IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA Nos: 1894 to 1903/Ahd/2019 & 1904/Ahd/2019
Asst. Years: 2000-01 to 2009-10 & 2016-17
&
IT(SS)A Nos: 569 to 574/Ahd/2019
Asst. Years: 2010-11 to 2015-16

Manjulaben Bipinbhai Patel Legal Heir of Late Bipinbhai P. Patel C/o. Apex Extrusions Pvt. Ltd., 220-221, GIDC Estate, Makarpura, Vadodara, Gujarat, 390010	**बनाम**/ Vs.	**Deputy Commissioner of Income Tax** Central Circle-1, Vadodara - 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACQPP7757H		
(**Appellant**)	..	(**Respondent**)

&

ITA Nos: 1905 to 1914/Ahd/2019 & 1915/Ahd/2019
Asst. Years: 2000-01 to 2009-10 & 2016-17
&
IT(SS)A Nos: 575 to 580/Ahd/2019
Asst. Years: 2010-11 to 2015-16

Smt. Manjulaben B. Patel C/o. Apex Extrusions Pvt. Ltd., 220-221, GIDC Estate, Makarpura, Vadodara, Gujarat, 390010	**बनाम**/ Vs.	**Deputy Commissioner of Income Tax** Central Circle-1, Vadodara - 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACQPP7419J		
(**Appellant**)	..	(**Respondent**)

&

ITA Nos: 31 to 39/Ahd/2020 & 40/Ahd/2020 &
C.O. Nos: 54 to 61 & 63/Ahd/2020 & 62/Ahd/2020
Asst. Years: 2000-01 to 2009-10 & 2016-17

&

IT(SS)A Nos: 01 to 06/Ahd/2020 &
C.O. Nos: 47, 49, 50, 52, 51 & 53/Ahd/2020
Asst. Years: 2010-11 to 2015-16

Deputy Commissioner of Income Tax Central Circle-1, Vadodara – 390007 **Manjulaben Bipinbhai Patel Legal Heir of Late Bipinbhai Prabhudas Patel** 2, Shantivan Society, Tarsali Society, Makarpura, Vadodara, Gujarat – 390014	**बनाम**/ Vs. & 	**Smt. Manjulaben B Patel, Legal Heir of Late Shri Bipinchandra Prabhudas Patel** 2, Shantivan Society, Sussen Tarsali Society, Makarpura, Vadodara, Gujarat – 390014 **Deputy Commissioner of Income Tax** Central Circle-1, Vadodara - 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACQPP7757H		
(**Appellant/Cross Objector**)	..	(**Respondent**)

&

ITA Nos: 41 to 49/Ahd/2020 & 50/Ahd/2020
Asst. Years: 2000-01 to 2009-10 & 2016-17

&

IT(SS)A Nos: 07 to 12/Ahd/2020
Asst. Years: 2010-11 to 2015-16

Deputy Commissioner of Income Tax Central Circle-1, Vadodara – 390007	**बनाम**/ Vs.	**Smt. Manjulaben Bipinchandra Patel** 2, Shantivan Society, Sussen Tarsali Society,

		Makarpura, Vadodara, Gujarat – 390014
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACQPP7419J		
(**Appellant**)	..	(**Respondent**)

Assessee by :	Shri Tushar Hemani Sr. Advocate & Shri Parimalsinh B. Parmar, AR.
Revenue by :	Dr. Darsi Suman Ratnam, CIT. DR & Shri Ashish Revar, Sr. DR

Date of Hearing	07/08/2024
Date of Pronouncement	10/09/2024

आदेश/ORDER

PER BENCH:

The above 82 appeals pertain to Late Shri Bipinchandra Prabhudas Patel (hereinafter referred to as "the assessee") and his wife Smt. Manjulaben Bipinbhai Patel in respect of assessments completed for 17 assessment years (A.Y.) from A.Y. 2000-01 to A.Y. 2016-17. All the 82 appeals filed by these two assessees and by the Revenue as well as the cross-objections were heard together. During the pendency of these group of appeals before the ITAT, Shri Bipinchandra Prabhudas Patel expired on 18.01.2021. Smt. Manjulaben Bipinbhai Patel has impleaded herself as his legal-heir and an affidavit to this effect has been filed. Further, the revised Form No.36 and 36A has also been filed in respect of appeals and cross-objections pertaining to late Shri Bipinchandra P. Patel.

2. The major controversy in all the appeals revolves around various transactions as reflected in the following foreign bank accounts of late Shri Bipinchandra Prabhudas Patel and Smt. Manjulaben Bipinchandra Patel:-

i) Merrill Lynch Bank (Cayman Islands) ["MLB" for short]
   a) A/c No. ICA03B39
   b) A/c No. 16503B39

ii) Hinduja Bank (Switzerlands) ["HBS" for short]
   a) A/c No. 0011370 001.000.840 (USD-US Dollar);
   b) A/c No. 0011370 001.000.001 (CHF-Swiss Franc);
   c) A/c No. 0011370 001.000.392 (JPY-Japanese Yen);
   d) A/c No. 0013700 3392 (JPY-Japanese Yen)

Facts of the case

3. Succinctly, the facts of the case are that a search action u/s 132 of the Act was carried out in the case of the assessee and his family members on 02.12.2015. During the search at the residence of the assessee, it was gathered that bank accounts with "MLB", as referred earlier, were held in the name of a company 'M/s. NAD Investments Ltd.", registered in Cayman Islands, through a trust and the settlors of the said trust were Shri Bipinchandra P. Patel and Smt. Manjulaben B. Patel (husband and wife). The ultimate beneficiaries of the trust/accounts were their own family members namely Shri Minesh Patel, (Son – 50%); Smt. Jigishaben Patel (Daughter-in-law, 25%); Ms. Natasha Patel (Grand-daughter – 12.5% and Ms. Amisha Patel (Grand-daughter – 12.5%). These foreign bank accounts were not disclosed in the income-tax returns of either of the persons. During the course of search, a statement of Shri Bipinchandra P. Patel was recorded

u/s 132(4) of the Act, wherein he initially denied having possessed any foreign bank account or being a beneficiary of any foreign trust. However, when he was confronted with "Confidential Client Profile Sheet", "Settlor Profile Form", deed of trust between Shri Bipinchandra P. Patel & Smt Manjulaben B. Patel and Merrill Lynch Bank and Trust Company (Cayman) Ltd. dated 07.01.2000, the supplementary deed of trust dated 07.01.2000, the company formation letter, deed of amendment dated 30.03.2021, Revocation of Trust Deed dated 19.11.2012; Shri Bipinchandra P. Patel accepted that he had signed on the deed of trust as well as the other documents related to establishment of a trust with Merrill Lynch Bank and Trust Company (Cayman) Ltd. However, he stated that he had signed on these forms as settlor in order to help his blood-sister late Smt. Prabhavatiben Amin and brother-in-law late Shri Jashbhai Amin who were settled in London, in order to help them to bring their money from Africa to London. The Assessing Officer found this explanation to be a concocted story; and on the basis of material available on record and the statement of Shri Bipinchandra P. Patel, initiated action against the assessee and Smt. Manjulaben B. Patel for 17 assessment years under different provisions of Act as follows: -

i) U/s 147 of the Act : for AYs 2000-01 to 2009-10
ii) U/s 153A of the Act : for AYs 2010-11 to 2015-16
iii) U/s 143(3) of the Act : for AY 2016-17

4. Apart from the aforesaid foreign accounts, cash and jewellery were also found during the search operations. In the course of assessment proceedings, details of four foreign bank accounts held by the assessee in Hinduja Bank (Switzerland), as detailed earlier, were received through

FT&TR Division of the CBDT. These accounts were having deposits during the period of financial years 2013-14 to 2016-17. The assessments were completed in the case of Shri Bipinchandra P. Patel and Smt. Manjulaben B. Patel after making additions in respect of credits reflected in the foreign bank accounts. Further, addition in respect of jewellery found during the search was also made.

5. It will be relevant here to discuss certain facts of the case pertaining to foreign bank accounts of the assessee in slight details in order to appreciate and properly examine the grounds as taken by the contending parties in these appeals. The relevant facts pertaining to foreign bank accounts held with 'MLB' are as under: -

- *Such bank accounts were held in name of NAD Investments Ltd. (NAD).*
- *NAD is a company registered in Cayman Islands.*
- *Such bank accounts were held in the name of NAD through a 'trust'.*
- *Shri Bipinchandra P. Patel & Smt. Manjulaben B. Patel were 'settlors' of the said trust.*
- *Beneficiaries of trust were family members of the assessee & Manjulaben.*

6. During the course of the search carried out by the revenue, the assessee was confronted with following documents in relation to foreign bank accounts held with MLB [Ques. 22-29 of statement of assessee u/s 132(4) as reproduced in the assessment order at Pgs.19-24] :

1. Deed of trust dated 07.01.2000 (Ques. 22):
2. Supplementary deed of trust dated 07.01.2000 (Ques. 23);

3. Company formation letter (Ques. 24):
4. Confidential Client Profile Sheet (Ques. 25 & 26);
5. Settlor Profile Form (Ques. 27):
6. Deed of amendment dated 30.03.2001 (Ques. 28):
7. Revocation of trust deed dated 19.11.2012 (Ques. 29);

7. According to the assessee the above seven documents as referred, were merely confronted to the assessee and these documents were not found during the course of search from the premises of the assessee. "Confidential Client Profile Sheet" & "Settlor Profile Form" were received by the Income Tax Department from "Tax Authorities of Cayman Islands" on the basis of "Tax Information Exchange Agreement". In the statement u/s 132(4) of the Act, the assessee had stated that he had signed the forms in relation to foreign bank accounts held with MLB in the capacity of "settlor" in order to help his blood sister namely Late Smt. Prabhavatiben Amin and brother-in-law Late Jashbhai Amin (who were settled in London) to help them bring their money from Africa to London. However, the AO held that all the 'credits' reflected in these bank accounts were 'income' of the assessee and consequently, additions were made in respect of such credits for the period from AYs 2000-01 to 2013-14.

8. In respect of four foreign bank accounts held by the assessee with 'HBS', the information regarding which was received through FT&TR division of the CBDT; the entire credits as reflected in these bank accounts were treated as income of the assessee and additions were made in AYs 2013-14 to 2016-17. The total additions made in respect of credits reflected in foreign bank accounts from AYs 2000-01 to 2016-17 aggregated to

Rs.24,18,78,960/-. As the foreign bank accounts were held by the assessee and Smt. Manjulaben B. Patel jointly, the Assessing Officer had made the addition of Rs.24,18,78,960/- in the hands of both the persons in the following manner: -

(i) 50% of the amount was added on substantive basis;

(ii) 50% of the amount was added on protective basis.

9. Aggrieved with the orders of the Assessing Officer, appeals were filed before the First Appellate Authority by the assessee as well as by Smt. Manjulaben B. Patel. The ld. CIT(A) rejected all the technical grounds raised by the assessee in respect of reopening u/s 147 of the Act as well as the proceedings u/s 153A of the Act. He, however, adopted a different mechanism for working out the amount of income in respect of funds credited in foreign bank accounts. Apart from the credit side entries, he considered the entries on the debit side as well and reworked the income for the different years, which resulted in loss for certain years. While the positive income was confirmed as addition by the ld. CIT(A), the losses were ignored. This aspect will be discussed in details while dealing with the grounds taken on merits of the addition. The ld. CIT(A) held that since the transactions in foreign bank accounts were carried out by the assessee without the consent of his wife and other family members, he confirmed the entire addition pertaining to foreign bank accounts in the hands of the assessee on substantive basis. However, 50% of the amount was also considered as income of Smt. Manjulaben B. Patel on protective basis.

10. As regarding the addition of Rs.1,13,86,888/- on account of unexplained jewellery in AY 2016-17, the Assessing Officer had added a sum of Rs.10 lakhs in the hands of Shri. Bipinchandra P. Patel. The balance addition of Rs.1,03,86,888/- was made in the hands of Smt. Manjulaben B. Patel and Jigishaben Patel; being 50% on substantive basis and 50% on protective basis in the hands of both the persons. The ld. CIT(A) confirmed the entire addition of Rs. 1,03,86,888/- of jewellwery in the hands of Smt. Jigishaben Patel as she had owned up the entire jewellery. However, 50% addition in the hands of Smt. Manjulaben B. Patel on protective basis was also sustained as the matter had not reached finality.

11. Aggrieved with the orders of the ld. CIT(A), both the assessees as well as the Revenue is in appeal before us.

Grounds taken in the appeal

12. Grounds of appeal in ITA No.1894/Ahd/2019 for A.Y. 2000-01 filed by the assessee are as under:

> *"**1.00 Order passed u/s 147 r.w.s. 143(3) of the Act is void and deserved to be quashed:***
>
> *1.01 On the facts and in circumstances of your appellant's case and in law, Id. CIT(A) failed to appreciate that -*
>
> - *Your appellant was simply settlor and Merrill Lynch was the director of the Company, therefore the ld. AO ought to have called on relevant information from the directors rather than calling the information from settlor and as such the act of ld. AO is arbitrary to make impugned addition of Rs.54,43,228/- to the returned income.*

- *No documents were found during search or thereafter to prove that the funds in the alleged foreign bank accounts are transferred or sourced by the appellant and likewise the ld. AO also not proved that the appellant has received or has been enriched in any manner whatsoever by any funds from the alleged foreign bank accounts,*

- *Ld. AO has grievously erred in passing the order on "False Statement / Grounds/basis that incriminating documents were found or gathered from searched premises whereas the addition was made based on the documents gathered from unknown sources.*

- *Ld. AO has passed the impugned order with the predetermined mind set to make high pitched assessment which can be proved from the fact that details and statements related to offshore trust accounts were provided almost after 22 months post search conducted and that too after number of requests made by your appellant. Such details and statements were running into around 2,500 pages. Accordingly, the order passed was without providing sufficient opportunity to your appellant to represent his case and as such violates principles of natural justice.*

*1.02 On the facts and in circumstances of your appellant's case and in law, the reasons recorded before issue of notice u/s 148 of the Act does not spell out clearly any income that has escaped assessment, in as much as, it only states that "**amounts credited into these bank statements (relating to foreign bank accounts) need to be taxed as per the prevailing provisions of the Income Tax Act, 1961".***

1.03 On the facts and in circumstances of your appellant's case and in law, ld. CIT(A) erred in upholding the order passed us 147 r.w.s. 143(3) of the Act an erroneous plea that information along with the statement recorded during the search became the basis of issue of notice u/s 148 of the Act for proceedings u/s. 147 r.w. Explanation 2(d) of the Act.

1.04 On the facts and in circumstances of your appellant's case and in law, ld. CIT(A) erred in upholding that credit entries in alleged foreign bank statements is liable to be treated as deemed income as per section 68 of 69A of the Act though your appellant has not maintained any books of accounts. Accordingly, confirmed addition of Rs.38,58,950/- to the returned income as against additions of Rs.54,43,228/- made by ld. AO.

*2.00 **WITHOUT PREJUDICE TO ABOVE**, on the facts and circumstances of your appellant's case and in law, ld. CIT(A) grossly erred in not allowing set off of resultant loss of the year, relating to transactions in foreign bank accounts, against declared income of the same year and carry forward of such unadjusted loss, if any, for being its set off of with the income of following year(s), on wrong plea that such set off and carry forward could have been possible only if the*

returns were filed within the due date as per the provisions of the Act which is not the case in the case of your appellant.

2.01 It is brought to notice that the return was filed in time for the year under review. Since the loss is first computed, relating to transactions in alleged foreign bank accounts, during appellate proceedings, the same should be allowed to be set off against returned income of the same year and carry forward of the same to subsequent year(s) for being its set off as per sections 70, 71, 72, 74 of the Act."

Grounds of appeal in ITA Nos. 1895/Ahd/2019 to 1903/Ahd/2019 & in ITA Nos. 1905 to 1914/Ahd/2019 are same as in ITA No. 1894/Ahd/2019 (except the amounts mentioned in Ground 1.01 and in Ground 1.04 of each appeal and a ground regarding substantive & protective addition taken in ITA No. 1914/Ahd/2019).

13. Grounds of appeal in IT(SS)A No.569/Ahd/2019 for A.Y. 2010-11 are as under:

"1.00 Order passed u/s 153A r.w.s. 143(3) of the Act is void and deserved to be quashed:

1.01 On the facts and in circumstances of your appellant's case and in law, Id. CIT(A) failed to appreciate that -

- *Your appellant was simply settlor and Merrill Lynch was the director of the Company, therefore the ld. AO ought to have called on relevant information from the directors rather than calling the information from settlor and as such the act of Ld. AO is arbitrary to make impugned addition of Rs. 61,02,094/- to the returned income.*

- *No documents were found during search or thereafter to prove that the funds in the alleged foreign bank accounts are transferred or sourced by the appellant and likewise the Id. AO also not proved that the appellant has received or has been enriched in any manner whatsoever by any funds from the alleged foreign bank accounts.*

- *Ld. AO has grievously erred in passing the order on "False Statement / Grounds/basis that incriminating documents were found or gathered from searched premises whereas the addition was made based on the documents gathered from unknown sources.*

- *Ld. AO has passed the impugned order with the predetermined mind set to make high pitched assessment which can be proved from the fact that details and statements related to offshore trust accounts were provided almost after 22 months post search conducted and that too after number of requests made by your appellant. Such details and statements were running into around 2,500 pages. Accordingly, the order passed was without providing sufficient opportunity to your appellant to represent his case and as such violates principles of natural justice.*

1.02 On the facts and in circumstances of your appellant's case and in law, Id. CIT(A) erred in upholding the order passed u/s 153A r.w.s. 143(3) of the Act on erroneous plea that information along with the statement recorded during the search became the basis for proceedings u/s 153A r.w.s. 143(3) of the Act.

1.03 On the facts and in circumstances of your appellant's case and in law, Id. CIT(A) erred in upholding that credit entries in alleged foreign bank statements is liable to be treated as deemed income as per section 68 or 69A of the Act though your appellant has not maintained any books of accounts. Accordingly, confirmed additions of Rs. 4,99,483/- to the returned income as against additions of Rs. 61,02,094/-made by Id. AO.

2.00 WITHOUT PREJUDICE TO ABOVE, on the facts and circumstances of your appellant's case and in law, ld. CIT(A) grossly erred in not allowing set off of resultant loss of the year, relating to transactions in foreign bank accounts, against declared income of the same year and carry forward of such unadjusted loss, if any, for being its set off of with the income of following year(s), on wrong plea that such set off and carry forward could have been possible only if the returns were filed within the due date as per the provisions of the Act which is not the case in the case of your appellant.

2.01 It is brought to notice that the return was filed in time for the year under review. Since the loss is first computed, relating to transactions in alleged foreign bank accounts, during appellate proceedings, the same should be allowed to be set off against returned income of the same year and carry forward of the same to subsequent year(s) for being its set off as per sections 70, 71, 72, 74 of the Act."

Grounds of appeal in IT(SS)A Nos. 570/Ahd/2019 to 574/Ahd/2019 & 575 to 580/Ahd/2019 are identical as in IT(SS)A No.569/Ahd/2019 (except the amounts mentioned in Ground 1.01 and in Ground 1.03 of each appeal).

14. Grounds of appeal in ITA No.31/Ahd/2020 for A.Y. 2000-01 filed by the Revenue are as under:

> *"1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition of Rs.54,43,228/- to Rs.38,58,950/- on account of undisclosed income from foreign bank account, by not appreciating the facts involved in this case. .*
>
> *2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the income on account of STCG/LTCG which relate to transactions in shares and find place in bank statement showing realized gain/loss.*
>
> *3. The issue involved is related to undisclosed foreign bank accounts which falls within the ambit of exception under para 10(d) of the C.B.D.T. instruction no. 17/2019 dated 08.08.2019.*
>
> *4. It is, therefore, prayed that the order the Ld. CIT(A) 12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*
>
> *5. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

Grounds of appeal in ITA Nos. 32/Ahd/2020 to 39/Ahd/2020, in ITA Nos. 41/Ahd/2020 to 49/Ahd/2020, IT (SS)A Nos. 1 to 6/Ahd/2020 & IT (SS)A Nos. 7 to 12/Ahd/2020 are same as in ITA No. 31/Ahd/2020 (except the quantum of amounts as mentioned in the Grounds of each appeal).

15. The grounds taken by the assessee in CO No. 54/Ahd/2020 are as under:

> *"1. The ld. CIT(A) erred in law and on facts in upholding the addition made in assessment u/s. 153A r.w.s. 143(3) for unabated AY 2000-01 in the absence of incriminating material found during the course of search.*
>
> *2. The ld. CIT(A) erred in law and on facts in holding that confrontation of available documentary evidences to the appellant and recording of statement u/s.132(4) of the Act constitutes incriminating material on the basis of which addition can be made for an unabated assessment year.*
>
> *3. The ld. CIT(A) erred in law and on facts in confirming the addition made by the AO to the extent of Rs.38,58,950.27/- (USD 89,054).*
>
> *4. The ld. CIT(A) erred in law and on facts in holding that 100% of the addition is taxable on a substantive basis in the hands of the appellant as against the AO adding 50% on a substantive basis and 50% on a protective basis. This amounts to enhancement and is not permissible without notice.*
>
> *5. The ld. CIT(A) erred in law and on facts in holding that in case of loss/negative income, it will not be allowed to be carried forward as return was not filed within due date.*
>
> *6. The ld. CIT(A) erred in law and on facts in advising AO to examine applicability of and initiate proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015."*

Grounds of appeal in CO Nos. 47/Ahd/2020, in 49 to 53/Ahd/2020, in 55/Ahd/2020 to 61/Ahd/2020 & in CO No. 63-64/Ahd/2020 are same as in CO no. 54/Ahd/2020 (except the quantum of amounts as mentioned in the Grounds of each CO).

16. Grounds of appeal in ITA No.1904/Ahd/2019 for A.Y. 2016-17 filed by the assessee is identical to grounds in ITA No. 1894/Ahd/2019 except that an additional ground No. 3 has been raised as under:

> *3.00 On the facts and in the circumstances of your appellant's case and in law, ld. CIT(A) erred in confirming the addition of Rs.10,00,000/- on account of jewellery found from Locker No.-17 not owned by your appellant on the ground that explanations given by your appellant do not corroborate with supporting evidence and as such it is not reliable. Ld. CIT(A) also failed to appreciate that the said locker was never operated since last 10 years as confirmed by the bank.*

17. Grounds of appeal in ITA No.1915/Ahd/2019 for A.Y. 2016-17 filed by the assessee is also identical to grounds in ITA No. 1894/Ahd/2019 except that an additional ground No. 3 has been raised as under:

> *3.00 On the facts and in the circumstances of your appellant's case and in law, ld. CIT(A) erred in confirming addition of Rs.52,41,977/-- on protective basis on account of jewellery found during the course of search though full details has been confirmed on this account in the hands of Smt. Jigishaben Patel, daughter-in-law of your appellant by virtue of order dated 07.01.2019 arising out of appeal No. CIT(A)-12/320/CC 1/2017-18.*

18. Grounds of appeal in ITA No.50/Ahd/2020 for A.Y. 2016-17 filed by the Revenue are as under:

1. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition of Rs.3,65,49,939/- (Rs.3,13,56,495/- on account of undisclosed foreign bank account + Rs.51,93,444/- on account of unexplained jewellery found) made by the AO on substantive basis.*
2. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in restricting the addition of Rs.3,13,56,495/- to Rs.17,47,300/- made by the AO on protective basis following the decision in the case of appellant's husband Sri Bipinchandra Prabhudas Patel on account of undisclosed income from foreign bank account by not appreciating the facts involved in this case.*
3. *It is, therefore, prayed that the order the Ld. CIT(A) 12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*

4. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

19. Grounds of appeal in ITA No.40/Ahd/2020 for A.Y. 2016-17 filed by the Revenue are as under:

1. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition of Rs.6,27,12,990/- to Rs.34,94,597/- on account of undisclosed income from foreign bank account by not appreciating the facts involved in this case.*
2. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in allowing the expenses as per bank statement without appreciating that the substantial part of addition was made and upheld under section 68/ 69A of the IT Act and no expenditure is allowable against such income as per provision 115BBE of the IT Act. (emphasis is supplied on para 8.31 of appellate order).*
3. *On the facts and in the circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition on account of receipts in undisclosed foreign bank accounts described as a spot transaction without establishing on facts, a one-to-one correspondence between credit and debit entries relating to a "spot transactions" in the appellate order.*
4. *It is, therefore, prayed that the order the Ld. CIT(A) 12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

20. We will take A.Y. 2000-01 & 2010-11 as the lead year(s) and discuss the grounds taken by the assessee as well as by the Revenue in detail in these years. The appeals pertaining to A.Y. 2000-01 are ITA No.1894/Ahd/2019 filed by the assessee and ITA No.31/Ahd/2020 filed by the Revenue. The assessee has also filed CO No. 54/Ahd/2020 in ITA No.31/Ahd/2020 with delay of 99 days. The delay was explained to be on account of Covid pandemic and, therefore, the delay is condoned. The appeals pertaining to

A.Y. 2010-11 are IT(SS)A No.569/Ahd/2019 filed by the assessee and IT(SS)A No.01/Ahd/2020 filed by the Revenue with CO No.47/Ahd/2020.

21. We have heard Shri Tushar Hemani, Sr. Advocate and Shri Parimalsinh B. Parmar, AR appearing for the assessee as well as Dr. Darsi Suman Ratnam, CIT.DR on the various grounds taken in these appeals. Shri Tushar Hemani, Ld. Senior Counsel explained that the various grounds taken by the assessee can be categorized in following four categories:

i. Principle of natural justice;
ii. Reopening under Section 147 of the Act for the A.Ys. 2000-01 to 2009-10;
iii. Completion of unabated assessment without incriminating material for A.Ys. 2010-11 to 2014-15; &
iv. Grounds on the merits of the addition.

We will take up the legal grounds raised by the assessee for the different years first before deciding the grounds as taken on the merits of the addition.

Principle of natural justice

22. Shri Parimalsinh Parmar, the Ld. AR opened the arguments for this ground and submitted that the AO had passed the impugned order with the predetermined mind without allowing proper opportunity of being heard to the assessee. He submitted that the details and statements pertaining to offshore trust accounts were provided to the assessee almost after 22 months of the search and that too after a number of requests as made by the assessee.

He further submitted that these details and statements were running into around 2500 pages, but no proper opportunities were allowed to the assessee to represent his case, which was in violation to principle of natural justice. The Ld. AR submitted that the time allowed to the assessee to explain the documents were not sufficient and that the AO passed the order in a hurry. He further submitted that the Ld. CIT(A) also did not allow sufficient opportunity to respond to the remand report of the AO. According to the Ld. Counsel the Ld. CIT(A) had passed the order within less than one month time after providing a copy of the remand report. He relied upon the following decisions in respect of his contention that sufficient opportunity of being heard has to be granted before the AO and that the factum of opportunity of being granted before the appellate forum is of no consequence:

i. Tin Box Co. vs. CIT, [2001] 249 ITR 216 (SC)

ii. TIBCO Software India P. Ltd. Vs. DCIT [2015] 170 TTJ 432 (Pune)

23. Per Contra, Dr. Darsi Suman Ratnam, Ld. CIT.DR submitted that the AO had provided numerous opportunities to the assessee to explain the transactions in foreign bank accounts. However, the assessee never provided the required details and was in perpetual denial mode. The documents were made available to the assessee as and when requested but no explanation was given thereon by the assessee in spite of allowing sufficient opportunity by the AO. Rather the assessee had merely filed an affidavit dated 04.12.2015 on 05.12.2017 stating that foreign bank accounts doesn't belong to him. The Ld. CIT-DR further submitted that the assessee had filed additional evidences before the Ld. CIT(A) which was examined by the AO

in the course of remand proceedings. The assessee had made further submissions in respect of year wise net income calculated as per bank statements, post remand report. Thus, sufficient opportunities were allowed to the assessee before the Ld. CIT(A) as well. The Ld. CIT.DR relied upon the decision of *Hon'ble Calcutta High Court in case of Hydro Carbon Services (P.) Ltd. vs. Union of India, [2021] 131 taxmann.com 175 (Calcutta)* in support of his contention that there was no violation of natural justice.

24. We have carefully considered the rival submissions and also gone through the assessment order. The Revenue has furnished a timeline chart of the events that took place in this case, which is reproduced below:

Assessment Proceedings				
Sr. no.	*Date*	*Event*	*Reference*	*Remarks*
1.	*02.12.2015*	*Search & Statement u/s 132*	*Para 2.1-2.2 Pg 1-2 of AO*	
2.	*03.12.2015*	*Statement recorded where asked to explain contents of letter in Qs no 30.*	*Para 5.9 Pg 31 of AO*	
3.	*11.01.2016*	*Statements by (A)*	*Para 5 Pg 18 of CIT (A) Order*	
4.	*27.01.2016*	*Statements by (A)*	*Para 5 Pg 18 of CIT (A) Order*	
5.	*27.05.2016*	*Statements by (A)*	*Para 5 Pg 18 of CIT (A) Order*	
6.	*23.11.2016*	*Issue of notice u/s 148 for initiating proceedings u/s 147*	*Para 2.3 Pg 3 of AO*	

7.	*22.12.2016*	*Reply of (A) to consider returns filed u/s 139(1) for s. 148 + Request to provide copy of reasons for initiation of proceedings u/s 147.*	*Para 3.1 Pg 3 of AO*	
8.	*10.01.2017*	*Reasons for initiation of proceedings u/s 147 provided to (A)*	*Para 3.1 Pg 3 of AO*	
9.	*17.02.2017*	*Objections filed by (A) against initiation of proceedings u/s 147*	*Para 3.2 Pg 3 of AO*	
10.	*28.07.2017*	*Objections filed by (A) against initiation of proceedings u/s 147 were disposed off by speaking order.*	*Para 3.2 Pg 3 of AO*	
11.	*09.08.2017*	*Notice u/s 143(2) r.w.s. 147 issued*	*Para 4 Pg 7 of AO*	
12.	*22.08.2017*	*Notices u/s 142(1) along with questionnaire issued and requested to furnish on or before 31.08.2017*	*Para 4 Pg 7 of AO/Para 7.1 Pg 44 of AO*	
13.	*29.08.2017*	*Letter by (A) to give details and copy of documents rather than furnishing what was asked for*	*Para 7.2 of 44 of AO*	
14.	*22.09.2017*	*(A) was furnished with bank statements and other documents as asked vide notice and was asked to reply on or before 04.10.2017*	*Para 7.2 of 44 of AO*	*Nothing was furnished by (A) till 04.10.2017*
15.	*04.10.2017*	*Yet another notice given with soft copy of complied data of all documents and was requested to furnish details on or before 09.10.2017*	*Para 7.3 Pg 45 of AO*	*Nothing was furnished by (A) till 09.10.2017*
16.	*27.10.2017*	*Final Show Cause Notice and was asked to reply on or before 06.11.2017*	*Para 7.4 Pg 46 of AO*	
17.	*06.11.2017*	*(A) asked for 3 weeks time however was granted upto 17.11.2017*	*Para 7.5 Pg 47 of AO*	
18.	*17.11.2017*	*(A) vide letter informed that information is under preparation and will be submitted in due course of time*	*Para 7.5 Pg 47 of AO*	*No specific date mentioned. Nothing submitted.*
19.	*01.12.2017*	*Final Show cause notice to submit required details by 07.12.2017*	*Para 7.5 Pg 48 of AO*	

20.	*05.12.2017*	*(A) submitted his reply*	*Para 7.6 Pg 48 & 51 of AO*	*Included an affidavit made on 04.12.2015 disowning foreign bank accounts*
21.	*29.12.2017*	*Assessment Order Passed*	*Pg73*	
Appellate Proceedings				
Sr. no.	*Date*	*Event*	*Reference*	*Remarks*
22.	*24.01.2018*	*Appeal e-filed by Assesses*	*Pg 2 of CIT(A) order*	
23.	*09.09.2018*	*Submission of Assessee to CIT(A)*	*PB dated 06.09.2023 Pg 40*	
24.	*30.11.2018*	*Submission made by Assessee forwarded to AO vide letter*	*Para 5 Pg 37 of CIT(A)*	
25.	*10.12.2018*	*Paper book submission*	*Para 3.9 Pg 40 of CIT(A)*	
26.	*04.05.2019*	*Letter of Summarized statement of income from bank accounts of NAD investment furnished to Ld. AO by Assessee*	*Pg 43 of CIT (A)*	
27.	*07.05.2019*	*Letter dated 04.05.2019 acknowledged by Ld. AO & Ld. / AR furnished details and explanations*	*Pg 40 & 43 of CIT (A)*	
28.	*30.09.2019*	*AO Remand Report*	*Para 5 Pg 37 of CIT(A)*	
29..	*07.10.2019*	*Remand Report received by Assessee*	*Para 8.16 Pg 51 of CIT (A)*	
30.	*19.10.2019*	*Rejoinder of Assessee*	*Para 6 Pg 41 of CIT(A)*	
31.	*21.10.2019*	*Hearing post Remand Report*	*Para 7 Pg 44 of CIT (A)*	
32.	*24.10.2019*	*Further Submission by Assessee*	*Para 7 Pg 44 of CIT(A)*	
33.	*30.10.2019*	*CIT(A) Order*		

25. It is evident from the above chart that assessee was allowed sufficient opportunity to represent his case before the AO as well as before the Ld. CIT(A). The assessee had for the first time requested the AO to give a copy of the documents on 29.08.2017, which was provided to him on 22.09.2017.

These documents were basically the statement of foreign bank account which should have been available with the assessee himself. Still, when he demanded the copy of the same from the AO, it was provided to him. However, no compliance was made before the AO in spite of repeated opportunities as provided to explain these documents. In fact, the AO had *suo motto* provided the soft copy of bank statement and other documents to the assessee on 04.10.2017, still no compliance was made. The assessee had asked time for 3 weeks vide letter dated 06.11.2017 which was granted till 17.11.2017 by the AO. In fact, the AO waited till 01.12.2017 for issue of final show cause notice. Finally, the assessee had made his submission on 05.12.2017 by denying and disowning the foreign bank account and filing an affidavit dated 04.12.2015 disowning the foreign bank accounts. When the foreign bank accounts were disowned on 05.12.2017 and no further time was sought by the assessee, we don't find any violation of principle of natural justice. The AO had finally passed the assessment order on 29.12.2017 but no further communication was made by the assessee till the date of passing of the order.

26. It is, thus, found that the AO had allowed numerous opportunities to the assessee to submit the explanation in respect of the credit entries as appearing in the foreign bank accounts. The assessee has not explained as to why the affidavit dated 04.12.2015 denying the ownership of foreign bank account was filed after 2 years on 05.12.2017. Further, when assessee had denied the ownership of the foreign bank accounts, there can be no question of allowing insufficient opportunities to explain the transactions therein. Once having denied the ownership of the accounts before the AO, the

assessee cannot take a plea that no sufficient opportunity was allowed by the AO to explain the credit entries in the foreign bank account. Further, it is found that the Ld. CIT(A) had also allowed sufficient opportunities to the assessee to explain the transactions in the foreign bank accounts by admitting the additional evidences filed before him. The assessee had made submissions before the AO in the course of remand proceeding as well as before the Ld. CIT(A) after receipt of the remand report. Even if the Ld. CIT(A) passed his order within a month of the remand report, it is not the case that the he didn't consider the submissions of the assessee on the rejoinder of the remand report. Rather, the ld. CIT(A) has passed a detailed order considering and taking into account the submissions of the assessee and has substantially reduced the additions as made by the AO. We, therefore, do not find any instance of violation of natural justice in this case. The assessee was allowed sufficient opportunities to explain the transactions in the foreign bank accounts. The case laws relied upon the assessee are not found applicable to the peculiar facts of this case as discussed above. Therefore, **the grounds taken by the assessee in respect of providing insufficient opportunities and violation of principle of natural justice are dismissed.**

Reopening u/s. 147 of the Act

27. The cases for the A.Ys. 2000-01 to 2009-10 were reopened under Section 147 of the Act by issue of notice under Section 148 dated 23.11.2016. The assessee had raised objection against the reopening which was disposed off by the AO vide order dated 28.07.2017. Shri Hemani, the

Ld. Sr. Counsel explained that the reopening was done merely on the basis of details of foreign bank accounts received from FT&TR division of CBDT. The deposits appearing in the foreign bank account were apparently on account of interest, dividend, person cheque deposits, wire transfers, call loan/ fixed loan/ loan etc. According to the AO, the amounts deposited in the bank accounts were required to be taxed as per the provisions of the Act and, therefore, the cases were reopened. The Ld. Sr. Counsel has raised the following specific objections in respect of reopening of the cases:

(A) Mere deposits in the bank account cannot lead to the conclusion or even inference that the income chargeable to tax has escaped assessment. The Ld. Sr. Counsel submitted that the assessee had filed return of income for all the assessment years and, therefore, the mere fact that there were certain deposits in the bank accounts cannot lead to the conclusion or inference that income chargeable to tax has escaped assessment and can't be a ground for resorting to reopening. In this regard, reliance was placed on the following decisions:

1. *Mariyam Ismail Rajwani in ITA No. 676/Ahd/2016*
2. *Bir Bahadur Singh vs. ITO, [2015] 53 taxmann.com 366 (Del.)*
3. *Gurpal Singh vs. ITO, 159 ITD 797 (Amritsar)*
4. *Amrik Singh vs. ITO, 159 ITD 329 (Amritsar)*

(B) Reopening was based on borrowed satisfaction: – The Ld. Sr. Counsel submitted that the cases were reopened merely on the basis of the details received from the FT&TR Division of CBDT and there was no independent application of mind by the AO. He submitted that the reopening

in the case of the assessee was merely based on borrowed satisfaction. In this regard he placed reliance on the following decisions:

1. *Harikishan S. Virmani vs. DCIT, [2017] 394 ITR 146 (Guj.)*
2. *Varshaben S. Patel vs. ITO, [2015] 64 taxmann.com 179 (guj)*
3. *Signature Hotels P. Ltd. Vs. ITO, [2012] 338 ITR 51 (Delhi)*
4. *Paresh Babubhai Bhalani vs. ITO, [2023] 156 taxmann.com 517 (Guj.)*

(C) Reason for reopening was absolutely vague, scanty and non-specific: According to the Ld. Senior Counsel, the nature of underlying transaction was not specified in the reason. In this regard, he placed reliance on the following decisions:

1. *Paresh Babubhai Bhalani vs. ITO, [2023] 156 taxmann.com 517 (Guj.)*
2. *Surani Steel Tubes Ltd. vs. ITO, [2022] 136 taxmann.com 139 (Guj.)*

(D) AO had not quantified amount of escapement of income chargeable to tax – The Ld. Sr. Counsel submitted that no notice u/s. 148 of the Act can be issued beyond four years unless the income chargeable to tax that has escaped assessment is Rs. One Lakh or more. He submitted that this condition was not fulfilled as the AO had not quantified the amount of escapement for the different years in the reason as recorded by him. He further relied on the followings decisions:

1. *Mahesh Kumar Gupta vs. CIT, 363 ITR 300 (Allahabad)*
2. *Novo Nordisk India P. Ltd., [2018] 95 taxmann.com 225 (Kar.)*

(E) Reopening was barred by limitation – The Ld. Senior Counsel explained that the AO had resorted to Clause (c) of Section 149(1) of the Act

which was inserted w.e.f. 01.07.2012 for issuing notice u/s. 148 of the Act. Prior to 01.07.2012, the reopening was permissible only up to a period of 6 years from the end of relevant assessment year. Thus, the limitation for reopening for A.Y. 2005-06 and earlier years had expired on or before 31.03.2012. According to the Ld. Sr. Counsel, A.Ys. 2000-01 to 2005-06 had attained finality on 31.03.2012 and it was not permissible to reopen cases for these years beyond 6 years period, as a vested right was created in favour of the assessee for these years. Ld. Senior Counsel emphasized that it is well settled that subsequent amendment (w.e.f. 01.07.2012 in this case) cannot empower the AO to reopen the assessments which had already become time barred under the earlier provision, prior to such amendment coming into force. He placed reliance on following decisions in support of this legal proposition:

1. *S. S. Gadgil vs. Lal & Co. - (1964) 53 ITR 231 (SC);*
2. *J. P. Jani vs. Induprasad D. Bhatt - (1969) 72 ITR 595 (SC);*
3. *K M Sharma vs. ITO - (2002) 254 ITR 772 (SC);*
4. *Varkey Jacob v. CIT (2005) 275 ITR 146 (Ker)*
5. *C. B. Richards Ellis Mauritius Ltd. - (2021) 21 taxmann.com 535 (Del);*
6. *Tata Teleservices vs. UOI- (2016) 385 ITR 497 (Guj);*
7. *Brahm Dutt vs. ACIT - (2018) 100 taxmann.com 324 (Del):*
8. *DCIT v. Smt. Indira D. Thakkar - (2022) 138 taxmann.com 428 (Mum);*
9. *DCIT v. Smt. Deval D. Thakkar - (2023) 148 taxmann.com 270 (Mum);*

28. Per contra, Dr. Darsi Suman Ratnam, Ld. CIT.DR submitted that the cases were reopened by the AO after following the due process of law and

obtaining the prior approval of the Pr. CIT as stipulated under the provisions of the Act. He explained that the cases were reopened on the basis of specific information received from FT&TR Division of CBDT regarding foreign bank account of the assessee. On the basis of this information, the AO had recorded his reason to believe that income has escaped assessment. The Ld. CIT.DR relied upon the decision of *Hon'ble Gujarat High Court in the case of Kantibhai Dharamshibhai Narola v. ACIT, [2021] 125 Taxmann.com 348 (Gujarat)* and submitted that the validity of the reopening of the assessment has to be determined with reference to the reasons as recorded by the AO. He asserted that sufficiency or correctness of any material cannot be considered at the stage of the notice. In this regard, he relied upon the decision of *Hon'ble Supreme Court in the case of ITO vs. Lakhmani Mewal Das, [1976] 103 ITR 437 (SC).* As regarding amendment made in Section 149 of the Act vide Finance Act, 2012 w.e.f. 01.07.2012, the Ld. CIT.DR submitted that the said amendment was retrospective in nature. In this regard, he has placed reliance on the Explanation to Section 149 of the Act as well as Memorandum of the Finance Bill, 2012. He further submitted that the decision of Hon'ble Delhi High Court in the case of *Brahm Dutt vs. ACIT (supra)* relied upon by the assessee was without considering the retrospective application of Section 149(1)(c) of the Act. In this regard, he has placed reliance on the decision of *ITAT, Mumbai Bench in the case of DCIT vs. Dilip J. Thakkar, 135 taxmann.com 208 (ITAT Mumbai).*

29. We have carefully considered the rival submissions. In order to examine the objections of the assessee in respect of reopening under Section

147 of the Act, it will be relevant to reproduce the reason as recorded by the AO. The assessee has filed a copy of the reason in the paper book which is reproduced below:

> *"The assessee has furnished the return of income. It was gathered that there are bank account having account number ICA03B39 and 16503B39 held in Merrill Lynch Bank in the name of a company, M/s Nad Investment Ltd. This company is registered in Cayman Islands. The foreign bank accounts were held in the name of the company "M/s NAD Investments Ltd" through a trust, whose settler were Shri Bipinchandra Patel and Mrs. Manjula Patel and ultimate beneficiaries were his own family members.*
>
> *2. In the meantime, a search u/s 132 of the I T Act was carried out at the residence of Shri Bipinchadra Patel and Mrs. Manjulaben Patel at 2, Shantivan Society, Sussen-Tarsali Road, Vadodara on 02.12.2015, During the course of the search, a statement on oath u/s 132(4) of the Income Tax Act, 1961 was recorded on 02/12/2015 of Shri Bipinchandra Patel. In the statement, in the initial questions, he was specifically asked to state whether he or his family members were holding any foreign bank accounts / were beneficiaries of any amount received from a trust located outside India. In his reply, he categorically denied having any foreign bank account or being a beneficiary of any foreign trust.*
>
> *3. In the later questions, he was confronted with the "Confidential Client Profile Sheet", "Settler Profile Form", the deed of trust between Shri Bipinchandra Patel & Mrs. Manjulaben Patel and Merrill Lynch Bank and Trust Company (Cayman) Ltd dated 07/01/2000, the supplementary deed of trust dated 07/01/2000, the company formation letter, deed of amendment dated 30/03/2001, Revocation of Trust Deed dated 19/11/2012 and was asked to explain them. Sh. Bipinchandra has accepted that he signed on the deed of trust as well as other documents related to the establishment of a trust with Merrill Lynch Bank and Trust Company (Cayman) Ltd. In none of his reply, he stated that he has not signed on the document. In all his reply, he put forward a concocted story stating that he had signed on the form as a settler in order to help his blood sister Late Smt. Prabhavatiben Amin and brother-in-law Late Shri jashbhai Amin, who were settled in London to help them bring their money from Africa to London. In view of these facts, these bank accounts with Merrill Lynch Bank and Trust Company (Cayman) Ltd are undisclosed and the deposits made in these Foreign Bank Accounts are unexplained. .'*

4. Details of deposits made in these bank accounts :

4.1 In the meantime, a request was made to tax authorities of Cayman Islands, through FT & TR division of Central Board of Direct Taxes, New Delhi (CBDT), to obtain the bank statements as well as account opening forms for bank account numbers ICA03B39and 16503B39. In the copies of bank accounts/details received from FT & TR division of CBDT, the following year wise deposits in these bank accounts were found which is apparently on account of interest) dividend, person cheque deposits, wire transfers etc. which needs to be taxed in the hands of Shri Bipinchandra Patel and Smt. Manjulaben Patel for relevant assessment years.

Financial Year	*Amount in US$*	*Average Exchange Rate as per RBI*	*Amount in Rupees*
1999-2000	*124,396.00*	*43.3327*	*5390415*
2000-01	*254,994.56*	*45.6844*	*11649273*
2001-02	*3110.04*	*47.6919*	*148324*
2002-03	*4766.93*	*48.3953*	*230697*
2003-04	*3585.58*	*45.9516*	*164763*
2004-05	*2667.69*	*44.9315*	*119863*
2005-06	*145,526.01*	*44.2735*	*6442946*
2006-07	*93,038.14*	*45.2849*	*4213223*
2007-08	*22989.11*	*40.241*	*925105*
2008-09	*2824.59*	*45.917*	*129697*

4.2 The exchange rate taken into consideration is the average exchange rate for the relevant year as available on the website of Reserve Bank of India at https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/1477 BST130913. pdf.

4.3 Various other deposits are, also, observed in these two bank accounts by way of "call loan/fixed loan/ loan", which is written in the description column of the bank statements. Also, from the bank statements, it: is seen that the assessee had indulged in mutual funds transactions on a regular basis. Therefore, these amounts credited into these bank statements need to be taxed as per the prevailing provisions of the Income Tax Act, 1961.

5. Therefore, I have reasons to believe that the income chargeable to tax has escaped the assessment within meaning of provisions of section 147 read with Explanation 2 (d) of the I T Act for the year under consideration.

6. The notice u/s 148 of the Act is issued after taking prior approval u/s 151(1} of the Act from the Pr. Commissioner of Income Tax, Central, Surat as per his letter Nc SRT/PR. CIT(C)/HQ/Approval/148/2016-17/3234 dated 15.11.2016 received in th;; office on 21.11.2016."

Whether mere deposits in the bank account don't lead to escapement of income?

30. The first objection of the assessee is that mere deposits in bank account cannot lead to the conclusion that the income had escaped assessment. This contention of the assessee might be true in the case where the bank account is disclosed to the department in the balance sheet or in the income tax return as filed with the department. However, if the bank account itself is undisclosed this proposition will not stand good. In the present case, the AO has categorically recorded in the reason that the foreign bank accounts of the assessee were undisclosed and, therefore, the deposits appearing in these accounts were unexplained. On this basis, the AO has formed his opinion that the income chargeable to tax has escaped assessment. The Explanation-2 to Section 147 of the Act enumerates certain conditions where the income chargeable to tax shall be deemed to have escaped assessment. **As per Clause (d) of the said Explanation where a person is found to have any asset (including financial interest in any entity) located outside India, then such a case will be deemed to have escaped assessment.** It is found that Explanation (2)(d) of Section 147 of the Act was directly applicable in this case. There is no dispute to the fact that the foreign bank accounts, which were confronted to the assessee in the course of his statement recorded under Section 132(4) of the Act during the search, were not disclosed in the income tax returns filed with the

Department. In view of the specific provision of deemed escapement of income in respect of foreign assets (bank account of the assessee), the case laws as relied upon by the Ld. Sr. Counsel in this respect are not found applicable to the facts of the present case.

Whether reopening was based on borrowed satisfaction?

31. The 2nd objection of the assessee is that the cases were reopened on borrowed satisfaction without application of mind by the AO. We do not find any merit in this objection. The details received by the AO from FT & TR Division of CBDT was an 'information' based on which the AO had formed his opinion that the income chargeable to tax had escaped assessment. The AO had recorded a detailed reasons (as reproduced above) and he had considered all the information as available including the statement of the assessee recorded u/s. 132(4) of the Act and the documents confronted therein as well as the information received through FT&TR Division; analysed the information as available and thereafter recorded his detailed, independent and logical reason for escapement of income. We don't find any semblance of borrowed satisfaction on the part of the AO.

32. The facts of the cases relied upon by the Ld. Sr. Counsel in respect of this submission are found to be all different. In the case of *Harikishan S. Virmani (supra)*, the issue was reopening beyond 4 years and the Hon'ble Gujarat High Court had held that there was no allegation of assessee's failure to disclose truly and fully any material facts, whereas in the present case, the foreign bank accounts were not disclosed by the assessee in their

respective income tax returns. Further, this decision was in the context of reopening beyond 4 years and in consideration of *Proviso* to section 147 of the Act. In fact, the *Proviso* to section 147 of the Act is not at all applicable in the case of reopening on account of undisclosed foreign assets and, therefore, the assessee can't derive any benefit from this decision.

33. In the case of *Varshaben S. Patel (supra)*, the reason for reopening was based on material from an external source, which was not reflected in the reasons as recorded by the AO. For this reason, the Hon'ble Gujarat High Court held that basic requirement of assumption of jurisdiction for reopening was not satisfied. In the instant case, however, the AO has mentioned and relied upon the information based on which the reopening has been done. In the case of *Paresh Babubhai Bhalani (supra)*, the reasons recorded by the AO did not disclose the nature of transactions, day of transactions and other details etc. and on this basis it was held by Hon'ble Gujarat High Court that the exercise of reopening was vitiated. We do not find any such infirmity in the present case. The facts of the other case laws as relied upon by the assessee are also found to be totally different and not directly applicable to the facts of the present case.

Whether reason for reopening was vague, scanty and non-specific?

34. The contention of the assessee that the reason for reopening was vague, scanty and non-specific and the nature of underlying transaction was not specified in the reason is also not found correct. The AO has discussed in detail the reason for reopening of the cases on account of undisclosed

foreign bank accounts of the assessee. The background of the case, the information available with the AO, the explanation of the assessee has been discussed in detail and taken into account, while the AO formed his opinion that the foreign bank accounts of the assessee were undisclosed and that the income had escaped assessment. Therefore, the ground taken by the assessee in this regard is found to be baseless, and is dismissed. The facts of the case laws as relied upon by the assessee in this respect are found to be totally different and not directly applicable to the facts of the present case, as the nature of underlying transaction was specified in the reasons recorded in this case.

Whether quantification of escaped income is necessary?

35. The assessee has contended that the AO had not quantified the amount of escapement of income chargeable to tax. This objection of the assessee is found to be perfunctory as the AO had quantified the amount of escapement for the different years in the reasons as recorded and the quantum of escapement was mentioned in the table as appearing in the reason. Further, the quantification of escaped income was necessary only if the case was reopened u/s. 149(1)(b) of the Act, which stipulates that the cases beyond 4 years cannot be reopened unless the income escaped assessment is Rs.1 Lakh or more. In the present case, the provision of Section 149(1)(c) of the Act was applicable and no quantification was required if the cases were reopened in respect of escapement of any income in relation to any asset located outside India. In view of this specific provision the case laws relied upon by the assessee are not found applicable in the present case as those

cases are not related to foreign account cases. Therefore, the objection of the assessee regarding non-quantification of escapement of income is without any merits, and is dismissed.

Whether reopening was barred by limitation?

36. The real serious objection of the assesse is against the reopening of the cases for the A.Y. 2000-01 to 2005-06. The Ld. Sr. Counsel contended that prior to 01.07.2022, the reopening was permissible only up to 6 years period. Therefore, the limitation for reopening u/s.147 of the Act for A.Y. 2000-01 to 2005-06 had expired on or before 31.03.2012. According to the Ld. Sr. Counsel, the subsequent amendment w.e.f. 01.07.2012 did not empower the AO to reopen the assessments which had already become time barred under the earlier provision. We have given a careful thought to the submission of the Ld. Sr. Counsel. Prior to 1st July, 2012, the time limit for reopening the assessment u/s.149 of the Act was only six years. This was amended by introduction of sub-clause (c) of Section 149(1) of the Act, and an Explanation was also added to that section w.e.f. 1st July, 2012, which is reproduced below:

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(*a*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*) or clause (*c*);

(*b*) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(*c*) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset

(including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

……

***Explanation.*—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.** *(Emphasis supplied)*

37. As per this amendment the time limit for issue of notice for reopening was increased to 16 years where the income in relation to any foreign asset had escaped assessment. The Explanation further clarified that the amended time limit of 16 years vide Finance Act, 2012 was applicable to any assessment year beginning on or before 1st day of April, 2012. Thus, the retrospective nature of this amendment for reopening the cases up to 16 years in case of escapement of any foreign income was made explicit by the legislature. The intention of the legislature was also categorically explained in the Memorandum to Finance Bill, 2012 which is reproduced below:

REASSESSMENT OF INCOME IN RELATION TO ANY ASSET LOCATED OUTSIDE INDIA

Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is 6 years. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

It is proposed to amend the provisions of section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Amendments are also proposed to be made in section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

> **The provisions of sections 147 and 149 are procedural in nature and will take effect from 1st July, 2012 for enabling reopening of proceedings for and assessment year commencing prior to this date. This is proposed to be clarified through an *Explanation* stating that the provisions of these sections, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.** *(Emphasis supplied)*

38. We, therefore, do not find any merit in the objection of the assessee that the amended provisions of section 149(1)(c) of the Act was not applicable in respect of assessment years 2000-01 to 2005-06. We have also carefully considered the decisions of Hon'ble Supreme Court and the High Courts on which reliance has been placed by the Ld. Sr. Counsel in respect of reopening of the cases beyond 6 years. The lead judgment in this regard is the decision of Hon'ble Supreme Court in the case of *S. S. Gadgil vs. Lal & Co. (supra).*

39. The issue involved in the case of *S.S. Gadgil (supra)*, was reassessment notice u/s 43 of 1922 Act against a person deemed to be an agent of non-resident person. As per the original provision, reassessment notice could not be issued after expiry of one year from the end of assessment year. This provision was amended with effect from 1st April 1956 and the time period for issue of notice was extended to 2 years. The AO had issued the reassessment notice after expiry of original one year time period on the strength of the amended provision. The Hon'ble Supreme Court held that the period for serving a notice of reassessment under the unamended section had expired and the amending provision had come into force after the expiry of the said period. Therefore, the amended provision will not come to the assistance of the AO to issue the reassessment notice,

for the period already expired. The observation of the Hon'ble Apex Court is reproduced below:

> *As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income-tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by section 18 of the Finance Act, 1956, authority was conferred upon the Income-tax Officer to assess a person as an agent of a foreign party under section 43 within two years from the end of the year of assessment. But authority of the Income-tax Officer under the Act before it was amended by the Finance Act of 1956, having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act.* ***The legislature has given to section 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry, of the period provided become barred.*** *(Emphasis supplied)*

40. The Hon'ble Court Supreme Court has categorically held in that case that the legislature did not intend to attribute greater retrospectivity to the amending provision than what was expressly mentioned in the Act. By applying this ratio, the amended provision will be certainly applicable in the instant cases as the legislature had expressly provided greater retrospectivity to it. As already mentioned earlier, an Explanation was inserted to section 147 of the Act which categorically stipulated that the provisions of sub-sections (1) and (3) as amended by the Finance Act 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April 2012. **In view of this categorical retrospective application to the**

amended provision vide Explanation to section 147 of the Act, the judgement of the Supreme Court in the case of *SS Gadgil (supra)* rather supports the case of the Revenue.

41. In the case of *J.P. Jani (supra)* also, identical facts were involved and the right of the ITO to reopen the assessment for the year 1947-48 was barred under the old Act before the new Act came into force. The Hon'ble Supreme Court had held that the new Act did not revive the right of the ITO to reopen the assessment which was already barred under the old Act. Such an interpretation would give retrospective operation to that section which was not warranted either by the express language of the section or by necessary implication. Thus, the Hon'ble Supreme Court had re-iterated the principle of rule of interpretation that**, unless the terms of the statute expressly so provide or unless there is a necessary implication**, retrospective operation should not be given to the statute so as to affect or destroy any right already acquired or to revive any remedy already lost by efflux of time. That the language of the new section must be read as applicable only to those cases where the right of the ITO to reopen the assessment was not barred under the repealed section. That the new statute does not disclose in express terms or by necessary implication that there was a revival of the right of the ITO to reopen an assessment which was already barred under the old Act. The Hon'ble Supreme Court had relied upon the decision in the case of *SS Gadgil (supra)* and re-iterated the principle of rule of interpretation that the new statute must disclose in express terms or by necessary implication, its intent that the amended provision will have retrospective application and that there was a revival of the right of the AO

to reopen an assessment which was already barred under the old Act. As already discussed earlier the retrospective application of the amended provision of section 147 w.e.f. 1st April, 2012 was expressed unequivocally by insertion of Explanation to section 147 of the Act. **Therefore, the amended provisions had revived the rights of the AO to reopen the assessments which had become barred under the old provisions.**

42. In the case of K M Sharma (supra) the Hon'ble Supreme Court has held as under:

> **13.** Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. **Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective….**
>
> **14.** To hold that the amendment to sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under section 149 as applicable prior to 1-4-1989, would amount to give sub-section (1) a retrospective operation **which is neither expressly nor impliedly intended by the amended sub-section.** (Emphasis supplied)

Thus, the Apex Court has approved the proposition that the proceedings which have attained finality due to bar of limitation can be revived and allowed to be unsettled by the amended provision, if the amended provision is given retrospective operation.

43. In the case of *Varkey Jacoob (supra)* when the amendment came with effect from 1-4-1989, the time for assessment or reassessment, as provided under section 147 read with section 149, was over and the liability for assessment was completely extinguished. Thus, at the time of issuance of the notices for reopening and at the time of amendment, the right to initiate proceedings under section 147 was extinguished for certain assessment years as per the old provisions. The Hon'ble Kerala High Court had relied upon the judgement of the Supreme Court in the case of *SS Gadgil (supra)* and held that:

> *When the new Act came into force, there was no cause of action of issuing a further notice to revive old matters which have attained finality under the then existing law due to limitation and, therefore, the new Act cannot be applied.* ***Provision for limitation is not a mere procedure and unless it is made retrospectively, it cannot be acted upon retrospectively for reviving any barred and extinguished assessments on the date when the Act came into force****. (Emphasis supplied).*

The Hon'ble Court had acknowledged that the provision of limitation can't be acted upon retrospectively unless the new provision was given retrospective application by the Statute.

44. In the case of *C.B. Richards Ellis Mauritius Ltd. (supra)* the re-assessment notice dated 30.3.2009 under Section 148 of the Act for the A.Y. 1998-99 was challenged vis-à-vis the amendment vide Finance Act, 2001. Earlier the time limit of reopening was up to 10 years which was reduced to

6 years vide this amendment. Commenting on the law of limitation the Hon'ble Delhi Court had held as under:

> ***11.*** *Law of limitation, therefore, being procedural law has to be applied to the proceedings on the date of institution/filing. No person can have a vested right in the procedure. Therefore, the procedural law on the date when it was enforced is applied….*

The Hon'ble Court had categorically held that the time period/limitation period prescribed on the date of issue of notice will apply. The Court has also relied upon the judgement of Hon'ble Supreme Court in the case of *S.C. Prashar* v. *Vasantsen Dwarkadas Hungerfor Investment Trust Ltd. [1963] 49 ITR 1 (SC)* and reproduced the following portions in that order:

> *"93. ....If the 1948 Amendment could be treated as enabling the Income Tax Officer to take action at any point of time in respect of back assessment years within eight years of March 30, 1948 then such cases were within his power to tax. We have such a case here in CA No. 509 of 1958 where the notice was issued in 1949 to the lady whose husband had remitted Rs 9180 to her from Bangkok in the year relative to Assessment Year 1942-43. That lady was assessable in respect of this sum under Section 4(2) of the Income Tax Act. She did not file a return. If the case stood governed by the 1939 Amendment the period applicable would have been four years if she had not concealed the particulars of the income. She had of course not deliberately furnished inaccurate particulars thereof. If the case was governed by the 1948 Amendment she would come within the eight-year rule because she had failed to furnish a return. Now, we do not think that we can treat the different periods indicated under Section 34 as periods of limitation, the expiry of which grant prescriptive title to defaulting tax-payers It may be said that an assessment once made is final and conclusive except for the provisions of Sections 34 and 35 but it is quite a different matter to say that a "vested right" arises in the assessee.* ***On the expiry of the period the assessments, if any, may also become final and conclusive but only so long as the law is not altered retrospectively.*** *Under the scheme of the Income Tax Act a liability to pay tax is incurred when according to the Finance Act in force the amount of income,*

profits or gains is above the exempted. ***That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time limit, it can be enforced at any time. What the law does is to prevent harassment of assessees to the end of time by prescribing a limit of time for its own officers to take action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands****. In other words, though the liability to pay tax remains it cannot be enforced by the officers administering the tax laws****. If the disability is removed or according to a new law a new time limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable.*** *The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced…*

	**	**	**

*95. .....It says that the limit of time mentioned in Section 34 is removed in certain cases that is to say, action can be taken at any time in these cases****. In our judgment, each case of a notice must be judged according to the law existing on the date the notice was issued or served, as the law may require. So long as the notice where the notice is in question, and the assessment, where the assessment is in question, are within the time limited by the law, as it exists when the respective actions are taken, the actions cannot be questioned provided the law is clearly retrospective. The only case in which no further action can be taken is one in which action was not taken under the old law within the period prescribed by that law and which is not also within the period mentioned in the new law if its operation is retrospective. All other cases are covered by the law in force at the time action is taken****. It is from these viewpoints that these appeals, in our opinion, should be judged." (Emphasis supplied)*

45. The Hon'ble Supreme Court in the case of *S.C. Prashar (supra)* had unambiguously held that the notice for reassessment should be judged by the law as existing on the date of issue of notice and that if the notice and the assessment year is within the time period in compliance to the retrospective law, such notice can't be questioned. The principle that the liability to the State is independent of any consideration of time and the legislature is

capable of enacting retrospective law was endorsed by the Hon'ble Supreme Court in that case.

46. The case of *Tata Teleservices (supra)* is found to be totally different on facts. The issue involved in that case was application of section 201(3) of the Act and the amended provision was not made expressly with retrospective effect.

47. The decision of Hon'ble Delhi High Court in the case of *Brahm Dutt (supra)* was analyzed by the Bombay bench of the ITAT in the case of *Deputy Commissioner of Income-tax v. Dilip J. Thakkar [2022] 135 taxmann.com 208 (Mumbai - Trib.)* and not considered as a conclusive judicial precedent for the reason that the Hon'ble non-jurisdictional High Court in that case has construed and inferred the amendment in law to be only prospective in effect, on the ground that the law was not explicitly stated to be retrospective in effect. In *Braham Dutt's case (supra)*, there was no occasion for the Hon'ble Court to refer to, or take note of, the Explanation below Section 149(3), introduced with effect from 1st April 2012, which categorically made the amendment retrospective. The relevant part of the ITAT order regarding non-binding nature of the decision in the case of *Brahm Dutt (supra)* is reproduced below:

> ***9.*** *Clearly, thus, the Hon'ble non-jurisdictional High Court decisions do not bind us in law in all the situations, as held by our Hon'ble jurisdictional High Court in the case of CIT v. Thana Electricity Co. Ltd. [1994] 206 ITR 727, and, more so in this case, particularly when Explanation below section 149(3), which did not come up for consideration before Their Lordships, has explicitly been relied upon by the learned Commissioner (Departmental Representative) before us. The Hon'ble non-jurisdictional High Court judgment, as we have seen in our analysis*

> *of legal position earlier in this order, in any event, do not constitute unquestionably binding judicial precedents, which cannot be deviated from, for us. While the views expressed by even non-jurisdictional High Court does deserve utmost respect and reverence, that position is still a step below the unquestionable binding force of law. On the peculiar facts of this case, it is not open to us to disregard the Explanation above below section 149(3) based on a judicial precedent that had no occasion to even deal with the same. Regarding the Hon'ble Supreme Court's summary dismissal of SLP against the Brahm Datt case (supra), as relied upon by the assessee, it is only elementary that mere dismissal of an SLP does not amount to a decision on the law. Such a summary dismissal of SLP cannot be treated as a binding precedent under article 141 of the Constitution of India- as has been held by several judgments of Hon'ble Supreme Court time and again, and reiterated by Hon'ble Bombay High Court in the case of CIT v. Pamwi Tissues Ltd. [2009] 313 ITR 137. Nothing, therefore, turns on the dismissal of the SLP either.*

We are in complete agreement with the decision of the ld. ITAT Bombay in that case. The other decisions of Mumbai Tribunal relied upon by the assessee were delivered following the non-binding ratio in the case of *Brahm Dutt (supra)* and can't be given any weightage.

48. The assessee has also strongly relied upon the judgement of Hon'ble Gujarat High Court in the case of *Kiara industries Private Limited versus ITO [2023] 147 taxmann.com 585 (Gujarat).* The issue involved in that case was reassessment notices issued on or after 1-4-2021 under the erstwhile sections 148 to 151 by relying on *Explanation*s in the Notification No. 20/2021, dated 31-3-2021 and Notification No. 38/2021, dated 27-4-2021 which extended applicability of aforesaid provision as they stood on 31-3-2021, before commencement of Finance Act, 2021, beyond period of 31-3-2021. It was held by the Hon'ble Court that as unamended provisions of reopening itself ceased to exist on 1-4-2021, Notification Nos. 20/2021 and

38/2021 cannot extend the time limit and that CBDT's Instructions No. 1 of 2022 dated 11-5-2022 which, if permits Jurisdictional Assessing Officer to act beyond jurisdiction prescribed under statute, was ultra vires to the provision of Finance Act, 2021. It was also held that Notification Nos. 20/2021 and 38/2021 would not extend time period provided under proviso to section 149(1). The Court further held that the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TLA Act) was a subsidiary legislation, whereas unamended sections 147 to 151 was principal legislation. The substitution of sections 147 to 151 by Finance Act with entire new set of provision having different conditions and procedures on which existence of subsidiary legislation TLA Act depends itself and ceased to exist, provision contained in TLA cannot have any effect after enactment of Finance Act, 2021. This decision was given after considering the specific mention of Proviso to section 149 which read as under:

> ***Provided*** *that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021*.

The Hon’ble Court held that in view of express language of 1st proviso to Section 149(1), legislative mandate required that no notice could be issued under the new provision, if such notice could not be issued at that time on account of being beyond the time specified under the said section as it stood before the commencement of the Finance Act 2021, i.e. a period of six years. Further, in view of decision of Hon'ble Supreme Court in case of *Ashish*

Agarwal (*supra*), the notices issued to the respective assessees under section 148 shall be deemed to be notices under section 148A(*b*) of the Act as substituted by Finance Act 2021. Accordingly, it was held that the notices under section 148A (by deeming fiction) was issued, between the period 1-4-2021 to 30-6-2021 (i.e after 31-3-2021), wherein six years had elapsed from end of the relevant assessment year and therefore they were time barred. Thus, the issue involved in that case is found to be totally different and not applicable to the facts of the present case.

49. A somewhat similar issue was involved in the case of *Principal Commissioner of Income-tax v. Karina Airlines International Ltd. decided by Hon'ble Delhi High Court [2024] 165 taxmann.com 421 (Delhi).* In that case a search was conducted on 7-4-2016. Section 153A, as it stood prior to 01 April 2017, envisaged a search assessment being undertaken "*in respect of each assessment year falling within six assessment years*". By virtue of Finance Act, 2017 the block period for search assessment was extended to ten assessments years on account of the introduction of the concept of "*relevant assessment year or years*", which was defined by Explanation 1 to Section 153A of the Act. Simultaneous amendment was also made in Section 153C and the concept of relevant assessment years was adopted therein. In that case the satisfaction u/s 153C was recorded on 15-5-2019, i.e., after amendment to section 153C by Finance Act, 2017 had come into effect and the block period of six assessment years was extended to ten assessment years. The Ld. ITAT had held that since the date of search in that case was 07.04.2016, the amendment brought by the Finance Act, 2017 would not be applicable and consequently the order of assessment for

'relevant assessment year' passed u/s 153C r.w.s. 144 of the Act was held as bad in law and quashed. The Hon'ble High Court held that the Tribunal had faulted on the ground that the search being conducted on 07 April 2016, the extended period of ten years was not applicable. According to the Hon'ble Court, the commencement point would have to be construed as the date when the satisfaction is formed by the common AO with respect to such other person. It was held that it would be the date when the Assessing Officer records his satisfaction with respect to the non-searched entity which would be of seminal importance and constitute the bedrock for commencement of action under section 153C. **The Hon'ble Court held that even though the search was conducted on 7-4-2016, since satisfaction in case of assessee was recorded on 15-5-2019, i.e., after amendment to section 153C by Finance Act, 2017 came into effect, block period of six assessment years would get extended to ten assessment years.**

50. The assessee has also relied upon the judgement of Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC)* in support of the proposition that if two view are possible, the view in favour of the assessee must be adopted. We don't find any ambiguity in respect of the issue of reopening. The express provision of *Explanation* to section 149 of the Act, which in unequivocal terms stated that amended provision will have retrospective effect, mandates for issue of notice for 16 years period for reopening the cases in the event of escapement of foreign income. Further the decisions of Hon'ble Supreme Court and the other decisions as discussed above have endorsed the view that if the amended provision has retrospective application, the reopening has to be held as correct. The law as

existing on the date of issue of notice has to be applied and in the present case it is clear that the cases can be reopened up to 16 years. Therefore, the notice under section 148 of the Act issued by the AO for the assessment years 2000-01 to 2009-10 are held as valid, correct and in accordance with the provisions of law.

51. In view of the express language of the section 147 of the Act for reopening of cases up to 16 years in respect of foreign assets, the retrospective nature of amendment made vide the Finance Act, 2012 and the judicial pronouncements as discussed above; we are of the considered opinion that the AO had rightly reopened the assessment for the A.Ys. 2000-01 to 2005-06. Further, in view of the discussions in para-29 to para-50 above we don't find any merit in the objection taken by the assessee against reopening of the cases for the A.Y. 2000-01 to 2009-10. Accordingly, **the grounds taken by the assessee in this regard are dismissed.**

Completion of unabated assessment without incriminating material

52. This ground is involved in the A.Ys. 2010-11 to 2014-15, for which assessment were completed u/s.153A of the Act. According to the Ld. Sr. Counsel, A.Ys. 2010-11 to 2014-15 are unabated assessment years, whereas, A.Y. 2015-16 is the case of abated assessment. The Ld. Sr. Counsel submitted that no incriminating material was found in the course of search at the premise of the assessee. The assesse was only confronted with certain documents in relation to foreign bank accounts held with MLB. He had drawn our attention to the various questions put to the assessee in the

statement recorded under Section 132(4) of the Act and explained that the documents were merely confronted to the assessee during the search and those documents were not found from the premises of the assessee during the search. He had also drawn our attention to the assessment order wherein the AO had categorically mentioned that "Confidential Client Profile Sheet" and "Settler Profile Form", were received from tax authorities of Cayman Islands. Further, that the AO had acknowledged in the assessment order that the assessee was only confronted with these documents. Ld. Sr. Counsel has also drawn our attention to the order of the Ld. CIT(A) wherein only the confrontation of the available documentary evidence to the assessee and the statement u/s.132(4) of the Act, was construed as incriminating material. Ld. Sr. Counsel submitted that the details regarding other four foreign bank accounts held by the assessee with HBS were received through FT&TR Division of CBDT during the assessment proceeding, which was acknowledged by the AO. According to the Ld. Sr. Counsel, the additions made by the AO in respect of foreign bank accounts were not based on any incriminating material found from the premises of the assessee during the search. He submitted that in the case of unabated assessment no addition can be made in the absence of any incriminating material found during the search. In this regard, he has placed reliance mainly on the following decisions:

i. CIT v. Abhishar Buildwell (P.) Ltd., [2023] 149 taxmann.com 399/293 Taxman 141/454 ITR 212 (SC)

ii. Pr.CIT-4 v. Saumya Construction (P) Ltd., (2016) 387 ITR 529 (Guj-HC)

iii. CIT vs. Kabul Chawla, [2016] 380 ITR 573 (Del HC)

53. The Ld. Sr. Counsel further submitted that the statements recorded by the Revenue doesn't constitute incriminating material, for which reliance was placed on the following decisions:

i. CIT v. Best Infrastructure Ltd. (2017) 397 ITR 82 (Del-HC)
ii. PCIT vs. Anand Kr. Jain & Ors. Manu/DE/0347/7021 (Delhi)
iii. CIT vs. Harjeev Aggarwal - [2016] 70 taxmann.com 95 (Delhi)

54. The Ld. Sr. Counsel contended that the material brought by search team along with them during course of search do not constitute incriminating material. In this regard, reliance was placed on the decision of *Ravi Badalia vs. DCIT, 158 taxmann.com 373 (Kol.).* The Ld. Sr. Counsel assailed the order of the AO on the ground that the additions made in respect of credits reflected in the foreign bank account for unabated assessment years were not based on any incriminating material found during the search and were not justified in the eye of law.

55. Per contra, Dr. Darsi Suman Ratnam, Ld. CIT. DR submitted that during the course of search, documents relating to formation of NAD Investment Ltd. and operation of bank account in its name with Merrill Lynch Bank (MLB) were found. In addition, certain loose paper file, pen drives and backup of images of 2 Samsung mobiles were also seized and inventorized in which certain evidences regarding foreign investment of the assessee was found. Further, that the search was conducted precisely for the reason that the foreign bank accounts of the assessee were not disclosed to the Department in their Income Tax returns. The information as available with the Department was confronted to the assessee in the course of statement recorded during the search. Therefore, the admission of the

assessee in the statement under Section 132(4) of the Act that he was settlor of the trust and that the beneficiaries of the trust were all his family members constituted incriminating material. The Ld. CIT.DR submitted that in spite of being confronted with all the documentary evidences which clearly established that the foreign bank accounts belonged to the assessee, the assessee was in denial mode and didn't answer the specific questions about the foreign account transactions as evident from the seized documents. According to the Ld. CIT. DR, the statement recorded during the search also constituted incriminating material and the AO had rightly based his additions on this statement. Further, no evidence was brought on record by the assessee in support of his contention that the foreign bank accounts belonged to his sister. Therefore, the AO had rightly made the addition after confronting the evidences available with the Department in the course of statement recorded during the search, which constituted incriminating material.

Our finding on incriminating material

56. We have carefully considered the rival submissions. Before adverting to the merits of the rival contentions, we deem it proper to refer to the judicial decisions on which reliance has been placed by the learned counsel for the respective parties. Prior to the judgment of Hon'ble Supreme Court in the case of *Abhisar Buildwell (supra)*, the majority view of various High Courts was that no addition can be made in respect of completed/unabated assessment in the absence of any incriminating material. The lead judgments in this respect were

that of the Hon'ble Delhi High Court in the case of *Kabul Chawla (61 taxmann.com 412) (Del)* and by the Hon'ble Gujarat High Court in the case of *Saumya Constructions (81 taxmann.com 291) (Guj).* The Hon'ble Allahabad High Court, however, in the case of *CIT v. Mehndipur Balaji [2023] (147 taxmann.com 201) (All)* had taken a contrary view. After the declaration of law on the issue by the Hon'ble Apex Court, reference and reliance on various other decisions of different High Courts and Tribunals, will be otiose. The doctrine of precedence is absolute for the lower courts and therefore, we don't find it necessary to refer to other decisions relied upon by the assessee in this regard.

57. The Hon'ble Supreme Court in the case of *Abhisar Buildwell (supra)* has taken note of all these decisions and while agreeing with the decision of Hon'ble Delhi High Court in *Kabul Chawla (supra*) and with Hon'ble Gujarat High Court in *Saumya Contruction (supra)* held, in no uncertain terms, that no addition can be made in respect of completed assessments in the absence of any incriminating material. However, the Court has nowhere mandated that the addition in the completed assessments has to be only on the basis of incriminating material found during the search. The Hon'ble Apex Court has gone through the erstwhile scheme of block assessment under Section 158BA of the Act, analyzed the object and purpose of introduction of Section 153A of the Act pertaining to search assessment and taken note of the

difference of opinion in the judicial pronouncements of different High Courts. The conclusion as recorded by the Apex Court in Para 14 of the order in the case of *Abhisar Buildwell (supra)* is found to be as under:

> ***14.*** *In view of the above and for the reasons stated above, it is concluded as under:*
>
(i)	*that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
(ii)	*all pending assessments/reassessments shall stand abated;*
(iii)	***in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns;*** *and*
(iv)	*in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

> *(Emphasis supplied)*

58. It is evident from the ratio of this decision as enumerated in Para 14(iii), that the scope of unabated / completed assessment is

not confined only to the incriminating material found during search. The Hon'ble Apex Court has categorically held that the AO would assume the jurisdiction to assess or re-assessee the "total income" by taking into consideration the incriminating material unearthed during the search and the 'other material' available with the AO, including the income declared in the returns. The essence of the judgement is that the incriminating material found during the search gives the AO the jurisdiction to assess or reassess the 'total income' u/s 153A of the Act of the unabated/completed assessment. In the absence of any incriminating material unearthed during the search the AO would not have the jurisdiction to proceed in the unabated/completed year(s) only on the basis of other material. However, once the jurisdiction is assumed by the AO on the strength of incriminating material found during the search, the AO has to assess or reassess the 'total income' of the unabated year not only on the basis of incriminating material found during the search but also taking into account the 'other material' as available with him as well as the return of income. We have to, therefore, examine as to what were the "incriminating materials" found during the search and what were the "other materials" available with the AO, to assess/reasess the total income of the assessee.

59. As per provision of Section 132 of the Act, a search operation can be conducted in consequence of information available with the department, on

the basis of which the reason to believe is formed that any person is in possession of money, bullion, jewellery or other valuable articles or things which represent his income and which has not been or would not be disclosed for the purpose of Income Tax Act. The precise purpose of conducting search operation is to get hold of evidences having a bearing on the tax liability of a person, which the said person is seeking to withhold from the assessing authority. From the facts as narrated in the assessment order as well as from the statement recorded u/s 132(4) of the Act, it *prima facie* appears that the department was already in possession of certain specific information in respect of foreign bank accounts of the assessees, which were not disclosed in their income tax returns. For this reason, search operation u/s.132 of the Act was conducted to unravel further evidences, and in the course of search the assessee was confronted with the information/documents already available with the department. The statement of the assessee recorded u/s. 132(4) of the Act is reproduced in the assessment order and it is found therefrom that the *trust deed dated 07.01.2000, supplementary deed dated 07.01.2000, company formation letter addressed to MLB and Trust Company (Cayman) Ltd., Confidential Client Profile Sheet dated 06.12.1999, Settlor Profile Form, deed of amendment dated 30.03.2004, Revocation of Trust Deed dated 19.11.2012*; were all shown to the assessee and merely confronted for explanation in the course of statement. It is apparent from the statement that these documents were not found from the premises of the assessee in the course of search, as no such reference is appearing in the statement. However, there is no dispute to the fact that the documents as confronted to the assessee in the course of statement recorded during search were in respect of foreign bank accounts of

the assessee. These documents can't be considered as 'incriminating material' found during the search but are in the nature of 'other material' and the very basis upon which the search was conducted at the premises of the assessee.

60. In fact, the word "incriminating" is nowhere defined under the Income Tax Act. The provision of section 153A of the Act, only refers to books of accounts or other documents or assets or evidences found during the search and which has a bearing on the total income of the assessee. The *Explanation 2* to section 153A clarifies that asset includes deposits in bank accounts. The dictionary meaning of the word "incriminating" is *"making it seem that someone is guilty, especially of a crime"*. Therefore, any evidence found during the search as well as the basis of search, which has a bearing on the income of the assessee and which is not correctly disclosed to the Department, will be in the nature of 'incriminating material'. Such incriminating material found in the course of search can be any form of evidence such as a document, an entry in the books of accounts, an asset, a statement given on oath, absence of any fact claimed earlier but not found during the course of search etc. Any fact or evidence which suggests that documents/transactions claimed or submitted in any old proceedings were not genuine, fulfilling the ingredients of undisclosed income, shall constitute an incriminating material.

61. In the present case, incriminating materials regarding non-disclosure of foreign bank accounts in the Income Tax returns, was already available with the department in the form of the documents which were confronted to

the assessee in the course of the statement recorded during the search. The correctness or authenticity of these "other incriminating materials" has not been questioned. Therefore, **any evidence found in the course of search that corroborates the "other materials" as already available with the department, partakes the character of incriminating material found during the search. Such corroborating evidences found during the search may be documentary or oral and the same has to be considered by the AO during the search assessment as per section 153A of the Act.** Therefore, we have to examine whether any documentary or oral evidence was found in this case during the search, which corroborates the incriminating material already available with the department regarding existence of foreign bank accounts of the assessee.

62. In the course of search, a loose paper filed containing 1 to 54 pages, one Pen Drive (one master copy & one working copy) and back up of image of Samsung Mobiles was seized and inventorized vide Annexure-A1 dated 02.12.2015. The copy of loose papers vide Annexure-A1 contained visiting cards of one Shri Anil Chaturvedi. In one card Shri Anil Chaturvedi was representing Merill Lynch, New York as "First Vic-President-Investments, International Wealth Management Advisor". In another visiting card Shri Anil Chaturvedi was "Managing Director, Corporate Advisory Services" of Hinduja Bank (Switzerland) Ltd., Geneva. The recovery of these visiting cards of representative of Merill Lynch & Hinduja Bank from the residence of the assessee and the assessee having foreign bank account in both these banks can't be held as mere coincidence. **These documents found from the residence of the assessee corroborated the evidences that were already**

available with the Revenue. Further, the documents in respect of re-payment mortgage scheme of Barclays Bank and a letter from Barclays Bank, England, which contained the confidential Pin of a credit card issued by Barclays Bank were also seized. In the course of statement recorded u/s. 132(4) of the Act on 03.12.2015, the assessee was enquired about these documents and in reply to question no.30, he had stated as under:

> *Q 30: During the course of search u/s 132 at your residential premises on 2/12/2015 certain loose papers were found and inventorized in a loose paper file as per Ax. A-1 containing pages 1 to 54. Kindly confirm whether the same have been found from your premises and give page wise description for the same.*
>
> *Ans.: I confirm that the loose paper, cards etc. were found during the course of search from my residential premises and the page wise description is as under:*
> *Page Nos. - 1 to 6 are xerox copy of visiting cards.*
> *…….*
> *Page 26 - Credit Card related correspondence resident from Barclays Bank for Add on card of my sister Prabhavatiben Amin*
> *Page 27 – Visiting card*
> *Page 37 to 42 – Brochure of Barclays Bank*
> *Page 43 to 54 – Actual visiting cards, copies of which were already explained while explaining* page no. 1 to 6.
>
> *Q.31 During the course of search at your residence two mobiles were found and backup of the same are taken, and one sealed copy and one working copy are taken in pendrives inventorized as per Ax-A/2. Kindly confirm the same.*
>
> *Ans: Yes, I confirm the same*

63. It is thus found that evidence of interest in a foreign asset was found during the search from the residence of the assessee in the form of a letter from Barclays Bank, England, which contained the confidential Pin of a credit card issued by Barclays Bank. The assessee was confronted with this

evidence in the course of statement u/s.132(4) of the Act and he had stated that this correspondence was related to his late sister Smt. Prabhavatiben Amin. However, no evidence in this regard was brought on record by the assessee. On the other hand, in the Confidential Client Profile Sheet of NAD Investment Ltd. which was signed by the assessee and which is reproduced at Page Nos.12 to 14 of the assessment order, the assessee had disclosed his present banking relationship with Barclays Bank. Therefore, the correspondence with Barclays Bank found during the search was not in respect of assessee's sister as contended in his statement, but it pertained to the assessee himself. Thus, **corroborating evidence in the form of correspondence with Barclays Bank was found during the search which confirmed the disclosure as made by the assessee in the other material i.e. Confidential Client Profile Sheet of the bank account with MLB**.

64. As already mentioned earlier, visiting cards of Shri Anil Chaturvedi representing Merrill Lynch Bank and Hinduja Bank, Switzerland were found in the course of search. In the course of statement u/s.132(4) of the Act, the assessee was required to explain the financial transactions made through Shri Anil Chaturvedi. The assessee had explained that financial transactions were made through Shri Anil Chaturvedi, when he was representing SBI, by his late sister and not by him. However, it is found from the Confidential Client Profile Sheet that the name of Shri Anil Chaturvedi was appearing therein as "FC" who was required to complete the CCPS when submitting new trust or standalone company business. Thus, it is found that **the introduction of account of NAD Investment Ltd. with MLB was made through Shri Anil Chaturvedi, as Financial Consultant**

***i.e.* FC who was representing MLB and whose connection was found at the residence of the assessee in the course of search**.

65. In the statement of the assessee recorded u/s.132(4) of the Act on 27.01.2016, extract of bank statement of Account No. I6503B39 and ICA03B39 in MLB in the name of M/s. NAD Investment Ltd. was confronted to the assessee and he was required to explain the source of $684468. The relevant questions put to the assessee and the reply of the assessee are reproduced below:

> *"Q 4. You are shown the extract of bank statement of bank a/c. no. I6503B39 and ICA03B39 in Meryll lynch bank in the name of the company M/s. NAD Investment Ltd. There are total 31 transactions of deposits from the period 12/01/2000 to 16/09/2010 totalling to $6,84,468/- by way of fund transfer wire transfers, cheque deposits and money transfer. The company NAD Investment Ltd. was a property of a trust, whose settler as well as beneficiary were you and your wife Smt. Manjulaben Patel. Therefore you are requested to kindly explain the source of this $6,84,468/-.*
>
> *Ans 4:-First of all we were only Settler working under instruction of my sister. Any of these above amount had not been withdrawn or deposited by me from Indian funds. My sister's name is Prabhavatiben Amin (British Citizen) who was formerly a Kenyan resident.*
>
> *Q 5:- Please confirm the 31 pages described in Q.4 of this statement pertaining to A/c. no. I6503B39 and ICA03B39 in Meryll Lynch bank in the name of NAD Invst. Co. as Annexure-1*
>
> *Ans 5:-Yes, I am confirm that the particular page is marked as Annexure-1 to the statement.*
>
> *Q 6 You are shown the extract of bank statement of bank a/c. no. ICA03B39 in Meryll lynch bank in the name of the company M/s. NAD Investment Ltd. There are total 6 transactions of withdrawals which is attached with statement as Annexure-2 for the period 10/06/2011 to 04/12/2012 totalling to $2,71,669/- by*

way of wire transfer to different accounts. The Company NAD Investment Ltd. was a property of a trust, whose settler as well as beneficiary were you and your wife Smt. Manjulaben Patel. Therefore you are request to explain these withdrawals of $2,71,669/-.

Ans 6:- All transactions are done under the instruction of account holder (Smt. Prabhavatiben).

Q 7 Do you know any person Shri Jignesh Patel to whom amount of $50,000/- has been transferred on 10/06/2011 from bank a/c no. ICA03B39 in Meryl lynch bank of the company NAD Investment Ltd.

Ans 7:-At present I am unable to recollect….. I am unaware of the said person.

Q 8 Do you know any person Shri Hitesh Patel to whom amount of $30,000/-, $40,000/- and $30,000/- has been transferred on 16/06/2011 from banc a/c. no. ICA03B39 in Meryll lynch bank of the Company NAD Investment Ltd.

Ans 8:-I am unable to recollect and also I am unaware of the said person.

Q 9 Do you know any entity Anjaneya Hospitality Ltd. to whom amount of $50,000/- has been transferred on 23/06/2011 from bank a/c no. ICA03B39 in Meryll lynch bank of the company NAD Investment Ltd.

Ans 9:-I am unaware of the said entity and also I am unable to recollect.

Q 10 At the time of closure of A/c. no. ICA03B39 in Meryll lynch bank of the Company NAD Investment Ltd. an amount of #71,669/- was transferred to an account in Bank of America of NAD Investment Ltd. on 04/12/2012. Does NAD Investment ltd. has another account in Bank of America also?

Ans 10:- I am not aware of another account and also I am unable to recollect.

Q11 Do you know a person Shri Anil Chaturvedi and are you in touch with him?

Ans 11 Shri Anil Chaturvedi was Branch Manager of State Bank of India, Markarpura Indl. Est. Branch, Vadodara, where my account is there for last

more than 45 years. I am not regularly in touch with him except talk phone."

66. The above statement was recorded in the course of search of the locker of wooden cupboard in the room near the staircase at the residence of the assessee on 27/01/2016. According to the Revenue, the documents referred in this statement were found from the pen-drive and the mobile backup taken on the date of search. Obviously, these documents were not available with the Revenue on the original date of search, else questions would have been put to the assessee in this respect on the date of original search itself. However, in the statement recorded on 27/01/2016 there is no mention in the questions raised by the Revenue as to from where these documents, which were confronted to the assessee, were found. Be that as it may, there is no doubt that evidences for foreign bank accounts as available with the Revenue and the bank statement of the foreign bank accounts of the assessee were confronted to the assessee in the course of statements recorded during the search u/s 132(4) of the Act. We have to, therefore, decide whether the statements recorded during the search can be considered as an incriminating material.

Whether statement u/s 132(4) is incriminating material?

67. In the course of search the assessee was confronted with the 'other materials' as available with the Department as well as the evidences recovered during the search and the assessee, though denying that he was owner of the foreign bank accounts, had admitted that he had signed all those documents. **Thus, there is oral evidence recorded during the search**

which corroborates the 'other incriminating material' available with the Department. Further, **the circumstantial evidences recovered during the search in the form of visiting cards of Sh Anil Chaturvedi representing the foreign banks and communication of Barclays Bank as referred above, also corroborate the other incriminating materials**. The Ld. Sr. Counsel has contended that the statements recorded by the Revenue doesn't constitute incriminating material for which he has placed reliance on certain judicial pronouncements. We have carefully gone through the referred decisions and it is found that they rather support the case of the Revenue in the given facts and circumstances.

68. In the case of *Best Infrastructure (India) (P.) Ltd. (supra)* a search was conducted in the case of investor of assessee 'T' as well as the assessee and 'T' had stated to have provided accommodation entry to the assessee, that he had received cash from assessee and in return he had given entry for share capital. In support of its assumption of jurisdiction under section 153A, the revenue had placed reliance on the statements of 'T' under section 132(4) and opined that for the purposes of section 153A these statements, by themselves, constitute incriminating material. Further, the statement of one of the Director of the company was also recorded wherein she had surrendered a sum of Rs. 8 crores only for the year of search and not for each of the six assessment years preceding the year of search. On these facts the **Hon'ble Delhi High Court had held that the statements of one of the directors of company made it plain that the surrender made by her was only for one year and not for each of the six assessment years and that it could not be said to be incriminating material *qua* each of the preceding**

assessment years. As regarding statement of T, a copy of the said statement was not provided to the assessee and he was also not offered for cross-examination. Further 'T' had retracted from his statement and, therefore, his statement was discarded. Thus, the facts of that case are found to be totally different. In that case reliance was placed on statement of third party whereas in the present case the reliance is on the statement of the assessee himself and, therefore, the ratio of that decision can't be imported here. **Rather, the statement u/s 132(4) of the Director of the company was considered as incriminating material by the Hon'ble Delhi High Court for the year to which the surrender pertained.**

69. In the case of *Anand Kumar Jain and Ors. (supra)* the Hon'ble Delhi High Court has held **that the statements recorded under section 132(4) of the Act alone cannot justify the additions made by the AO**. **According to the Hon'ble Court, the statement certainly has the evidentiary value and relevance as contemplated under the explanation to section 132(4) of the Act**. However, such statement cannot, on standalone basis, without reference to any other material discovered during the search and seizure operations, empower the AO to frame the block assessment. It is found that the facts of that case were totally different from the facts of this case. In the present case the statements recorded under section 132(4) of the Act is not a bald statement bereft of any evidence. The assessee has been confronted with many other incriminating

details and evidences, the correctness or authenticity of which is not in question and which clearly establish the existence of undisclosed foreign bank accounts. Further, the evidences and details found during the search, which corroborates the other materials available with the Department, were also confronted in the statements recorded under section 132(4) of the Act. **The reliance here is not on mere statements u/s 132(4) but also on the other materials that were duly confronted to the assessee.**

70. The issue involved in the case of *Harjeev Agarwal (supra)* was computation of undisclosed income for the block period u/s 158BC of the Act and it was held by the Hon'ble Delhi High Court that a statement recorded under section 132(4) can form a basis for a block assessment, only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and seizure. The relevant part of the order is reproduced below:

> **20.** In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, **the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act.** However, such statements on a standalone basis without reference to any other material

discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that **a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act.** …*(Emphasis supplied).*

71. It is relevant to consider here that the decision of Hon'ble Delhi High Court in that case was given in the context of section 158BC of the Act, which required computation of undisclosed income only for the block period. On the other hand, the provision of section 153A of the Act, requires the AO to compute the 'total income' of the assessee considering the evidences found during the search as well as the other evidences as available with him. Therefore, the statement recorded during the search u/s 132(4) is not confined only to materials found during the search. As held by the Hon'ble Delhi High Court, the statement can be recorded in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. Therefore, the other materials as well as the materials which were the base of the search, were rightly confronted to the assessee in the statements recoded during the search and which can be

utilized in its entirety as incriminating material to compute the total income of the assessee, as held in the case of *Abhisar Buildwell (supra).*

72. The assessee has submitted that the material brought by the search team along with them during the course of search and confronted to the assessee during the search, do not constitute incriminating material as held by the ITAT Calcutta in the case of *Ravi Badalia (supra).* In this regard, it is relevant to consider the scope of statement recorded under section 132(4) of the Act. To reiterate, it was held by Hon'ble Delhi High Court in the case of *Harjeev Agarwal (supra)* that the statement under section 132(4) can be recorded not only in respect of books and documents found during the search, but also in respect of all matters relevant for the purpose of investigation connected with any proceedings under the Act. Under the circumstances, there was nothing wrong if the statement of the assessee was recorded during the search in respect of the foreign bank accounts, the information regarding which was received by the department through other sources. Such statement can be considered as incriminating evidence vis-à-vis the 'other material' available with the Revenue and can be certainly utilized to compute the 'total income' of the assessee as held by the Hon'ble Supreme Court in the case of *Abhisar Buildwell (supra).*

73. In the case of *B. Kishore Kumar v. Deputy Commissioner of Income-tax, Central Circle-IV (1), Chennai [2014] 52 taxmann.com 449 (Madras)* the Assessing Officer had made additions as undisclosed income on basis of sworn statements of assessee made during search and seizure. The Hon'ble High Court had held that since the assessee himself had stated in sworn

statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents. To reproduce from the order of the Hon'ble High Court:

> ***6.*** *…. When there is a clear and categoric admission of the undisclosed income by the assessee himself, in our considered opinion, there is no necessity to scrutinize the documents. The document can be of some relevance, if the undisclosed income is determined higher than what is now determined by the department. Moreover, it is not the case of the assessee that the admission made by him was incorrect or there is mistake. In fact, when there is a clear admission, voluntarily made, by the assessee, that would constitute a good piece of evidence for the Revenue.*

The Special Leave Petition filed against this order was dismissed by the Hon'ble Apex Court in *B. Kishore Kumar* v. *Dy. CIT [2005] 62 taxmann.com 215*. The fact that a mere statement U/s 132(4) is evidence for making an assessment was upheld in this judgement. Thus, even a statement u/s 132(4) shall constitute incriminating material for the purpose of making an assessment U/s 153A of the Act.

74. In view of the above facts and analysis of the judicial pronouncements we are of the considered opinion that certain evidences in respect of the interest of the assessee in the foreign assets were found in the course of search in the form of communication of Barclays Bank and the visiting card of Shri Anil Chaturvedi representing MLB & HBS, which were incriminating evidences. Further, the statements recorded during the search wherein the assessee was confronted with other incriminating materials was also incriminating evidence collected during the search and such incriminating material/evidence can be utilised to compute the total income in the course of assessment u/s 153A of the Act. The statements were

recorded with specific reference to the circumstantial evidences found during the search as well as the 'other materials' available with the Department and such statement is "incriminating evidence" collected during the search which certainly can be used as evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. Therefore, **the grounds taken by the assessee in respect of completion of unabated assessment without incriminating material and against considering the statement u/s 132(4) as incriminating evidence, are dismissed.**

Grounds on the merits of the addition.

75. Shri Hemani, Ld. Sr. Counsel explained that the AO had made addition in respect of all the credit entries reflected in the foreign bank accounts by treating the same as income of the assessee. In first appeal, the Ld. CIT(A) had held that the bank statements had to be read in totality and that the expenses/debits as appearing in bank statements has also to be considered. By adopting this approach, the Ld. CIT(A) had partly confirmed the addition and partly allowed relief to the assessee after calling for a remand report from the AO. The detailed calculation of additions confirmed/deleted was as per Annexure 1 to 17 of the Ld. CIT(A)'s order. The Ld. Sr. Counsel submitted that the bank accounts were held in the name of company NAD Investment Ltd. and Bipinbhai Patel and Manjulaben Patel were merely settlors of the Trust through which the foreign bank accounts were held. He further submitted that all the funds in the foreign bank accounts were transferred from overseas and belonged to the assessee's

sister. Shri Bipinbhai Patel and his family members had not transferred any amount from India to the foreign bank accounts nor had they transferred any funds from the foreign bank accounts into India for their personal benefit. The bank accounts with MLB was closed in December 2012 and the proceeds were transferred back to assessee's sister or her nominees. An affidavit to the above extent was also filed before the AO in the course of assessment proceeding, which was ignored. The Ld. Sr. Counsel submitted that the contents of the affidavit cannot be ignored unless proved to be contrary by the Revenue and in this regard reliance was placed on the decision of Hon'ble Jurisdictional High Court in the case of *Glass Lines Equipments Company Ltd. Vs. CIT, reported in 253 ITR 454 (Gujarat).*

76. The Ld. Sr. Counsel further submitted that in the course of statement under Section 132(4) of the Act, the assessee had explained that one Mr. Anil Chaturvedi was the Fund Manager who was involved in the process of opening the foreign bank accounts in question and, thereafter, the transactions were looked after by him. This fact was also confirmed by Shri Anil Chaturvedi and the visiting card of the Anil Chaturvedi was also found in the course of search. In spite of this clarification of the assessee, the AO did not make any enquiry from Shri Anil Chaturvedi. According to the Ld. Sr. Counsel, there was no specific material with the department to demonstrate that the transactions in the foreign bank accounts were carried out by the assessee and that the entire addition was based solely on the basis of suspicion that the foreign bank accounts belonged to the assessee. According to the Ld. Counsel, the suspicion cannot take place of evidence and cannot be made a basis for making addition.

77. Without prejudice, the Ld. Sr. Counsel submitted that the AO had erred in not considering expenses or losses emanating from the very same material (i.e. foreign bank accounts), based on which additions were made by treating the transactions as income of the assessee. He conceded that the Ld. CIT(A) has correctly worked out the income of the assessee after considering the expenses /losses as appearing in the foreign bank accounts. The Ld. Sr. Counsel submitted that each and every item of bank statement and year-wise net income chart prepared by the assessee was verified by the AO at the remand stage and no specific fault was found in the year-wise net income as worked out. The quantification of expenses, gain/loss of MF transactions and other income worked out on the basis of the entries in the foreign bank accounts, was not under dispute. Therefore, the Revenue's appeal against quantification of income as made by the Ld. CIT(A) were required to be dismissed since no fault was found by the AO in quantification of income at the remand stage.

78. The Ld. Sr. Counsel submitted that the assessee had incurred losses in certain years in MF transactions but the Ld. CIT(A) had ignored the losses and adopted Nil value for those years, which was not correct. The Ld. CIT(A) had denied the losses on the count that set off of losses was possible only if the returns were filed within the due date as per the provision of the Act, which was not the case. The Ld. Sr. Counsel submitted that even if such losses were not claimed in the return of income, the losses for the period prior to search must be allowed, for which reliance was placed on the decision of AP high Court in the case of *CH Mohan vs. ACIT, (369 ITR 189)*

(AP). The Ld. Sr. Counsel further submitted that the assessee had filed return of income in response to notices u/s.148/153A of the Act within the prescribed time limit. As the bank statements were made available to the assessee towards the fag end of assessment proceeding, the losses could be quantified only at the appellate stage and, therefore, the assessee could not have claimed such losses in the return of income. He further submitted that the provision of Section 79A of the Act which prohibits set off of losses subsequent to search was inserted by Finance Act, 2022 w.e.f. 01.04.2022 and the amendment was prospective in nature. Therefore, the assessee was eligible for set off of losses subsequent to search. The Ld. AR contended that the losses in question were worked out on the basis of same material based on which income was worked out and additions were made. According to the Ld. Sr. Counsel, any document has to be read in its entirety and it was not permissible for the Revenue to adopt pick and choose method. He further submitted that the losses falling within the block period must be allowed, reliance for which was placed on the following decisions:

i. *E.K. Lingamurthy(2009) 314 ITR 305 (SC):*
ii. *H.E. Distilleries (P.) Ltd. (2010) 229 CTR 457 (Karnataka)*
iii. *Fenoplast Ltd.(2014) 367 ITR 761 (AP & Telangana):*
iv. *Ch. Mohan v ACIT-(2014) 369 ITR 189 (Andhra Pradesh);*
v. *P Mohammed alias Manu- (2014) 41 taxmann.com 6 (Kerala);*
vi. *P.D. Abrahm - (2012) 349 ITR 442 (Kerala):*
vii. *Mahalaxmi Motors Ltd.-(2014) 368 ITR 724 (AP):*

79. The Ld. Sr. Counsel further submitted that the additional claim in respect of set off of losses can be raised before the appellate authorities, for which, reliance has been placed on the following decisions:

i. *Jute Corporation of India vs. CIT-187 ITR 688 (SC) ✓National Thermal Power Corporation vs CIT-229 ITR 383 (SC);*
ii. *CIT v. Mitesh Impex-(2014) 367 ITR 85 (Guj):*
iii. *PCIT vs. UTI Bank-(2017) 398 ITR 514 (Guj):*
iv. *CIT vs. Jai Parabolic Springs Ltd.-306 ITR 42 (Delhi):*
v. *CIT vs. Pruthvi Brokers & Shareholders-349 ITR 336 (Bom):*
vi. *CIT vs. Abhinitha Foundation P. Ltd.-396 ITR 251 (Madras*

80. The Ld. Sr. Counsel submitted that the genuineness and quantification of the losses was not in dispute and it was well settled that only real income has to be taxed in the hands of the assessee, for which, reliance was placed on the decision of *Godhara Electricity Co. Ltd. vs. CIT, (1997) 225 ITR 746 (SC).* He submitted that AO was duty bound to give relief to the assessee wherever due even if it was not claimed by the assessee, for which, he relied on the decision of *Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in (2205) 276 ITR 165 (Guj.).* The Ld. SR. Counsel vehemently contended that the Ld. CIT(A) was not justified in adopting Nil amount in place of losses, which has resulted in denial of benefit of carry forward and set off of such losses in the succeeding years.

81. Per contra, Dr. Darsi Suman Ratnam, Ld. CIT.DR submitted that the assessee and his wife were settlor of the foreign bank accounts and as held by the ITAT, Ahmedabad in the case of *Dr. Atul T Patel. v. DCIT (2019) 108 taxmann.com 227 (Ahd)(Trib.),* the settlor has to explain the investments which were not accounted for in his books of accounts or not disclosed to the revenue authorities. He further submitted that apart from making a bald statement that the trust deed documents and the foreign bank account documents were signed by the assessee in order to help his sister, the

assessee didn't bring any evidence on record to establish that the amounts in the foreign bank accounts were transferred from the accounts of his sister or that the bank accounts belonged to his sister. He has drawn our attention to the fact that in the documents related to formation of NAD Investment Ltd. and the operation of the bank accounts with MLB, no mention of assessee's sister or even her husband was mentioned anywhere. The Ld. CIT-DR vehemently submitted that the assessee had not explained, that if the accounts were opened to help his sister, why the ultimate beneficiary of the trust that was holding the foreign bank accounts were his own son, daughter-in-law and granddaughters and why his sister or his descendants were not nominated as beneficiary of the foreign accounts. The Ld. CIT-DR further submitted that the affidavit dated 04.12.2015 filed by the assessee on 04.12.2017 was only a self-serving document and no evidence was brought on record to establish the contentions as made in the said affidavit. He submitted that the primary onus was only on the assessee to establish that he was not the owner of the foreign bank accounts or that the funds in those accounts did not belong to him. Apart from making a bland denial the assessee has not brought any evidence to establish that the funds in the foreign bank accounts did not belong to him. As the assessee was a resident and his global income was taxable, the onus was squarely on him to establish that certain amount/credit were not his income and it was not for the AO to prove otherwise. The Ld. CIT-DR submitted that the initial burden lying on the assesse to rebut the primary presumption made by the AO on the documents found during the search and as available with the department was not discharged.

82. As regarding merits of the addition, the Ld. CIT.DR submitted that the addition made by the AO was in respect of credits in the foreign bank account and was made was u/s. 68 of the Act. The Ld. CIT(A) had held that the addition can be considered as unexplained money u/s.69A of the Act as well and the assessee had agreed to this proposition. The Ld. CIT.DR submitted that when the addition is made u/s.68 or u/s. 69A of the Act, the provision of Section 115BBE of the Act is applicable. Further, as per sub-clause (2) to Section 115BBE of the Act, no deduction can be allowed with respect to any expenditure and no set off of any loss shall be allowed while computing income under the provision of Section 115BBE of the Act. According to the Ld. CIT. DR, considering the express provision of section 115BBE of the Act, the Ld. CIT(A) was not correct in allowing set off or deduction of the expenditure as appearing in the foreign bank accounts, as such deduction was not permissible. According to the Ld. CIT. DR, the entire credit as appearing in the foreign bank accounts was liable to be taxed without allowing any set off on account of expense or loss. He further submitted that the Ld. CIT(A) was correct in disregarding the losses, as losses could have been carried forward only if the returns were filed within the due date as prescribed u/s.139(1) of the Act, which was not complied in the present cases. He further submitted that the case laws as relied upon by the Ld. Sr. Counsel were all different on facts and not applicable to the facts of present case.

Our findings on ownership of the bank accounts

83. We have carefully considered the rival submissions. The first objection of the assessee is that Shri Bipinbhai Patel and Manjulaben Patel were merely Settlors of the Trust through which foreign bank account were held in the name of company NAD Investment Ltd. That an affidavit of Shri Bipinbhai Patel was filed before the AO wherein he had stated that the funds in the foreign bank accounts were transferred from overseas which belonged to his sister and that the assessee or his family members had neither transferred nor brought back any funds into India from the foreign bank accounts for their personal benefits. Further, that the bank accounts were closed and proceeds were transferred back to assessee's sister Prabhavatiben J. Amin/her nominees. It is further submitted that the AO did not make any enquiry with Mr. Anil Chaturvedi, the Fund Manager who was involved in opening the foreign bank accounts and was managing the funds of her sister.

84. There is no dispute to the fact that the assessee and his wife Manjulaben Patel were the Settlors of the trust and the company M/s. NAD Investment Ltd., which was holding to foreign bank accounts, was the property of the trust. Merrill Lynch Bank and Trust Company (Cayman) Ltd. was the trustee, who was requested by the assessee and his wife to allocate a company on their behalf, and a copy of this company formation letters dated 07.01.2000 signed by the assessee and his wife is reproduced in the assessment order. Accordingly, the trustee had allotted M/s. NAD Investment Ltd. to Shri Bipinbhai Patel and Manjulaben Patel. Though, M/s. Fairfield Nominee Ltd. was made a nominee share holder of M/s. NAD Investment Ltd. to maintain confidentiality and client secrecy, the actual owners of the company and its assets were Shri Bipinbhai Patel and

Manjulaben Patel. The Confidential Client Profile Sheet (CCPS) and Settlor Profile Form, which were received from tax authorities of Cayman Islands and which has been reproduced in the assessment order, contained identity details and profile of owners of NAD Investment Ltd. and settlor of the trust and the name of the assessee and his wife and their Baroda address was appearing in these forms. It is explicit from these evidences that the assessee and his wife were the actual owners of the company NAD Investment Ltd., which was holding the foreign bank accounts and the onus was squarely on the assessee and his wife, who were the settlors, to explain the source of the funds in the foreign bank accounts.

85. These documents available with the Department were confronted to the assessee in the course of statement recorded during search u/s. 132(4) of the Act on 02.12.2015 and the assessee had admitted that all these documents were signed by him and his wife. Thus, the evidences brought on record by the AO establish that the actual owner of the foreign bank accounts was the assessee himself. It is true that in the course of statement recorded u/s.132(4) of the Act, the assessee had stated that the foreign bank accounts were opened by him to help his sister Smt. Prabhavatiben Amin. However, the assessee has not explained as to why his sister, who was resident of UK (and earlier resident of Kenya), could not have opened the foreign bank accounts herself. Being a non-resident, she must be having her own account in the foreign countries. What necessitated the assessee to open foreign bank accounts on behalf of her sister? Further, if the foreign bank accounts were opened on behalf of her sister, why the ultimate beneficiaries of the foreign bank accounts and that of the Trust were not his sister or her

husband or her family member. Why the ultimate beneficiaries of the trust were his own son, daughter-in-law and granddaughter of the assessee and why his sister or his family members were not named as ultimate beneficiary of the trust in the documents? No explanation was given in this regard as any stage in spite of specific queries. In fact, the deed of trust was amended on 30.03.2024 to include the name of second granddaughter of the assessee in the list of ultimate beneficiaries. The assessee has also not brought on record any evidence to establish the fact that the funds in the foreign bank account were transferred from the account of her sister. **The contention of the assessee that the funds, on closure of the foreign bank accounts with MLB, were transferred to her sister is also not found correct.** In the statement u/s 132(4) Dated 27th January 2016 (already reproduced earlier) it was categorically mentioned that at the time of closure of account number 1CA03B39 with Meryll Lynch Bank on 04/12/2012 the company NAD Investment Limited had transferred $71669/- to another account of NAD Investment Limited with Bank of America and when enquired about this another bank account the assessee had pleaded his ignorance. Thus, the fund on closure of the account was not transferred to his sister but to another account of NAD Investment Limited, which was owned by the assessee and his wife, as already discussed earlier.

86. A mere affidavit filed by the assessee that the foreign bank accounts belonged to his sister without bringing on record any evidence in this respect was rightly rejected by the Revenue. The evidences available with the Revenue, as discussed in the assessment order and also as mentioned above, were all stacked against the assessee and the onus was squarely on the

assessee the dispel those evidences by producing evidences in support of the averments as made in the affidavit. Rather the averment made in the affidavit regarding transfer of closure proceeds of the account was found to be incorrect. In the absence of any contrary evidence the AO had rightly not taken into account the affidavit of the assessee, which was a mere self-serving document and furnished without establishing its correctness through other supportive documents. The assessee had relied upon the decision of jurisdictional High Court in the case *Glass Lines Equipments Company Ltd. Vs. CIT (supra).* In that case the assessee had on its own described that six items of expenditure totalling to Rs. 38,349 were not relevant to the setting up of the plant, and this part of the affidavit was accepted by the Commissioner (Appeals), and the balance portion of the affidavit was ignored. The Hon'ble Gujarat Court had held that the Commissioner (Appeals) was not correct in accepting only part of the affidavit. The facts of that case being totally different, the assessee can't derive any benefit from the said decision. In the present case neither the assessee has supported his affidavit with any shred of evidence not any part of the affidavit was accepted by the Revenue.

87. The contention of the assessee is that neither the funds were transferred from India nor the funds were brought into India from the foreign bank accounts. However, the assessee has not brought on record any evidence in this regard. Further, merely because no funds were transferred out/into India from the foreign bank accounts, it doesn't absolve the assessee from his onus to explain the source of credits appearing in the foreign bank accounts. The assessee being resident in India, his global income was liable

to be taxed in India. Under the circumstances, the onus was squarely on the assessee to explain and bring on record the evidences for source of credits as appearing in the foreign bank accounts. Apart from making a bald statement that foreign bank accounts were opened on behalf of his sister, no evidence has been brought on record to substantiate this fact. Under the circumstances, the affidavit filed by the assessee, which was a mere self-serving document, was rightly rejected by the AO.

88. The documents received by the AO through FT&TR Division of CBDT in the course of assessment proceeding, regarding four bank accounts of NAD Investment Ltd. with Hinduja's Bank, Switzerland was also confronted to the assessee. These documents, which are reproduced in the assessment order, clearly establish that the assessee and his wife Manjulaben Patel were the beneficial owners of these foreign bank accounts. The recommendation for opening these foreign bank accounts was given by Ex Bank Manager of SBI, whose name has been redacted in these documents. It is also mentioned that the family was known to the Ex-Manager for last 32 years when he was Manager of SBI, Vadodara. This leaves no doubt that the foreign bank accounts were opened only by the assessee and his wife and not by his sister as contended by the assessee. The AO has also given a finding that some of the cheques in the name of the assessee were deposited in the foreign bank accounts with MLB, which is categorical evidence that the accounts belonged to the assessee only.

89. As regarding enquiry with Mr. Anil Chaturvedi, it is found that the name of Shri Anil Chaturvedi was appearing in CCPS of foreign bank

account with MLB. This CCPS was to be completed by FC/GPB when submitting new trust or standalone company business. Shri Anil Chaturvedi had submitted the CCPS of the assessee and his wife as FC. Regarding his acquaintance with the client, Mr. Chaturvedi had declared in the CCPS that he knew the client since 1977 when he was client of his previous employer and his present banking relationship was stated to be with Barclays Bank. In the case of Hinduja's Bank account also, the relationship of Mr Chaturvedi with the assessee is evident from his association as declared while Manager with SBI Vadodara, though his name is redacted in the document. Thus, the acquaintance of Mr. Anil Chaturvedi was only with the assessee and his family members. There was no trace of evidence that Mr Chaturvedi had any acquaintance with the sister of the assessee or that the foreign bank accounts were opened on her behalf by him or that he was managing the funds of her sister. Neither any such evidence was brought on record by the assessee. In the absence of any contrary evidence to his declarations as made while opening the foreign bank accounts of the assessee, there was no occasion for the Revenue to conduct any enquiry with Shri Anil Chaturvedi. The contention of the assessee that no specific material was found to demonstrate that the transactions were carried out by the assessee is found to be baseless. All the evidences were confronted to the assessee and have also been discussed in detail in the assessment order, which leave no doubt about the ownership of the bank accounts. It will be apposite here to refer to some of the evidences.

90. The evidence regarding foreign bank account no. I6503B39 with Meryll Lynch bank in the name of M/s. NAD Investment Ltd., was also confronted to the assessee in the course of statement recorded u/s. 131 of the Act on 27.05.2016. The relevant questions and reply of the assessee is reproduced below:

> *"Q. No.10 In the said cheque signed by Shri Vijay M Patel for $ 6200 dated 24/05/2000, the payments is stated to be made to B.P. Patel and has been deposited in the bank account no.16503B39 in Merrill Lynch in the name "NAD Investment Ltd." Considering the fact that the cheque has been issued in your name and deposited in the account of Nad Investment Ltd, why this bank account no. 16503B39 in Merrill Lynch Bank should not be considered as belonging to you?*
>
> *Ans : I have explained at the time of raid also that I helped my sister to take out whatever possible from East Africa and these may be the transactions she may have made in my name as per the bankers advice. Sitting in India, I cannot handle all these things.*
>
> *Q.No. 14 You are shown a cheque signed by Shri Prakash M Amin for $ 57,000 dated 25/08/2000, in which the payments is stated to be made to Bipin Patel and has been deposited in the bank account no. 16503B39 in Merrill Lynch in the name "NAD Investment Lid." Considering the fact that the cheque has been issued in your name and deposited in the account of Nad Investment Ltd, you are again asked why this bank account no. 16503B39 in Merrill Lynch Bank should not be considered as belonging to you?*
>
> *Ans I am not aware of the foreign countries law.*
>
> *Q. No. 15 Does this bank account number 16503B39 and 1CA03B39 in Merrill Lynch Bank belong to you and your wife?:*
>
> *Ans I was merely a settlor for this account and to my knowledge, no money has been deposited or withdrawn from India by me.*
>
> *Qs. No. 24 In reply to all questions related to bank account number 16503B39 & 1CA03B39 of NAD Investments Ltd in Merrill Lynch Bank, you have repeatedly*

stated that these bank accounts, the funds in it and all the transactions in these bank accounts belong to your sister Late Smt. Prabhavati Amin. Do you have any documentary evidence to prove this?

Ans: This must be with the bankers, Mr. Chaturvedi

Qs. No.25 You are again asked to submit any documentary evidence you have with you to prove that these foreign bank accounts 16503B39 & 1CA03B39 of NAD Investments Ltd in Merrill Lynch Bank belongs to your sister and not to you/your wife.

Ans : I will have to check with Mr. Chaturvedi

Qs. No. 26 Your reply to Qs. No. 25 means that at present, you don't have any evidence to prove that these undisclosed foreign bank accounts doesn't belong to you. Therefore, please state why these bank account number 16503B39 & 1CA03B39 of NAD Investments Ltd in Merrill Lynch Bank be considered as belonging to you / your wife?

Ans: All formalities of bank is done by my sister and Mr. Chaturvedi, as my domicile is India and not other country.

Qs No. 28 Does mobile number 09898453287 belongs to you and used by you only?

Ans : Yes. But when I give it in repairs, I don't know who uses it.

Qs, No. 29 Have you made any telephonic conversation from 09898453287 with Merrill Lynch bank authorities on 12/03/2012 requesting for transfer of funds?

Ans : As advised by our lawyer, I have telephoned to Merrill Lynch time and again.

Qs. No. 30 Have you ever signed any account opening forms/documents for any other foreign bank accounts?

Ans : As directed by my sister and Mr. Chaturvedi, I may have signed many papers.

Qs. No.34 You are shown a notarized letter dated 16/08/2012 signed by you and your wife Smt. Manjulaben Patel, whereby it is stated that all balance trust funds, after revocation of trust with Merrill Lynch Bank, shall be transferred to bank account number 11370 in Hinduja Bank (Switzerland) Ltd. in the name of Nad Investment Lid having IBAN No CH12 0882 7001 1370 0184 0. Kindly state whether this foreign bank account number 11370 in Hinduja Bank (Switzerland) Ltd. belongs to you/your wife or not?

Ans: The account belongs to NAD Investment Ltd."

91. It is evident from the above statement that the cheques in the name of the assessee were deposited in the foreign bank account with Merill Lynch Bank, which is a conclusive proof that those bank accounts belonged to the assessee. The assessee couldn't explain how the cheque drawn in his name was deposited in the bank account, if the account belonged to her sister, as contented. When the assessee was specifically asked to produce documentary evidence that the accounts belonged to his sister, no documentary evidence could be provided and an evasive reply was given by the assessee that the documents will be available with the banker or Mr. Chaturvedi. If so, why the documents couldn't be obtained and furnished by the assessee. Not only the assessee had signed the account opening forms for all the foreign bank accounts, but he was also in constant touch with Merrill Lynch through his telephone number 09898453287 as acknowledged in the statement. The evidences as available with the Revenue leave no doubt that the assessee and the assessee only, along with his wife, were the actual owner of all the foreign bank accounts. Therefore, the action of the AO to treat all the foreign bank accounts as belonging to the assessee is upheld. **The grounds taken by the assessee and his wife that they being settlors, no addition could have been made in their hands are rejected.**

Our findings on merit of the addition

92. As regarding merits of the addition is concerned, the AO had considered the aggregate of all the credit entries in the bank accounts as income of the assessee and accordingly made the addition in the hands of the assessee and his wife, 50% on substantive basis and 50% on protective basis. The Ld. CIT(A), on the other hand, considered all the entries on the debit side as well as on the credit side in the bank accounts to work out the income of the assessee. Thus, the Ld. CIT(A) allowed relief to the assessee by allowing deduction for expenses (debits) as appearing in the bank accounts. According to the Ld. CIT(A), the bank statement had to be read and adopted in totality and that the debit entries appearing in the bank accounts could not be ignored. The Revenue is aggrieved with the deduction of expenses as allowed by the Ld. CIT(A) and has filed appeals on this ground. According to the Revenue, the credit entries appearing in the bank accounts were added u/s 68 or u/s 69 of the Act and, therefore, the assessee was not eligible for deduction of any expense from such addition.

93. We do not find any merit in the objection raised and the grounds as taken by the Revenue. As rightly pointed out by the assessee only the real income has to be taxed as held by the Hon'ble Supreme Court in the case of *Godhara Electricity Co. Ltd. (supra).* The real income can be worked out only after considering all the entries *i.e.*, on the credit side as well as on the debit side as appearing in the foreign bank accounts. Therefore, the Ld. CIT(A) had rightly considered the totality of all the transactions as appearing

in the foreign bank accounts and allowed relief to the assessee in respect of the expenses as evident from the bank accounts. The contention of the Revenue that all the additions were in the nature as mentioned in section 68 or section 69 of the Act is also not found correct. The AO had reproduced the description of the credit entries appearing in the bank accounts in the assessment order from which it is found that large number of credit entries were in respect of dividend, interest, STCG, LTCG etc. and the assessee was entitled to claim deduction for the expenses incurred in earning the income of these nature. Therefore, the Ld. CIT(A) had rightly allowed the deduction for expenses as evident from the bank account itself. As a result, **the ground taken by the Revenue against the deduction for expenses, as allowed by the ld. CIT(A), is dismissed.**

94. The Revenue has also taken a ground in respect of deleting the addition on account of receipts in undisclosed foreign bank accounts described as **"spot transactions**". According to the Revenue, no one to one correspondence between credit and debit entries relating to "spot transactions" was established in the appellate order. We have considered the findings given by the ld. CIT(A) in this regard. The additional evidences as furnished by the assessee in the course of appeal were forwarded to the AO for verification in the remand proceeding. The ld. CIT(A) has given a finding that the AO had confirmed full verification of all the entries with ledgers. It is further mentioned in the order of the CIT(A) that 'spot' transactions depicted in Hinduja Bank Account were contra (transfer) entries from one currency account to another currency account which were neither any receipt nor any payment. The revenue had not come up with any facts or

any specific submission as to how the finding as given by the Ld. CIT(A) was not correct. Under the circumstances we do not find any reason to interfere with the order of the Ld. CIT(A) in this respect. **The ground taken by the Revenue in this regard is, therefore, dismissed.**

95. The assessee has also taken objection to the manner of working of the income by the Ld. CIT(A). One of the objections of the assessee is that credit entries in the foreign bank accounts cannot be treated as deemed income under section 68 or 69A of the Act as the assessee had not maintained any books of accounts. We do not find any merit in the objection raised by the assessee. The foreign bank account ledgers were the accounts of the assessee only, the only difference being that it was maintained by a 3rd party i.e. the Bank. All the entries in the bank account ledgers pertained to the assessee only which was in essence the books of accounts of the assessee in respect of his bank transactions. Therefore, the ld. CIT(A) had rightly upheld the applicability of section 68/69A of the Act in respect of the credit entries appearing in the foreign bank accounts. **The ground taken by the assessee in this regard is, therefore, rejected.**

96. Another objection of the assessee is that after considering the debit entries in the foreign bank accounts there were losses in certain years and the Ld. CIT(A) directed that the losses should be ignored for the purpose of computation of total income. Accordingly, income for all the years in which loss was computed was taken at Nil and the loss was not allowed to be carried forward and set off with income of subsequent years. The assessee has contended that the losses falling within the block period must be allowed

for which reliance has been placed on various judicial decisions. It is found that all the decisions as relied upon by the assessee were rendered in the context of block proceeding u/s. 158BC of the Act, where a single assessment order for the entire block period was required to be passed. In the scheme of assessment u/s.153A of the Act, there is no concept of block period and the assessment for each year is required to be completed separately. Further, in the block period only unaccounted income for the entire block period was required to be computed whereas in the proceeding u/s.153A of the Act, the total income of the assessee (including unaccounted income) is to be computed for each year separately. Therefore, the reliance upon decisions that were delivered in the context of the block proceeding u/s.158BC of the Act cannot be applied to the assessments being completed u/s.153A of the Act. In the scheme of assessment u/s.153A of the Act, the carry forward of loss has to be decided in accordance with the specific provision as stipulated under the Act.

97. The Ld. CIT(A) has given a finding that the loss or negative income in any year was not eligible for carry forward and set off with income of the following year(s) for the reason that returns were not filed within the due date, which was a necessary condition for carry forward of loss. The assessee has contended that the return for the block period was filed within the time. The provision of Section 139(3) of the Act stipulates that in order to carry forward a loss under the head “business” or “capital gain”, the return of income has to be filed within the time as allowed under section 139(1) of the Act. Thus, according to this provision, the assessee must file his original return of income within the time stipulated u/s 131(1) of the Act

in order to carry forward the loss. In the present cases, no return of income was filed claiming any loss within the time limit as prescribed u/s.139(1) of the Act. Therefore, the direction of the ld. CIT(A) that the assessee was not eligible for carry forward of loss, is found to be in accordance with the provisions of the Act and correct. **The ground taken by the assessee in respect of allowing carry forward of losses is, therefore, rejected.**

Correctness of losses?

98. The assessee has submitted that the genuineness and quantification of the losses is not under dispute. The Revenue has also not put any question mark on the quantification of the losses except the submission that the Ld. CIT(A) had rightly ignored the losses and taken the income at Rs. Nil for the years in which loss was worked out. The assessee had worked out the losses on the basis of difference between sales and purchase of mutual funds as appearing in the foreign bank accounts and furnished the same before the ld. CIT(A). Neither the AO nor the ld. CIT(A) have commented upon the working of the loss as done by the assessee. The CIT(A) had only raised a query about the nature of the loss and it was explained that the losses cannot be treated as a speculative in nature as there can be no speculation in mutual fund transactions. Therefore, the contention of the assessee that the loss should be treated as short term capital loss was accepted. However, the ld. CIT(A) had only held that the assessee was not eligible to carry forward and set off of the losses with income of following years. The correctness of the loss as worked out by the assessee was neither examined by the AO in the course of remand proceeding nor by the ld. CIT(A).

99. The Ld. CIT(A) has annexed detailed working of the income and loss for different years vide Annexure-1 to Annexure-17 of his order. We have gone through the said working and it is found that the quantum of loss as mentioned therein can't be held as correct. The assessee had only considered the difference between sale and purchase value of mutual funds, as reflected in the foreign bank accounts, to work out the income / loss in such transactions. This approach itself is not found to be correct. In the working as attached by the Ld. CIT(A), the details of purchase and sale of mutual funds transacted during the year is not reflected and only net figure of "Difference between sale and purchase of MFs" is appearing. For example, in A.Y. 2001-02, the loss of -6,04,934/- is worked out as the difference between sale and purchase of mutual funds and it is remarked that "total sale value less purchase value of mutual fund not considered by the AO". Thus, loss as well as the profit was worked out by the assessee by taking the difference between the total purchase value and the total sale value of mutual funds during the year, as reflected in the bank statement. The working of such loss can't be held as correct as it is based on the presumption that all the mutual funds purchased during the year were sold during the year itself, which may not be correct. Some of the shares/MF purchased during the year might be available in the form of closing stock, which were not considered in this working. Thus, the income/loss in the transactions of mutual funds was worked out by the assessee without considering the opening stock and closing stock of the mutual funds for each year. Under the circumstances, the year-wise profit or loss in the transactions

of mutual funds as worked out by the assessee and reproduced in the order of Ld. CIT(A) cannot be held as correct.

100. From the above analysis, it is evident that the working of income/loss from mutual fund transactions as done by the assessee and accepted by the Ld. CIT(A) was not correct. Not only the losses even the profits were worked out without considering the opening/closing stocks, which may result in inflation of loss in certain years and also inflation of profit in other years. While the inflated losses were ignored by the Ld. CIT(A), the assessee might have been required to pay taxes on the inflated profits in certain years, which can't be considered as a correct approach. The year-wise profit/loss worked out by the assessee on the basis of difference between sale and purchase of mutual funds in different years, as reproduced in the Annexures to the order of the ld. CIT(A) is found to be as under:

AY	*Diff. between sale & purchase of MF*
2000-01	*0*
2001-02	*-604923*
2002-03	*-101711*
2003-04	*197840*
2004-05	*2050*
2005-06	*1065*
2006-07	*61695*
2007-08	*-89631*
2008-09	*-12923*
2009-10	*-83820*
2010-11	*8307*
2011-12	*-30093*
2012-13	*772561*
2013-14	*197840*

2013-14	*-271094.25*
2014-15	*-236.78*
2015-16	*6922.75*
2016-17	*-1000*
Net Total	***52848.72***

101. On taking a holistic view of the mutual fund transactions the net income derived by the assessee was US $52848.72 *(subject to verification)* only during the entire period from A.Y. 2000-01 to 2016-17. This net income for the entire period is based on the presumption that there was no opening stock at the beginning and no closing stock remains at the end of the period; and in the absence of any contrary evidence this will be a realistic approach. By working out the profit or loss in mutual fund transactions without taking into account the year-wise opening stock and closing stock of mutual funds, the assessee was taxed on artificial income in certain years, while the losses in the other years were ignored. In view of this discrepancy, **we deem it proper to set aside the matter to the file of the AO to work out the correct profit or loss for different years on account of mutual fund transactions in the following manner:**

(i) The AO should work out year-wise profit/loss of mutual fund transactions after taking into account the closing stock and opening stock of shares/mutual funds for each year after allowing an opportunity of being heard to the assessee. For this purpose, he may call for the details from the assessee in respect of the opening stock/closing stock for the different years or from any other source as deemed fit. If details are obtained from a third party, that should be confronted to the assessee before taking a final call.

(ii) We are conscious of the fact that the above exercise will not be easy on the part of the AO since the assessee is no longer alive and the other family members may not be privy to the information. Further, the details from third party also, mayn't be forthcoming due to long passage of time. In such an eventuality and in the absence of any quantitative details of the mutual funds / share transactions, the net positive income of US $52,858.72 as per the working as detailed above, may be apportioned to different years proportionately on the basis of sale proceeds of the respective years.

102. Since the quantification of actual profit/loss in mutual funds / share transactions as appearing in foreign bank accounts is set aside to the file of the AO, **the appeals of the assessee (except for A.Y. 2000-01 wherein no such transaction was involved) are deemed to be partly allowed for statistical purposes.**

Unexplained jewellery found during search

103. The Ld. Sr. Counsel explained that in the case of Smt. Manjulaben Patel this issue is involved in ITA No.1915/Ahd/2019 filed by the assessee and ITA No.50/Ahd/2020 filed by the department for the A.Y. 2016-17. In the course of assessment, the AO had made addition of Rs.1,03,86,888/- in respect of unexplained jewellery found during the course of search in the hands of Manjulaben Patel and Jigishaben Patel (Daughter-in-law of Manjulaben Patel) in the following manner:

(a) Substantive addition @50% Rs.51,93,444/-
(b) Protective addition @ 50% 51,93,444/-

The Ld. Sr. Counsel submitted that the entire addition of jewellery was confirmed in the hands of Jigishaben Patel with an enhancement. As against original addition of Rs.1,03,86,888/-, the addition confirmed in the hands of Jigishaben Patel on account of unexplained jewellery was Rs.1,04,83,953/-. He explained that in the case of Jigishaben Patel that a Declaration was filed under Vivad Se Vishwas Act, 2020 for A.Y. 2016-17 and tax was paid on the entire addition of jewellery as confirmed by the Ld. CIT(A) and, thereafter, the appeal in her case before the ITAT was withdrawn. According to the Ld. Sr. Counsel, the entire addition on account of unexplained jewellery, thus stands confirmed in the hands of Jigishaben Patel on substantive basis. Therefore, the protective addition of Rs.52,91,977/- as upheld by the Ld. CIT(A) in the hands of Smt. Manjulaben B Patel deserves to be deleted.

104. Per contra, Dr. Darsi Suman Ratnam, the ld. CIT.DR had no objection for allowing relief in respect of protective addition of unexplained jewellery in the hands of Smt. Manjulaben Patel subject to verification of the contention of the assessee that the entire substantive addition in respect of unexplained jewellery was accepted in the hands of Smt. Jigishaben Patel.

105. We have carefully considered the rival submissions. The relevant order passed in the case of Smt. Jigishaben Patel has been brought on record vide a separate paper book. It is found therefrom that the addition of

unexplained jewellery of Rs.1,03,86,888/- was made in the hands of Jigishaben Patel, 50% on protective basis and 50% on substantive basis. The Ld. CIT(A)-12 vide order dated 07.01.2019 had directed that the entire addition should be made in the hands of Smt. Jigishaben Patel on substantive basis. As per order giving effect to CIT(A)'s order, the AO vide order dated 11.03.2019 had made addition of Rs.1,04,83,953/- on account of unexplained jewellery in the hands of Jigishaben Patel. As appeal was filed in the case of Jigishaben Patel before the ITAT vide ITA No.497/Ahd/2019 for the A.Y. 2016-17. The assessee has filed Form No.3, Form No.4 and Form No.5 in respect of application of Jigishaben Patel under Vivad Se Vishwas Act, 2020 and it transpires therefrom that the declaration made by the assessee was accepted on payment of the disputed tax. In the Form-5, a reference of appeal pending before the ITAT i.e. ITA No.497/Ahd/2019 is also appearing. It thus transpires that the entire substantive addition of the unexplained jewellery of Rs.1,04,83,953/- as made in the hands of Smt. Jigishaben Patel stands finalized and accepted in her hands. In view of these facts, we direct that **the protective addition of Rs.51,93,444/-in respect of unexplained jewellery as made in the hands of Smt. Manjulaben Patel should be deleted. The ground taken by the assessee in the regard is allowed and the ground of the Revenue is dismised.**

106. An addition of Rs.10 Lakhs was also made in the hands of the Sri Bipinbhai Patel in respect of unexplained jewellery found from locker in the course of search. The addition as made by the AO was confirmed by the Ld. CIT(A). The Ld. Sr. Counsel submitted that the assessee was third holder of the locker from which the jewellery was found. Under these circumstances,

the addition made on account of unexplained jewellery found from the locker was not justified as locker did not belong to the assessee. He submitted that the assessee had given a detailed explanation regarding the jewellery but the AO did not make any effort to verify the same. Further, that the Ld. CIT(A) had dismissed the ground taken by the assessee in a very cryptic manner. Per contra, the ld. CIT-DR supported the orders of the lower authorities.

107. We have carefully considered the rival submissions. The AO has given the following finding in respect of the jewellery found from the locker and the explanation of the assessee in this regard:

> *"13.4 It is worth mentioning here that the assessee, Shn Bipinchandra Patel has admitted in his statement recorded u/s 132(4) of the Income Tax Act, 1961 on 11.01.2015 in reply to question No. 4 to 6 that all the Jewellery items found from this locker belongs to Sml Kusumben V. Patel and Late Shri Vinodbhai R. Patel However, no documentary evidence to support his daim was submitted by him at that time. Whereas, during the assessment proceedings, Smt Kusumben Patel has stated in her submission filed in this office on 18.09.2017 that the jewellery belong to Shri Bipin Patel and his family. However, Shri Bipinchandra Patel vide his submission filed in this office on 05.10.2017 has stated that the jewellery belongs to Smt. Kusumben Patel and her late husband Shri Vinod Patel and his name was kept as third holder for convenience. Surprisingly Shn Bipin Patel in his submission filed in this office on 10.10.2017 and 13.11.2017 has confirmed that the jewellery does not belong to Smt. Kusumben Patel and hesusband but it belongs to his late brother Shri Vinayak Patel. The submission of Shri Bipin Patel is summarized as under-*
>
> > *"The jewellery belong to the legal heirs of his late brother, Mr. Vinayak Patel, who passed away in 1995 and left behind a will wherein he was a executor. He filed for the probate before the city civil judge in Bangalore in 1996. In the meantime he had distributed all his jewellery among women of the family and jewellery of some of some of the women members of the family are lying with him which was kept in the said locker No.17*

somewhere in 1995-96. The said locker has not been operated since 1995-96. A certificate to this effect issued by the concerned bank i..e Makarpura Industrial Estate Co-Op. Bank Ltd. has been furnished wherein it stated that as per the records available with the bank for the last 10 years, the locker has not been operated within that period. It must have been operated before 10 years, the exact date of operation could not be provided in absence of the records beyond 10 years. Shri Bipin patel has kept the jewellery in the lockers of Smt Kusumben Patel because it was vacant at that time."

13.5 Due to frequent change in the explanations furnished by the assessee, Shri Bipinchandra Patel which is also not corroborative with his statement recorded during the search proceedings, the different versions of explanations submitted by Shri Bipin Patel is not reliable and thus rejected."

108. It is, thus, found that the assessee had not given any convincing explanation for the jewellery found from the locker. There were frequent changes in the explanation and no supporting evidence whatsoever was brought on record in respect of the ownership of the jewellery found from the locker. It is found that the Ld. CIT(A) has taken a holistic view of the entire jewellery found during the search and given a finding that the jewellery valued at Rs.1,13,86,888/- was unexplained. Since, the addition of Rs.10 Lakhs on account of unexplained jewellery was upheld in the hands of Shri Bipinbhai Patel, only remaining unexplained jewellery of Rs.1,03,86,888/- was considered for addition in the hands of Smt. Manjulaben Patel. We, therefore, do not find any reason to interfere with the order of the Ld. CIT(A). **The addition of Rs.10 Lakhs in respect of unexplained jewellery as upheld in the hands of the assessee is confirmed. The ground taken by the assessee in this regard is dismissed.**

109. One of the grounds taken in these appeals is substantive addition as well as protective addition made in the hands of Sri Bipinbhai P Patel and Smt. Manjulaben B Patel. As already mentioned earlier, Sri Bipinbhai P Patel had expired during the pendency of these appeals and Smt. Manjulaben B Patel has impleaded herself as legal heir of Sri Bipinbhai P Patel. As a result, the entire addition has now to be considered in the hands of Smt. Manjulaben B Patel as legal heir of Sri Bipinbhai P Patel only on substantive basis and there is no requirement for making any protective addition in her hand as Individual. Therefore, **the ground taken by the assessee as well as the Revenue in respect of substantive verses protective addition in the two hands, has become infructuous and is dismissed**.

110. The issue involved in all other appeals filed by the assessee as well as by the Revenue is identical to the issues as discussed in ITA No. 1894/Ahd/2019, ITA No. 31/Ahd/2020 with CO No. 54/Ahd/2019, IT(SS)A No. 569/Ahd/2019 & IT(SS)A No. 01/Ahd/2020 with CO NO. 47/Ahd/2020, which have been discussed in detail in this order. Therefore, the decisions as given in these appeals, as discussed above, will be applicable *mutatis mutandis* in all other appeals as well.

111. Before we close, we must place on record our sincere appreciation to the ld. Sr. Advocate Sh. Tushar Hemani & the ld. CIT-DR Dr. Darsi Suman Ratnam for their erudite presentation and in-depth analysis of the issues involved in this appeal, which has helped us immensely in disposal of these appeals.

112. The final outcome of these appeals is summarized in the table below:

Sl. No.	ITA No.	A.Y.	Appeal filed by	Outcome
1-2	ITA Nos. 1894 /Ahd/2019 & 1905/Ahd/ 2019	Both for 2000-01	Assessee	Dismissed
3-12	ITA Nos. 1895 to 1903/Ahd/2019 & 1904/Ahd/2019	2001-02 to 2009-10 & 2016-17	Assessee	Partly allowed for statistical purposes
13-18	IT(SS)A Nos. 569 to 574/Ahd/2019	2010-11 to 2015-16	Assessee	Partly allowed for statistical purposes
19-28	ITA Nos. 1906 to 1914/Ahd/2019	2001-02 to 2009-10	Assessee	Partly allowed for statistical purposes
29	ITA No.1915/Ahd/2019	2016-17	Assessee	Partly allowed
29-34	IT(SS)A Nos. 575 to 580/ Ahd/2019	2010-11 to 2015-16	Assessee	Partly allowed for statistical purposes
35-54	ITA Nos. 31 to 39 & 40/Ahd/2020 A/w. CO Nos. 54 to 61, 63 & 62/Ahd/2020	2000-01 to 2009-10 & 2016-17	Appeal by Revenue & CO by assessee	Dismissed
55-66	IT(SS)A Nos. 01 to 06/Ahd/2020 A/w. CO Nos. 47, 49, 50, 52, 51 & 53/Ahd/2020	2010-11 to 2015-16	Appeal by Revenue & CO by assessee	Dismissed
67-76	ITA Nos. 41 to 49/ Ahd/2020 & 50/Ahd/ 2020	2000-01 to 2009-10 & 2016-17	Revenue	Dismissed
77-82	IT(SS)A Nos. 07 to 12/Ahd/2020	2010-11 to 2015-16	Revenue	Dismissed

This Order is pronounced in the open court on 10/09/2024

Sd/- **Sd/-**
(SUCHITRA KAMBLE) (NARENDRA PRASAD SINHA)
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/09/2024
S. K. SINHA *True Copy*
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad