IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITAs No.1871/Del/2023,
Assessment Years 2006-07

Parag Dalmia 11, Hari Bhawan, Shri Ram Mandir Marg, Sector -4 Vasant Kunj New Delhi.	Vs.	**DCIT** Central Circle-26 New Delhi
TAN/PAN: AAAPD3725B		
(Appellant)		(Respondent)

ITAs No. 6604, 6605, 6606, 6608, 6609 & 6610/Del/2017
ITAs No. 920, 921, 922, 923, 924, 925 & 3285/Del/2018
Assessment Years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15

ACIT Central Circle-26 New Delhi	Vs.	**Parag Dalmia** 11, Hari Bhawan, Shri Ram Mandir Marg, Sector -4 Vasant Kunj New Delhi.
TAN/PAN: AAAPD3725B		
(Appellant)		(Respondent)

Applicant by:	Sh Vinod Bindal, Chartered Accountant Ms. Rinky Sharma, ITP		
Respondent by:	Shri P.N. Barnwal, CIT-DR		
Date of hearing:	12	08	2024
Date of pronouncement:	30	08	2024

O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned Appeal for Assessment Year 2006-07 has been preferred by the assessee and other captioned appeals have been filed by the Revenue against the respective orders passed by the CIT(A) for captioned assessment years as tabulated below:

Sr. No.	***ITA/CO Nos.***	***Appeal by***	***A.Y.***	***Pr.CIT Order dated***	***Assessment Order dated***	***Remarks***
1.	*ITA No.1871/Del/2023*	*Assessee*	*2006-07*	*CIT(A)-29, New Delhi order dated 22.05.2023*	*Assessment order dated 30.12.2018*	*Assessment Order under section 254/153A/143(3) of the Income Tax Act, 1961.*
2.	*ITA No.6604/Del/2017*	*Revenue*	*2007-08*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 153A/143(3) of the Income Tax Act, 1961.*
3.	*ITA No.6605/Del/2017*	*Revenue*	*2008-09*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 153A/143(3) of the Income Tax Act, 1961.*
4.	*ITA No.6606/Del/2017*	*Revenue*	*2009-10*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 153A/143(3) of the Income Tax Act, 1961.*
5.	*ITA No.6608/Del/2017*	*Revenue*	*2011-12*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 153A/143(3) of the Income Tax Act, 1961.*
6.	*ITA No.6609/Del/2017*	*Revenue*	*2013-14*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 23.12.2015*	*Assessment Order under section 143(3) of the Income Tax Act, 1961.*
7.	*ITA No.6610/Del/2017*	*Revenue*	*2014-15*	*CIT(A)-26, New Delhi order dated 11.08.2017*	*Assessment order dated 31.08.2016*	*Assessment Order under section 143(3) of the Income Tax Act, 1961.*
8.	*ITA No.920/Del/2018*	*Revenue*	*2007-08*	*CIT(A)-26, New Delhi order dated 28.11.2017*	*Assessment order dated 30.06.2015*	*Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.*
9.	*ITA No.921/Del/2018*	*Revenue*	*2008-09*	*CIT(A)-26, New Delhi order dated 28.11.2017*	*Assessment order dated 30.06.2015*	*Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.*
10.	*ITA No.922/Del/2018*	*Revenue*	*2009-10*	*CIT(A)-26, New Delhi order dated 28.11.2017*	*Assessment order dated 30.06.2015*	*Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.*
11.	*ITA No.923/Del/2018*	*Revenue*	*2010-11*	*CIT(A)-26, New Delhi order dated 28.11.2017*	*Assessment order dated 30.06.2015*	*Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.*
12.	*ITA No.924/Del/2018*	*Revenue*	*2011-12*	*CIT(A)-26, New Delhi order dated 28.11.2017*	*Assessment order dated 30.06.2015*	*Penalty Order under section 271(1)(c) of the Income Tax Act, 1961.*
13.	*ITA No.925/Del/2018*	*Revenue*	*2012-13*	*CIT(A)-26, New Delhi order dated 03.11.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 143(3) of the Income Tax Act, 1961.*
14.	*ITA No.3285/Del/2018*	*Revenue*	*2012-13*	*CIT(A)-26, New Delhi order dated 03.011.2017*	*Assessment order dated 18.03.2015*	*Assessment Order under section 143(3) of the Income Tax Act, 1961.*

ITA No.1871/Del/2013: A.Y. 2006-07 – Assessee's Appeal

2. The concise grounds of appeal raised by the assessee are reproduced hereunder:

"1. The impugned assessment order is bad in law and void ab initio as no incriminating material was found during the income-tax search in the premises of the assessee on 20/01/2012. This AY being a completed and not abated assessment year, no addition made u/s 153A of the Act in absence of any incriminating material is sustainable in view of the judgments of the Hon'ble Apex Court in PCIT vs Abhisar Buildwell Pvt Ltd (2023) 149 taxmann.com 399 (SC), PCIT vs Jay Ace Technologies Ltd (2023) 154 taxmann.com 45 (SC) and Jay Ambey Aromatics (2023) 156 taxmann.com 691 (SC) (DoJ 24/11/2023). Hence, the addition of Rs 1,20,37,863/- made be declared as void ab initio.

2. The impugned assessment order is bad in law and void ab initio as the statement of the assessee recorded u/s 132(4) of the Act (where no such additional income was offered as the same was not admitted) could not be considered as an incriminating material in absence of any corroborative evidence found in the search as has been held by the Hon'ble jurisdictional Delhi High Court in CIT vs Harjeev Aggarwal (2016) 70 taxmann.com 95 (Delhi) and PCIT vs Best Infrastructure Pvt Ltd (2017) 84 taxmann.com 287 (Delhi) and PCIT vs Meeta Gutgutia (2017) 82 taxmann.com 287 (Delhi) confirmed by the Hon'ble Apex Court (2018) 96 taxmann.com 468 (Delhi) (DoJ 02/07/2018).

3. The authorities below erred in law and on facts by ignoring that all the alleged foreign bank accounts of the assessee held with the HSBC Bank, Switzerland:

(i) were closed before 31/03/2006 (not existing even as on the close of the period relevant to this Assessment Year) as is mentioned in the impugned assessment order;

(ii) as per the DTAA with Switzerland, no information in any manner was to be given by the Swiss authorities for the bank accounts closed before the April 2011, as confirmed by the Swiss authorities also and thus no information other than what was considered in the original assessment order is available with the revenue;

iii) the Hon'ble ITAT in para 34 of its appellate order dated 26/02/2018 in the first round of appeal no. ITA 5499/Del/2017, never held that the said incriminating material was found during the course of search on the assessee and an admitted fact by the revenue also,

(iv) though the Hon'ble ITAT held therein the same to be an incriminating material but for application of the provisions of the section 153A of the Act in respect of a completed assessment is finding of an incriminating material in the premises of the assessee during an income-tax search and nowhere else or in any other manner as has been held by the Hon'ble Apex Court in the above judgments;

(v) the directions from the Hon'ble ITAT vide above appellate order dated 26/02/2018 in the first round stood fully met and which otherwise stand overruled since then by the above stated judgments;

(vi) the authorities below failed to correctly appreciate the directions, material on record, the sanctity of the information with the revenue, and law in this regard while making the impugned addition;

(vii) the provisions of the section 65B of the Indian Evidence Act were not at all complied with; and

(viii) the assessee was not at all a beneficiary of the said account as is not at all mentioned in the impugned information as has been held in PCIT vs Joginder Singh Chatha 2023-TIOL-1635-HC-P&H-IT (DoJ 07/11/2023).

Thus, the impugned additions of Rs 1,20,37,863/- made in respect of the said Swiss Bank account are not sustainable and should be deleted.

4. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."

3. The case has a chequered history. The assessee a Resident of India. He derives income from salary, business and profession, capital gains and income from other sources etc. The assessee filed Return of Income(ROI) on 30.10.2006 declaring total income at Rs.20,73,131/- for the Assessment Year 2006-07 in question. A search action was conducted on 20.01.2012 at the premises of the assessee under Section 132 of the Act. Accordingly, notice under Section 153A of the Act was issued and assessment proceedings were set in motion. In response to notice issued under Section 153A of the Act, the assessee filed return of income on 22.11.2012 declaring the total income at Rs.20,73,131/- which is identical to the income declared in the return filed prior to search. The assessment was completed under Section 153A r.w. Section 143(3) vide order dated 18.03.2015 at a total income of Rs.1,42,34,124/- against the returned income of Rs.20,73,131/- by making an addition of Rs.1,20,37,863/- on account of undisclosed foreign asset in the form of foreign bank account and another addition of Rs.1,23,130/- on

account of interest income earned on the deposits in the said undisclosed foreign bank account.

4. Aggrieved by the assessment order dated 18.03.2015, the assessee filed appeal before the CIT(A). The CIT(A) vide order dated 11.08.2017 declined any relief and confirmed the additions towards undisclosed deposits in foreign bank account and imputed interest on such deposits.

5. Further aggrieved, the assessee preferred appeal before the Tribunal. The Co-ordinate Bench of Tribunal in ITA No.5499/Del/2017 dated 26.02.2018 made certain observations and restored the issue to the file of the AO for re-adjudication after obtaining certain verificatory reports on the existence of alleged Foreign Bank.

6. It would be apt to reproduce the relevant paras of the order passed by the Co-ordinate Bench dealing with the issue.

> *"30. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer as well as the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find in the instant case information was received by Govt. of India under DTAA/DTAC between India and other countries that certain persons in India held bank accounts in HSBC Private Bank (Suisse), SA, Switzerand which contained the name of the assessee. A search u/s. 132 was conducted in the premises of the assessee on 20.01.2012 during which the statement of the assasee was recorded u/s. l32(4) of the I.T. Act. He was also asked to give the details of his foreign bank accounts to which the assessee had categorically denied to have known or maintained any such foreign bank account. We find the Assessing Officer, during the course of assessment proceedings, confronted the information received in the form of 7 page documents to which the assessee had also denied to have any knowledge about the existence of such bank account. It is pertinent to mention here that the assessee vide letter dated 09.02.2012 addressed to the DDIT (Inv.) New Delhi had clarified that neither he created any such entity nor is aware of one existing on that date as mentioned in the 7 pages which were confronted to him. He,*

however, had stated that in order to buy peace and avoid litigation with the revenue authorities is willing to pay income-tax and interest due thereon for the relevant year provided no penal action and/or prosecution action is undertaken and is kept confidence. The Assessing Officer noted that despite such undertaking given by the assessee before the DDIT (Inv.) no such amount was offered to tax in the return filed in communication to notice u/s. 153A on the ground that the assessee did not receive any reasons from the department to his request and the information was leaked to a TV channel. Since the information in the form of document has been collected by the, Government of India from credible sources wherein name of the assessee appeared containing his date of birth, address and other details such as name of father, wife, mother, etc. and since the details of visit to Switzerland coincided with the details of consent waiver form, the assessee did not sign the same, the Assessing Officer rejected the explanation given by the assessee and made addition of Rs.1,20,37,863/- to the total income of the assessee being the deposit in TAIRA FOUNDATION, RONDEBERG LIMITED and ASPREY WORLWIDE SA, the details of which are given at para 6 of this order. The Assessing Officer further made addition of Rs.1,23,130/- being income on account of undisclosed income earned for such undisclosed foreign bank account deposits u/s 69 of the I.T. Act.

31. We find the Id. CIT(A) deleted the addition of Rs.1,23,130/- being the interest on account of undisclosed interest earned on such deposits for which the revenue is not in appeal and therefore we are not concerned with the same. He, however, dismissed the ground raised by the assessee challenging the validity of the assessment proceedings u/s 153A and sustained the addition made by the Assessing Officer amounting to Rs. 1,20,37,863/-.

32. It is the submission of the ld. counsel for the assessee that in absence of any incriminating material found during the course of search, no addition can be made. It is also the submission of the Id. counsel for the assessee that the documents relied on by the Assessing Officer are inadmissible since these documents are not signed by any authority and these are merely photocopies which were not duly authenticated. Further, it is the submission of the ld. counsel for the assesses that none of the client profile reflecting outstanding bank balance is in the name of the assessee i.e. Parag Dalmia or his family members and, therefore, addition, if any, can be made in the hands of those entities and not in the hands of the assessee.

33. It is the submission of the ld. DR that the assessee was shown the information received by the Government of India regarding the undisclosed foreign bank account during the course of search and his statement was recorded u/s 132(4) of the I.T. Act. The assessee

vide his letter dated 09.02.2012 i.e. 20 days after the search had filed a letter before the DDIT (Inv.) agreeing to pay the tax and interest due thereon. The declaration of the assessee voluntarily on such undisclosed income in post-search enquiries and the statement recorded during the course of search constitute incriminating evidence found during the course of search. It is also the submission of the ld. DR that since a search has taken place u/s 132 during which the assessee was confronted with those 7 pages documents, therefore, the Assessing Officer could not have issued notice u/s 148 on the basis of the 7 pages received from a sovereign country containing the name of the assessee of having Swiss bank accounts which were confronted to him during the course of search. It is also the submission of the Id. DR since the assessee denied to have signed the consent waiver form as required by the Assessing Officer during the course of assessment proceedings and since his travel to Switzerland coincides with the creation of the documents / operation of the bank accounts, therefore, it is clear that the accounts maintained with the Suisse Bank belong to the assessee and, therefore, the addition made by the Assessing Officer and sustained by the ld. CIT(A) are justified.

34. So far as the argument of the ld. counsel for the assessee that in absence of any incriminating material found during the course of search, the proceedings u/s. 153A has to be held as null and void is not applicable to the facts of the present case. The various decisions relied on by the ld. counsel for the assessee in our opinion are not applicable to the facts of the present case and are distinguishable. Since in the instant case the documents in the shape of 7 pages received by the Government of India from a sovereign country containing information regarding the undisclosed foreign accounts were received prior to the search and was confronted to the assessee during the course of search, therefore, the same, in our opinion, constitutes incriminating material which has rightly been used by the Assessing Officer in the proceedings u/s. 153A/143(3) of the I.T. Act. Further, since the proceedings u/s. 153A was pending, the Assessing Officer is not empowered to issue notice u/s. 148 of the I.T. Act in respect of income which comes to his knowledge from a source other than the evidence found during the course of search and continued the said proceedings simultaneously with proceedings u/s. 153A/153C as held by the Tribunal in the case of ACIT vs. Vipul Motors Pvt. Ltd. vide ITA No.2675 & 2676/Del/2010 order dated 08.08.2013 and in the case of Rajat Subham Chatterjee vs. ACIT vide ITA No.2430/00/2015, order dated 20.05.2016. Such type of argument was never taken in the case of Bishwanath Garodia (supra) and Shyam Sunder Jindal (supra).

35. Now, coming to the merits of the case is concerned, we find the Assessing Officer at para 11 of the order as observed as under :-

"11. From the above facts it is clear that the assessee has opened and/or operated accounts) in HSBC Bank. He has been given a unique code which is BUP SIFIC PER ID 9070142903. His profile was found linked to five client profiles namely, ASPREY WORLDWIDE S.A.; RONDEBERG LIMITED; TAIRA FOUNDATION, 12717 RSK AND MENKO FOUNDATION, VADUZ. With a view to verifying the above foreign bank accounts) a reference(s) has/have been sent to competent authorities in Switzerland and other countries. Till date the verificatory report in respect of above foreign bank account(s) has not been received. In view of these facts and since the assessment is getting barred by limitation on 31.03.2015, the assessment of the assessee is being completed in the absence of verificatory report and appropriate action as provided in the Act, will be taken as and when the verificatory report is received."

36. This shows that the verificatory letters from the competent authorities in Switzerland was yet to be received before completion of the assessment. Before Id. CIT(A) was also, the same was not available. Even before us nothing was brought to our notice regarding the verificatory letters received from Switzerland. Since assessee in the instant case was denying from the beginning that the accounts does not belong to him and since verificatory report in respect of above is yet to be received, and since in absence of such verificatory letter cannot be conclusively proved that the accounts in fact do belong to the assessee, therefore, considering the totality of the facts and in the interest of justice, we restore this issue to the file of the AO with a direction to adjudicate the issue afresh and in accordance with law after obtaining the law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are partly allowed for statistical purposes.

37. In the result, the appeal filed by the assessee is partly allowed for statistical purposes."

7. Based on the observations and directions of the Co-ordinate Bench rendered under Section 254(1) of the Act, the AO once again proceeded to re-examine the issue. In an attempt to implement the directions of the Tribunal, the AO requested the assessee to furnish copy of signed 'Consent Waiver Form' (Waiver) to enable the Revenue to gather the particulars of bank account and bank balances from HSBC, Switzerland found to be allegedly maintained by the

assessee. The reframed the assessment order in pursuance of the ITAT order. The AO observed in its order passed dated 30.12.2018 under Section 254 r.w. Section 153A r.w. Section 143(3) of the Act that the assessee has declined to co-operate with the AO in the second round of assessment proceedings initiated at the instance of the ITAT order. No verification report could be received by the AO as contemplated in ITAT order owing to failure of the Assessee to provide Waiver to secure bank particulars and statement of Assessee from Swiss authorities. Hamstrung by the denial of the assessee to provide Waiver, the AO once gain reiterated the previous assessed income and thus assessed the income yet again at Rs.1,41,10,994/-.

8. Aggrieved by the assessment order in the second round, the assessee once again filed appeal before the CIT(A). The CIT(A) however, on appreciation of facts and circumstances involved in the case, opined against the assessee and thus denied any relief. The CIT(A) has dealt with the issue as under:

> *"Ground No.s. 2 to 6: In the present case certain information was received in April-May-2011 under DTAA that certain persons in India including the appellant have bank accounts in Hong Kong and Shanghai Banking Corporation (HSBC Bank), Switzerland. A search and seizure action u/s 132 was carried out in the case of appellant on 20.01.2012. During the search certain assets in the form of cash, documents and jewellery had been found and seized. Assessment u/s 153A/143(3) of the Act, was completed in the case of appellant vide order dated 18.03.2015 by making addition at Rs. 1,20,37,863/- on account of income from undisclosed foreign bank account u/s 69 of the Act and a further addition of Rs. 1,23,130/- was made on account of interest on these deposits in the foreign bank account. Aggrieved with the assessment order, the appellant had filed appeal before CIT(A)-26, Delhi who vide order No. 10138/06-07 dated 11.08.2017, confirmed the addition of Rs. 1,20,37,863/- made on account of undisclosed deposits in foreign bank account but deleted the addition of Rs. 1,23,130/- made on account of interest on deposits in the said foreign bank account. A further appeal was preferred before Hon'ble ITAT by the appellant. Hon'ble ITAT Delhi vide order in ITA no. 5499/DEL/2017 dated 26.02.2018 restored the issue to file of AO with the direction to adjudicate the issue airesh*

in accordance with law as under:

**35. Now, coming to the merits of the case is concerned, we find the Assessing Officer at para 11 of the order as observed as under :-*

> *"11. From the above facts it is clear that the assessee has opened and/or operated accounts) in HSBC Bank. He has been given a unique code which is BUP SIFIC PER ID 9070142903. His profile was found linked to five client profiles namely, ASPREY WORLDWIDE S.A.; RONDEBERG LIMITED; TAIRA FOUNDATION, 12717 RSK AND MENKO FOUNDATION, VADUZ. With a view to verifying the above foreign bank accounts) a reference(s) has/have been sent to competent authorities in Switzerland and other countries. Till date the verificatory report in respect of above foreign bank account(s) has not been received. In view of these facts and since the assessment is getting barred by limitation on 31.03.2015, the assessment of the assessee is being completed in the absence of verificatory report and appropriate action as provided in the Act, will be taken as and when the verificatory report is received."*

36. This shows that the verificatory letters from the competent authorities in Switzerland was yet to be received before completion of the assessment. Before Id. CIT(A) was also, the same was not available. Even before us nothing was brought to our notice regarding the verificatory letters received from Switzerland. Since assessee in the instant case was denying from the beginning that the accounts does not belong to him and since verificatory report in respect of above is yet to be received, and since in absence of such verificatory letter, it cannot be conclusively proved that the accounts in fact do belong to the assessee, therefore, considering the totality of the facts and in the interest of justice, we restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law after obtaining the verificatory report. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are partly allowed for statistical purposes."

10.1 Subsequently, the assessment proceedings in pursuance to the direction of Hon'ble ITAT, Delhi were completed u/s 254/153/143(3) of the Act, vide order dated 30.12.2018 which is the subject matter of the present appeal. The relevant extract of the assessment order has already been reproduced in para 3 above of this order.

10.2 In pursuance to the directions of Honble ITAT, Delhi in ITA no.5499/DEL/2017 dated 26.02.2018 the AO had issued letters to Foreign Tax Authority for seeking a response/verificatory letter. Though the response was not received during the course of re-

assessment proceedings, but subsequently, during the remand proceedings, it has been conveyed by the Foreign Tax Authority that the administrative assistance was only available from F.Y. 2011/2012 onwards. Therefore the information from 1st April, 2011 onwards could only be provided. Meaning thereby, that the information pertaining to prior years could not be provided as they were not covered by the scope of convention. It was also informed that during the time period 01.04.2011 to 31.03.2012 no account of Parag Dalmia existed. The information for the period 01.04.2011 to 31.03.2012 is not of much relevance in the present case as the client profiles had already been closed before 2011 though the accounts were operative during the F.Y. 2005-06 as per the details mentioned in the assessment order.

10.3 1 have perused the document received under DTAA/DTAC running into seven pages and it contains the Name, Date of birth, Place of birth, Nationality and Gender in respect of the appellant alongwith the address. The details as available in the document pertain to the appellant as such. From the above facts, it is seen that the appellant was given a unique code in HSBC Bank and its profile was found linked to five client profiles. During the search u/s 132 of the Act the statement of appellant was recorded u/s 132(4) and he denied having such foreign bank account. Thereafter the appellant filed a letter dated 09.02.2012 before DDIT-(Inv.), Unit-6, New Delhi wherein he admitted to pay taxes on the deposits in the said foreign bank accounts. Later on the appellant retracted from this statement on certain grounds after a period of 9 months. A statement recorded under the statutory provisions of section 132(4) cannot be retracted at the will of the assessee but such retraction have to be made within a reasonable time, at the earliest opportunity, when the element of pressure or coercion ceases to exist on the assessee. The retraction of the present case has been made after a time lapse of around 9 months which raises doubts on its credibility. In this regard, Reliance is placed on the order of Hon'ble Rajasthan High Court in the case of Roshan Lal Sancheti v. Pr. CIT [IT Appeal No. 47 of 2018, dated 30.10.2018], the relevant extract of which is reproduced as under:

> *"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has*

retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days. In view of above discussion, we are persuaded to allow the appeal of the revenue which is accordingly allowed. The substantial question of law formulated by this Court vide order dated 10.04.2018 is answered in favour of the revenue and against the assessee in the aforesaid terms."

10.4 Now going by the merits of the document relied upon by the AO during the assessment as well as re-assessment proceedings, it is seen that the document contains the personal details of the appellant i.e. its name, date of birth, and address borne on the account profile which could not have been accessed without the explicit approval of the appellant. The name of the family members of the appellant such as Sangeeta Dalmia (wife), Aruna Dalmia (mother), Narahari Dalmia (father) are appearing as attornies which lend more authenticity to it. During the course of search, appellant was asked to furnish the details of travel to Switzerland and it was observed that the appellant was physically in Switzerland on the dates of opening of the foreign bank account. AO has noted that the date of creation of profile in HSBC bank has been shown as 10.05.1998 which coincides with the period of his travel to Switzerland. The document under reference was received was credible sources under the mutual agreement with a foreign country and the contents of this documents corroborate with the personal details of the appellant and other circumstancial evidences such as period of visit to the foreign country under reference. AO has also mentioned in the remand report that the appellant was not cooperative in signing the consent waiver form which could have enabled the department to get the account details from HSBC bank, Geneva.

10.5 It is seen that the information under reference in the document pertained to the HSBC cases where department was in possession of information that certain Indian passport holders had opened and maintained HSBC bank accounts. Based on the information, investigations were initiated by the department and some persons admitted having bank account with HSBC before the tax authorities and also paid the due taxes on the deposits in such accounts. However in cases where details of transaction were denied, reference was required to be made to HSBC with the consent letter signed by the alleged account holder and duly notorized to enable HSBC to furnish requisite details such as account opening form, details of transactions etc. In present case the appellant did not sign the consent form for seeking information in respect of alleged overseas bank account which could have facilitated in seeking further details. The issue under consideration is not of a simple tax evasion but a

case where the evidences available with the department relate to parking of the funds in foreign destination in an unaccounted manner contrary to the law. Accordingly, in such a case it was also beneficial to the appellant to get the charges against him clarified by way of seeking complete information against him and cooperating in this regard. The evidences received by the department are through official channels and constitute a credible source for making the addition. In view of the same and also considering that the documents available with the department corroborate with the personal details of appellant and the circumstantial evidences such as travel history, I am inclined to agree with the order of AO.

11. In the result, the appeal of the appellant is hereby dismissed."

9. Further aggrieved, the assessee has knocked the door of the Tribunal once again.

10. The ld. counsel submitted at the outset that the controversy revolves around the taxability of deposits kept in alleged foreign bank allegedly maintained with HSBC Switzerland by the assessee without any corroboration. The ld. counsel contended that the Tribunal had set aside the matter to the file of the AO for determining the issue after obtaining certain verificatory report or letters from Switzerland Authorities to corroboration the allegations towards undisclosed bank account. No such verificatory report or any authenticated corroboration has been confronted to the assessee while repeating the additions in contravention of the order the tribunal.

10.1 The ld. counsel thereafter raised jurisdictional issue and pointed out that the assessment in the instant case has been carried out under Section 153A of the Act. The assessment of A.Y. 2006-07 at the time of the search, had already stood concluded and remained unabated and therefore in view of the settled position of law enunciated in *PCIT vs. Abhisar Buildwell Pvt. Ltd., (2023) 154 taxmann.com 45 (SC)* and *Jay Ambey Aromatics, (2023) 156 taxmann.com 691 (SC)*, the impugned additions could not be made

by the AO within the sweep of Section 153A of the Act in the absence of any incriminating material found in the course of search. The additions made are based on so called 7 page documents which were already in possession of the revenue at the time of search and have not been gathered in search. Thus the alleged undisclosed income based on documents obtained prior to search cannot be assessed under s. 153A qua a concluded assessment. The action of the revenue is thus contended to be unsustainable in law.

10.2 The assessee further relied upon the judgment rendered by the Hon'ble High Court in the case of *Shyam Sundar Jindal vs. CIT, (2024) 461 ITR 96 (Delhi)(HC)* to contend that in somewhat similar factual matrix, the Hon'ble High Court was persuaded to hold that in the absence of incriminating material, additions under Section 153A was not justified. The ld. counsel simultaneously pointed out that in *Shyam Sunder Jindal (supra)* case also, the assessee had refused to sign the Waiver and having taken note of the fact situation similar to present case, the Hon'ble High Court has held in favour of the assessee and against the Revenue. The ld. counsel thus submitted that the case of the assessee is squarely covered in favour of the assessee as per the judicial precedents cited above.

10.3 The ld. Counsel also quipped that as per the 7 page documents extracted in the assessment order in first round of proceedings, it is evident that the alleged Foreign Bank Account was closed before 31.03.2006 and thus no additions could be justified in the absence of any balance.

10.4 The ld. counsel next pointed out that so called 7 pages information indicating Foreign Bank Account held in the name of Assessee obtained from Swiss Authorities is not at all reliable since, as per the DTAA with Switzerland, no information in any manner

was to be given or shared by the Swiss Authorities for the bank accounts closed before April, 2011. The sanctity of information collected by the Revenue is thus under grave doubt and the onus lies on the revenue to confront some credible material to support its action.

10.5 The ld. counsel thus submitted that neither the action of Revenue is justified within the jurisdiction conferred to AO under Section 153A nor such additions are plausible on the touchstone of factual matrix. The ld. counsel thus urged for suitable relief in the matter.

11. The ld. CIT-DR for the Revenue, on the other hand, pointed out that the present appeal lies against the second round of proceedings and thus is governed by the landscape set out by the ITAT in the first round. The ITAT in the present second round is thus not entitled to revisit any concluded aspect of the appeal as it would tantamount to review which is impermissible. The ITAT thus cannot expand the scope of its power and revise the conclusive findings of the Tribunal rendered in the first round on the jurisdictional issue already stood decided.

11.1 To support such assertions, the ld. CIT-DR referred to paragraph 34 of the decision of the Co-ordinate Bench of the Tribunal in ITA No.5499/Del/2017 order dated 26.02.2018 for the A.Y. 2006-07 (first round) to contend that the ITAT, on appraisal of factual matrix categorically held that the claim of the assessee towards absence of any incriminating material is not justified. The ITAT affirmed the action of the AO on the touchstone of s. 153A of the Act. The jurisdiction issue thus stood concluded in the first round by the ITAT and cannot be permitted to be re-agitated. The Ld. CIT-DR next submitted that on factual analysis, the Tribunal

clearly observed in the first round that information regarding undisclosed foreign account constituted incriminating material for the purposes of assessment under Section 153A of the Act. It was thus concluded that the assessee cannot re-agitate the jurisdictional issue yet again in the second round.

11.2 The ld. CIT-DR thereafter submitted, without prejudice, that ITAT also categorically observed that since the proceedings under Section 153A is set in motion, the jurisdiction of AO under s. 147 is ousted and the AO is not empowered to issue separate notice under Section 148 of the Act to assess undisclosed income which came to his knowledge from independent source on exchange of information etc. by the sovereign. The CIT-DR submitted that, be that as it may, the powers conferred under Section 147/148 to the AO are saved by the Hon'ble Supreme Court. The ITAT thus is fully empowered in law to give a finding or direction in terms of Section 150 of the Act and direct the AO to reopen the assessment under Section 147 r.w. Section 148 by extending the limitation period in tune with the spirit of observations of the Hon'ble Supreme Court in *Abhisar Buildwell Pvt. Ltd. (supra).*The Ld. CIT-DR thus pleaded that the ITAT may, if considered expedient, provide enabling 'findings' or 'directions' etc. contemplated under s. 150 of the Act to lift the embargo of time limit for issuance of notice for the purposes of reassessment under the provisions of the Act. The assessee thus cannot escape the taxation of such non-disclosure of foreign bank on technical grounds.

11.3 Addressing further, The ld. CIT-DR pointed out that the ITAT has weighed the peculiar circumstances in perspective in the first round and approved the jurisdiction assumed under Section 153A of the Act. No remedy is thus available on issues already determined in

the first round.

11.4 On facts, it was pointed out that information received under DTAA / DTAC between India and other countries, in the form of 7 pages document (extracted in para 6 of the assessment order passed in first round representing particulars of undisclosed bank account etc.) was confronted to the assessee in the course of search. Subsequently, the assessee vide letter dated 09.02.2012 before DDIT (Inv.) also consented and voluntarily expressed his willingness to pay income tax and interest due on such undisclosed amount for the relevant year so detected [provided no penal action and / or prosecution action is under taken and is to be kept confidential]. Despite such assurance and undertaking given in writing by the assessee before the DDIT (Inv.), the assessee resiled from its stand and no such undisclosed sum was eventually offered to tax in the return filed pursuant to notice under Section 153A of the Act.

11.5 The CIT-DR thus asserted that in the light of the material available on record, and in the absence of any co-operation from the assessee in the matter of deeper enquiry which prevented the Revenue to bring exact facts on undisclosed facts to the fore, it is not open to the assessee to take the plea of his innocence and *bona fides*. The assessee has consciously prevented the Revenue to gather pin-pointed information from the Swiss Authorities towards Foreign Bank Account reported to be maintained by assessee. Since collection of desired information / verification report is possible only on receiving Waiver from the account holder assessee which he has refused to provide on the pretext of self incrimination, the action of the revenue cannot be faulted.

11.6 The ld. CIT-DR submitted that if the assessee claims to be not maintaining any unaccounted foreign bank account as alleged

despite particulars of account confronted to assessee, there is no reason for him to refuse to sign consent waiver form to unearth the truthful position laid bare. It is not permissible for the assessee to halt enquiry by non cooperation on the grounds of self incrimination. In the light of the information received and confronted to the assessee in the course of search and in the light of offer or undertaking given by the assessee before the DDIT, the propriety of denial towards holding undisclosed foreign bank is a damp squib. The CIT-DR contended that the refusal to sign the consent waiver form to enable revenue to obtain the exact information from Swiss Authorities on the bank account found as per 7 pages document, lends credence to the presence of undisclosed foreign bank account maintained by the assessee.

11.7 The ld. CIT-DR thus contended that in the light of peculiar circumstances, no interference is called for with the order of the CIT(A) appealed against.

12. We have carefully considered the rival submissions and perused the material available on record as well as case laws cited.

13. While several grounds have been raised to narrate different facets of issues involved; two pertinent issues have been effectively raised on behalf of the assessee.

(a) Firstly, whether the additions under Section 153A in search assessment is permissible in law in the absence of any incriminating material found in the course of search in view of the judgment rendered in the case of *Abhisar Buildwell (supra)*?.

(b) Secondly, whether the additions made by the AO could be sustained in the facts of the case where the Revenue does not allegedly possess any credible material to justify its allegation towards undisclosed foreign bank account maintained by the assessee in HSBC

Bank, Switzerland?

14. On perusal of the order of the Co-ordinate Bench previously passed under Section 254(1) of the Act in the first round of proceedings, it is manifest that similar grievance towards lack of jurisdiction to assess the undisclosed income attributable to Foreign Bank Account within the ambit of Section 153A were raised before the Tribunal. The ITAT, on appraisal of facts and circumstances of the case, clearly held that 7 pages document in possession of the Revenue constituted incriminating material for the purposes of assessment. Therefore where on facts, it was found by the Tribunal that incriminating material was existing in the present case and the ingredients for assumption of jurisdiction to assess the income of the assessee under s. 153A stood satisfied, the jurisdictional issue raised yet again in the second round of proceedings are non longer available to the assessee. The review of jurisdictional issue already decided earlier, is outside the mandate of the ITAT. It is not open to the Tribunal to review and re-ascertain the view already expressed by the Tribunal in the first round of proceedings. The jurisdictional question thus being not maintainable is answered against the assessee and in favour of the Revenue.

15. The assessee has heavily relied upon the judgment rendered by the Hon'ble Delhi High Court in the case of *Shyam Sunder Jindal (supra)*. The substantial question for determination before the Hon'ble High Court was maintainability of additions under Section 153A in the absence of incriminating material in the light of the judgment rendered in the case of *Abhisar Buildwell (supra)*. The judgment was admittedly rendered in the context of foreign bank account in Geneva Switzerland. The Hon'ble Delhi High Court applied the principles enunciated in *Abhishar buildwell* and

exonerated the assessee from the clutches of s. 153A of the Act. In this backdrop, the assessee seeks to argue that the he cannot be compelled to sign Consent waiver form in the light of certain observations of the Hon'ble Court in the context of determining the assumption of jurisdiction. It is trite that what is binding precedent is what the superior court actually decides and not what logically follows from various observations made in the decision making process. The issue before the Hon'ble High Court was legitimacy of jurisdiction under s. 153A of the Act and not whether the claim of the assessee not sign waiver is per se justified or not. The aforesaid judgment thus is of no assistance to the assessee to justify refusal to sign waiver in the present circumstances. Joining the issue, the Tribunal in the first round of proceedings, has categorically observed the presence of incriminating material giving rise to impugned additions in the hands of the assessee. As already observed, the issue presented for decision in *Shyam Sunder Jindal* case has already been decided by the ITAT in the first round and thus stood concluded. The ITAT in the second round is thus not competent to re-examine the decision of the Co-ordinate Bench.

16. On facts, we observe that the AO, in the first round of proceedings, confronted the assessee with 7 page information/documents in the form of client profiles of HSBC Bank also showing unique code assigned to the assessee for operation of the bank account maintained with HSBC Bank. The profile of the assessee was found to be linked to 5 client profiles. Thus, evidently, the Revenue was in possession of definite material claimed to be obtained under DTAA/DTAC with foreign countries which seeks to indicate holding of foreign bank account by the assessee with HSBC Bank, Switzerland. The particulars available with the Revenue were thus overwhelming and specific in nature. With a view to verify the

credibility and precision of such information on purported foreign bank account, a reference was sent to competent authorities in Switzerland and other countries by the Indian Revenue Authorities. The confirmatory verification report in respect of the foreign bank accounts allegedly maintained by the assessee could not however be obtained by the Revenue Authorities owing to the conditional handicap namely 'Consent Waiver Form' which is required to be necessarily signed by the account holder. The Swiss authorities would, otherwise, in the absence of consent from the account holder would not officially part with the information of the customer to authorities of other sovereign state.

17. Contextually, the Tribunal in the first round of proceedings in paragraph 32 of its order, noted that *'it is also the submissions of the ld. counsel for the assessee that the documents relied upon by the AO are inadmissible. These documents are not signed by any authorities and these are merely photocopies which are not duly authenticated.*'

18. The Tribunal in paragraph 34 also *inter alia* observed that documents in the shape of 7 pages were received by the Government of India from a sovereign country containing information regarding the undisclosed foreign accounts. Thus, such information received cannot be summarily brushed aside as wholly unreliable piece of evidence. In fitness of things, the ITAT remanded the matter to AO with an objective of ascertainment of facts. The Assessee was having second opportunity to come forward with clean hands. To lend credence to the *bona fides* claimed by the assessee, the assessee ought to have extended help to the Revenue to collect the information on the details available with the Department. Thus while the Revenue is having specific channelized information *albeit* in the

form of unauthenticated photocopies statedly obtained from other sovereign country which seeks to taint the *bona fides* of the claim of the assessee, the assessee on its part, is in refusal mode to provide any co-operation to the Revenue Authorities to ascertain the truthfulness of the information collected in the form of photocopies. Under the circumstances, the preponderance of probabilities is clearly against the assessee for which the assessee himself is to blame.

19. At this juncture, it would be equally pertinent to address the key argument raised on behalf of the Assessee. It is the main contention of the assessee that he cannot be compelled to sign the consent waiver form as it might end up incriminating him despite he not maintaining a bank account with the HSBC Bank or other foreign bank account as alleged. We are unable to visualize any rationale in such line of plea. It does not stand to reasons as to how signature of an innocent assessee on a consent waiver form meant for ascertainment of correct factual position, would criminalize a signatory unless the culpability is established. A person not holding such undisclosed bank account has no reason to fear any adverse consequences. The defense raised thus is far cry and devoid of any ring of truth. The refusal to sign the Waiver itself vouches for culpability. We simultaneously observe that the Hon'ble Delhi High Court in the case of *Shyam Sunder Jindal (supra)* opined in favour of the assessee on the premise that material relied upon by the Revenue was not of a quality which could persuade the Court to hold that assessee did maintain the account with HSBC bank Geneva. In the instant case, however, the facts are materially different. The Revenue is in possession of cogent material which indicated the details of bank account maintained in the name of the assessee including the date of opening of bank account (06.10.1998) and date

of closure (25.01.2006). The authenticated copy of such bank account could be obtained only with the consent and concurrence of the assessee, i.e., bank account holder, owing to limitations fastened by the stated policy, protocols and regulations of Swiss Govt. The question of self incrimination by signing the consent waiver form would arise only in the case of a finding of any offence committed. Where the assessee has not maintained any bank account, the existence of 'offence' would not arise. Besides, a person who is called upon to assist the deptt. in the course of enquiry and investigation of facts is not an 'accused' *per se*. Hence self incrimination plea is a *damp squib*. This view is supported by the judgment rendered in the case of *Ramesh Chandra Mehta vs. State of West Bengal AIR 170 SC 940*. Therefore, in the context of income tax proceedings, providing consent waiver form on non existent bank account, in our view , would not tantamount to testamentary compulsion violative of Article 20(3) of the Constitution. We thus see no substance in justification advanced for refusal to provide consent waiver form.

20. The Hon'ble Bombay High Court in the case of *Soignee R Kothari vs. DCIT 386 ITR 466 (Bom)*, in identical facts, observed that the conduct of the assessee is not forthcoming and opposed to normal human conduct. The Hon'ble Court declined to turn a blind eye to the fact of refusal to sign consent waiver form to support absence of any undisclosed foreign bank account. The remedy sought by way of Writ challenging reopening action was thus not entertained.

21. Notwithstanding, an undertaking of voluntary nature by the assessee addressed to DDIT (Inv.) post search filed by the assessee is entitled to due weight. Such undertaking, in the light of specific

bank particulars of overseas bank confronted to the assessee, is a good evidence to draw adverse inference even if not conclusive.

22. Judged by any parameter, the second issue on merits also deserves to be answered against the assessee and in favour of the Revenue.

23. In the result, the appeal of the assessee is dismissed.

ITA No. 6604, 6605, 6606, 6608, 6609, 6610/Del/2017 (A.Y. 2007-08, 2008-09, 2009-10, 2011-12, 2013-14, 2014-15 (Revenue's Appeal)

24. In the captioned appeals, while framing assessment, Rs.4,72,431/- for A.Y.2007-08 and similar amounts in other assessment years captioned above, were added by the AO on account of imputed interest income attributable to amount deposited with HSBC Geneva Switzerland.

25. In the matter, it is straightaway noticed that as per the evidences collected by the Revenue as reproduced in paragraph 6 of the assessment order framed in the first round dated 18.03.2015 relevant to A.Y. 2006-07, the purported bank account maintained by the assessee in HSBC bank is shown to be closed on 25.01.2006 and thus where the deposit itself is not available with the bank, the question of notional interest on deposits in the subsequent financial years is incomprehensible. The imputed interest @ 4% in the deposits kept with HSBC bank as a secondary adjustment cannot be countenanced on such facts. The grievance of the Revenue on account of imputed interest on deposits with HSBC bank in the respective appeals captioned above thus stands dismissed.

26. In the result, the appeal of the Revenue in ITAs No. 6604, 6605, 6606, 6608, 6609, 6610/Del/2017 are dismissed.

ITA No.925/Del/2018 (A.Y. 2012-13) - Revenue's Appeal

27. The grounds of appeal raised by the Revenue read as under:

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 7,24,438/- made by the AO on account of undisclosed interest income on the undisclosed deposits of Rs.1,81,11,008/- in HSBC Bank, Geneva without appreciating the fact that the assessee had not submitted any details regarding the same during the assessment proceedings or appellate proceedings.

2. The Ld. CIT(A) has erred in deleting the addition of Rs.41,08,342/- on account of unexplained investment in jewellery found during search and seizure action without appreciating the fact that the assessee has not submitted any documentary evidence in support of his claim.

3. The Ld. CIT(A) has erred in deleting the addition of Rs.6,60,000/- on account of undisclosed cash found during search and seizure action without appreciating the fact that the assessee has not submitted any documentary evidence in support of his claim.

28. Ground No.1 of the Revenue's Appeal has already been adjudicated in paragraph 25 (supra) wherein it was held that the additions on account of notional interest attributable to undisclosed bank account in HSBC Bank is not permissible owing to closure of the bank account itself. In this view of the matter, Ground No.1 of the Revenue's Appeal is dismissed.

29. Ground No.2 concerns additions of Rs.41,08,342/- on account of unexplained investment in jewellery found during the search. The CIT(A) while granting the relief on the issue has observed as under:

"7.3 The AR of the appellant submitted that substantiating evidence for explaining the jewellery found during search was duly filed before the assessing officer, whereas in the assessment order it has been stated that no evidence was filed. In order to verify the same copy of letter dated 05.11.2014 claimed to have been filed by the assessee before the assessing officer was forwarded to the assessing officer (DCIT, Central Circle-26, New Delhi) for remand report vide this office letter dated 09.08.2017. In response to the

same the assessing officer submitted a remand report dated 12.10.2017. In the said remand report the assessing officer agreed that the assessee had submitted letter dated 05.11.2014 alongwith annexures1, 2 &3 during the assessment proceedings. However, on merits the assessing officer contended that the addition in respect of unexplained jewellery aggregating Rs. 44,74,226/- should be confirmed. A copy of the remand report was furnished to the AR of the appellant during the course of hearing on 26.10.2017. In response to the same the AR filed a rejoinder to the remand report vide letter dated 27.10.2017 essentially reiterating the submissions made earlier.

Findings:

I have considered the facts of the case, the basis of addition made by the Assessing Officer and the argument of the A.R. during assessment as well as appellate proceedings. The grounds of appeal are disposed of in the terms as below-

a. In respect of Cash-

I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during the assessment as well appellate proceedings. It is seen that right from the assessment stage the appellant claimed that the cash found during search stands explained in view of sufficient cash in hand available in the hands of various family members and group companies as on 20.01.2012 (date of search). Details of the same are tabulated as under:-

S. No.	Particulars	Status	Amount (in INR)
1	Dalmia Infrastructure Private Limited	Company	89,919.00
2	Globus Estate Private Limited	Company	6,565.00
3	Globus Property Management Private Limited	Company	17,297.00
4	Sh. Nar Hari Dalmia	Individual	157,670.00
5	Smt. Aruna Dalmia	Individual	100,316.00
6	Sh. Parag Dalmia	Individual	73.028.00
7	Mrs. Sangeeta Dalmia	Individual	32,537.00
8	Parag Dalmia (HUF)	Hindu Undivided Family	130,456.00

9	Ms. Rasalika Dalmia	Individual	48,413.00
10	Ms. Saudamani Dalmia	Individual	24,376.00
11	Mr. Krittvas Dalmia	Individual	30,394.00
	Total		710,971.00

In corroboration of the above, the appellant has filed copies of respective Ledger Accounts showing the availability of cash. It has been pointed out that soft copies of these books of accounts have been seized during the search action and therefore the veracity of the appellant's claim regarding availability of sufficient cash in hand can be cross verified from the seized material. The arguments of the Assessing Officer that no Ledger Account have been furnished in support of granting of cash by family members to the appellant is without any merits as the Assessing Officer failed to appreciate that all family members are staying together in the same residential house and therefore there is no segregation of cash amongst the family members who are staying as a joint family. The appellant has brought on record sufficient documentary evidence to establish that cash to the extent of Rs.7,10,971/- was available in the books of accounts on the date of search as against cash aggregating Rs. 6,60,000/- found and seized during search action. In the circumstances the addition of Rs.6,60,000/- made by the Assessing Officer is directed to be deleted.

b. In respect of Jewellery-

It is seen that the Assessing Officer has added jewellery of Rs. 13,04,724/- (Rs. 4,77,780/- + Rs. 8,26,944/-) and treated the same as unexplained by rejecting the contention of the assessee, that this part of jewellery has been assessed in the hands of a third person, in the absence of any documentary evidence. The appellant has submitted that the jewellery aggregating to Rs. 13,04,724/- belongs to Mrs. Archana Gujral, married sister of the appellant. It has been submitted that Locker No. 1242 from where the said jewellery aggregating Rs. 4,77,780/- was found is owned and maintained by Mrs. Archana Gujral and Smt. Aruna Dalmia (mother of the appellant) and therefore the appellant does not have any relation with the said locker. From the perusal of copy of Panchnama of Locker No. 1242 filed by the appellant it is evident that the said locker stands in the joint name of Mrs. Archana Gujral and Mrs. Aruna Dalmia. Clearly, therefore, the said jewellery aggregating Rs. 4,77,780/- cannot be assessed in the hands of the appellant. It is further submitted by the appellant that items of jewellery amounting to Rs. 8,26,944/- kept in Locker No. 1168 which is

jointly owned and maintained by Mrs. Sangeeta Dalmia, appellant and Smt. Aruna Dalmia belong to Mrs. Archana Gujral. The appellant has also filed a duly notarised affidavit dated 26th March, 2012 of Smt. Archana Gujaral stating that some jewellery items meant for her married daughter and her prospective daughter in law were kept with her brother Mr. Parag Dalmia for getting them polished and minor resetting, to make them ready for her son's forthcoming wedding in November 2012. In view of the status of the assessee, the possession of jewellery of such magnitude is in tune with the social status of the assessee. Hence the aforesaid explanation of the appellant appears acceptable. It is also noted that out of total jewellery aggregating Rs. 5,23,51,795/- found during search, the appellant is claiming only an amount of Rs. 8,26,944/- as being belonging to its married sister Mrs. Alpana Gujral, which is 1.56% of the total jewellery. Even on preponderance of probabilities the explanation of the appellant does not merit rejection, especially keeping in view the fact that jewellery of Rs. 18,97,402/-, that could not be reconciled, has already been included by the appellant in its return of income and offered for taxation. In the circumstances, addition of Rs. 13,04,724/-in respect of jewellery stated to be belonging to Mrs. Archana Gujral, married sister of the appellant is directed to be deleted.

It is seen that the Assessing Officer has not extended the benefit of Instruction No. 1914 in respect of jewellery amounting to RS. 2,67,500/- in the hands of Mr. Krittvas Dalmia, son of the appellant in terms of Instruction No. 1916 of the CBDT on the reasoning that the operation of said instruction was only applicable from seizure point of view and therefore no benefit of such instruction can be extended in the assessment proceedings. The appellant has submitted that benefit of Instruction No. 1916 operates from the seizure point of view as well as in the assessment proceedings. It is seen that as per Instruction No. 1916 the authorized officer has been directed not to seize jewellery upto 100 gms of Gold in respect of unmarried male member. The appellant has relied upon a number of citations in support of its contention. Respectfully following the said citations viz. CIT vs. Satya Narain Patni (2014)

46 Taxmann.com 440 and CIT vs. Ghanshyam Das Johri (2014) 41 Taxmann.com 295, it is held that the jewellery found in possession to the extent mentioned in Instruction No. 1916 cannot be treated as undisclosed investment. In the result, addition of Rs.2,67,500/- in respect of jewellery pertaining to Mr. Krittvas Dalmia is directed to be deleted.

It is seen that the Assessing Officer has treated the jewellery aggregating Rs. 29,02,002/- as unexplained, which is being claimed by the appellant as having been received on wedding and birthday's of children. It has been stated in the assessment order that the assessee has not filed documentary evidence in support of its contention that jewellery of Rs. 29,02,002/- was received on wedding and children's birthdays. The appellant has submitted that jewellery aggregating Rs. 29,02,002/- was received by its spouse on the occasion of wedding and birthday functions and the same has been disclosed in the Wealth Tax Return of Mrs. Sangeeta Dalmia. The appellant has filed details of the persons from whom such gifts in the form of jewellery were received alongwith "Aashirvad Patras" substantiating the gifts. The details of gifts filed by the appellant, is reproduced below:-

Smt. Sangeets Dalmia on her wedding on 27th April, 1980

Particulars Of Person	Relationship	Description	Gross Weight	Net Weight	Value of Metal	Stones	Weight of Diamond	Value of Stones	Total Value	Sl. No. RR
Late lady Ansuya Singhania R/o Ganga Kuti 11-Contonnment, Kanpur	Maternal Grand Mother	One pair Kara set with Polka	141.500	135.000	321,300	Polki		100,000	421,300	38
Late Smt. Pushpawati Singhania R/o JK House, 12 Alipore Calutta	Paternal Grand Mother	Bracelet with diamond	13.200	11.100	26418	Diamond	10.50	262,500	288,918	43
Late Sh. Sohanlal Singhania R/o Udichi, 7/184 Swaroop Nagar, Kanpur	Matenal Grand Father	Bangles with diamonds in Gold & white Metal	15.900	5.000	11,900	Diamonds	14.00	385,000	396,900	45

Late Smt. Lalita Dalima R/o No.9, 30 January Marg, New Delhi	*My Aunt (Taiji)*	*One pari solitaire diamonds tops in white metal* *Gold Ginnies of 51 Nos*	*4.400* *408.000*	*408.000*	*500* *1,071,000*	*Diamonds*	*3.25*	*357,500*	*358,000* *1,071,000*	*53* *32*
			583.000	*559.100*	*1,431,118*		*27.75*		*2,536,118*	

The following items have been received as Gifts by my children on their Birth

1	*Friends and Relatives*	*Pendant set in diamonds & Stones in white metal*	*15.000*	*0.000*	*750*	*Diamonds Stones*	*1.50*	*15,000* *3,000*	*18,750*	*21*
2	*Friends and Relatives*	*One pair Kara with Polki in victorious*	*99.700*			*Polki Victoria*	*0.20*	*160,000*	*160,000*	*40*
3	*Friends and Relatives*	*One chain, pendant with stones, amethis and diamond*	*16.100*	*11.000*	*26,180*	*Diamonda Amethes*	*2.50*	*2,400* *10,000*	*38,580*	*42*
4	*Friends and Relatives*	*One chain, one 3 pcs ring, one pair tops & diamond*	*31.800*	*31.300*	*74,494,*	*Diamonds*	*2.00*	*25,000*	*99,494*	*50*
5	*Friends and*	*1 key ring, 1*	*22.30*	*12.00*	*28,560*	*Diamon*		*20,00*	*49,060*	*6*

	Relatives	*nath & one tikka with diamond, pearls in gold and white metal*	*00*	*0*		*ds*		*0* *500*		*0*
			185.400	*54.300*	*129,984*		*6.20*		*365,884*	
		Grand Total	*768.400*	*613.400*	*1561102*		*33.95*		*2902002*	

Perusal of the above reproduced table shows that in respect of the gifts received on wedding, name and address of the persons, relationship and the description of item of jewellery is mentioned along with the corresponding serial number of the valuation report prepared during search matching the respective jewellery item. The total value of jewellery received on the occasion of the wedding comes to Rs. 25,36,118/-. The appellant has also filed hand written "Aashirvad Patras" in substantiation of the above. In view of the same, there is enough evidence and material in support of the appellant's contention that the said jewellery items were received on its wedding. The Assessing Officer in case he disbelieved the version of the appellant could have conducted inquiries from the persons gifting jewellery items for which names and addresses are available in the details filed by the appellant. However, the Assessing Officer failed examine the issues and disprove the contention of the appellant. In view of the same, addition to the extent of Rs. 25,36,118/-, out of total addition of Rs. 29,02,002/- is directed to be deleted. As regards the balance amount of Rs. 3,65,884/-, it is seen from the above table that the same is claimed to have been received as small jewellery items on the occasion of children's birthdays from friends and relatives. However, the names and addresses of friends and relatives have not been furnished. Even the description of certain items of jewellery reveals that expensive items such as 1 pair of Kara, aggregating Rs. 1,60,000/- has been received on birthday which is highly unlikely even for a person of the status of the appellant. In view of the same addition of Rs. 3,65,884/- is hereby confirmed due to lack of proper details and substantiating documents filed by the appellant. In the result, addition of Rs. 3,65,884/- is confirmed and the addition of Rs. 41,08,342/- is deleted out of total addition of RS. 44,74,226/- on account of unexplained jewellery."

30. On perusal of the first appellate order, it is observed that the

CIT(A) has examined the issue in length and the issue has been decided on nuanced analysis of the facts and circumstances of the case. The preponderance of probabilities tilts in favour of the assessee. The Revenue has failed to successfully rebut the findings of the CIT(A). We thus decline to interfere.

31. Ground No.2 of the Revenue's Appeal is dismissed.

32. Ground No.3 concerns undisclosed additions on account of cash found in the search.

33. The CIT(A) on analysis of facts found that cash in hand found in the course of search is corroborated by the cash in hand of family members and companies at the time of search.

34. To our mind, the CIT(A) has taken a view [reproduced in para 29] which passes the test of reasonableness and is plausible. We thus see no reason to interfere with such order.

35. Ground No.3 of the Revenue's Appeal is thus dismissed.

36. In the result, the appeal of the Revenue is dismissed.

ITA No. 920, 921, 922, 923, 924 and 3285/Del/2018 (A.Y. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13)

37. The captioned appeals relates to penalty imposed under s. 271(1)(c) on notional interest charged on purported deposits with HSBC Bank with reference to respective assessment years captioned above.

38. Since it is found as a matter of fact that no such deposits were in existence after 25.01.2006, the basis for quantum additions towards notional interest itself was not found to be sustainable. The

edifice for imposition of penalty on notional interest is thus crumbled. The penalty action is thus not justified. We thus decline to interfere with the order of the CIT(A).

39. In the result, the appeal of the Revenue is dismissed.

40. In the combined result, all the appeals are dismissed.

Order pronounced in the open Court on 30 August, 2024.

Sd/-	Sd/-
[SUDHIR KUMAR]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: August**, 2024**
Prabhat