a pure trader of diamonds* and *against each sales, there certainly exists the purchase. In short, if the of the assesses are held as genuine, then there has to be corresponding purchase. The had furnished the complete quantity tally along with the tax audit report. Also, the copies o/ the Party wise details of purchases along with their address, purchase* register, *Party wise details of* sales *along with their address, sales register, stock register, bank statements and Audited balance sheet and tax audit report are filed on record in the earlier submissions made to your office and once again filled with this reply.*

The repeats that there cannot be a case of only sales of traded foods *without corresponding purchase. In short, if there is a sale, then it is required to the presumed that there would be a corresponding purchase against such sale. In impugned case, there is* a *nexus of the accepted genuine sales with disputed purchases, thus the addition of entire disputed purchase of Rs.1,92,19,31,021/- would be seriously unjustified and utmost the real profits embedded in the disputed purchase could utmost be brought to tax. {38 Taxmann.com 38S (Guj), 355 ITR 290 (Guj), 283 ITR 610 (MP), 304 ITR 52 (MP), 258 ITR 654 (Guj)}.*

The assesses *makes a prayer to adopt the concept of real income and estimate the disallowance of meager amount which would take care of alleged non-genuine purchase. Even in a case of best judgement assessment u/s 144, the total income is estimated on the basis of honest guess work as per normal profit margin prevailing in the Industry, [Kachwala Gems-288 ITR 10(SC)]. In impugned* case, *there corresponding sales against disputed purchases. There is no doubt about the genuineness of sales and there cannot be a case of sales without purchase.*

The assessee relies on understated direct judicial decisions:-

<u>Only profit embedded in ingenuine purchase could be brought to tax</u>

a. CIT vs. Simit P. Sheth 38 Taxmam.com 385 (Guj-HC)

"Assessee was engaged in business of trading in-steel on wholesale basis - Assessing Officer having found that some of alleged suppliers of steel to assesses had not supplied steel to assessee but had only provided bills, held that purchases made from said parties were bogus - He, accordingly, addled entire amount of purchases to gross profit of assessee - Commissioner (Appeals) having found that assessee had! indeed made purchases, though not from named parties but other parties from grey market, sustained addition to extent of 30 per cent of purchase cost as probable profit of ~ Tribunal however, sustained addition to extent of 12.5 per cent - Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to income - Meld, yes"

b) CIT vs. Bholanath Poly Fab Pvt ltd 355 ITR 290 (Guj-HC)

"Tribunal held that though purchases were from bogus parties, nevertheless purchases themselves were not bogus- Tribunal held that entire quantity of opening stock, purchases and quantity manufactured were sold by the assessee thus finished goods were purchased by assessee, may be not from the parties shown in accounts, but from other sources-Thus not entire amount, but profit margin embedded m such amount would be subjected to tax-Held"

c) CIT vs. President Industries 258 ITR 654 (Guj - High court)

"It cannot be a matter of an argument that the amount of safes *by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which M has already incurred the cost. It is the realisation of* ***excess*** *over the cost incurred that only forms part of the profit included in the consideration of sales."*

d) CTT vs. Balchand Ajit Kumar 135 Taxman 180 (High Court - MP)

"It cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case net profit rate of fire per cent has been applied, it is not appropriate that the same requires to be enhanced. It is high. In any case, it cannot be said that there has been perversity of approach."

Even in case of best judgment assessment, a honest and fair estimate of income should be made

e) Kachwala Gems vs. JCIT 288 ITR 10(SC)

"It is well settled that in a best judgment assessment there is always a certain degree of guesswork. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a *best judgment assessment, and should not act totally arbitrarily."*

In absence of contrary evidences, disallowance of purchase cannot be made.
f) CIT vs. Nikunj Eximp Enterprises (P) Ltd 35 Taxmann.com 384 (Bom-HC)
Confirmed by Hon'ble Apex Court in Civil appeal no. 14828/2013 on ***30/08/2013***
g) CIT v. Nangalia Fabric Pvt. Ltd. 40 Taxmamt.com 206 (Guj-HC)
h) DCIT vs. Majeev G. Kalathil ITA No. 6727/ Mum/ 2012

Without prejudice to *the above and without accepting the allegations, the assessee submits even if it is held that the business of the assessee is non-genuine, then only the commission/brokerage on the alleged accommodation transactions could be brought to tax. Accordingly, if it is held that the sellers and buyers related to the assessee's transactions had issued/received the accommodation bills, then only the commission earned on such transactions could be brought to tax. The concept* of real *income needs to be adopted and thus only the real profit of allied non-genuine purchase could be brought to tax. Even in a* case of *best judgement assessment u/s 144, the total income is estimated on the basis of honest guess work as per normal profit* margin *prevailing- in the Industry. [Kachwala Gems - 288 ITR 10 (SC)].*

In view of the above, **a** ***humble and respectful prayer is made;-***
A, To treat the business of the assesses *company as genuine and not to make any additions/disallowance of the purchases of Rs.1,92,13,31,021/-;*
Or

B, Without prejudice, to estimate the embedded profit at market rate prevailing in the market in this type of business on gross transaction value in case the business of the is held as non genuine.

for which assessee would ever remain grateful and oblige."

10. However, the assessing officer rejected the contention of the assessee and observed as follows:

(i) No actual business carried out by the assesses at the premises mentioned in its return of income which was proved during the course of investigation made of DRI, Investigation Wing as well field enquiry made by this office.

(ii) During the course of assessment proceedings, notice u/s 133(6) of the I.T. Act issued to various entities from whom, the assessee had claimed to purchase/sales. The said notices were un-served/un-complied except one. All the concerns except one have not submitted any reply till date in response to notice u/s 133(6) of the I T, Act. It is pertinent here to mention here that, these parties are having business transaction of purchase and sales, therefore it is apparent that non compliance of notices issued u/s 133(6) of the I.T. Act, shows that genuineness and identity and creditworthiness of these concerns are doubtful, It is also pertinent to mention here the third party who has submitted their replies are not having sale/purchase transactions.

(iii) Subsequently inspector of this office was deputed enquiry about the business and whereabouts of assessee-company. It was reported by the inspector that in the aforesaid premises no business activity has been seen in the name of Shrifal Impex Pvt. Ltd. and also no one identify about the company. It is gathered that in this premise a business of stock and share trading concern is currently doing its in the name of Mangal Keshav investment) since 3 years. In the course of enquiry the fact as mentioned in DRI report as well as in report of investigation wing and inspector report of this has confirmed that assessee is not doing any real business activity from addresses mentioned in its return of Income. Further it is gathered that the from whom have claimed to have made purchases from local Surat based companies are also mere

paper company. The assessee company has not performed any business on the address available on record.

(iv) In this ease, information has been received dated 19.03.2018 from DDIT (Inv), Unit-1, Surat from this report it is found that information was received by the Pr. DIT (Inv), Surat from DRI, regarding over in import / under invoicing in export with indication of money being stashed abroad in the case of Shrifal Impex Pvt. Ltd. and Sudarshan Diamond Pvt. Ltd.

Physical verifications was also conducted by the office of the DDIT (Inv.), Unit-1, Surat as well as the jurisdictional DRI. During physical verification the declared premised did not belong to the company concerned as the same were on rent, no business activity being conducted from these premises and the same were merely used for address purpose for purpose of obtaining IEC and for bank purpose. It is very clear from the report by the DRI that no actual business activity was carried out by any of these two business concerns. All the transactions carried out were merely paper transactions only. Further two bank accounts of Shrifal Impex Pvt. Ltd. ING Vysya vis-a-vis A/c. No. 550011039935 and A/c. No.200012860011 with Indusind Bank Ltd. were identified.

The A/c. No. 550011039935 with ING Vysa Bank Ltd., was operational from the period 16/07/2010 to 10/01/2017. During this period the said account was credited by way of RTGS / Transfer from various companies by total amount of Rs.249,31,54,699/- out of this, credit amount of Rs.89,71,14,581/- pertains to the F.Y.2011-12 relevant to A.Y.2012-13. After receipt of the funds through RTGS/Transfer, the same was utilized for funding various other firms/companies. Further it is also reported that the funds were also utilized for sending remittances to the overseas concern of amount of Rs.136,71,11,115/- for the period

F.Y.2010 to F.Y.2016-17. Out of this, an amount of Rs.73,92,69,328/- was remitted to overseas concern for the F.Y.2011-12 relevant to AY 2012-13. The amount so received in this account from the various concerns viz. M/s. Astha Gems, M/s. Kesharia Diam Pvt Ltd., M/s. Mery Impex, M/s. Kartik Diamond Pvt. Ltd, M/s. Gravity Impex Pvt Ltd, M/s Eajan Gems, M/s Rajeshwari Gems Pvt, Ltd., M/s. Delight Gems & M/s. Arihant Exim, etc. All the accounts were credited by the way of huge RTGS/Transfer.

It is pertinent to mention here that Shrifal Impex Pvt. Ltd. was holding another A/c. No. 200012860011 with Indusind Bank Ltd, was operational from the period from 27/02/2012 to 26/12/2014. During this period the said A/c. was credited by way of RTGS/Transfer from various companies by total amount of Rs.269,91,23,994/-, out of this, credit amount of Rs.30,17,85,000/- pertains to the F.Y.2011-12 relevant to A.Y.2012-13. Further it was also reported that apart from above, the funds were also utilized for sending remittances to the overseas concern of amount of Rs.160,80,30,210/- from this account from 20/03/2012 to 08/08/2013. The amount so received in this account from the various concerns viz. M/s. Shubh Impex, M/s. Aadishwar Diamond Pvt. Ltd., M/s. Ganga Gems, M/s. Kothari Impex, M/s. Mery Impex, M/s. Dhankuber Exports Pvt. Ltd., M/s. Kesharia Diam Pvt. Ltd., M/s. Rajan Gems, M/s. Abhishek Gems Pvt. Ltd., M/s. Sangam Impex, M/s. Rajat Diamond Exim Pvt. Ltd., M/s. Keshav Diamond Pvt. Ltd., etc, AH the accounts were credited by the way of huge RTGS/Transfer.

(v) Inquiry/verification/searches conducted by DM in the registered office i.e, House No 68/1379-1380, 504 parshva complex 5th floor, Thoba Mahidharpura Surat. During the course of the enquiry statement of Shri Bhikhabhai Patel owner of premises 1379-1380, parshwa Complex, Thobha Sheri, Mahidharpura Surat was recorded under

section 108 of the Customs Act, 1962 on 04/07/2017, wherein he interalia stated that he was one of the owner of Parshwa Complex alongwith other namely Shri Manishbhai, Shri Rameshbhai, Shri Keturnhai, Shri Jaswantbhai, Shri Vijaybhai, Shri Mansukhbhai, and does not know anything regarding the Shrifal Impex Pvt Ltd or any of its owners/ directors, that he had neither given any place on rent to the Shrifal Impex Pvt Ltd nor the said company was working at the said address and he was unaware as to how this company was got registered at the said address.

(vi) Further the assessee quoted various decisions in its submission, but facts and circumstances of assessee case is different from those mentioned in the said judicial pronouncements, therefore not applicable for Assessee Company.

(vii) The assessee has taken the plea that the transactions with the above parties were genuine having made through account payee cheques. In this regard, it would be necessary to note that this argument of the assessee cannot be taken into believe since in various case laws it has been held that **"mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transacted genuine [Precision Finance Pvt. Ltd. vs. CTT - 208 ITR 465 (Cal).]".** The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.

(viii) As to assessee's request for cross-examination witness it is stat© that if there are sufficient other collateral evidences, then mere not allowing cross examination would not be prejudicial. Here it is to be mentioned that unlike criminal proceedings where the charge has to be proved beyond doubt, income-tax proceedings are quasi-Judicial, Tax liability in cases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances,

human conduct and preponderance of probabilities as held by ITAT DELHI BENCH 'B'; NEW DELHI to the case of Shri Hersh W. Chadha in I.T.A.Nos.3088 to 3089 & 3107/Del/2005.

(a) Unlike criminal proceedings where the charge has to be proved beyond doubt, income-tax proceedings are quasi-judicial. **Tax liability in eases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of probabilities;**

(b) **Rules of existence do mot govern Income tax proceedings and the AO is not fettered or bound by technical rules** contained in the Indian Evidence Act and is entitled to act on material which may not be accepted as evidence in a court of law;

(c) **In clandestine transactions, it is to have direct evidence at demonstrative proof of every move and when the assessee is not forthcoming with proper facts and chooses to be elusive and evasive, the AO has no choice tat to take, recourse to estimate.** The only caveat, is that it should be reasonable -and based on material available on record. It should not. be perverse or based merely on conjectures.

The ITAT Mumbai, 'SMC Bench' **Arvind Balkrishna Goregonkar vs. ITO 21(2)(1) vide order dated 03/01/2018** has also held if there are sufficient other collateral evidences, then mere not allowing cross examination would not be prejudicial.

11. It is obvious from the course of enquiry the fact as mentioned in DRI report as well as in report of investigation wing and inspector report that the has not doing any business activity from addresses mentioned in its return, of Income. The assessee company is still showing its address in return of income for 2018-19, similar to A.Y

2011-12 i.e. 504, 5th floor Parshwa Complex, Thoba Sheri Mahidharpura Surat. All the reports vis-a-vis DRI or DDIT (Inv), Surat and Inspector it is seen that no business has ever performed by the assessee company from the said premises. All the above facts clearly establish that the assessee company is engaged in the activities of bogus purchase/sale. None of the purchases and sales shown by the company is genuine. As such the books result of the company cannot be trusted. Therefore, the books of account of the assessee company are rejected u/s 145(3) of the Act. As already stated, the assesses company is engaged in providing accommodation, entries in both sales and purchases, therefore, total purchases reported at Rs.1,92,19,31,021/- are bogus purchases and therefore, amount of Rs.1,92,19,31,021/- shown as purchases was considered as bogus purchases and was added to income of the assessee u/s 143(3) of the Act, dated 31/03/2015.

12. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has confirmed the action of the Assessing Officer by adjudicating various aspects/arguments raised by the assessee, as follows:

(i) The ld. CIT(A) held the reopening of assessment, in assessee`s case is valid. The findings of ld CIT(A) are as follows:

> ***"DECISION-I:***
> *7.2.13 However, at this juncture, it is important to note that the Hon'ble High Court has not overruled the decision of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) or for that matter; the Hon'ble High Court has no power to overrule the proposition of law laid down by the Hon'ble Supreme Court. Accordingly, considering the relevant facts and circumstances of the case from proper prospective, I am of the considered opinion that the proposition of law laid down by Hon'ble Supreme Court is applicable mutatis mutandis to the instant case at hand, wherein the AO had rightly communicated the reasons for reopening to the assessee, Immediately after the assessee sought for the same, that too, consequent to filing of the return of Income in response to notice issued u/s. 148 of the Act.*

7.2.14 To be precise, the assessee filed the letter seeking reasons for reopening, vide letter/fated 26.04,2019, and the AO communicated the same, vide letter dated 25.05.2019. Thus, it is amply clear that within a period of 30 days from the date of receipt of letter from the assessee, the AO communicated the reasons for reopening and, therefore, by any stretch of imagination, it cannot be termed a period of 30 days as not within a reasonable period of time as laid down by Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra), The same is the case in respect of reliance placed by assessee on the decision of Hon'ble ITAT Delhi in the case of Balwant Rat Wdhwa (supra) inasmuch as, facts involved in the said case are totally distinguishable,

7.2.15 In view of the above, due to distinguishable facts and circumstances of the case at hand, the reliance placed by the assessee on the decisions of the Hon'ble Delhi High Court and Hon'ble ITAT, Delhi (supra) are of no help to the assessee. Accordingly, t am of the considered opinion that, in the instant case, the AO has scrupulously followed the proposition of law laid by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) in providing reasons for reopening of the assessment to the assessee within a reasonable period of time. Thus, the ground of appeal raised by the assessee on this issue is dismissed as not maintainable.

7.3 ***Ground Mo.2: issuance of notice u/s. 148 of the Act is bad in law without recording of appropriate satisfaction:***

"On the facts and circumstances of the case, the learned assessing officer erred in issuance of notice u/s 148 without recording of appropriate satisfaction as required by provisions of section 151 and therefore,, the notice itself is bad in law."

7.3.1 It is the contention of assessee that the notice u/s. 148 of the Act was issued by the AO without recording proper satisfaction by the sanctioning authority u/s. 151 of the Act. To be precise, the assessee submitted that the AO forwarded a proposal seeking approval for issue of notice u/s. 148 of the Act to the Pr.CIT-2, Surat, through the Range Head i.e., Addl. CIT Range-2(1), Surat. In this regard, the assessee obtained a copy of proposal dated 18.03.2019, along with a satisfaction recorded by the Pr.CIT and the Range Head. On the basis of satisfaction recorded by the Pr.CIT, the assessee opined that there is no judicial satisfaction arrived at by Pr.CIT except to the extent of granting an administrative approval inasmuch as, the approval note does not even brings out what was the material made available before the Pr.CIT for the purpose of obtaining his satisfaction. While doing so, the assessee reproduced the satisfaction recorded by the Pr.CIT ***"Yes, I am satisfied with the reasons recorded by the AO that it is a fit case for issue of notice u/s.148 of the IT Act."***

7.3.2 Also, the assessee opined that the Pr.CIT has mechanically recorded the permission and not given the satisfaction as per the provisions of section 148 of the Act and, therefore, the notice u/s. 148 of the Act was bad

in law and, as a natural corollary, the assessment proceedings completed on the basis of impugned notice need to be quashed, in this regard, the assessee placed reliance on various judicial precedents.

7.3.3 I have given my thoughtful consideration to the submissions made by the assessee and examined the same in the light of the factual matrix of the case. At the outset, as per the provisions of the section 147 and 148 of the Act, it is mandatory on the part of the AO, wherein the assessment is being reopened after expiry of 4 years from the end of the relevant AY, to obtain prior sanction of the Administrative Commissioner of income Tax and above in terms of section 151(1) of the Act.

7.3.4 Accordingly, in the instant case, as per the Standard Operating Procedure (SOP) laid down by the Department, the AO recorded his reasons in writing for initiating proceedings u/s.147 of the Act and forwarded the proposal in the prescribed proforma to the Pr.CIT through the Range Head on 18.03.2019. While doing so, the AO recorded elaborate reasons as to why he had reason to believe that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act and the same was duly enclosed to the proforma as ***Annexure-A****.*

7.3.5 Further, the said proposal was received in the office of Range Head and, after perusing the reasons recorded by the AO, the Range Head made his forwarding comments that "Recommended" As seen from the satisfactory note, it appears that the Range Head has recommended the case for issue of notice u/s.148 of the Act on 20.03.2019. On the other hand, it is interesting to note that in the written submissions the assessee stated that the Range Head had made his forwarding remarks as ***"Yes, I have examined the material on record and in view of the merit of the facts, I am satisfied with the reasons recorded by Assessing Officer, it is a fit case for reopening u/s.148 of the Act".*** *However, as per the documentary evidence furnished by the assessee itself, the Range Head has only mentioned "Recommended". it appears that the assessee has copy pasted the forwarding remarks of the Range Head made in the proforma forwarded by the AO for AY 2011-12, implying that the assessee/AR of the assessee has drafted the written submissions mechanically without proper application of mind.*

7.3.6 At this juncture, it may be noted that the said satisfaction/recommendation recorded by the Range Head is only a mere formality, since the proposal is being forwarded to the sanctioning authority i.e., Pr.CIT through proper channel wherein the Range Head is the immediate superior of the AO. As such, in terms of the statutory provisions governing sanction of permission to issue notice u/s.148 of the Act, wherein the assessment is being reopened after the expiry of four years after the end of the relevant AY, the Range Head cannot grant permission u/s. 151(1) of the Act. In view of this, I am of the considered opinion that there is no much relevance as far as the quality of satisfaction recorded by the Range Head in his forwarding note being sent to the Pr.CIT, being the sanctioning authority, in the instant case.

7.3.7 As far as satisfaction recorded by the sanctioning authority i.e., Pr.CIT, I have carefully perused the same and found that the authority concerned has recorded his satisfaction on 26.03.2019, after having examined the detailed reasons recorded by the AO and in unequivocal terms recorded his satisfaction stating that "On perusal of the reasons recorded by the Assessing Officer, all the relevant facts and information available, I am satisfied that this is a fit case for the issue of notice u/s.148 of the Income Tax Act, 1961". Accordingly, after obtaining the approval of the sanctioning authority, the AO issued the notice u/s.148 of the Act on 30.03.2019. At this juncture, it is interesting to note that in the written submissions, the assessee stated that the Pr.CIT had recorded his satisfaction as follows- ***"Yes, I have examined the material on record and in view of the merit of the facts, I am satisfied with the reasons recorded by Assessing Officer, it is a fit case for reopening u/s.148 of the Act".*** *It appears that the assessee has copy pasted the satisfaction recorded by the Pr.CIT in the proforma forwarded by the AO for AY 2011-12, implying that the assessee/AR of the assessee has drafted the written submissions mechanically without proper application of mind.*

7.3.8 Be that as it may, coming to the assessee's contention that the said satisfaction does not bring out what was the material made available before the Pr.CIT, as per the reasons recorded by the AO, it is categorically stated that the AO received specific information from DD!T(Inv.) Unit-1, 'Surat, along with enquiry report conducted in the case of the assessee based on the information received from DRI that no actual business activity was carried out by the assessee from the address mentioned in their official documentation. As such, prima facie, it would appear that the AO had communicated to the Pr.CIT all the details and documentary evidence, including the investigation report received from DRI as well as from DDIT(Inv.) Unit-1, Surat, that the assessee had indulged in bogus transactions and, therefore, the assessee's claim of purchases to the extent of Rs. 192,19,31,021/- cannot be allowed as deduction under the provisions of the statute."

(ii) The ld. CIT(A) has adjudicated the issue of specific information and investigation report, *inter alia,* forwarded by the Assessing Officer along with the proposal of ld. PCIT, observing as follows:

"DECISION-II:
7.3.9 In view of the above, after considering the specific information and investigation report, inter alia, forwarded by the AO along with the proposal, the Pr.CIT had applied his mind and came to the conclusion that income chargeable to tax In the shape of bogus purchases had escaped assessment within the meaning of section 147 of the Act and, therefore, recorded his satisfaction that this is a fit case for issue of notice u/s.148 of the Act. While doing so, it is categorically recorded by the Pr.CIT that he came to the conclusion on perusal the reasons recorded by the AO as well as all the relevant facts and information available on record. Accordingly, I am of the considered opinion that the contention of the assessee that the

Pr.CIT had granted the approval mechanically without proper application of mind is baseless and devoid of merits.

7.3.10 At this juncture, I would like to rely upon the decisions of the Hon'ble Jurisdictional High Court of Gujarat in plethora of cases wherein it has been held that the satisfaction recorded by the sanctioning authority by stating that "Yes, it is a fit case" is construed as valid satisfaction in terms of section 151(1) of the Act.

7.3.11 For instance, in the case of Lalita Ashwin Jain vs. ITO (2014) 45 taxmann.com 404 (Gujarat), the Hon'ble Jurisdictional High Court of Gujarat has held that where the AO had initiated re-assessment proceedings on the basis of information supplied by the Investigation Wing, based on which the AO recorded reasons for reopening, the sanctioning authority, being Joint Commissioner of income Tax, had granted approval by writing "Yes" to reasons recorded by the AO, then, it cannot be held that assumption of jurisdiction u/s.147 of the Act was invalid, if application of mind is otherwise demonstrable from material on record. The relevant portion of the decision is reproduced below for ready reference.

"17. With regard to satisfaction recorded by the Commissioner which is alleged to have not been recorded as required under section 151 of the Act, it is contended by the petitioner that merely writing 'yes' and signing thereon suggest that the decision was mechanical.

17.1 This of course is a very valid and additional safeguard to check against the exercise of powers of reassessment in arbitrary fashion. Section 151 of the Act requires an Assessing Officer to seek approval of the Joint Commissioner, in a case where assessment under sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year and "the notice is to be issued after expiry of four years from the end of the relevant assessment year." Thus, while issuing notice of reopening on expiry of four years period from the end of the relevant assessment year, in a case assessment was previously framed under Section 143(3) or 147, seeking approval of the Joint Commissioner by the Assessing Officer is a must. Requirement under the law is that the Joint Commissioner needs to be satisfied on the reasons recorded by the Assessing Officer.

17.2 Of course, in the judicial pronouncements discussed hereinabove, the Courts have time and again emphasized that the Income-tax Officer when proposes to reopen the assessment under Section 147(a) and requests the Commissioner to accord necessary sanction for reopening the assessment, the Commissioner so as to obviate any impression that he had not applied the mind and also to infuse more confidence in the assessee should state brief reasons while sanctioning such proceeding under section 147 of the Act.

17.3 The reference heeds to be made at this stage of Circular No. 1 of 2009 dated 27th March, 2009 of CBDT sought to be relied upon by the Revenue which is a self explanatory note to the provisions of Finance Act 2008 where Note No. 29 concerns amendment in respect

of reassessment proceedings. It is meant to clarify the correct legislative intention in respect of the amendment relating to Section 151 which has been applicable w.e.f 1st October, 1998. It has been stated that the legislative intent is very clear that the Joint Commissioner is only required to be satisfied on the reasons recorded by the Assessing Officer and no notice is required to be issued by him. Possibly this was necessitated as some pronouncements on this issue insisted upon the issuance of notice at the end of Joint Commissioner. Here, of course, that is neither the case nor insistence of the petitioner.

17.4 However, so as to aver such allegations of non-application of mind all that is desirable is that the Joint Commissioner should briefly state his reasons. However, only because he has nodded in favour of Assessing Officer by writing 'yes' to the reasons recorded and accorded permission for reopening of the assessment, the notice of reopening on that count alone cannot fail holding that the assumption of jurisdiction under Section 147 is invalid, if application of mind is demonstrable from the material on record. From the record, it emerges that the reasons recorded were placed before the Assistant Commissioner along with other details in prescribed format. It was only after perusing such details that the Assistant Commissioner agreed that it was a fit case for issuing notice under Section 148 of the Act. Thus, this is not a case where such permission can be stated to have been granted without application of mind. We are satisfied from the overall facts and circumstances that the provisions of the Act are duly complied with in the action of the Joint Commissioner."
(emphasis supplied)

7.3.12 In the case of Baldevbhai Bhikhabhai Patel vs. DCIT (2018) 94 taxmann.com 428 (Gujarat), the Hon'ble Jurisdictional High Court of Gujarat has held that where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment along with reasons recorded by the AO for same were placed before Addl. CIT who, upon perusal of the same, recorded his satisfaction that it was a fit case for Issuance of notice for reopening assessment, reassessment notice issued against the assessee was justified.

7.3.13 In this regard, it may be noted that in the above case dealt with by the Hon'ble Jurisdictional High Court of Gujarat, the sanctioning authority, i.e., Addl. CIT, recorded his satisfaction stating that "I am satisfied that it is a fit case to issue notice u/s.148 of the Income Tax Act, 1961". Whereas in the instant case, the satisfaction recorded by the Pr.CIT is much more descriptive and speaking wherein instead simply stating that I am satisfied that it is a fit case to issue notice u/s. 148 of the income Tax Act, 1961", it is stated that "On perusal of the reasons recorded by the Assessing Officer, all the relevant facts and information available, I am satisfied that this is a fit case for the issue of notice u/s. 148 of the Income Tax Act, 1961".

7.3.14 Also, reliance is placed on the recent decision of the Hon'ble High Court of Chhattisgarh in the case of Jugal Kishore Paliwal vs. JCIT (2022)

140 taxmann.com 336 (Chhattisgarh), wherein the Hon'ble High Court has held that where the AO had elaborately recorded reasons to believe that income had escaped assessment on the basis of analysis of information collected/received and findings thereon and communicated the same to the sanctioning authority in the form of Annexure-A to the proposal u/s. 151 of the Act, and the approving authority granted approval based on such reasons recorded and communicated in the form of Annexure-A, then, there is no substance in the submissions filed by the assessee that sanction/approval granted u/s.151 of the Act is bad in law. Accordingly, the Hon'bSe High Court has approved reopening of the assessment without recording elaborate satisfaction by the sanctioning authority. The relevant portion of the decision is reproduced below for ready reference.

"12. So far as submission of learned counsel for petitioners that there was no proper sanction/approval on the date of issuance of notice under section 148 of the Act of 1961 is concerned, provision under section 151 of the Act of 1961 provides for "sanction for issuance of notice". Authority prescribed for grant of sanction/approval within four years of relevant assessment year is the 'Joint Commissioner of Income Tax'. Under section 151(2) of the Act of 1961 the Joint Commissioner is required to record his satisfaction on the reasons recorded by Assessing Officer. Respondents along with their additional reply have placed on record copy of screen shot of ITBA web portal in which there is mention of 'print approval' against name of respective petitioner with DIN number showing status to be generated with an option to view attachments. From the screen shot placed on record by respondents along with their additional return, accord of sanction/approval with DIN number of authority showing status to be generated on 31-3-2021, prima facie it cannot be said that there was no sanction/approval for issuance of notice under section 148 of the Act of 1961. Along with additional return respondents have further placed on record approval/sanction granted under section 151 dated 31-3-2021 which contains similar DIN Number as is mentioned in screen shot of ITBA web portal placed on record. Petitioners have also annexed approval/sanction granted under section 151 of the Act of 1961 as Annexure P-6 to writ petition. DIN Number is mentioned in Annexure P-6. Nothing has been brought on record by petitioners to show that any objection was raised by them to the effect that DIN number is incorrect or it was not generated on 31.03.2021, except raising objection before this Court with respect to manner in which sanction/approval is granted, as is appearing in sanction order. In view of aforementioned facts of case, submission of learned counsel for petitioner that notice under section 148 of the Act of 1961 is issued without there being any sanction/approval from the competent authority is not sustainable and it is hereby repelled.

13. Ruling of the Bombay High Court in Svitzer Hazira's case (supra) on which heavy reliance is placed by learned counsel for petitioners is of no help to petitioners being based on different facts. In that case, time of issuance of notice as also time of granting sanction is specifically mentioned in the document. Considering both the

documents, the Court held that notice under section 148 of the Act of 1961 was issued prior to grant of sanction/approval by competent authority. Time mentioned in sanction/approval is 15 minutes after the time of issuance of notice under section 148 of the Act of 1961. In these circumstances, Division Bench of Bombay High Court has passed the order.

14. Another submission of learned counsel for petitioners is that there was no proper application of mind by authority granting approval/sanction. Section 151 of the Act of 1961 deals with sanction for issue of notice. Sub-section (2) of section 151 requires that the authority granting sanction/approval must be satisfied on the reasons recorded by Assessing Officer that it is a fit case for issuance of such notice. In case at hand, on the basis of analysis of information collected/received and findings thereon, the Assessing Officer elaborately recorded reasons to believe in Annexure-A that income of petitioners escaped assessment and sought permission to proceed under section 148 of the Act of 1961 Based on reasons to believe recorded by Assessing Officer in Annexure-A. The approving authority granted approval under section 151 of the Act of 1961. At this stage, this Court is to consider whether notices under section 148 of the Act of 1961 issued to petitioners are after following the procedure prescribed under the law or net. In the acts of the case do not find any substance in submission of learned counsel for petitioners that sanction/approval under section -5" of the Act of 1961 is bad in law and it is hereby repelled."

7.3.15 Also, reliance is placed on the decision of the Jurisdictional High Court of Gujarat in the case of Mehrunnisa Mohamed Fazal Maniar vs. ITO [2021] 127 taxmann.com 547 (Gujarat).

7.3.16 In view of the above, I am of the considered opinion that in the instant case, the sanctioning authority had applied his mind to the elaborate reasons recorded by the AO based on information received/gathered from investigation Wing and DRI that the assessee had indulged in bogus transactions of purchase and sale of diamonds and, therefore, recorded his satisfactions based on the reasons recorded by the AO that the case of the assessee was fit for issuance of notice u/s.148 of the Act. Accordingly, I am of the considered opinion that there is no strength in the assessee's argument that the sanctioning authority did not comply with the provisions of section 151(1) of the Act. Thus, the ground of appeal raised by the assessee on this issue is dismissed.

7.4 ***Ground No.3: Issuance of notice u/s.148 of the Act is bad in law on account of borrowed satisfaction and in absence of fresh tangible material:***

"On the facts and circumstances of the case and in law, the ld. AO erred in issuing the notice u/s 148 without having valid reasons to

believe of escapement of income, on the basis of change of opinion, on borrowed satisfaction and in absence of fresh tangible material, thereby the reassessment order u/s 147 is bad in law."

Ground No.4: Issuance of notice is bad in law as it is without bringing out the failure on the part of the assessee:

"On the facts and circumstances of the case and in law, the ld. A.O. erred in re-opening of the assessment under section 148 without bringing out the failure on part of the assessee to disclose fully and truly all material facts as required u/s 147 therefore, the notice issued pursuant to the same is bad in law."

7.4.1 It is the contention of the assessee that the AO Issued the notice u/s. 148 of the Act on the basis of change of opinion based on borrowed satisfaction, since there was no fresh tangible material on record. Also, the assessee submitted that the AO recorded the reasons based on the information received from DDIT (Inv.) Unit-1, Surat, which was once again prepared based on the enquiry report of the DRI, but without making any verification on his own.

7.4.2 Accordingly, the assessee opined that there was borrowed satisfaction i.e., based on the reports received from DRI and DDIT (Inv.) Unit- 1. Surat. While doing so, the assessee contended that there is no independent application of mind on the part of the AO and, therefore, notice issued u/s. 148 of the Act, cannot be sustained in the eyes of the law. In this regard, the assessee placed reliance on various judicial precedents.

7.4.3 Further, it is contended by the assessee that the AO has failed to record that there was failure on the part of the assessee in disclosing fully and truly all material facts at the time of original assessment."

(iii) The decision of ld. CIT(A) in respect of change of opinion are as follows:

*"**DECISION-III:***
7.4.4 I have given my thoughtful consideration to the submissions made by the assessee and examined the judicial precedents relied upon by the assessee. Also, I have perused various documentary evidence placed on record and considered the latest judicial precedents on this subject.

7.4.5 At the outset, the assessee has raised two broad objections i.e.

(I) The assessment was reopened based on change of opinion on the ground that there was no fresh tangible material to come to the conclusion that income had escaped assessment and there was no failure on the part of the assessee in disclosing fully and truly all material facts at the time of original assessment; and

(ii) The assessment was reopened based on borrowed satisfaction.

7.4.6 Before venturing into adjudication of the issue raised by the assessee. I would like to highlight the fact that, in the instant case, the assessment was re-opened after four years, but within six years from the end of the relevant AY 2012-13 to be precise, for the impugned AY 2012-13, the threshold period of six years expired on 31.03.2019. However, the AO initiated reopening proceedings by issuing notice u/s.148 of the Act on 30.03.2019. Accordingly, the first proviso below sec.147 of the Act is attracted to the facts of the case. Also, originally, the case was subjected to scrutiny u/s. 143(3) of the Act.

7.4.7 At this juncture, it may be noted that the phrase escaped would cover the case of discovery of a mistake in the original assessment u/s. 143(3) of the Act caused by either on erroneous construction of the transaction or due to its non consideration or caused by mistake of law applicable to such transactions even where there has been a complete disclosure of all relevant facts by the assessee which are necessary for the completion of the assessment.

7.4.8 Besides, in case, where the AO omitted to consider certain facts at the time of original assessment u/s. 143(3) of the Act, it cannot be considered as change of opinion, when the income which was chargeable to tax is actually taxed correctly in accordance with the provisions of law u/s. 147 of the Act which was omitted to be considered due to mistake by the AO at the time of completion of the original assessment u/s 143(3) of the Act. Under the circumstances, when the issue itself was not all considered at the time of original assessment u/s. 143(3) of the Act, the question of attributing change of opinion while passing the reassessment rectifying such mistake doesn't arise.

7.4.9 It is also important to note that the basic requirement to reopen the assessment u/s. 147 of the Act is that there should be reason to believe on the part of the AO that income has escaped assessment while passing the original assessment u/s. 143(3) of the Act. In this regard, It is trite law that the word reason in the phrase ' reason to believe would mean cause or justification. Accordingly, if the AO has a cause or justification to think that the income had escaped assessment, it can be construed that AO has reason to believe that such income had escaped assessment.

7.4.10 Unless the information or the material on the basis of which the AO has come to a belief that the income had escaped assessment is found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion that it constitutes a sufficient reason cannot be questioned. If the AO honestly comes to a conclusion that a mistake has been made, it matters nothing so far as his jurisdiction to initiate the proceedings u/s. 147 of the Act is considered, even, if he has come to an erroneous conclusion whether on law or on facts.

7.4.11 Further, it is well settled legal position that the court will not in exercise of its extraordinary jurisdiction under the constitution, examine the sufficiency of the reason which led the AO to believe that the income had escaped the assessment. The court can only examine whether the reasons are relevant and have a bearing on the matters with regard to which the AO had come to a belief that income had escaped assessment.

7.4.12 In this regard, reliance is placed on the following decisions:
1. Aradhana Estates (P) Ltd vs DCIT [2018] 91 taxmann.com 119 (Guj.):

*In this case, the Hon'ble Jurisdictional High Court of Gujarat has held that what is required to be examined u/s. 147 of the Act is whether the AO has sufficient material at his command to form a reasonable belief that income had escaped assessment. Also, it was held that merely because the transactions on the basis of which the assessment has **been** reopened were scrutinised by the AO during the original assessment proceedings u/s. 143(3} of the Act would not preclude the AO from reopening the assessment. The relevant portion of the decision is reproduced below for ready reference.*

"10. The contention that there was no failure on part of the assessee to disclose truly fully facts cannot be accepted. The Assessing Officer, as noted, received fresh material after the assessment was over, prima facie, suggesting that the assessee company had received bogus share application/premium money from number of shell companies.

11. Merely because the transactions in question were examined by the Assessing Officer during the original assessment would not have any difference. The scrutiny was on the basis of disclosures made and materials supplied by the assessee. Such material is found to be prima facie untrue and disclosures not truthful. Earlier scrutiny or examination on the basis of such disclosures or materials would not debar a fresh assessment. Each individual case of this nature is bound to have slight difference in facts."

2. Krishna Developers and Company vs DCIT [2017] 84 taxmann.com 166 (Guj.):

In the above case, Hon'ble Jurisdictional High Court of Gujarat has held that merely because reasons recorded by AO proceeded on same basis on which AO initially desired to make additions but which failed on account of setting aside of order of assessment by CST(Appeals), it would not preclude the AO from carrying out exercise of reopening of assessment. The relevant portion of the decision is reproduced below for ready reference.

"20. Nothing contained in the language of section 147 would permit to hold that even if all the parameters to enable the Assessing Officer to assess or reassess the income by reopening the assessment are present, same may not be permitted in cases where the original assessment framed by the Assessing Officer has failed on any technical ground, such as in the present case i.e. want of service of notice under section 143(2). Once the original assessment is

declared as invalid as ha zing been completed without the service of notice on the assessee within the statutory period, there would be thereafter no assessment in the eye of law. The situation therefore, be akin to where return of the assessee has been accepted without a scrutiny. Reopening of the assessment, if the Assessing Officer has the reason to believe that income chargeable to tax has escaped assessment, would be entirely permissible under section 147. Merely on the ground that the reasons recorded by the Assessing Officer proceeded on the same basis on which the Assessing Officer initially desired to make additions but which failed on account of setting aside the order of assessment, would not preclude the Assessing Officer from carrying out the exercise of reopening of the assessment. In the present case, facts are peculiar. It is not as if the Assessing Officer after noticing certain discrepancies in the return of the assessee, slept over his right to undertake the scrutiny assessment. The scrutiny assessment was initiated by issuance of notice under section 143(2) on 23-9-2013. It was also dispatched for service to the assessee on 24-9-2013 by Speed Post on the last known address. The Commissioner (Appeals) however, held that there was no proof of service of notice and since section 143(2) requires service of notice, the assessment was framed without complying with the mandatory requirements."

Aggrieved by the above decision of the Hon'ble Gujarat High Court, the assessee preferred Special Leave Petition (SIP) before the Hon'ble Supreme Court. However, after examining the issue, SLP filed by the assessee has been dismissed by the Hon'ble Supreme Court as reported in Krishna Developers and Company vs DCIT [2018] 91 taxmann.com 306 (SC).

7.4.13 Also, reliance is placed on the decision of Hon'ble High Court of Delhi in the case of Consolidated Photo and Finvest Ltd Vs. ACIT [2006] 281ITR 394 (Del.) wherein it has been held that –

> *"(1) Action u/s.147 of the Act is permissible even if the AO gathered his reasons to believe that income had escaped assessment from the very same record as had been subject matter of completed assessment proceedings u/s.143(3) of the Act; and*
>
> *(2) The principle that a mere change of opinion cannot be a basis for reopening completed assessment u/s 143(3} of the Act. would have no application where the original order of assessment doesn't address itself to the aspect which is basis for reopening of the assessment u/s. 147 of the Act."*

7.4.14 Further, the Hon'ble ***High Court of Bombay in the case of Pranawa Leafin (P.) Ltd Vs. DCIT [2013] 215 Taxman 109 (Bom.)(Mag.),*** *has held that where there was a failure on the part of the assessee to make true and complete disclosure in respect of share transactions entered into by it, in view of proviso to sec. 147 of the Act, the AO was justified in initiating re-assessment proceedings even after expiry of four years from the end of the relevant AY, and, also, after completing the original assessment u/s. 143(3)*

of the Act. While doing so, the Hon'ble High Court has placed reliance on judgements of Divisional Bench in the following cases:

(i) Indian Hume Pipe Co. Ltd Vs. ACIT [2012] 348ITR 439 (Bom.)

(ii) Dynacraft Air Controls Vs. Smt. Sneha Joshi [2013] 24 Taxman 183 (Bom.)

7.4.15 At this juncture, it may be noted that, the Hon'ble High Court has emphasized on the fact that the nature of the disclosure as envisaged under first proviso to Section 147 of the Act has to be assessed in the facts and circumstances of each individual case. As such, merely because the assessee has filed the details called for by the AO during the course of original assessment proceedings u/s.143(3) of the Act, it cannot be construed as if the assessee had actually disclosed fully and truly all the relevant material facts necessary for the assessment.

7.4.16 Also, reliance is placed on the judgement of Hon'ble Supreme Court in the case of Honda Seil Power Products Ltd vs. DCIT (2012) 340 ITR 64 (SC) ***wherein it has been held that in view of the assessee's failure to point out during the assessment proceedings u/s. 143(3) of the Act about the expenses incurred by it relating to tax- free income, there was omission and failure on its part to disclose fully and fully the material facts necessary for completing the assessment, and, therefore, the first proviso to Section 147 would not come in the way of reopening the assessment by the AO. While doing so, the Hon'ble Supreme Court has upheld the decision of Hon'ble High Court of Delhi [Honda Seil Power Products Ltd vs. DCIT*** *(2011) 197* ***Taxman*** *415* ***(Del.)]*** *and,* ***therefore,*** *dismissed* ***the*** *SLP filed by* ***the*** *assessee.*

7.4.17 Also, reliance is placed on the following judicial precedents:

1. Kalyanji Mavji & Co., vs CIT [1976] 102ITR 287 (SC):

In this case, the ***Hon'ble Supreme Court*** *has laid down the position of law with regard to conditions to be fulfilled for the purpose of reopening of assessment. The relevant portion of the same is reproduced below for ready reference.*

"Section 34(1) contemplates two categories of cases for reopening the previous assessment: (1) where there has been an omission or failure on the part of the assessee to make a return of his income under section 22 or to disclose fully and truly all material facts necessary for his assessment; and (2) where there has been no such omission on the part of the assessee but the ITO on the basis of information in his possession finds that income chargeable to tax has escaped assessment for any year, it is, therefore, manifest that the first category deals with cases where an assessee is himself in default and the second category deals with cases where there is no fault on the part of an assessee but where the income chargeable to tax has actually escaped assessment for one reason or the other and the ITO comes to know about the same.

The following tests and principles would apply to determine the applicability of section 34(1)(b) to the following categories of cases:

(1) where the information is as to the true and correct state of the law derived from relevant judicial decisions;

(2) where in the original assessment the income liable to tax has escaped assessment due to oversight, inadvertence or a mistake committed by the ITO. This is obviously based on the principle that the taxpayer would not be allowed to take advantage of an oversight or mistake committed by the taxing authority;

(3) where the information is derived from an external source of any kind. Such external source would include discovery of new and important matters or knowledge of fresh facts which were not present at the time of the original assessment;

(4) where the information may he obtained even from the record of the original assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law.

if these conditions are satisfied then the 1T0 would have complete jurisdiction to reopen the original assessment. It is obvious that where the ITO gets no subsequent information, but merely proceeds to reopen the original assessment without any fresh facts or materials or without any enquiry into the materials which form part of the original assessment, section 34(1)(b) would have no application."

(equivalent to sec. 147 of the Act)

(emphasis supplied)

2. ITO vs Lakshmani Mewal Das [1976] 103 ITR 437 (SC) &

3. Raymond Woolen Mills vs ITO [1999] 236 ITR 34 (SC):

In the abovementioned cases, the Hon'ble Supreme Court has laid down the proposition of the law that sufficiency of reason on the part of the AO in coming to the belief that income had escaped assessment is not open to question in a court of law, but the existence of belief can be challenged. The relevant portion of the decision is reproduced below for each reference.

"The Supreme Court had only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material was not a thing to be considered at this stage. The Supreme Court could not strike down the reopening of the case in the facts of the instant case. It would be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee might also prove that no new facts came to the knowledge of the ITO after completion of the assessment proceeding. The Supreme Court was not expressing any opinion on the merits of the case. The questions of fact

and law were left open to be investigated and decided by the assessing authority. The assessee would be entitled to take all the points before the assessing authority. The appeals were dismissed."

4. ***Rajat Export Impart India Pvt Ltd vs ITO [2012] 341ITR 135 (Del.)***

7.4.18 Coming to the issue of borrowed satisfaction*, it is observed that the AO had in fact analyzed the information and reports received from the DDIT (Inv.) Unit-1, Surat, and DRI and recorded his findings keeping in view the material available on record such as return of income, financial statements, etc. that the assessee had indulged in bogus purchase and sale of diamonds thou: there being any real business activity. As such, it is clearly evident that the AO had not copied the findings of either the DRI or the DDIT (Inv.) Unit-1, Surat formulate his belief that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act, but recorded his own satisfaction after analyzing the facts came to his knowledge. This fact is once again vindicated by the elaborate satisfaction recorded by the AO spread over four to five pages in the form of Annexure – A to the proposal.*

7.4.19 At this juncture, it may not be out of place to highlight the fact that it is trite law that at the time of initiation of proceedings u/s 147 of the Act, the condition precedent is reason to believe that income had escaped assessment but not establishment of the fact of actual escapement of income. Accordingly, while issuing notice u/s 148 of the Act, there should be evidence on record or specific information received from outside agencies or gathered by the AO to demonstrate that there is a prima facie case of escapement of income.

7.4.20 In the instant case, it is an admitted fact that the AO received specific information from two Investigating Agencies .e. DRI and DDIT (Inv.) Unit-1, Surat, establishing ***prima facie*** *case of escapement of income. Under the circumstances, I don't find any merit in the assessee's contention that the AO recorded reasons for reopening based on borrowed satisfaction.*

7.4.21 In this regard, I have perused the case laws relied upon by the assessee and found that the same are not applicable to the facts of the instant case and, also, on account of the fact that the said decisions have been impliedly overruled by the latest judgments of the ***Hon'ble Jurisdictional High Court of Gujarat.*** *In view of this, I would like to place reliance on the latest decisions of the* ***Hon'ble Jurisdictional High Court of Gujarat*** *on the issue of borrowed satisfaction, apart from the judgment of the* ***Hon'ble Supreme Court,*** *as discussed below.*

7.4.22 In the case of ***ITO vs. Purushottam Das Bangur [1997] 90 Taxman 541 (SC),*** *involving the issue of reopening the assessment based on information received from the Investigation Wing, the* ***Hon'ble Supreme Court*** *has held as follows:*

"A perusal of clause (b) of section 147 shows that for taking action under thesaid provision what is required is that (i) the ITO has received

information, and (ii) in consequence of such information he has reason to believe that income chargeable to tax has escaped assessment for any assessment year. The question was whether in the present case after, he had completed the original assessment; the ITO had received information on the basis of which he could have reason to believe that the income chargeable to tax had escaped assessment.

The High Court had proceeded on the basis that the letter of Deputy Director (Investigation) did not contain any information and that there was neither evidence of manipulation nor evidence of collusive transactions referred to in the letter and that no inquiries were made by the ITO after the receipt of the letter so as to constitute information. The said view of the High Court could not be accepted. The contents of the letter referred to the statement containing financial information regarding MSUL which was annexed to the letter. The said statement contained information derived from the Bombay Stock Exchange Directory about the financial condition of MSUL during the period 1965- 70 which indicated that during this period the company had prospered and that the book value per equity share had arisen from Rs. 318.55 for the year ending 31 -12-1965 to Rs. 401 for the year ending 31-12-1970, the earning per share rose from Rs. 8.3 7 per share to Rs. 44 per share and that dividend percentage had also risen from 2 per cent to 10 per cent for the same period. On the basis of the information contained in the letter and the documents annexed to it, the ITO could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from Calcutta Stock Association shown by the assessee at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in the letter was not definite information and it could not be acted upon by the ITO for taking action under section 147(b). Merely because the impugned notice was sent on the next day after receipt of the letter did not mean that the ITO did not apply his mind to the information contained in the said letter.

On the basis of the said facts and information contained in the said letter, the ITO without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment. The High Court was in error in proceeding on the basis that it could not be said that the ITO had in his possession information on the basis of which he could have reasons to believe that income of, the assessee chargeable to tax had escaped assessment for the relevant assessment years. The impugned judgment of the High Court was set aside and the writ petitions filed by the respondents were dismissed."

7.4.23 Also, reliance is placed on the decision of the ***Hon'ble*** *Jurisdictional High Court of Gujarat* ***in the following cases:***

(i) ***Peass Industrial Engineers (P.) Ltd. vs. DCIT [2016] 76 taxmann.com 122 (Gujarat):*** *In this case, it is held that – In this case, it is held that –*

"Where in case of assessee, return was processed under section 143(1), Assessing Officer could initiate reassessment proceedings subsequently on basis of information supplied by Investigation wing of department that assessee had taken bogus purchase entries from two parties."

(ii) ***Bharatkumar Kalubhai Ghadiya vs. ACIT [2021] 129 taxmann.com 306 (Gujarat): In this case, it is held that-***
"Where reassessment notice was issued to assessee mainly on basis of information received from Deputy Director to effect that search in case of two individuals companies revealed that they had provided accommodation entries to assessee for claiming bogus capital gain, since thorough inquiry was carried out and after verifying all aspects regarding incriminating documents unearthed during course of search action, it was declared that transactions were accommodation entries provided to assessee, there was reason to believe that income chargeable to tax had escaped assessment and, thus, reassessment was justified."

(iii) ***Backbone Projects Ltd. vs. ACIT [2021] 131 taxmann.com 80 (Gujarat):*** *In this case, it is held that –*
"Where AO issued a reopening notice against assessee on ground that an information was received from Investigation wing that assessee was a beneficiary of accommodation entries in respect of bogus sales and thereafter notice under section 133(6) issued by AO to assessee was not responded by it, since AO had received tangible material from investigation wing and upon due satisfaction, he formed an opinion that assessee had received accommodation entries and amount concerning these transactions had escaped assessment, impugned reopening notice was justified."

(iv) Priya Blue Industries (P.) Ltd. vs. ACIT [2021] 130 taxmann.com 492 (Gujarat): *In this case, it is held that –*
"Where Assessing Officer had reason to believe that income chargeable to tax had escaped assessment as assessee was; beneficiary of accommodation entries and basis for formation of such belief were several inquiries and investigation by Investigation Wing, that there had been escapement of income of assessee from assessment because of his failure to disclose fully and truly all material facts, reopening of assessment was justified."

In this regard, it may be noted that the appeal filed by the assessee against the decision of the Hon'ble High Court of Gujarat by filing SLP before the Hon'ble Supreme Court was dismissed confirming the decision of the Hon'ble High Court as reported in ***Priya Blue Industries (P.) Ltd. vs. ACIT [2022] 138 taxmann.com 69 (SC).***

(v) ***Sanjay Baulal Surana vs. ACIT [2021] 129 taxmann.com 375 (Gujarat):*** *In this case, it is held that –*
"Where information was received from Dy. Director, Investigation Wing that two companies were involved in activity of providing accommodation entries through various companies controlled and managed by them and assessee had received a certain sum from one of said controlled companies and notice under section 148 was issued to assessee, since Assessing Officer

had reason to believe that assessee was a beneficiary of accommodation entry and basis for formation of such belief was several inquiries and investigation by Investigation Wing and report thereof, initiation of reassessment was justified."

(vi) ***Kottex Industries (P.) Ltd. vs. ACIT [2021] 129 taxmann.com 151 (Gujarat):*** *In this case, it is held that-*
"Where Assessing Officer issued a reopening notice against assessee company on ground that during scrutiny assessment for a subsequent assessment year it was found that assessee had received share application money from shell/paper concerns, since said share applicant companies were unable to establish that they had carried out any actual business and during investigation it was established that addresses of these companies were actually residential premises, impugned reopening was justified; assessee's argument that it had returned share application money in question in subsequent year was immaterial."

(vii) ***Anderson Biomed (P.) Ltd. vs. ACIT [2021] 129 taxmann.com 135 (Gujarat):*** *In this case, it is held that –*
"Where search and seizure under section 132 was carried out in case of 'J' and it was found that 'J' was managing and controlling multiple companies which were involved in providing accommodation entries and documents unearthed during search showed that petitioner-company had taken accommodation entries from one of such concerns, since prima facie there was live link between material coming to notice of Assessing Officer and formation of his belief that there had been escapement of income of assessee from assessment because of assessee's failure to disclose fully and truly all material facts, initiation of reassessment was justified."

(viii) ***Rainbow Texchem (P.) Ltd. vs. ITO [2021] 129 taxmann.com 85 (Gujarat):*** *In this case, it is held that –*
"Where Assessing Officer issued a reopening notice against assessee on ground that an information was received from investigation wing that during a survey under section 133A conducted in case of a person, several material was impounded which revealed accommodation entries of tax bills and bogus loan connected to assessee, impugned reopening notice issued against assessee on basis of said information was justified.

(ix) ***Madhav Gems (P.) Ltd. vs. ITO [2021] 126 taxmann.com 212 (Gujarat):*** *In this case, it is held that -*
"Where Assessing Officer issued a reopening notice on ground that an information was received from Investigation wing that assessee had received accommodation entries on account of bogus purchases, since Assessing Officer had verified such information received and applied his mind to same and after independent inquiries, he came to conclusion that assessee was a beneficiary of accommodation entries, impugned reopening was justified."

(x) ***Aaspas Multimedia Ltd. vs. DCIT [2017] 83 taxmann.com 82 (Gujarat):*** *In this case, it is held that-*

"Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

7.4.24 Also, reliance is placed on rulings of various other ***High Courts,*** *as given below:*

(i) ***Yogendrakumar Gupta vs. ITO [2014] 46 taxmann.com 56 (Gujarat):*** *In this case, it is held that –*
"Where subsequent to completion of assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in' providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee."

(ii) ***AMBER vs. DCIT [2021] 129 taxmann.com 316 (Orissa):*** *In this case, it is held that-*
"Where Assessing Officer issued a reopening notice against assessee on ground that an information was received from DIT (Investigation) that during a search conducted in case of a group of companies, it was found that assessee had obtained accommodation entries in nature of unsecured loans through two paper/shell companies, impugned reopening notice issued against assessee on basis of said information was justified."

(iii) ***Usha Martin Ltd. vs. Union of India [2021] 126 taxmann.com 113 (Jharkhand):*** *In this case, it is held that*
"Where reopening notice was issued against assessee after four years from end of relevant year on basis of an information received from District Registrar that assessee had actually purchased lands for much higher amount than what was shown by it in its return of income and, thus, differential amount of expenses incurred on purchase of land was an unexplained expenditure, impugned reopening notice was justified."

(iv) ***Acorus Unitech Wireless (P.) Ltd. vs. ACIT [2014] 43 taxmann.com 62 (Delhi):*** *In this case, it is held that –*
"In terms of section 148, law only requires that information or material on which Assessing Officer records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document."

7.4.25 In view of the above, respectfully following the decisions of the Hon'ble Supreme Court as well as the Hon'ble Jurisdictional High Court of Gujarat (supra), apart from others, I am of the considered opinion that, in the instant case, the AO had properly applied his mind and recorded reasons and, therefore, there is no merit in the assessee's contention that the reasons were recorded based on borrowed satisfaction.

7.4.26 preceding paragraphs with the help of case laws, after considering the totality of the facts and circumstances of the case, I am of the view that

the assessee did not disclose fully and truly all material facts necessary for its assessment while filing the original return of income as well as while completing the original assessment order u/s.143(3) of the Act (supra). Thus, the Ground Nos.3 and 4 raised by the assessee are dismissed.

***7.5** Ground No.5: Assessment order **is bad in law as the** objections have been disposed of at **the fag end of passing** the order:*
"The Id. A.O. erred in disposing the objections on 06.08.2019 at fag end of passing of the reassessment order, resultantly the reassessment order u/s 143(3) r.w.s. 147 is bad in law."

*7.5.1 It is contended by the assessee that the AO disposed of the objections raised by the assessee against the reopening of the assessment on 06.08.2019 whereas the impugned assessment order was passed on 29.11.2019 and, therefore, the assessment order passed u/s.143(3) r.w.s. 147 of the Act is bad in law. While doing so, the assessee placed reliance on the decision of the **Hon'ble Supreme Court** in the case of **GKN Driveshafts (India) Ltd. vs. ITO** (supra), apart from others."*

(iv) The decision of ld. CIT(A) in respect of assessee's objections for re-assessment proceedings u/s 147 of the Act, are as follows:

DECISION-IV:

7.5.2 I have given my thoughtful consideration to the issue raised by the assessee and examined the same in the light of the facts and relevant provisions of the statute.

*7.5.3 At the outset, it is important to note that there is not truth in the assessee's contention that the AO disposed of the objections at fag end of passing of the impugned re-assessment under u/s. 143(3) rws 147 of the Act dated 29.11.2019 (supra). First of II, the assessee has committed a mistake in stating that the objections were disposed of on 06.08.2019 inasmuch as, the objections were actually disposed of by the AO on 04.09.2019. Secondly, the objections were not disposed of at fag end. This is precisely because of the reason that the objections were disposed of on 04.09.2019 i.e., 87 days before the date of passing the impugned, re-assessment order on 29.11.2019. **As such, by any stretch of imagination, disposal of objections 87 days before the date of passing the impugned re-assessment order cannot be treated as disposal of objections at fag** end **of passing the impugned reassessment order. Accordingly, I am of** the **considered opinion that, the ground of appeal raised by the assessee on this issue is factually** incorrect and, **therefore,** cannot **be** sustained in **the** eyes **of** law.*

7.5.4 Be that as it may, it is not under dispute that, before passing the impugned re-assessment order, during the course of reopened assessment proceedings, the assessee was provided with sufficient time and adequate number of opportunities of hearing, including show cause notice issued dated 22.11.2019, wherein the AO proposed to make the impugned addition based on evidence gathered and, in response thereto, vide letter dated 27.11.2019, the assessee made elaborate reply rebutting the findings of the AO and requesting to drop the impugned addition. While doing so, the

assessee requested the AO to treat the business of the assessee as genuine and not to make any addition towards bogus purchases of Rs.192,19,31,021/-. Alternatively, the assessee requested the AO to estimate the commission @ 0.05% on gross transaction value in case the business of the assessee is held as non-genuine.

7.5.5 In the above mentioned background, it is amply clear that the rights of the assessee have not been curtailed by way of delayed disposal of objections raised against reasons for reopening of the assessment, if any. At this juncture, it is also important to note that, it is an admitted fact that, during the course of reopened assessment proceedings, till the date of passing the impugned assessment order, the assessee never raised any objections before the AO that the assessment proceeding may not be continued without disposing of the objections raised against reasons for reopening of the assessment. As such, the assessee participated in the assessment proceedings without raising any objections and also availed all the opportunities of being heard provided.

7.5.6 In this regard, it may not be out of place to highlight the fact that there is no statutory limitation in so far as disposal of objections raised by the assessee against reopening of the assessment. Further, even after considering delay in disposal of objections, the assessee cannot raise any ground against the said action of the AO after having participated in the assessment proceedings.

7.5.7 ***Be that as it may, as explained in the preceding paragraphs, it is an admitted fact that the objections were not dispose of at fag end of passing of the re-assessment order, but it was disposed of on 04.09.2019. Thus, I am of the considered opinion that there is no merit in ground of appeal raised by the assessee on account of factual inaccuracy as well as non-application of provisions of the statute to the relevant facts of the case. Accordingly, the ground of appeal raised by the assessee on this issue is dismissed.***

(v) The findings of the ld CIT(A) in respect of merits of the case: On merits, the ld CIT(A) has reiterated the findings of the assessing officer (we have already narrated the findings of assessing officer in above para of our order, therefore we do not repeat them) and confirmed the addition made by the assessing officer at Rs.1,92,19,31,021/-.

12. Aggrieved by the order of ld. CIT(A), the assessee is in appeal before us.

13. Learned Counsel for the assessee argued that the reassessment proceeding initiated by the Assessing Officer was bad in law. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147 of the Act. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax.The assessee has raised the contention that the AO was not having any material information to form "a reason to believe" that there was an escapement of income. The Ld. Counsel took us through paper book, (vide paper book page no.31) wherein the Assessing Officer has recorded the reasons in respect of income escape assessment and contended that the basis of reopening that an income has escaped assessment are defective. The reasons also stated that assessee does not have any fixed assets to handle turnover Rs.192,19,31,021/-. Therefore, ld Counsel contended that reasons recorded by the Assessing Officer is defective and not valid, therefore reassessment proceedings may be quashed.

14. The Ld. Counsel for the assessee, argued on merit stating that assessee is working as a commission agent and assessee is taking commission at the rate of 0.50 paisa per 100 rupees or 0.20 paisa per 100 rupees. Therefore, assessee should be treated, as a commission agent and for this Ld. Counsel for the assessee relied on the judgment of ***Bhavesh Bhuva vs. ITO, in ITA No.235/SRT/2022***, order dated 29.05.2023.

15. On the other hand, Learned Departmental Representative (ld. CIT-DR) for the Revenue, argued that the reasons in the assessee's case were recorded after making due enquiry and inspection. The ld. CIT-DR for the Revenue also stated that reasons were recorded based on the factual information received from various agencies and these facts were found to be true at later stage also. Therefore, there is no defects in the reasons recorded by the Assessing Officer.

16. On merit, ld. CIT-DR for the Revenue submitted that assessee is engaged in bogus purchases to inflate purchase expenses and to reduce the profit and thereby paying the lesser taxes. The assessee has been showing ownership of the transactions (purchases & sales) and has also shown in the audit report, as if the transactions are made by him in the capacity of trader and engaged in purchase and selling activities. Therefore, assessee cannot be treated as a commission agent. The audit report of the assesse in AY.2011-12 in ITA No.190/SRT/2023 clearly shows that assessee is engaged in trading activities, therefore assessee cannot be treated that it is engaged in the business of providing accommodation entries on commission basis. Hence, on merit also, the assessee's case may be dismissed and addition made by the assessing officer may be dismissed.

17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. First of all, we should analyze the reasons recorded by the Assessing Officer, which are reproduced below:

Subject: SUPPLY OF REASO0NS RECORDED FOR REOPENING OF CASE FOR A.Y.2012-13

INCOME TAX DEPARTMENT

1. Brief Details of the Assessee :

The assessee is a Private Limited company and has filed its return of income for A.Y.2012-13 on 21/09/2012 declaring total income at Rs.2,09,220/-. Subsequently, the case was selected for scrutiny and assessment order was passed U/s.143(3) of the Act on 31/03/2015 and income was assessed at Rs.2,09,220/-

2. Brief Details of Information collected/ received by the AO :

In this case, information has been received vide Confidential letter No.SRT/DDIT(Inv)-I/Diss.of info./Sudarshan&Shrifal/2017-18 dated 19.03.2018 from DDIT(Inv), Unit-1, Surat wherein the enquiry report in the case of ShrifalImpex Pvt. Ltd., and Sudarshan Diamond Pvt. Ltd. Dissemination of information was received by the Pr.DIT(Inv), Surat from DRI, regarding over in import / under invoicing in export with indication of money being stashed abroad, in the case of ShrifalImpex Pvt. Ltd., and Sudarshan Diamond Pvt. Ltd.. Physical verifications was also conducted by the office of the DDIT(Inv.)Unit-1, Surat as well as the jurisdictional DRI. During physical verification the declared premised did not belong to the company concerned as the same were on rent, no business activity being conducted from these premises and the same were merely used for address purpose for purpose of obtaining IEC and for bank purpose. It was very clear from the report by the DRI that no actual business activity was carried out by any of these two business concerns. All the transactions carried out were merely paper transactions only. Further two bank accounts of ShrifalImpex Pvt. Ltd., ING Vysya vis-à-vis a/c. No.550011039935 and a/c. No.200012860011 with Indusind Bank Ltd. were identified.

2. The a/c. No. 550011039935 with ING Vysa Bank Ltd., was operational from the period 16.07.2010 to 10.01.2017. During this period the said account was credited by way of RTGS / Transfer from various companies by total amount of Rs.249,31,54,699/- out of this, credit amount of Rs.89,71,14,561/- pertains to the F.Y.2011-12 relevant to A.Y.2012-13.The A/c. No.200012860011 with Indusind Bank Ltd. was operational from the period from 27/02/2012 to 26/12/2014. During this period the said account is credited by way of RTGS/Transfer from various companies by total of Rs.269,91,23,994/- out of this, credit amount of Rs.30,17,85,000/- pertains to F.Y.2011-12 relevant to A.Y.2012-13. After receipt of the funds through RTGS/Transfer, the same were utilized for funding various other firms/companies. Further it is also reported that the funds were also utilized for sending remittances to the overseas concern of amount of Rs.136,71,11,115/- for the period F.Y.2010 to F.Y.2016-17.

3. Analysis of information collected / received :

The information received from Investigation Wing has been considered and conclusion drawn in the report it apparently found to be correct on following grounds:

(1) On 04/03/2019, field inquiries have been conducted by the Inspector of this ward and it is ascertained that no genuine business activities were being run by the assessee company ever.

(2) On perusal of return of income filed for A.Y.2012-13, it is noticed that the assessee company has shown to have been made total sales of Rs.202,45,41,899/- and total purchase of Rs.192,19,31,021/-. The assessee has shown net profit of Rs.2,09,220/- which is not in commensurate with huge sales and purchases shown.

4.Inquiries made by the AO as sequel to information collected/ received:

(a) On 04/03/2019, field inquiries have been conducted by the Inspector of this ward and it is ascertained that no genuine business activities were being run by the assessee company ever.

(b) On perusal of return of income filed for A.Y.2012-13, it is noticed that the assessee company has shown to have been made total sales of Rs.202,45,41,899/- and total purchase of Rs.192,19,31,021/-. The assessee has shown net profit of Rs.2,09,220/- which is not in commensurate with huge sales and purchases shown.

(c) On perusal of Return of Income filed by the assessee for A.Y.2012-13, it is found that the assessee has shown value of Fixed Assets at Rs.NIL. The NIL value of fixed assets is not commensurate with business profile which should be in view of such huge turnover.

(d) On perusal of Return of Income filed by the assessee it is found that the assessee has not shown any expenses towards under head of "Rents". In the circumstances, when the assessee company does neither have any fixed nor have any rented premises, it is apparent that no genuine business transactions were being made by the assesee company.

5. Findings of the AO:

On the basis of following points it is apparent that the credentials of the assessee company are not reliable and the assessee was never doing genuine business activities:

(a) On 04/03/2019, field inquiries have been conducted by the Inspector of this ward and it is ascertained that no genuine business activities were being run by the assessee company ever.

(b) On perusal of return of income filed for A.Y.2012-13, it is noticed that the assessee company has shown to have been made total sales of Rs.202,45,41,899/- and total purchase of Rs.192,19,31,021/-. The assessee has shown net profit of Rs.2,09,220/- which is not in commensurate with huge sales and purchases shown.

(c) On perusal of Return of Income filed by the assessee for A.Y.2012-13, it is found that the assessee has shown value of Fixed Assets at Rs.NIL. The NIL value of fixed assets is not commensurate with business profile which should be in view of such huge turnover.

(d) On perusal of Return of Income filed by the assessee it is found that the assessee has not shown any expenses towards under head of "Rents". In the circumstances, when the assessee company does neither have any fixed nor have any rented premises, it is apparent that no genuine business transactions were being made by the assessee company.

6. Basis of forming reason to believe and details of escapement of income:

In view of the following points it is apparent that the no genuine business transactions are being made by the assessee company and actually assessee company is engaged in paper transactions only:

(a) On 04/03/2019, field inquiries have been conducted by the Inspector of this ward and it is ascertained that no genuine business activities were being run by the assessee company ever.

(b) On perusal of return of income filed for A.Y.2012-13, it is noticed that the assessee company has shown to have been made total sales of Rs.202,45,41,899/- and total purchase of Rs.192,19,31,021/-. The assessee has shown net profit of Rs.2,09,220/- which is not in commensurate with huge sales and purchases shown.

(c) On perusal of Return of Income filed by the assessee for A.Y.2012-13, it is found that the assessee has shown value of Fixed Assets at Rs.NIL. The NIL value of fixed assets is not commensurate with business profile which should be in view of such huge turnover.

(d) On perusal of Return of Income filed by the assessee it is found that the assessee has not shown any expenses towards under head of "Rents". In the circumstances, when the assessee company does neither have any fixed nor have any rented premises, it is apparent

that no genuine business transactions were being made by the assessee company.

On perusal of return of income filed for A.Y.2012-13, it is noticed that the assessee company has shown to have been made total sales of Rs.202,45,41,899/- and total purchase of Rs.192,19,31,021/-. As per the report of DRI as well as DDIT(Inv.), Unit-1, Surat and inquiries conducted by this office it is apparent that the assessee is not doing any actual business. Therefore, the above transactions are nothing but only paper transactions. Further as reported, the assessee has filed the income tax return regularly but no genuine business activity was noticed at the addressed provided. **In view of these facts, transactions shown in the return of income is nothing but only accommodation entries and therefore purchase of Rs.192,19,31,021/- is nothing but bogus purchase only. In these circumstances, I have reasons to believe that the assessee company had taken accommodation entries amounting to Rs.192,19,31,021/- for the A.Y.2012-13 has escaped assessment.**

In view of the discussion above, I have reason to believe that the income of Rs.192,19,31,021/- chargeable to tax has escaped assessment for AY 2012-13 as per the provisions of section 147 due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for A.Y. 2012-13.Thus, it is a fit case to issue Notice U/s.148 of the IT Act.

7. Escapement of Income chargeable to Tax in relation to any assets (including financial interest in any entity) located outside India

Not Applicable

8. Findings of the AO on true and full disclosure of the material facts necessary for assessment under Proviso to section 147:

In this case regular assessment for A.Y.2012-13 has been made on 31/03/2015 U/s.143(3) and income was assessed at Rs.2,09,220/-. As apparent, after completion of regular assessment U/s.143(3) of the Act on 31/03/2015, the Assessing Officer has received new Tangible Material in the form of information from DDIT(Inv), Unit-1, Surat that the Assessee company is not doing any genuine business and is a paper company only.

After, receiving the Tangible Material the Assessing Officer has made inquiries through material available with this office and in field inquiry as discussed above which conclusively establish that the assessee is not doing any genuine business activities and assessee company is a paper/shell company. From this fact, it is apparent that the material/particulars produced during the original assessment proceedings were not reliable, and therefore,there is apparent failure on the part of the assessee since it has not disclosed fully and truly all material facts which were necessary for its assessment. Further, during the original assessment the assessee has filed return of income alongwith its enclosures, however, the requiste full and true disclosure of all material facts necessary for assessment had not been made as discussed above.From the facts of the case, it is apparent that, from the

documents/evidence produced before the assessing officer during the original assessment, material evidence could not be discovered by the AO and could have been discovered with due diligence. The facts of the case are covered by Explaination 1 to section 147 of the Act.

9. Applicability of the provisions of section 147/151 to the facts for the case :

In this case a return of Income was filed for the year under consideration and regular assessment u/s 143(3) was made on 31/03/2015. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceedings u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded as above. I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment proceedings and have noted that the assessee has not fully and truly disclosed the fact that it is not doing any genuine business and is indulged in paper transactions only which was necessary for its assessment for the year under consideration.

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for its assessment for the year under consideration thereby necessitating reopening u/s 147 of the IT Act.

It is true that the assessee has filed a copy of annual report and audited P&L A/c and balance sheet along with return of income where various information/ material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has furnished annual report, audited P&L A/c and balance sheet or other evidence, however, the requisite material facts as noted above in the reasons for reopening that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the IT Act .

It is evident from the above discussion that in this case, the issue under consideration was never examined by the AO during the course of regular assessment. This fact is corroborated from the contents of notices issued by the AO u/s 143(2)./142(1) and order sheet entries recorded during the 143(3) proceedings. It is important to highlight here that material facts relevant for the assessment on the issue under consideration were not filed during the course of assessment proceedingand the same may be embedded in annual report audited P&L A/c balance sheet and books of account in such a manner that it would require due diligence by the AO to extract this information. For afore stated reasons, it is not a case of change of opinion by the AO.

18. Having gone through the above reasons recorded by the Assessing Officer, we note that reasons have been recorded on a systematic basis based on the tangible material, therefore there is no defects in the reasons recorded by the Assessing Officer. We have gone through the findings of ld CIT(A) about reasons recorded and disposing of the objections of the assessee and other aspects of the reasons recorded by the assessing officer. In para No.11 of this order, we have reproduced the findings of ld CIT(A) about reopening of the assessment under section 147 of the Act. We note that ld CIT(A) has passed a speaking order and reasoned order and upheld the validity of reopening

of reassessment. Therefore, we confirm the findings of ld CIT(A) in respect of reopening of assessee`s case under section 147/148 of the Act, and dismiss the grounds raised by the assessee.

19. In the result, ground No. 1 and 3 raised by the assessee, are dismissed.

20. Now, coming to the merit of the case, we note that assessee submitted before us the following documents and evidences, viz: (i) Purchase register (vide Pb.44 to 46), (ii) Sales register (vide Pb.47 to 53), (iii)Audit report along with audited financial statements, wherein the assessee has himself shown as a trader (vide Pb.54 to 84). First of all, we should examine the fact whether assessee is a trader or commission agent. The assessee has submitted before us audited profit and loss account, which is reproduced below:

SHRIFAL IMPEX PRIVATE LIMITED

Profit and Loss Statement for the year ended 31st March 2013

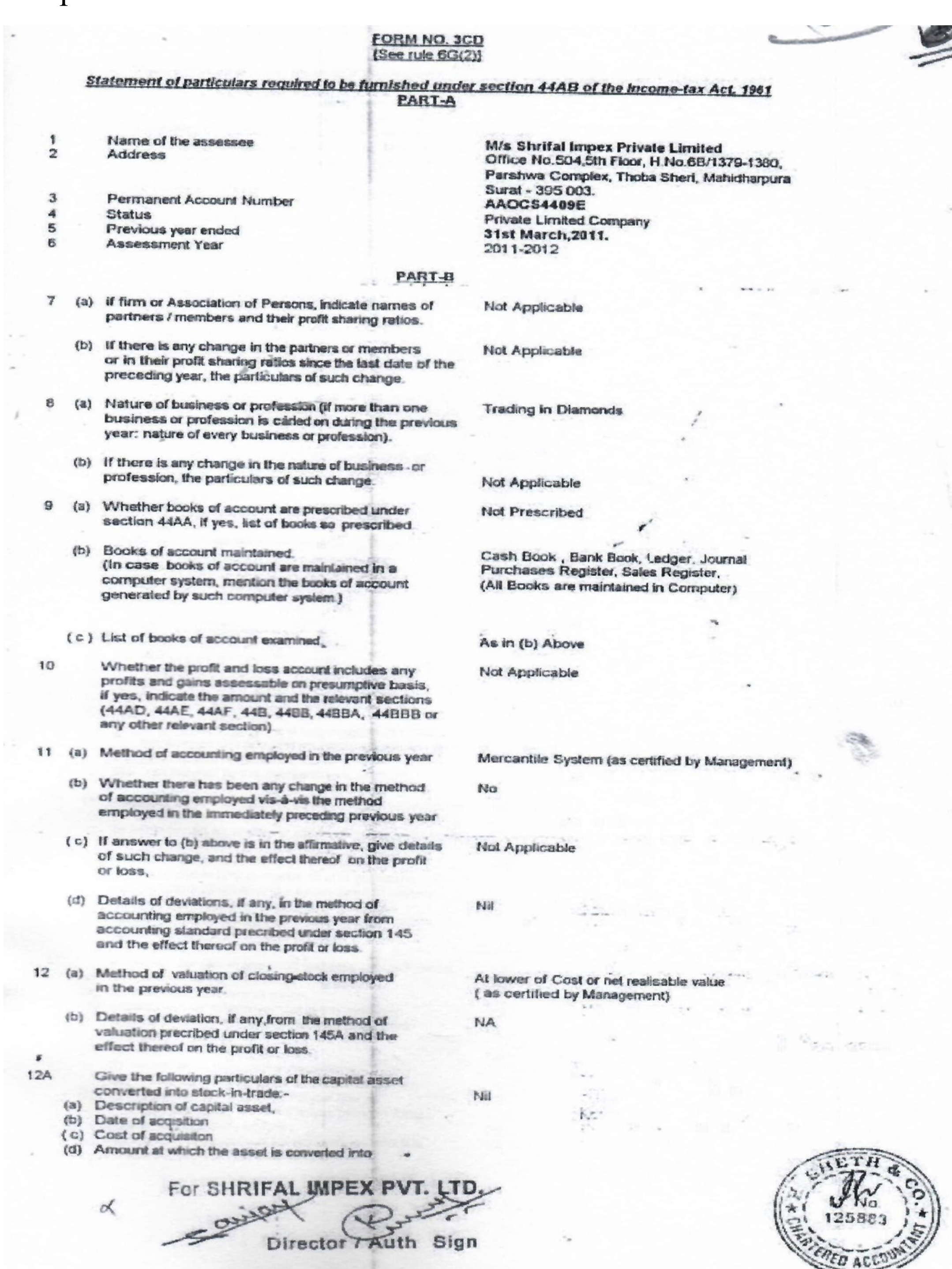
	Particulars	Refer Note No.	For the year ended 31 March 2013	For the year ended 31 March 2012
I.	Revenue from operations	1	1,846,890,377	2,024,541,899
II.	Other income	2	973,333	976,000
III.	**Total Revenue (I + II)**		1,847,863,710	2,025,517,899
IV.	Expenses:			
	Cost of materials consumed Purchases of Stock-in-Trade	3	1,847,008,320	2,024,238,199
	Changes in inventories of finished goods work-in-progress and Stock-in-Trade	4	-	-
	Employee benefits expense	5	120,000	120,000
	Finance costs	6	-	-
	Depreciation and amortization expense			-
	Other expenses	7	530,876	950,482
	Total expenses		1,847,659,196	2,025,308,681
V.	**Profit before Tax**		204,514	209,218
VI	Tax expense:			
	(1) Current tax		63,194	64,648
	(2) Deferred tax		-	-
XI	**Profit (Loss) for the period (XI + XIV)**		141,320	144,570

In terms of our report attached.
FOR H SHETH & CO
Chartered Accountants
HIREN SHETH
Proprietor
Firm Reg.No. 129098W
Place : Mumbai
Date : 05.09.2013

For and on behalf of the Board of Directors
For SHRIFAL IMPEX PVT. LTD.
Director / Auth Sign
Director Director

21. From the above profit and loss account, it is clear that assessee has been showing purchases and sales and claims the ownership of purchases and sales, hence assessee cannot be treated commission agent.

22. The assessee produced before us audited tax audit report, which is reproduced below:



FORM NO. 3CD
[See rule 6G(2)]

Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961

PART-A

No.		Particulars	
1		Name of the assessee	M/s Shrifal Impex Private Limited
2		Address	Office No.504,5th Floor, H.No.6B/1379-1380, Parshwa Complex, Thoba Sheri, Mahidharpura Surat - 395 003.
3		Permanent Account Number	AAOCS4409E
4		Status	Private Limited Company
5		Previous year ended	31st March,2011.
6		Assessment Year	2011-2012

PART-B

No.		Particulars	
7	(a)	If firm or Association of Persons, indicate names of partners / members and their profit sharing ratios.	Not Applicable
	(b)	If there is any change in the partners or members or in their profit sharing ratios since the last date of the preceding year, the particulars of such change.	Not Applicable
8	(a)	Nature of business or profession (if more than one business or profession is caried on during the previous year: nature of every business or profession).	Trading in Diamonds
	(b)	If there is any change in the nature of business or profession, the particulars of such change.	Not Applicable
9	(a)	Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.	Not Prescribed
	(b)	Books of account maintained. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system.)	Cash Book , Bank Book, Ledger, Journal Purchases Register, Sales Register. (All Books are maintained in Computer)
	(c)	List of books of account examined.	As in (b) Above
10		Whether the profit and loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant sections (44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB or any other relevant section)	Not Applicable
11	(a)	Method of accounting employed in the previous year	Mercantile System (as certified by Management)
	(b)	Whether there has been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year	No
	(c)	If answer to (b) above is in the affirmative, give details of such change, and the effect thereof on the profit or loss.	Not Applicable
	(d)	Details of deviations, if any, in the method of accounting employed in the previous year from accounting standard precribed under section 145 and the effect thereof on the profit or loss.	Nil
12	(a)	Method of valuation of closing stock employed in the previous year.	At lower of Cost or net realisable value (as certified by Management)
	(b)	Details of deviation, if any,from the method of valuation precribed under section 145A and the effect thereof on the profit or loss.	NA
12A		Give the following particulars of the capital asset converted into stock-in-trade:- (a) Description of capital asset, (b) Date of acqsition (c) Cost of acquisiton (d) Amount at which the asset is converted into	Nil

For SHRIFAL IMPEX PVT. LTD.

Director / Auth Sign

23. From the above it is clear that nature of assessee`s business is "Trading in Diamonds", hence it is clear that assessee is a trader.

24. Accounting policies of the assessee are reproduced below:

Note : 17

SIGNIFICANT ACCOUNTING POLICIES & NOTES TO THE ACCOUNTS :

ACCOUNTING POLICIES AND NOTES FORMING PART OF THE BALANCE SHEET AS AT AND PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2013

1) Basis of Accounting

The financial statements are prepared in accordance with generally accepted accounting standards applicable in India. The accounts have been prepared using historical cost convention and on the basis of a going concern, with revenue recognized and expenses accounted for on accrual basis. The financial statements have also been prepared in accordance with relevant presentational requirements of the Companies Act, 1956.

2) Inventories

Inventories are valued at cost

Cost comprise all cost of purchase cost of conversion and others cost incurred in bringing the inventories to their present location and condition.

3) Foreign Currency Transactions

Transactions denominated in foreign currencies are recorded at the exchange rate Prevailing at the time of transaction any gain or losses on account of exchange difference either on settlement or on translation is recognized in the Profit & Loss Account.

4) Contingent Liabilities

Contingent liabilities are not provided for and are disclosed by way of Notes to the Accounts.

6) Income Tax

Income Taxes are accounted for in accordance with Accounting Standard 22 (AS 22) on "Accounting for Taxes on Income" issued by the Institute of Chartered Accountants of India. Tax expense comprises both current and deferred tax. Current tax is measured at the amount expected to be paid to / recovered from the tax authorities using the applicable tax rates on the assessable income after taking credit for allowances and expenditure at the tax rate applicable to the relevant assessment Year. Deferred tax assets and liabilities are recognized for future tax consequences attributable to timing differences between taxable income and accounting income that are capable of reversing in one or more subsequent periods and are measured using the relevant enacted tax rates. At each Balance Sheet date, the Company reassesses unrealised deferred tax assets to the extent they have become reasonably certain or virtually certain of realization, as the case may be.

7) Revenue Recognition

The Company follows the mercantile system of accounts and recognises income and expenditure on accrual basis except in case of Significant uncertain the Principles of revenue recognition are given below

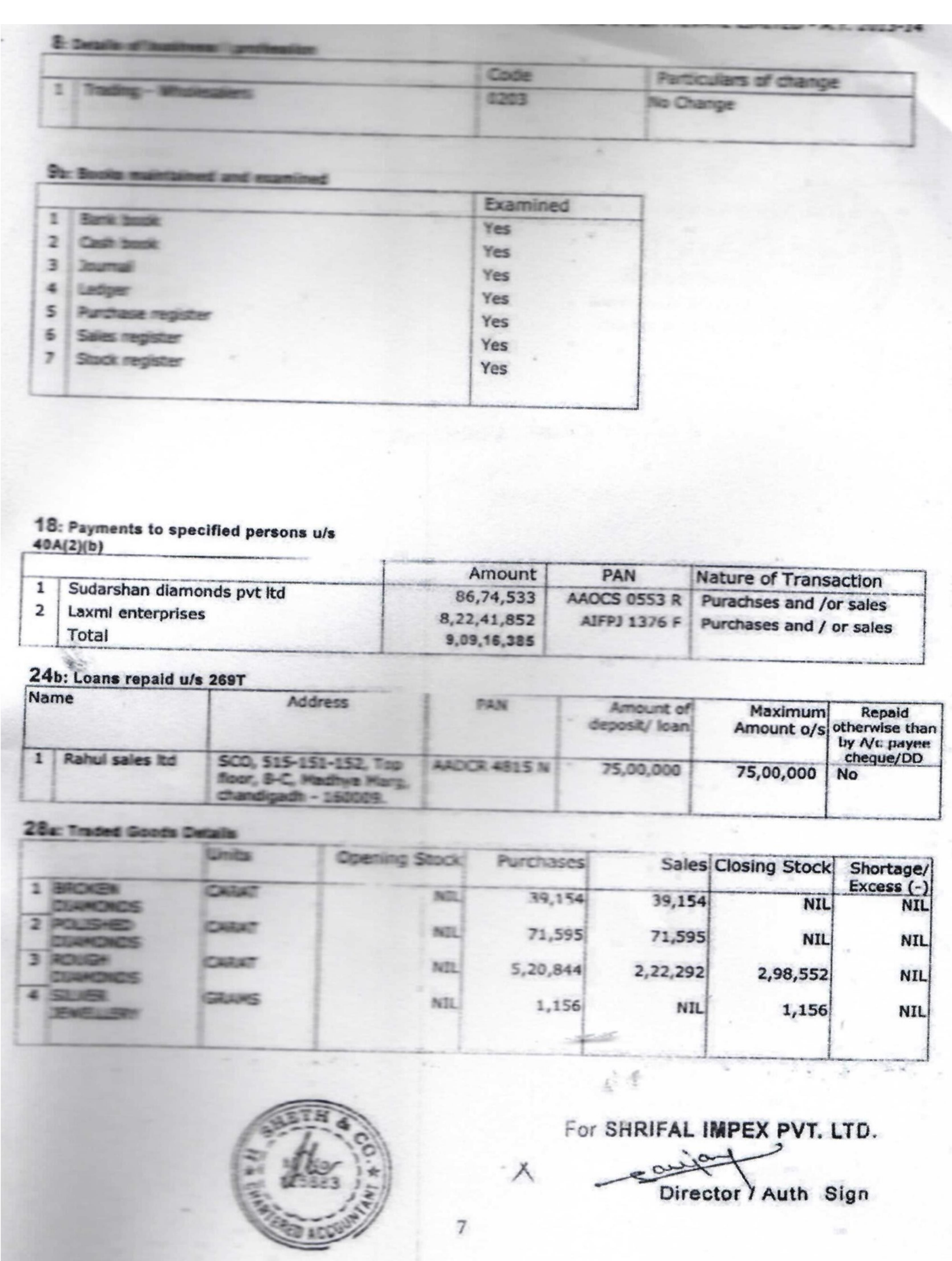
(a) Revenue from Goods recognizes sale at the point of dispatch of goods to the customers, sales are net of trade discounts and inclusive of sales tax where applicable.

8) Preliminary Expenses

Preliminary Expenses are amortised over a period of 5 years.

25. From the above accounting policies, it is vivid that assessee is recognizing the revenue and expenses on accrual basis. There is no mention in the accounting policies that assessee is getting commission. Moreover, the assessee is valuing inventories at cost, it means assessee is in trading business and not a commission agent.

26. Nature of business and quantitative details of stock of assessee:



8: Details of business / profession

		Code	Particulars of change
1	Trading - Wholesalers	0203	No Change

9b: Books maintained and examined

		Examined
1	Bank book	Yes
2	Cash book	Yes
3	Journal	Yes
4	Ledger	Yes
5	Purchase register	Yes
6	Sales register	Yes
7	Stock register	Yes

18: Payments to specified persons u/s 40A(2)(b)

		Amount	PAN	Nature of Transaction
1	Sudarshan diamonds pvt ltd	86,74,533	AAOCS 0553 R	Purachses and /or sales
2	Laxmi enterprises	8,22,41,852	AIFPJ 1376 F	Purchases and / or sales
	Total	9,09,16,385		

24b: Loans repaid u/s 269T

Name		Address	PAN	Amount of deposit/ loan	Maximum Amount o/s	Repaid otherwise than by A/c payee cheque/DD
1	Rahul sales ltd	SCO, 515-151-152, Top floor, 8-C, Madhya Marg, chandigadh - 160009.	AADCR 4815 N	75,00,000	75,00,000	No

28a: Traded Goods Details

		Units	Opening Stock	Purchases	Sales	Closing Stock	Shortage/ Excess (-)
1	BROKEN DIAMONDS	CARAT	NIL	39,154	39,154	NIL	NIL
2	POLISHED DIAMONDS	CARAT	NIL	71,595	71,595	NIL	NIL
3	ROUGH DIAMONDS	CARAT	NIL	5,20,844	2,22,292	2,98,552	NIL
4	SILVER JEWELLERY	GRAMS	NIL	1,156	NIL	1,156	NIL

SHETH & CO. CHARTERED ACCOUNTANT

For SHRIFAL IMPEX PVT. LTD.

Director / Auth Sign

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27. From the above, we note that assessee maintains quantitative details of his trading goods, hence assessee cannot be treated commission agent, therefore, plea of ld Counsel that assessee is a commission agent is hereby rejected.

28. We note that assessing officer has made addition at the rate of 100% of bogus purchases at Rs.1,92,19,31,021/- and ld CIT(A) has confirmed the same. We find that sale of the assessee is not disputed Assessing Officer. The sale is not possible in absence of purchases. The main allegation of Assessing Officer is that the assessee is not doing actual business, thus, the transaction of assessee in purchase and sale are only paper transaction, hence no genuine business. On the basis of such allegation that the assessee is not doing real transaction, entire disallowance of purchase is not justified. It is settled legal position under income tax proceedings that when the transaction is not verifiable or real business, is not established only profit element embedded in the transaction may be added and not the substantial part of transaction. We are of the view that profit element embedded in the purchases may be added. We note that by and large, the profit margin in the diamond business varies from 5% to 10%, depends on the size of the business and geographical area. Considering the facts and circumstances of the assessee`s case, we are of the view that 5% addition on purchases are sufficient to plug the leakage of the revenue. Therefore, we direct the assessing officer to make addition @ 5% of purchases. Thus, on merit, the assessee`s appeal is partly allowed.

29. In the result, ground no. 2 raised by the assessee is partly allowed.

30. Since we have adjudicated the various issues by taking lead case in ITA No. 191/SRT/2023 for AY.2012-13, our decision in the case of ITA No. 191/SRT/2023 for AY.2012-13, shall apply *mutatis mutandis* to other appeals of the assessee in ITA Nos.250 and 190/SRT2023, also.

31. In the results, appeals filed by the assessees are partly allowed in above terms.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 29/12/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 29/12/2023
SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat