

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 737/JPR/2023
निर्धारण वर्ष/Assessment Years : 2013-14

Sh. Brij Bihari Agrawal A-26, Krishna Nagar First, Lal Kothi, Jaipur.	बनाम Vs.	The Assistant Commissioner of Income Tax, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYPA6437D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tarun Mittal (C.A)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 22/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax Act (Appeals)-4, Jaipur [hereinafter referred to as "CIT(A)"], dated 30.10.2023 for the assessment years 2013-14, which in turn arise from the order dated 28.12.2018 passed under section 148 r.w.s. 143(3) of the

Income Tax Act, 1961 (here in after “ Act”), by the DCIT, Central Circle-1, Jaipur.

2. The assessee has raised the following grounds:-

“1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has grossly erred in confirming the action of Id. AO in reopening the assessment u/s 147 of the Income Tax Act, 1961 arbitrarily, though assessment was already completed u/s 153A r.w.s.143(3) of the Act, after due verification of all the facts and documents furnished by assessee during assessment proceedings.

1.1. That, Id.CIT(A) has further erred in confirming the reopening of completed assessment under section 147 of the Income Tax Act, when the proper course of action was to invoke the provisions of section 153C and complete assessment in accordance with provisions of that section. Appellant prays reopening the assessment under the facts and circumstances of the case and is not in accordance with law, thus consequent order deserves to be quashed.

2. On facts and circumstances of the matter the Id. CIT(A) has erred in confirming the addition of Rs. 1,76,342/-made by Id.AO on the basis of an excel sheet found with an employee of the Maverick group, by alleging the same as containing details of interest paid by the assessee out of undisclosed income, without appreciating the explanation/ documents filed by the assessee. The addition so confirmed deserves to be deleted.

3. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in confirming the action of Id. AO in completing assessment without providing assessee with opportunity to cross examine persons, report prepared by whom has been relied upon for making addition, thus the consequent order passed deserves to be hold bad in law and liable to be quashed.

4. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

3. The brief fact of the case is that a search and seizure action was carried out on 30.10.2014 at the various premises of NIMS

Group. The residential premises of the assessee were also covered. Therefore, notice u/s 153A was issued to the assessee on 05.08.2015. In response to this notice, the assessee furnished his return of income on 10.09.2015 declaring total income of Rs. 3,30,450/-.

The assessee is an employee in Reserve Bank of India, Jaipur. He is engaged in the business of trading of shares and business income from sale of shares during this year. However, he has declared income from salary and business during this year. Information was received from DCIT, Central Circle-4, Jaipur, that the assessee has received cash loans from various persons/entities through Maverick Group, on which the assessee has paid out of books cash interest. Thereafter, notice u/s 148 of the Income-tax Act, 1961 was issued to the assessee on 26-03-2018 with approval from Pr. CIT (Central), Jaipur.

Further, query letter along with notice u/s 142(1) was issued on 08.08.2018. In response to the notice, the assessee had filed his return of income on 01.9.2018 declaring total income of Rs. 3,30,450/-. The assessee has requested for copy of reasons

recorded for re-opening and the same was provided. The AR of the assessee has filed an objection for re-opening u/s 148.

3.1 During the course of search operation in the Maverick Group, Jaipur a pen drive was found and seized from the possession of Shri Kailash Chand Khandelwal, who is one of the employees of the Maverick Group. The pen drive so seized contained some files in excels software. The excel sheets contains adjustment entries in the last column with remarks of 2.4%. The adjustment entries pertaining to the assessee, works out at Rs. 1,76,342/- for the year under consideration.

In reference to this issue the assessee was asked to show cause vide letter dated 10.12.2018 for the said adjustment entries of Rs. 1,76,342/- and also asked show cause as to why it should not be added to total income treating it as interest paid from undisclosed source of income for the year under consideration.

The assessee vide his reply dated 14.12.2018 and requested for cross examination of the persons who has prepared the report of interest calculation. The assessee has given a general reply. The reply filed by the assessee has been considered and found untenable.

3.2 Ld. AO noted that the assessee has been allowed ample opportunity, but he failed to furnish any evidence contradicting the information available with the revenue. The assessee never produced himself during assessment proceedings to contradict the information available in the records of the revenue; he has failed to comply even though the show cause notices given to him in view of the principles of natural justice. Since the assessee has not controverted the information available the adjustment entries amount pertains to the assessee of Rs. 1,76,342/- is added to the total income of the assessee treating as interest paid from undisclosed source of income for the year under consideration.

4. Aggrieved from that order of Id. AO, assessee preferred an appeal before the Id. CIT(A). After perusing the submissions of the assessee, the Id. CIT(A) has dismissed the appeal of the assessee.

The relevant finding of the Id. CIT(A) is as under:-

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The reply of the appellant vide dated 22.06.2021 as reproduced above is not pertaining to the issues in the appeal. The contentions/submissions of the appellant are being discussed and decided as under;-

5.3 In this case as per material on record the appellant entered into transactions with parties and the details are found in the pen drive seized during the course of search operation in the Maverick Group, Jaipur wherein a pen drive was found and seized from the possession of Shri Kailash Chand Khandelwal, who is one of the employee of the Maverick Group. The pen drive so seized contained some files in excel software. The excel sheets contains adjustment entries in the last column with remarks of 2.4%. In connection with these entries, in the reasons of reopening it is inter-alia noted in para 2 that During the course of search assessment proceedings in the Maverick Group, Jaipur the entries of Rs. 2,51,22,735 were asked to be explained by the assessee.” implying that inquiry was done regarding these entries in case of assesses of Maverick Group and the findings were recorded as noted in the reasons of reopening.

5.4 The nature of 2.4% and the quantification etc. are not in dispute as on page 120 of the order of Hon'ble ITAT (as referred in below para) it has been accepted by other assesseees that the respective parties demanded further interest of 2.4%. The only dispute is whether the extra amount of interest was paid or not and in that case the onus lies on the assesses and the explanation has to be satisfactory in terms of section 68, 69 etc. to the learned Assessing Officer.

The explanation that there was demand of further interest of 2.4% but that was not actually paid is only a baseless statement and no evidence is in this regard have been placed on record whereas the appellant is required to prove this statement along with the evidences. In this regard reference is made to the judgement of Hon'ble Supreme Court in Court in CIT v. Durga Prasad More [1971] 82 ITR 540. Two important principles enumerated in this judgement are as under:-

- A party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statemerats in documents either executed or taken by a party and rely on those recitals.
- If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax.

In view of the above, the submission made by the appellant cannot be accepted. The contention of the appellant that there is no connection with these parties is also incorrect as the bank part of the transactions is not in dispute ie. transactions have taken place between the parties.

5.5 Further, when all other figures are matching and accepted by the parties then the incriminating/unaccounted figures are also deemed to be correct until or unless proved otherwise by the assesses using evidences. The appellant in the present case has failed in this regard as also failed to satisfy that how the data of admitted bank transactions was with that person with precise details. The details are made party wise (like appellant). Prima-facie the same is not possible until or unless that person has connection with the appellant. The appellant has not shown that what effort were done to inquire the source of information with such person or any complaint filed against such person. The appellant has also not filed evidences regarding having done enquiry from his lenders w.r.t. such person. Income Tax is not governed by strict rules of evidence. Considering the preponderance of probabilities the conclusion heavily tilts against the appellant.

In normal course it can be safely said that nobody would write and record financial transaction in documents in clear terms what is not yet decided in financial matters and would write and record in documents the financial details only after that is finalized. The inquiry was also done in the case of Maverick group persons which has been referred by the Ld. AO. Further the manner in which the details are recorded also shows that this is an adjustment entry and not the under negotiation interest. In the excel file it is specifically mentioned as adjustment. Further the adjustment is mentioned separately in percentage and not in absolute numbers, in the context of the facts of the present appeal the use of the word adjustment in the Excel file further corroborates that it represents something other than the disclosed transaction and this corroborates the strand of the Ld. AO. As observed by Hon'ble Supreme Court that the direct evidence is rarely available for the transactions which take place in secret. An inference about such transaction has to be drawn on the basis of the circumstances available on the record. (Iumati Dayal v. Commissioner of Income-tax [[1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (BC)/[1995] 125 CTR 124 (BC)[28-03-1995] [Hon'ble Supreme Court]). It is an undisputed fact that the unaccounted transactions like the one under discussion in present appeal (unaccounted interest) take place in secret and are not recorded in books of accounts and direct evidence is rarely available and are to be decided based on circumstances available on record.

5.6 Reliance is placed on following judgements in this regard w.r.t. the principles of preponderance of probability and human probabilities:-

- CIT v. Durga Prasad More [1971] 82 ITR 540 [Hon'ble Supreme Court)
- Sumati Dayal v. Commissioner of Income-tax [[1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/[1995] 125 CTR 124 (SC)[28-03-1995] [Hon'ble Supreme Court
- CIT v. P. Mohankala [2007] 291 ITR 278 1 [Hon'ble Supreme Court)
- Vivek N. Jajodia v. Income-tax Officer, 16(2)(2), Mumbai (2011) 10 ITRIT) 581 (Mumbai)/[2010] 123 ITD 136 (Mumbai)/[2010] 134 TTJ 806 (Mumbai)[23-01-2009]
- Durai Murugan Kathir Anand v. Additional Commissioner of Income-tax [2022] 136 taxmann.com 70 (Madras)/[2022] 443 ITR 423 (Madras)(25-02-2022)

5.7 In his reply, appellant has also relied upon the judgment in the case of other individuals in whose case similar addition was done but that was on protective basis and Hon'ble Tribunal has granted relief in those cases. The appellant has placed copy of combined order dated 26-09-2022 of Hon'ble ITAT in ITA Nos. 152, 161, 164, 165/JP 2020 and other ITAs and Cross Objections. One of the main grounds for the relief in the order is that the addition was done on protective basis and the substantive addition has not been done in any hand. This issue is discussed in better 40.3 of the order of the Hon'ble ITAT. In this on page 120 of the order it has been accepted by those assessee that the respective parties demanded further interest of 2.4%. The appellant has also admitted that "The entries appearing in the 'adjustment column was the additional interest asked by the lender, which was never paid by the assessee, as is evident from the fact that no TDS was deducted there on". From this it is also further corroborated that figure of 2.4% as found in the seized pen drive pertains to extra interest however the argument of the assessee that the additional interest was not paid has not been specifically accepted by the Hon'ble ITAT on merits.

5.8 On page 122 of the order (of Hon'ble ITAT) it is seen that it was argued on the behalf of the assessee that substantive addition is not done in hands of any assessee then how the protective edition can survive and it was submitted that protective edition are required to be deleted. Whereas in the present appeal it is the appellant in whose hands the substantive addition has been done whereas it is seen from the Hon'ble ITAT order page 123 and 124 wherein an earlier order has been referred that the main ground for giving relief to the assesses is

that addition has been done in protective manner and it has not been identified in whose hands the substance addition has been done. Whereas in the present appeal, the substantive addition has been done in the hands of the appellant.

5.9 It is noted by the Ld. AO that the assessee never produced himself during the course of assessment proceedings to contradict the information available in the records of the revenue; he has failed to comply with the show cause notices given to him in view of natural justice. It is important to note that the notice u/s 148 of the Act was issued on 26-03-2018 whereas the return of income was filed on 01-09-2018 which is after a gap of more than five months. In the meantime the Ld. AO had already issued query letter/questionnaire on 08-08-2018. The objections were filed by the appellant as late as end of Nov. 2018 not leaving time with the Id. Assessing Officer as the order is passed on 28-12-2018 considering the date of time barring.

In view of the above, the explanation of the appellant on merits is not found satisfactory.

5.10 The appellant has also raised the issue of cross examination. The Ld. AO in this regard has observed that that the Hon'ble Supreme Court in the case of C. Vasantalat & Co. vs. CIT 45 ITR 206 (SC) (3 Judge Bench) had observed that "the ITO is not bound by any technical rules of the law of evidence. It is open to him to collect material to facilitate assessment even by private enquiry. But, if he desires to use the material so collected, the assessee must be informed about the material and given adequate opportunity to explain it. The right of cross examination is not an absolute right. (Nath International Sales vs. UOI, AIR 1992 (Del) 295). The Hon'ble Supreme court has also held that the right of hearing does not necessarily include right of cross examination. The right of cross examination must depend upon the circumstances of each case and also on the statute concerned (State of J&K vs. Bakshi Gulam Mohammad AIR 1967 SC 122). The question which may largely depends on the facts and circumstances of the case (Shyam lal Biri Merchant vs. UOI (1993) 68 ELT 548, 551 (All). The Hon'ble Rajasthan High Court in the case of Rameshwar lal Mali vs. CIT 256 ITR 536 (Raj.) has held that "there is no provision for permitting the cross examination of the persons whose statements were recorded during survey."

Further, in the present case the evidence seized documents in the pen drive. Hence the judgements referred by the appellant on the issue of cross examination are distinguishable. The copy of documents are

available with the appellant and hence the principles of natural justice have been followed. The presumption in search and seizure is against the assessee in terms of the evidences found during the search. It is for the appellant assessee to explain and substantiate the evidences unearthed during the search. Further the Hon'ble ITAT in the order relied upon by the appellant had not given relief or direction on the issue of cross objections. In view of the discussion, the objection of the appellant regarding cross objection is dismissed.

In view of the above, the grounds of appeal no. 2 and 3 (3, 3.1, 3.2 and 3.3) are dismissed.”

5. Feeling dissatisfied with the order of the Id. CIT(A), the assessee has preferred the present appeal challenging the finding recorded in that order of Id. CIT(A). To support the grounds so taken by the assessee, the Id. AR for the assessee has submitted his written submission and the same reads as under:-

“Brief facts of the case are that the assessee is an individual, deriving income from, Salaries, Business and Other sources. Return u/s 139(1) was filed on 28.03.2014. A search & Seizure operation was carried out at various premises of NMIS group, and simultaneously search was also carried out at the residential premises of the assessee. Pursuant to issue of notice u/s 153A, the return of income was filed on 10.09.2015 by the assessee, showing a total income of Rs. 330,450/-, which was the same as declared in return filed u/s 139(1). Assessment u/s 143 r.w.s.153A was completed at an assessed income of Rs.82,38,133/-, by making an addition of Rs.31,74,086/- treating the sale of stock-in-trade as being sale of capital asset, and further assessing the income by applying provisions of sec 44AD of the Act on the declared receipts. It is worthwhile to mention here that the said additions were made without there being any incriminating document found during the course of search and the Id. CIT(A) – 4, Jaipur decided the appeal in the favour of the assessee on the same legal ground vide order dated 22.03.2024.

In the meantime, a search action was carried out in the case of Maverick Group, wherein a pen drive stated to have been found and seized from the possession of some Shri Kailash Chand Khandelwal,

who is one of the employees of the Maverick Group, Jaipur. According to Id. AO, such purchase contained some entries pertaining to the individuals/ concerns of Maverick group as also some other persons, and had an amount of Rs. 1,76,342/- against the name of assessee. On the basis of this information reasons were recorded u/s 147 and a notice was issued to the assessee u/s 148 of the Act. The copy of reasons recorded is available at **(APB 1-4)**. The assessee had filed objections against the reasons **(APB 5-6)** so recorded which were rejected by Id. AO in a summary manner and the assessment was completed u/s 143(3) r.w.s. 147 of the Act, by adding the said sum of Rs. 1,76,342/- by alleging that the assessee had paid interest in cash out of undisclosed source of income.

Aggrieved of the aforesaid addition, the assessee has filed the appeal before the Id. CIT(A) who arbitrarily dismissed the appeal of the assessee without considering the submission of assessee. Therefore the present appeal is filed before the hon'ble bench.

Ground Of Appeal No.1 to 1.1:

In these grounds the assessee has challenged the action of Id. CIT(A) in confirming the re-opening of an assessment already completed u/s 153A r.w.s. 143(3), merely on the basis of some entries found recorded with some third party, during search operation, without independent application of mind to arrive at the conclusion of escapement of income.

In this regard it is humbly submitted that, the case of assessee was reopened merely for the reason that, a pen drive was found from possession of one Shri Kailash Khandelwal, an employee of Maverick group during search operation carried out in that group. The said pen drive was alleged to contain certain some excel sheet, which further contained details of amount borrowed, interest paid, Tax deducted, amount returned with dates, as also the last column which read as 'Adjustment Account' This column had further sub columns which had details regarding some calculation of amount. The Id. AO considered the amount appearing against the name of assessee in the last column as the interest paid over and above the interest paid through payees account cheque and recorded in the books of accounts and accordingly held the same as being interest paid by the assessee from his undisclosed sources and made addition of Rs. 1,76,342/- solely based on this noting, found in possession of a third party case of the assessee was re-opened, which had already been completed u/s 153A r.w.s. 143(3) of the Act on 31.12.2016.

In this regard it is submitted that the primarily condition for initiating action u/s 147 is that AO must have reason to believe that any income

chargeable to tax has escaped assessment. This satisfaction must be of AO himself and not a borrowed satisfaction. Reason to believe cannot be at the instance of audit party or investigation conducted by others or third party statement etc. In the present case, the reasons state that on the basis of information received from the office of DCIT-4, Jaipur, as mentioned in the pen-drive seized during search operation carried out on Maverick group, the assessee had paid interest to various money lending companies out of undisclosed income & is liable to be considered as undisclosed income of the assessee and the income of Rs. 1,76,342/- has escaped assessment within the meaning of sec 147 of the I T Act, 1961. However it is pertinent to mention here that, assessment was earlier completed u/s 153A r.w.s.143(3) of the Act on 31.12.2016, wherein the assessee had duly filed confirmations from all the parties involved and the said loans taken by the assessee were fully examined and the interest paid was accepted as such. There was no material with Id.AO, except information about entry in pen-drive found with one of the employee of Maverick group, who is not even connected to the assessee. It is submitted that the Ld. AO ought to have considered the issue objectively and not on the so called information received from some other official, therefore, the action of the Id. AO in reopening the completed assessment without independent application of mind deserves to be held bad in law. The **Hon'ble Gujarat High Court** in the case of **Seth Brothers Vs. CIT** reported in **169 CTR 519** has laid down following principles for the re-opening of the assessment u/s 148 of the Income Tax Act, 1961: (Reproduced in 28 TW 57,79)

- “11 (a) *There must be material for belief*
- (b) *Circumstances must exist and cannot be deemed to exist for arriving at an opinion.*
- (c) *Reason to believe must be honest and not based on suspicion, gossip, rumour or conjuncture.*
- (d) *Reasons referred must disclose the process of reasoning by which he holds 'reasons to believe' and change of opinion does not confer jurisdiction to reassess.*
- (e) *There must be nexus between material and belief.*
- (f) *The reasons referred must show application of mind by the assessing officer. The validity of initiation of reassessment proceedings has to be judged with regard to the material available with the officer at the point of time of issue of notice u/s 148 and cannot be sought to be substantiated by reference to material that may have*

come to light subsequently in the course of reassessment proceedings.

In the light of what is stated above, we hold that there was no material with the AO for having reasons to believe that the income as chargeable to tax, has escaped assessment. We are unable to hold that the jurisdiction assumed u/s 147/148 was legal and valid.”

It is further submitted that the validity of initiation of reassessment proceedings has to be judged with regard to the material available with the assessing officer and that too by framing the opinion strictly based on the documents and information in possession, that certain income has escaped assessment and not in a mechanical manner as has been done in the case in hand. The re-opening of the case based on the borrowed satisfaction on the information provided by some other official without in any manner recording his own independent satisfaction deserves to be held illegal. In this regard reliance is placed on the decision of Hon'ble Delhi High court in case of **Sarthak Securities Co. Pvt. Ltd. Vs. ITO reported in 329 ITR 110** wherein it has been held as under:

Reassessment – Notice – Condition precedent – Formation of belief that income escaped assessment – Assessing Officer treating share application money as bogus accommodation entries – Payments through banking channel and companies investing money genuine – No independent application of mind by Assessing Officer but acting under information from investigation wing – Notice to be quashed – Income Tax Act, 1961, ss. 147, 148.

Indian and Eastern Newspaper Society vs CIT 119 ITR 996 (SC)

Reassessment- In consequence of “Information”- Information as to “Law”- Opinion audit party on a point of law- Does not amount to “Information”- Income Tax Act, 1961, s.147(b)- Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971, s.16- Circular of Central Board No.14/19/56-II dated July 28, 1960, paras 2,4.

Devendra Kumar Jain, Jaipur vs ITO , ITAT Jaipur

I have heard the Id. DR and perused the materials available on record including the written submission filed by the Id. AR of the assessee. From the perusal of the figures of the Profit & Loss Account, the amount of Trailer Rent of Rs. 3,60,000/- was shown as in independent item of expense. Further this amount was also shown in the Tax Audit Report as payments to specified persons u/s 40A(2)(b). Thus, it could not be presumed that the AO had not verified the expense about its allowability or otherwise as stated by the Id. CIT(A). The AO is not

supposed to make all that as part of the assessment order. He is supposed to make the enquiries to be part of assessment order where he is not satisfied and where he holds different views. The decision of the ITAT, Jaipur Bench in the case of Arvind Bhartiya Vidhyalaya Samiti vs. ITO 32 Tax World 155 (2004) relied on by the assessee is squarely fit to the present case wherein the Hon'ble bench held as such. The copies of documents submitted in the form of Paper Book further reveals that the case was reopened solely on the basis of the major audit para. This indicates that there was no application of mind by the AO as provided in section 147 of the Act. The Id. AR of the assessee relied on various case laws which were taken into consideration. Further in the case of ACIT, Circle, Barmer Vs. Shri Nakhat Singh Bhati [49 Tax World 111 (Jodhpur)] order dated 14.02.2013 for the A.Y.2008-09, it was held that since the reopening of the assessment u/s 147 of the Act was solely based on the objection of audit para, therefore the reassessment proceedings are not valid. The assessment framed u/s 147 is null & void. Respectfully following the aforesaid decisions, I do not support the decision of the Id. CIT (A) in sustaining the reassessment proceedings and hold the reassessment proceedings u/s 147 as null and void. Thus this ground of appeal is decided in favour of the assessee and direct the AO to restore the total income as determined u/s 143(3) vide order dated 25.10.2010 as the assessed income for the AY 2008-09.

A Raman & Co 67 ITR 11(SC):

Held that the word information means instruction or knowledge derived from external source or as to law relating to a matter bearing on the assessment

34 DTR 49 CIT Vs. Kelvinator of India Ltd. (SC)

Reassessment – Reason to believe – Change of opinion – After 1st April, 1989, power to reopen is much wider – However, mere “change of opinion” cannot per se be reason to reopen – AO has power to reassess but no power to review – If the concept of “change of opinion” is removed, as contended on behalf of the Department review would take place in the grab of reopening of assessment – Concept of “change of opinion” is an in-built test to check abuse of power by the AO – Hence, after 1st April, 1989 AO has power to reopen the assessment under section 147 provided there is tangible material to come to the conclusion that there is escapement of income from assessment reasons must have a live link with the formation of the belief.

Jai Hotels Co. Limited Vs. Asst. DIT, (2009) 24 DTR 37 (Del):

The Delhi High Court has held that there being no new material in the hands of the Revenue leading to view that there was reason to believe that income had escaped assessment, the case is a classic instance of a change of opinion. The High Court further observed that when copies of statement of income, trading account, profit and loss account, audit report etc., were appended to the return filed by the assessee, taking resort to Section 147/148 was unwarranted as it constituted a change of opinion, since the material acted upon had been made available along with return of income.

Commissioner of Income Tax Vs. Eicher Limited, (2007) 294 ITR 310 (Del)

The High Court has taken a view that since the facts and materials were before the Assessing Officer at the time of framing of the original assessment, and later a different view was taken by him or his successor on the same facts, it clearly amounted to a change of opinion, which would not form the basis for permitting the Assessing Officer or his successor to reopen the assessment of the assessee. The Hon'ble High Court further observed that if the entire material had been placed by the assessee before the Assessing Officer at the time when the original assessment was made and the Assessing Officer applied his mind to that material and accepted the view canvassed by the assessee, then merely because he did not express this in the assessment order, that by itself would not give him a ground to conclude that income had escaped assessment and, therefore, the assessment needed to be reopened. The assessee had no control over the way an assessment order is drafted.

314 ITR 275 Cartini India Ltd. Vs. Addl. CIT (Bom.)

S. 143(3) – Reassessment – Notice – Validity – Deduction allowed in assessment order – Reassessment on basis of material considered during original assessment – Mere change of opinion – reassessment invalid.

CIT Vs. Indian Sugar & General Industry Export Import Corpn. Ltd. [2008] 170 Taxman 229 (Delhi High Court)*held that reopening based on objection raised by audit party without independent examination of materials would not be justified under law so that in such a case it shall amount to mere change of opinion.*

119 TTJ 379 ITO Vs. Smt. Indra Devi Gupta (JP)

Reassessment – Validity – Change of opinion – Claim for deduction under section 80IB allowed to the assessee being covered by a decision of the jurisdictional High Court, assessment was reopened

merely on the basis of change of opinion of the AO and, therefore, reassessment is not valid.

In the circumstances it is submitted that no independent application of mind was applied by Ld. AO while issuing notice u/s 148 and he simply proceeded on borrowed satisfaction reached by some other officials on the basis of material found in possession of a third party which has no evidentiary value. It also submitted that Id. CIT(A), while deciding the matter, without considering the submission made by assessee and without bringing any corroborative evidences simply that Id. AO had applied independent mind and had not initiated proceedings on the basis of borrowed satisfaction.

Moreover, during the course of assessment proceedings when the reopening was objected by the assessee (**APB 5-6**), the Ld. AO failed to bring on record any corroborative evidence of material except the part of so called notings in the excel sheet found in possession with an employee of Maverick group during a search conducted in that group on 17.07.2015 for supporting the allegation that the assessee had paid the alleged additional interest from unexplained sources. Also the request for cross examination of the said person was not allowed though such entries were found in possession of a person who was absolutely unconnected to the assessee. However, in spite of the dire necessity of cross-examination in the circumstances of the case, the assessee's request for cross-examination was turned down in an arbitrary manner, without specifying any justifiable reason. The Ld. AO merely stated that he was not bound by the technical rules of evidence and therefore, was not under any obligation to provide cross-examination of the aforesaid person.

Thus the assessment proceedings completed without adhering to the strict rules of natural justice embedded in an authority of quasi-judicial nature is prima facie bad in law and deserve to be quashed.

Ld. CIT(A) dismissed the contention of assessee that Id. AO passed the order without disposing the objections raised by assessee for reopening the assessment vide letter dated 28.11.2018 by simply stating that proceedings were getting time barred concluded the proceedings by passing vide order 28.12.2018. In this regard it is submitted that actions of Id. AO is against the settled position of law in the case of the GKN Driveshafts (India) Ltd. vs. DCIT MANU/SC/1053/2002 : (2003) 259 ITR 19 (SC) wherein the Hon'ble Apex Court has held that "*when a notice u/s. 148 of the Act is issued and the assessee has filed its return of income and sought the reasons for issuance of notice u/s. 148 of the Act, the AO is bound to furnish the copy of reasons within the reasonable time and assessee on receipt of the reasons is entitled to file objections to issuance of notice. The*

Hon'ble Apex Court held that the AO is bound to dispose of the objections filed by the assessee by passing a speaking order. However in the instant case before us, the AO has not disposed off the objections filed by the assessee."

Further reliance is also placed on the decision of Hon'ble ITAT, Kolkata bench, in the case of ACIT vs Mondal Constructions Co. Ltd. In ITA No. 1896/Kol/2019 where in it was held as under—

"5. We have heard both the parties and perused the material available on record as placed before us. The undisputed facts are that the AO has not disposed off the objection filed by the assessee against the re-opening before framing the assessment which in our opinion is a substantive defect which goes to the root of the matter. We have carefully perused the order of IdCIT(A) and find no infirmity therein as the Id CIT(A) allowed the appeal of the assessee on this legal issue by following various decisions as discussed in the appellate order. It is trite law that the assessment framed without disposing of objections filed by the assessee against the re-opening of assessment is not a valid assessment and cannot not be sustained. The case of the assessee finds support from the decision of the GKN Driveshafts (India) Ltd. vs. DCIT MANU/SC/1053/2002 : (2003) 259 ITR 19 (SC) wherein the Hon'ble Apex Court has held that when a notice u/s. 148 of the Act is issued and the assessee has filed its return of income and sought the reasons for issuance of notice u/s. 148 of the Act, the AO is bound to furnish the copy of reasons within the reasonable time and assessee on receipt of the reasons is entitled to file objections to issuance of notice. The Hon'ble Apex Court held that the AO is bound to dispose of the objections filed by the assessee by passing a speaking order. However in the instant case before us, the AO has not disposed off the objections filed by the assessee.

6. Considering the facts of the case in the light of ratio laid as discussed hereinabove we uphold the order of IdCIT(A) by dismissing the appeal of the revenue. The legal ground raised by the revenue is dismissed."

Similarly in the instant case, no speaking order for disposal of objections was passed by Id. AO before passing the order u/s 148 r.w.s. 143(3) of the Act and action of Id. CIT(A) in confirming the action of Id. AO on the ground that proceedings are getting time barred (even though order was passed after 1 month from the date of objection raised by assessee) could not be sole basis for rectify the error of Id. AO, despite of the facts there are plethora judgement in the favour of assessee.

It is also a matter of fact that no search has been conducted in the case of assessee and the entries in the pen-drive are not found and seized from the possession of the assessee thus the presumption available u/s 132(4) cannot be applied against the assessee, as has been done blindly by the Id. AO. It is further submitted that, the said entries found during search operation of Maverick Group, had entries pertaining to the assessee. Therefore provisions of sec 153C of the Act applied directly to the facts of the assessee. And the Id.AO was statutorily required to issue notice u/s 153C of the Act. Provisions of Sec 153C are reproduced herein for the sake of convenience as under:

153C. (1) ⁵⁷[Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in [section 153A](#), then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person ⁵⁸[and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of [section 153A](#), if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of [section 153A](#) :]

Provided that in case of such other person, the reference to the date of initiation of the search under [section 132](#) or making of requisition under [section 132A](#) in the second proviso to sub-section (1) of [section 153A](#) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules⁵⁹ made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year

relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#) and in respect of such assessment year—

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of [section 142](#) has been issued to him, or*
- (b) a return of income has been furnished by such other person but no notice under sub-section (2) of [section 143](#) has been served and limitation of serving the notice under sub-section (2) of [section 143](#) has expired, or*
- (c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in [section 153A](#).*

It is submitted that Finance Act 2014 has amended section 153C with effect from 01.10.2014 whereby if any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to person other the person who has been searched, the action under section 153C is to be taken in the case of such other person only after satisfaction is recorded by assessing officer having jurisdiction over searched party.

It is thus submitted that in the present case, the fact that Id. AO has not invoked the provisions of section 153C itself, shows that no satisfaction was recorded by the Assessing officer having jurisdiction over Maverick Group (i.e. the DCIT, Central Circle - 4, Jaipur) that any books of account or documents etc. seized during the course of search pertains or pertain to, or any information contained therein, relates to the assessee. It is submitted that in absence of any such satisfaction not recorded, the books of account or documents seized during the course of search were not handed over to the Assessing Officer having jurisdiction over the assessee. In absence of satisfaction so required to be recorded and handing over of the seized material by the Assessing

officer of the searched person, the Assessing officer could not by himself invoked the provisions of section 153C of the Act.

It is also submitted that in absence of any satisfaction that documents so found and seized during the course of search pertains to the assessee or any information contained therein relates to the assessee, no linkage or nexus has been established with the assessee and what has been received by the Assessing officer is pure raw data in abbreviated form and information which per se cannot constitute as tangible material and unless and until the said data and information is properly analyzed and examined and necessary linkage and nexus is established with the assessee, the same cannot form the basis for initiating action u/s 147 in hands of assessee. It is submitted that since action could not be taken under section 153C, Assessing officer has no jurisdiction to initiate action u/s 147 of the Act also. Courts have held from time and again that reopening of assessment proceedings is a potent power which cannot be casually and mechanically invoked and lightly exercised by the Assessing officer and the invocation of such powers is based on satisfaction of certain cardinal tests and principles which have not been fulfilled in the instant case. It is therefore submitted that reopening of assessment u/s 147 is not in accordance with law and thus entire proceedings being bad in law, deserves to be quashed.

Further reliance is placed on the judgement of jurisdictional High Court in the case of Shyam Sunder Khandelwal vs ACIT, Central Circle 2 in D.B. Civil Writ Petition No. 18363/2019 held as under—

“CONCLUSION:-

23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.
24. *In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.*
25. *In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or*

requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.

26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.
27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.
28. *The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148.*
29. The Department has not set up a case that for initiating proceedings under Section 148 it had material other than the material seized during the search of Manihar Group. The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.
30. *The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and*

Section 153A to 153D and Section 148 are different. Applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.

31.

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40. *In view of above discussion the notices issued under Section 148 and the impugned orders are quashed. However, the respondents shall be at liberty to proceed against the petitioners in accordance with law.”*

The hon'bleITAT Jaipur bench in the identical case in ITA No. 425/JP/2017 in the case of Sh. Navrattan Kothari Vs. ACIT, Jaipur vide order dt. 13.12.2017 has held as under:

“...Therefore, in conjoint reading of provisions of section 153A, 153C and 147/148 of the Act as well as a consistent view taken by this Tribunal in a series of decision cited (supra) we hold that the assessment or reassessment of income of the person other than search persons based on seized material can be only be made u/s 153C r.w.s. 153A and the provisions of section 147/148 of the Act are not applicable in such cases. No contrary decision has been brought to our notice. Accordingly, we hold that initiation of proceedings u/s 147/148 by the AO to reassess the income is illegal being without jurisdiction and consequently the reassessment order passed u/s 147 r.w.s. 143(3) is also illegal and void abinitio and is liable to be quashed.”

Further reliance is placed on the following case laws:

- Ashok Kumar BatwaniTalwandi ITA No. 204/2004 dated 10.01.2017 (Raj.)
- 140 TTJ 249 ITO vs. Arum Kumar Kapoor (ITAT, Amritsar Bench)
- 64 taxmann.com 159 G. Koteswara Rao v/s DCIT (ITAT, Visakhapatnam)
- Rajat Shubra Chatterji vs. ACIT in ITA no. 2403/Del/2015 (ITAT, Delhi)

- Prakash Chand Kothari in ITA No. 1190/JP/2019 (ITAT, Jaipur)

In view of above, it is reiterated that assessment on the basis of incriminating documents found during the course of search at third party has to be made u/s 153C of the Income Tax Act and not u/s 147/148 of the Act and it is requested that order passed by Id.AO u/s 147 is contrary to the law settled by the Hon'ble jurisdictional High Court and therefore, deserves to be quashed and consequent additions made vide such order be deleted.

Without prejudice to the legal ground of appeal, the submission on the merits of the issue is as under:

Ground of Appeal No. 2:

In this ground of appeal, the assessee has challenged the action of Id. CIT(A) in confirming the addition of 1,76,342/- made by Id. AO on the basis of an excel sheet found with an employee of the Maverick group, by alleging the same as containing details of interest paid by the assessee out of undisclosed income, without appreciating the explanation/documents filed by the assessee.

In this regard it is submitted that an addition of amount Rs. 1,76,342/- was made by relying upon the material stated to have been found noted in the pen drive seized from the possession of an employee of Maverick Group, Jaipur wherein contained an excel sheet. The said excel sheet contained three columns titled as 'adjustment' containing entries of amount Rs. 35,15,548/- out of which in entry of Rs. 1,76,342/- is in the name of the assessee with interest @2.4% mentioned in the last column. During the course of assessment proceedings in the case of assessee himself, initial notice u/s 133(6) was issued (APB 9) wherein the said amount of interest appearing as 'adjustment interest' was alleged to be interest received and was asked to furnish the manner of disclosing the same in the return of income. In reply to this vide letter dated 21.03.2018 (APB 10-11) it was explained that interest was not paid to them rather, it was paid by them. Further the confirmation for the same had already been submitted before Id.AO during proceedings u/s 153A of the Act. Thereafter, Id. AO had changed his stand of treating the entries as interest paid instead of earlier observation as interest received and alleged that the amount appearing under the column 'Adjustment' is the amount of interest paid by assessee out of his undisclosed sources and not recorded in the books of accounts.

During the assessment proceedings in the case of the Maverick group, it was observed that excel sheet was received from some finance broker who had been working for many persons apart from Maverick Group. Same was received by employee of the group namely Kailash

Khandelwal with the understanding that he would refer the details as belonging to various individuals / companies of the group out of total list and do the needful. This explanation of assessee was partly accepted by Ld. AO at this juncture.

Since there is no incriminating document relating to assessee, additions so made u/s 153A are bad in law and deserves to be deleted.

It is further submitted that, loans from parties to whom it was alleged that the assessee had paid excess interest were fully examined in detail during the assessment proceedings u/s 153A wherein after scrutinizing the details and confirmations filed by the assessee, the same were duly accepted and no addition was made in this regard in order passed u/s 153A r.w.s. 143(3) of the I T Act. Also during the re-assessment proceedings nothing was brought on records to establish that the alleged interest was paid over and above the interest claimed by the assessee. Nor any questionnaire/ notice was summoned to the parties concerned when all details pertaining to those parties were already submitted by the assessee during the proceedings u/s 153A r.w.s.143(3) of the Act. The sole reason for making the impugned addition was the noting found in the pen-drive found with a third party, totally unconnected to the assessee.

It is worth noting that the assessee had elaborately demonstrated the fact that the said pen-drive was not prepared by the assessee and the Id.AO has not doubted this. The assessee has fully explained the entries as appearing in the books of the assessee other than the ones appearing under the column 'Adjustment entries' for which it was categorically stated that they were not made by assessee. This is further evident from the fact that the assessee has deducted due tax on the amount of interest actually paid by him and the same is appearing as such in the excel sheet. The entries appearing in the 'adjustment' column was the additional interest asked by the lender, which was never paid by the assessee, as is evident from the fact that no TDS was deducted there on. Further no incriminating document was found during the course of search corroborating the allegation of the Id. AO nor was anything brought on record during the post search assessment proceedings by the Id.AO to substantiate the allegation that the assessee had paid anything more than what was recorded in the books of the assessee. Moreover, the assessee had filed copies of confirmation from the concerned parties along with the PAN and complete address, duly confirming the amount borrowed with the amount of Interest paid and Tax deducted by the assessee which stood accepted without raising any doubts. Thus, the assessee has discharged the initial burden of explaining the entries in the pen-drive found in possession of an employee of the assessee, so far as it pertained to the assessee.

Also, it is a settled law that mere writing any transaction in one's own record including on computer without the knowledge or supporting, signatures, handwriting etc. of other person and the writing of such transactions behind his / her (other person's) back cannot make the other person liable for the transactions and also the consequential effect cannot be given against the other person and simultaneously it cannot bind / make liable to the other person from the entry / transaction (s). Reliance is also placed on judgement of Apex Court in the case of V.C. Shukla & and Others, AIR (1998) Supreme Court 1406.

Thus, the addition so made merely on suspicion without any corroborative evidence on record deserves to be deleted and the assessee prays accordingly.

Ground of Appeal no. 2 to 3:

In these ground of appeal assessee has collectively challenged the action of Id. CIT(A) in confirming the addition of Rs. 1,76,342/- made by Id. AO by treating the entry found noted in excel sheet of a pen drive, found in possession of a third party, as being excess interest paid by the assessee, arbitrarily without any corroborative material on record and also without affording cross-examination to the assessee.

As stated above the impugned addition was made arbitrarily solely on the basis of observation made in the search conducted in case of a third party (Maverick group). The entries found recorded in the pen-drive found with one of the employee of Maverick Share Brokers (P) Ltd (MSBPL) was the only basis for making addition in the case of the assessee. Since the assessee had not connection with the said person, the assessee had specifically requested for cross examination of such person from whom the pen drive was found, which contained the name of the assessee. But this request was rejected by Id.AO by quoting that, he was not bound by technical rules of evidences, also that there is no provision for permitting cross-examination and also that right to cross-examination is not necessarily a part of reasonable opportunity by quoting the decision of the Hon'ble Rajasthan High court in the case of Rameshwar Lal Mali Vs. CIT(256 ITR 536) and the judgment of Hon'ble Allahabad High Court in the case of Shyam Lal Biri Merchant vs. UOI (1993) 68 ELT 548,551

In this regard, it is submitted that the said cases are distinguishable on facts for the following reasons:

- i. Impugned addition have been made solely on the basis of some entries found recorded in a pen drive seized from some employee of Maverick group - Shri Kailash Khandelwal, who is completely unknown and unrelated to the assessee and except

for the entries found noted in the pen drive found from his possession there is no corroborative evidence found either during the course of search or assessment proceedings to corroborate the allegations of Id.AO. Thus, cross examination of the said person is sine qua non, as only he could have explained the entries made by him, no other material has been referred to by the Ld. AO.

- ii. The requirement of allowing cross-examination of the person whose entries are the sole basis of addition made in the hands of assessee, who is unconnected to the assessee, is a sine qua none for validity of adjudication proceedings. The Ld. AO has unlawfully tried to dispense with this requirement by stating that he is not bound by the Technical Rules of Evidence Act.

As against this in the case relied by Id.AO the non-provision of cross examination was held as a technical-breach for the reason that the papers which were made basis for addition were found at the premises of the assessee and it was the assessee's employee whose statement was relied upon. It was under these circumstances that Hon'ble High court had held that, Id.AO was not bound by the technical rules of evidences. Thus, in the present case the impugned assessment order has been passed in violation of the principles of natural justice and therefore, is prima-facie bad in law. Not allowing the cross examination of the witness of the department to the assessee is thus gross violation of the principle of natural justice and for this reliance is placed on the decision of Hon'ble Supreme court in the case of Andaman Timber Products vs. CCE reported in 127 DTR 241 / 281 CTR 241 wherein it has been held as under:

Assessment – Natural justice – Denial of opportunity to cross-examine witnesses – Denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity in as much as it amounted to violation of principles of natural justice – Impugned order as passed by the Tribunal is set aside.

Here it is pertinent to mention that, on the basis of information received by Id.AO regarding the name of assessee being mentioned in the said excel sheet found during search operation, in the initial notice u/s 133(6) issued to the assessee (APB 9) the said amount of interest appearing as 'Adjustment interest' was alleged to be interest received by the assessee and was asked to furnish the manner of disclosing the receipt in his return of income. In reply to this vide letter dated 21.03.2018 (APB 10-11) the assessee clarified that he had not received any interest from the said parties and in fact he had paid interest to them and that the confirmation for same had already been submitted

before Id.AO during proceedings u/s 153A of the Act. Thereafter, Id.AO has changed his stand of treating the entries as interest paid instead of earlier observation as interest received and alleged that the amount appearing under the column 'Adjustment' is the amount of interest paid by assessee out of his undisclosed sources and not recorded in the books of accounts.

It is further submitted that, loans from parties to whom it was alleged that the assessee had paid excess interest were fully examined in detail during the assessment proceedings u/s 153A wherein after scrutinizing the details and confirmations filed by the assessee, the same were duly accepted and no addition was made in this regard in order passed u/s 153A r.w.s. 143(3) of the I T Act. Also during the re-assessment proceedings nothing was brought on records to establish that the alleged interest was paid over and above the interest claimed by the assessee. Nor any questionnaire/ notice was summoned to the parties concerned when all details pertaining to those parties were already submitted by the assessee during the proceedings u/s 153A r.w.s.143(3) of the Act. The sole reason for making the impugned addition was the noting found in the pen-drive found with a third party, totally unconnected to the assessee.

It is humbly submitted that the assessee had elaborately demonstrated the fact that the said pen-drive was not prepared by the assessee and the Id.AO has not doubted this. The assessee has fully explained the entries as appearing in the books of the assessee other than the ones appearing under the column 'Adjustment entries' for which it was categorically stated that they were not made by assessee. This fact is further evident from the fact that the assessee has deducted due tax on the amount of interest actually paid by him and the same is appearing as such in the excel sheet. The entries appearing in the 'adjustment' column was the additional interest asked by the lender, which was never paid by the assessee, as is evident from the fact that no TDS was deducted there on. Further no incriminating document was found during the course of search corroborating the allegation of the Id. AO nor was anything brought on record during the post search assessment proceedings by the Id.AO to substantiate the allegation that the assessee had paid anything more than what was recorded in the books of the assessee. Moreover the assessee had filed copies of confirmation from the concerned parties along with the PAN and complete address, duly confirming the amount borrowed with the amount of Interest paid and Tax deducted by the assessee which stood accepted without raising any doubts. Thus the assessee has discharged the initial burden of explaining the entries in the pen-drive found in possession of an employee of the assessee, so far as it pertained to the assessee.

Also, it is a settled law that mere writing any transaction in one's own record including on computer without the knowledge or supporting signatures, handwriting etc. of other person and the writing of such transactions behind his / her (other person's) back cannot make the other person liable for the transactions and also the consequential effect cannot be given against the other person and simultaneously it cannot bind / make liable to the other person from the entry / transaction (s). Reliance is also placed on judgement of Apex Court in the case of V.C. Shukla & Others, AIR (1998) Supreme Court 1406.

Further reliance is placed on the judgement of Hon'ble ITAT, Jaipur Bench, Jaipur in the case of the company M/s Maverick Share Brokers Pvt. Ltd. in ITA Nos. 38 – 41/JP/2020 dated 26.09.2022 wherein it was held as under—

“15. We have heard the rival contentions, submission made and relied upon relevant judicial decisions by both the party. The bench has noted that when the PEN drive is found during the search proceeding no questions are raised to the parties not only that the employee from this PEN drive found, his statement is not recorded. Thus, merely from that PEN when the veracity about that evidence is not recorded no addition either protective or substantive can be made. Not only that even on the merits the addition cannot be made on two counts, one is that there is no substantive addition in those persons who claimed to have additional interest as duly confirmed before us by the AO and secondly when the substantive addition is not made protective addition cannot survive. The amount in dispute is nothing but the amount of the additional interest demanded and not paid by the assessee. Based on the decision relied upon by the Id. AR and on careful consideration of the facts in this case we hold that the Id. AO before completing the assessments on protective basis, the AO is supposed to point out the name of the assessee who may be the owner of such income. It is common ground that in the present case, till this date, the authorities below did not bring on record any material to show that the declared income in question really belongs to some other assessee. The Id. DR honestly conceded that till this date no proceedings in respect of the disputed income have been made against any other assessee and the same is also confirmed by the AO in the report presented before us.

16. It is not disputed the findings of the Id. AO that there is no addition on substantive basis. Thus, the protective addition cannot be survived as AR of the assessee explicitly proved that whatever interest that they have paid in the group cases is duly recorded in the books of accounts and wherever applicable TDS is also deducted. As an additional interest as allegedly demanded by the parties is not paid by the assessee, even those parties are not questioned on that 2.4% found recorded in the Excel-Sheet and same were also not taxed on

substantive basis. There cannot be any protective addition without making the substantive addition and Revenue did not controvert the argument of the AR of the assessee and has also not supported by any judicial decision so as to confirm the order of the lower authorities. Thus, the interest which is actually paid is duly recorded in the books of accounts and there is no other material which is found even the person under whom possession the PAN Drive is found his statement is not recorded. This action itself shows that department find this evidence as dump documents and is not evidence relied upon. The statement of the person from whom the evidence his found is also not checked on its correctness and veracity. Therefore, based on the finding that the revenue has not made any substantive addition in the persons in whose name the interest as alleged addition income is not added and the Id. AR of the assessee categorically proved that there is no incriminating other document found recording the payment of the additional interest. Based on these observations we vacate the disallowance made for an amount of Rs.37,32,344/- made on protective basis.”

Further by following decision of M/s Maverick Share Brokers Pvt. Ltd. (supra), hon'ble ITAT, Jaipur bench in the case of Shri Ramesh Kumar Mantri, Shri Mukut Behari Agarwal, Smt. Asha Jain, Shri Mukesh Jain, Smt. Sangeeta Mantri and Smt. Sunita Agarwal wherein the additions based on the excel sheet found in the PAN drive seized during the course of search from the possession of Shri Kailash Khandelwal were also made and same were finally deleted . Relevant extract of order is reproduced as under—

“40.5 Similar issue we have decided in the ITA No. 41/JP/2020 where in the arguments, facts are similar in group search case and the bench noticed that the issues raised by the assessee in this cross objection are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various contentions raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 41/JP/2020 shall apply mutatis mutandis in this case also. The relevant finding in 41/JP/2020

is extracted here in below

15. We have heard

16. It is not

40.6 Based on the above observations the cross objection No.16/JPR/2020 is allowed.”

Thus, the addition so made merely on suspicion without any corroborative evidence on record deserves to be deleted.”

6. To support the various contentions so raised in the written submission the Id. AR of the assessee relied upon the following evidences:-

S. No.	PARTICULARS	PAGE NOS.
1.	Copy of reasons for reopening of the Assessment u/s 147 of the I.T. Act, 1961	1-4
2.	Copy of objections filed before DCIT, Central Circle-1, against reopening of the assessment	5-6
3.	Copy of letter filed before DCIT, Central Circle-1, in response to order disposing objections against reopening of the assessment	7-8
4.	Copy of notice u/s 133(6) of the I.T. Act, 1961 dated 16.03.2018	9-10
5.	Copy of reply filed before ACIT, Central Circle-1, dated 21.03.2018 in response to notice u/s 133(6)	11-12
9.	Copy of Written Submission filed before Ld. CIT (A)-4, Jaipur.	13-25
10.	Copy of Judgment Hon'ble ITAT Jaipur dated 13.12.2017 in the case of Shri Navrattan Kothari v/s The ACIT in ITA No. 425/JP/2017	26-69

7. The Id. AR of the assessee in addition to the written submission also argued that the similar issue addition made in the case of the alleged PEN drive found and the interest recorded thereon has been deleted in the case of M/s. Marverick Share Brokers P. Ltd., Jaipur Vs. DCIT, Jaipur on protective basis in ITA no. 40 & 41/JP/2020. Thereafter the same was also directed to be

deleted in the case of Shri Ramesh Kumar Mantri and others in ITA no. 164 & 165/JP/2020. Based on that set of fact and considering the consistent view of the Tribunal that decision taken should be applied in the case of the assessee on merits and on the legal ground he relied upon the decision of our Hon'ble Rajasthan High Court in the case of Shyam Sunder Khandelwal in DB writ petition no. 18363/2019.

8. Per contra, the Id. DR relied upon the order of Id. CIT(A). Ld. DR also to counter the submission in support of the decision so given by the assessee in support of the legal ground taken, she relied upon the following decisions:-

- Shri Shailesh S. patel, Palanpur Vs. ITO (2018) 97 taxmann.com 570 (Ahmedabad-Trib.)
- Saloni Prakash Kumar vs. ITO (2023) 458 ITR 452 (Mad) (HC)
- Pushpa Yadav v. ITO (2022) 139 taxmann.com 86 (Allahabad) (HC).

However, at the same time Id. DR did not controvert the finding of the our jurisdictional High Court.

9. We have heard the rival contentions, perused the material placed on record and gone through the submissions made along with the oral arguments advanced at the time of hearing of the present appeal. The brief facts related to the disputes are that the assessee is an individual, deriving income from, Salaries, Business and Other sources.

Return u/s 139(1) was filed on 28.03.2014. Pursuant to the search & Seizure operation carried out at various premises of NMIS group, and simultaneously search was also carried out at the residential premises of the assessee.

Because of those reasons notice u/s 153A of the Act was issued to the assessee, the return of income was filed on 10.09.2015 by the assessee, showing a total income of Rs. 330,450/-, which was the same as declared in return filed u/s 139(1).

During search action carried out in the case of Maverick Group, wherein a pen drive stated to have been found and seized from the possession of some Shri Kailash Chand Khandelwal, who is one of the employees of the Maverick Group, Jaipur. According to Id. AO, some entries pertaining to the individuals/ concerns of

Maverick group as also some other persons, and had an amount of Rs. 1,76,342/- against the name of assessee.

On the basis of this information reasons were recorded u/s 147 and a notice was issued to the assessee u/s 148 of the Act by recording the reasons. The assessee had filed objections against the reasons so recorded which were rejected by Id.AO in a summary manner and the assessment was completed u/s 143(3) r.w.s.147 of the Act, by adding the said sum of Rs. 1,76,342/- by alleging that the assessee had paid interest in cash out of undisclosed source of income.

Aggrieved of the aforesaid addition, the assessee has filed the appeal before the Id. CIT(A) who dismissed the ground and confirmed the addition. Therefore, the present appeal.

Ground no. 2 raised by the challenges the addition made by Id. AO and confirmed by Id. CIT(A) for an amount of Rs. 1,76,342/-. The said addition was made based on an excel sheet found with an employee of the Maverick group, by alleging the same as containing details of interest paid by the assessee out of

undisclosed income, without appreciating the explanation/documents filed by the assessee.

In this regard it is submitted that an addition of amount Rs. 1,76,342/- was made by relying upon the material stated to have been found noted in the pen drive seized from the possession of an employee of Maverick Group, Jaipur wherein contained an excel sheet. The said excel sheet contained three columns titled as 'adjustment' containing entries of amount Rs. 35,15,548/- out of which in entry of Rs. 1,76,342/- is in the name of the assessee with interest @2.4% mentioned in the last column.

During assessment proceedings in the case of assessee himself, initial notice u/s 133(6) was issued (APB 9) wherein the said amount of interest appearing as 'adjustment interest' was alleged to be interest received and was asked to furnish the manner of disclosing the same in the return of income.

In reply to this vide letter dated 21.03.2018 (APB 10-11) it was explained that interest was not paid to them rather, it was paid by them. Further the confirmation of the same had already been submitted before Id.AO during proceedings u/s 153A of the Act. Thereafter, Id. AO had changed his stand of treating the entries as

interest paid instead of earlier observation as interest received and alleged that the amount appearing under the column 'Adjustment' is the amount of interest paid by assessee out of his undisclosed sources and not recorded in the books of accounts.

During the assessment proceedings in the case of the Maverick group, it was observed that excel sheet was received from some finance broker who had been working for many persons apart from Maverick Group and that broker was asking the additional interest which was not given. The issue has been dealt with by the co-ordinate bench in the case of the M/s. Marverick Share Brokers Private Limited, Jaipur in ITA no. 38 to 41 wherein the while dealing with the PEN drive the bench has held as under:-

“15. We have heard the rival contentions, submission made and relied upon relevant judicial decisions by both the party. The bench has noted that when the PEN drive find during the search proceeding no questions are raised to the parties not only that the employee from this PEN drive found, his statement is not recorded. Thus, merely from that PEN when the veracity about that evidence is not recorded no addition either protective or substantive can be made. Not only that even on the merits the addition cannot be made on two counts, one is that there is no substantiative addition in those persons who claimed to have additional interest as duly confirmed before us by the AO and secondly when the substantive addition is not made protective addition cannot survive. The amount in dispute is nothing but the amount of the additional interest demanded and not paid by the assessee. Based on the decision relied upon by the Id. AR and on careful consideration of the facts in this case we hold that the id. AO before completing the assessments on protective basis, the AO is supposed to point out the

name of the assessee who may be the owner of such income. It is common ground that in the present case, till this date, the authorities below did not bring on record any material to show that the declared income in question really belongs to some other assessee. The Id. DR honestly conceded that till this date no proceedings in respect of the disputed income have been made against any other assessee and the same is also confirmed by the AO in the report presented before us.

16. It is not disputed the findings of the Id. AO that there is no addition on substantive basis. Thus, the protective addition cannot be survived as AR of the assessee explicitly proved that whatever interest that they have paid in the group cases is duly recorded in the books of accounts and wherever applicable TDS is also deducted. As an additional interest as allegedly demanded by the parties is not paid by the assessee, even those parties are not questioned on that 2.4% found recorded in the Excel-Sheet and same were also not taxed on substantive basis. There cannot be any protective addition without making the substantive addition and Revenue did not controvert the argument of the AR of the assessee and has also not supported by any judicial decision so as to confirm the order of the lower authorities. Thus, the interest which is actually paid is duly recorded in the books of accounts and there is no other material which is found even the person under whom possession the PAN Drive is found his statement is not recorded. This action itself shows that department find this evidence as dump documents and is not evidence relied upon. The statement of the person from whom the evidence his found is also not checked on its correctness and veracity. Therefore, based on the finding that the revenue has not made any substantive addition in the persons in whose name the interest as alleged addition income is not added and the Id. AR of the assessee categorically proved that there is no incriminating other document found recording the payment of the additional interest. Based on these observations we vacate the disallowance made for an amount of Rs. 37,32,344/- made on protective basis.”

As it is evident from the above finding that interest whatever actual paid is duly recorded in the respective parties accounting only the additional interest claim across all the parties which were

neither paid nor any supporting evidence have been found to have been paid. Based on that set of facts we do not find any reasons to sustained the addition of Rs. 1,76,342/- made in the hands of the assessee. Based on these observations ground no. 2 raised by the assessee.

Ground no. 1, 1.1 and 3 are technical ground raised by the assessee and since we have allowed the appeal of the assessee on merits we do considered it to be adjudicated. Ground no. 4 being general does not require our adjudication.

In the result the appeal of the assessee is allowed.

Order pronounced in the open Court on 29/08/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 29/08/2024.

*Santosh

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

1. अपीलार्थी / The Appellant- Sh. Brij Bihari Agrawal, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 737/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar