

आयकरअपीलीयअधिकरण, चण्डीगढ़ न्यायपीठ "B", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकरअपीलसं. / ITA NO. 1353/Chd/2018  
निर्धारणवर्ष / Assessment Year : 2013-14

The ITO Ward-1(3), Chandigarh	बनाम	Smt. Renu Anand, SCO 151-152, Sector-8 Chandigarh
स्थायीलेखासं. / PAN NO: AASPA1140M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे / Assessee by : Shri Samir Mahajan, CA and  
Shri Surinder Mahajan, CA

राजस्वकीओरसे / Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाईकीतारीख / Date of Hearing : 15/10/2024

उदघोषणाकीतारीख / Date of Pronouncement : 12/12/2024

### आदेश / Order

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by the **Revenue** under section 253 of the Income Tax Act, 1961 (which is hereinafter referred to as Act). **The Revenue is aggrieved** by the order dt. 29/08/2018 passed by the Commissioner of Income Tax (Appeals) in First Appeal No. 10316/16-17 which is hereinafter referred to as the "**impugned order**". The relevant assessment year is 2013-14 and the corresponding previous year period is From 01/04/2012 to 31/03/2013.

#### **Factual Matrix**

2. The return of income declaring income of **Rs. 10,85,000/-** was filed by the assessee on 28/09/2013 which was processed as such.

3. That the case was selected **through CASS** for the **limited scrutiny** to **examine the large investment in property as compared to total income declared by the assessee in her return of income**. Accordingly, notices under section 143(2) was issued on 02/09/2014 by the Dy. CIT Circle1(1) Chandigarh

and served upon the assessee on 08/09/2014. Thereafter the case record was transferred to ITO Ward1(3) which was received on 26/05/2015. That further proceedings were taken up by issuing notice u/s 142(1) alongwith questionnaire on 11/06/2015 followed by on 30/07/2015.

4. That the assessee **derives income from salary from M/s Rahul Sales Ltd. Chandigarh.**

5. That during the year the assessee made **investment in purchase of property i.e; House No. A-16, Mayfair Garden, New Delhi of Rs. 20 Crores plus Stamp Duty.**

6. That the assessee was required to explain the **source of making investment of the transaction amount of Rs. 20 Crores plus stamp duty in joint name with Shri Onkar Anand (Husband of the Assessee) who expired on 21/03/2014 of Rs. 21 Crores.**

7. That the explanation of the "**sources**" was as under:

S. N.	Particulars	Amount (in Rs.)	Source of Payment
1.	Payment Mode		
2.	Thru Indusind Bank A/c No. 100001449713 in the joint name of Shri Onkar Anand and Mrs Renu Anand on 28.06.2012 vide RTGS under UTR No. INDBH12180300100.(purchase consideration)	5,00,000/-	Unsecured Loan from Rahul Sales Ltd.- Indusind Bank A/c- 004186650060. PAN:AADCR4815N
	Thru Indusind Bank A/c No. 100001449713 in the joint name of Shri Onkar Anand and Mrs Renu Anand on 23.07.2012 vide RTGS under UTR No.INDBH12205300605 (purchase consideration)	1,95,00,000/-	Unsecured Loan from Mr. Gagan Suri- Insusind Bank A/c- 0014B15750001 PAN:ALDPS3238A
3.	Thru Indusind Bank A/c No.100001449713 in the joint name of Shri Onkar Anand and Mrs Renu Anand on 12.12.2012. (stamp duty)	1,00,00,000/-	Unsecured Loan from Rahul Sales Ltd. Indusind Bank a/c- 004186650060. PAN:AADCR4815N
4	Thru Indusind Bank A/c No.100001449713	75,00,000/-	Unsecured Loan from

	in the joint name of Shri Onkar Anand and Mrs Renu Anand on 13.12.2012 vide DD No.412043. (purchases consideration)		Rahul Sales Ltd- Indusind Bank <b>A/c-</b> 004186650060. PAN:AADCR4815N
5.	Vide DD.895929 dated 31.10.2012 issued by PNB Housing Finance Ltd as per Loan sanction dated 21.08.2012. (purchase consideration)	17,25,00,000/-	Financing by PNB Housing Finance Ltd.
	Total	21,00,00,000/-	

8. That the assessee has stated that amount of Rs. 1.95 Crores was remitted through RTGS to the seller on 23/07/2012 from Indusind Bank by raising **unsecured loan from Mr. Gagan Suri Which was repaid in March 2013.** That the **loaner Mr. Gagan Suri** has filed confirmation that he has **paid short term loan of Rs. 7,12,50,000/-** from his Indusind Bank Account to Mr. Onkar Anand, husband of the assessee on 18/07/2012. That in order to verify the unsecured loan given by loaner **Shri Gagan Suri was examined on 15/02/2016.** That during the course of the examination, the loaner was specifically **asked to furnish the source of the availability of funds with him. It was stated by him that he has received the funding from NSEL** and was not able to **produce any documentary evidence.** That however on **22/06/2016** the copy of the **current account of loaner** and that of his **proprietorship concern M/s Yathuri Associates** and NSEL Settlement account of M/s Yathuri Associates were filed but loaner Shri **Gagan Suri did not attend the office of Ld. AO.**

9. That the Counsel of the assessee on **22/02/2016** however admitted that the **loaner Shri Gagan Suri has not filed Income Tax Return** and **not got his accounts audited from any practicing CA** and also stated that his books of accounts are not available as the same are in the **custody of the investigation agency.**

10. That in view of the above factual facts, in order to verify the case in details, the necessary approval was sought by the Ld. AO from PCIT-1, Chandigarh to **convert the case under limitedscrutiny to the comprehensive scrutiny which was duly accorded on 03/03/2016.**

11. The Ld. AO vide letter dt. 15/03/2016 called upon the assessee to **show cause why the amount of Rs. 7,12,50,000/-** claimed to have been received from **Shri Gagan Suri** be not treated as **undisclosed income of the assessee as no credit worthiness to receive the amount as advance (short term loan) have been proved.** The relevant contents of the letter is reproduced as hereunder:

**"During the assessment proceedings it is noted that you have claimed to receive unsecured loan amounting to Rs.7,12,50,000/- from Sh. Gagan Suri. Bank account of the loaner has been examined and it is noticed that there are entries of credit and debit of small amounts only. It is also relevant that whenever there is credit entry, the almost same amount is debited on the same day or the next day leaving nominal closing balance only. Also the entry of unsecured loan amounting to Rs. 7,12,50,000/- stated to be given by the loaner was credited in your account on 18.07.2012 and the proceeds stands transferred to your account on the same day. Similarly the same amount received back by the loaner from the transfer proceeds out of the your joint account with late Sh. Onkar Anand on 01.03.2013 and 2.03.2013 resulting in the squared up of account during the year itself with the same amount. To verify the unsecured loan given by loaner, Sh. Gagan Suri was examined on 15.02.2016. During the course of examination, the loaner was specifically asked to furnish the source of availability of funds with him. It has been stated by him that he has received the funding from NSEL and not able to produce any documentary evidence as of now and request for grant of time till 19.02.2016. Thereafter on 22.02.2016 copy of current account of loaner and his proprietorship concern M/s Yathuri Associates and NSEL settlement account of M/s Yathuri Associates were filed but loaner Sh. Gagan Suri did not attend the office. It has been found that the loaner has not filed income tax return and not got his accounts audited from any practicing CA. He also stated that his books of accounts are not available as the same are in the custody of investigation agencies. In the absence of any income tax return, audit report and books of accounts, the credit worthiness of the loaner is not established. Furthermore the loaner Sh. Gagan Suri has stated that prior to financial 2012-13 he was engaged in the business of manufacturing of carry bags and he discontinued that business about the closing of the year 2011 as he suffered losses and thereafter shifted to the business of trading of sugar. Further he submitted that during the financial 2012-13 relevant to A. Y 2013-14 tentative turnover was about 10-12 Cr. from trading of Sugar. In view of all these facts, it can be safely inferred that the loaner Sh. Gagan Suri from whom unsecured loan of Rs.7,12,50,000/-claimed to have been received, had**

no credit worthiness to advance such huge amount and is proposed to be assessed as your undisclosed income. Photocopy of statement of Sh. Gagan Suri is enclosed.

In response to the letter, the assessee filed the reply as hereunder: -

"Reference to your letter F.No.ITO/W-I(3)/CHD/2015-16 dated 15.3.2016 received on 16.03.2015 requiring in person to appear before your good self on 18.03.2016 with relevant to the captioned cited subject. In this regard, we hereby submit as under:

1. Confirmation letter dated 19.01.2016 by Mr.Gagan Suri of having paid short term unsecured loan of Rs. 7,12,50,000/- from his Indusind Bank A/c No 0014B15750001 to Mr.Onkar Anand on 18.7.2012 has already been submitted to you along with the relevant bank statement.

2. Bank account statement of M/s Yathuri Associates prop. Gagan Suri opened in HDFC bank as NSEL Settlement account bearing Account No.00990680025086 showing the receipt of funds amounting to Rs.9,67,05,000/ on 17.7.2012 has already been submitted to you as a valid source. Out of above amount, a sum of Rs 9,31,38,527/-was transferred in the firms CA No.01070340001167 on 18.7.2012 from which a sum of Rs 7,12,50,000/-was subsequently transferred in his personal account bearing No. 100001540397 and then finally transferred in the account of assessee.

3. Mr. Gagan Suri prop. Yathuri Associates is a member of National Spot Exchange Ltd for trading in various commodities on the exchange as stated by him in his statement with the department. We are enclosing herewith his application form dated 7.5.2012 as a member of NSEL which has been downloaded from NSEL website being a valid proof of his association as a member with NSEL.

4. Mr. Gagan Suri Prop Yathuri Associates has been dealing with sale & purchase of sugar commodity with the exchange as a member of the exchange and has registered a gross turnover of Rs 93,93,38,675/- which comprises of trade sale and commodity trade sale at the exchange. A copy of unaudited Balance Sheet and Profit & Loss account of Yathuri Associates for the period ended 31<sup>st</sup> March.2013 showing the sale/purchase/expense and also the liability in his books amounting to Rs 293,06,51,567/-towards NSEL is enclosed herewith for your kind satisfaction and record.

5. Yathuri Associates prop Gagan Suri bank account opened as NSEL Settlement Account with the bank for receiving/paying trade amount on account of sugar trades with NSEL in FY 2012-13 shows monthly receipt and payment as under:

Summations of Yathuri Associates A/c No. 00990630025086 (NSEL SETTLEMENT ACCOUNT)

Month	Debit	Credit
June2012	1932,25,418.86	19,41,41000.00
July, 2012	144,10,26,250.57	145,95,16,558.32
August 2012	213,67,08,047.66	213,83,30,990.77
September2012	154,25,72,448.12	157,91,01,140.00

October 2012	156,10,47,514.17	162,03,73,390.00
November 2012	146,69,98,468.18	144,24,45,520.00
December 2012	183,64,50,218.02	183,72,07,960.00
January 2013	239,57,64,283.26	236,42,34,831.11
February 2013	393,99,30,693.80	409,90,00,920.00
March 2013	377,67,51,524.14	355,94,69,210.00

The yearly summations in the above account for various trades with the exchange is more than Rs 2000 Crore the bank statement for the whole year is annexed herewith for your kind satisfaction and record.

Summations of Yathuri Associates A/c No. 01070340001167(Current Account)

Month	Debit	Credit
May 2012	7,50,000.00	7,60,000.00
June 2012	15,69,49,056.18	17,45,25,000.00
July, 2012	129,94,22,702.30	128,36,92,324.00
August 2012	69,48,14,168.54	87,00,65,774.95
September 2012	21,68,00,252.81	5,84,50,000.00
October 2012	26,22,00,112.36	24,62,00,000.00
November 2012	27,66,50,028.09	27,42,00,000.00
December 2012	37,65,42,968.54	38,52,00,028.09
January 2013	41,89,00,000.00	40,99,40,000.00
February 2013	162,40,50,224.72	166,83,15000.00
March 2013	211,23,66,840.45	223,37,000.00

There are voluminous transactions in the firm account being transferred to/from the firms above settlement account. The bank statement for the whole year is annexed herewith for your kind satisfaction and record.

6. It is correct whatever he has stated in his statement with the department. He became member of the exchange on 7.5.2012 as per the application form submitted by him with exchange, a copy of which is enclosed herewith for your record. He has stated that his tentative turnover on account of sugar trade was Rs 10-12 Crore in FY2012-13 which excludes his turnover with the exchange. The receipt and payment of funds from NSEL in the NSEL settlement account is sufficient to prove his credit worthiness being a member of the exchange.

7. Merely non filing of income tax return and unable to get the accounts audited does not mean that he has unexplained source of income and liable to be taxed in the hands of assessee Mrs. Renu Anand, being recipient of unsecured loan from Mr Gagan Suri. The documents enclosed herewith are self explanatory in nature and shows valid source of payment hence is not liable to be taxed in **hands of assessee under section 68 of the Income Tax Act.**"

12. The Ld. AO in his assessment order dt. 29/03/2016 has observed as under:

**The reply filed by the assessee has been considered. It is relevant to mention here that in order to verify the transaction does not fall within the preview of section 68, the following conditions have to be satisfied:-**

1. **The Identify of the Creditor**
2. **The capacity of the creditor to advance money**
3. **Genuineness of transaction.**

**The assessee has tried to explain the creditworthiness of the creditor/loaner Sh. Gagan Suri, proprietor of M/s Yathuri Associates** from whom the unsecured loan of Rs.7,12,50,000/- have been received during the year. Reply of the assessee is **not acceptable** in view of the following observations:

(1) During the course of examination, the loaner was specifically asked to furnish the source of availability of funds with him. **It has been stated by him that he has received the funding from NSEL and not able to produce any documentary evidence as of now and request for grant of time till 19.02.2016. - Thereafter on 22.02.2016 copy of current account of loanee and his proprietorship concern M/s Yathuri Associates and NSEL settlement account of M/s Yathuri Associates were filed but loanee Sh. Gagan Suri did not attend the office. The counsel of assessee on 22.02.2016 has admitted that the loaner has not filed income tax return and not got his accounts audited from any practicing CA and also stated that his books of accounts are not available as the same are in the custody of investigation agencies. In the absence of any income tax return, audit report and books of accounts, the credit worthiness of the loaner is not established.**

(2) The assessee has now furnished the **copy of unaudited balance sheet of the loaner as on 31.03.2013.** During the course of examination the loaner has stated that his, books of accounts are not available with him. **It is now not understandable as to how the so called unaudited balance sheet has been prepared. Moreover, unaudited balance sheet has no value in the eyes of law as the loaner was required to get his accounts audited since the turnover exceeds the prescribed limited for getting the accounts audited u/s 44AB of the IT. Act. Hence the creditworthiness of the loaner is not established by any stretch of imagination.**

(3) The loaner Sh. Gagan Suri during the course of recording of his statement has stated that **prior to financial 2012-13** he was engaged in the business of manufacturing of **carry bags and he discontinued that business about the closing of the year 2011 as he suffered losses** and thereafter shifted to the business of trading of sugar. Further he submitted that during the financial 2012-13 relevant to A.Y 2013-14 tentative turnover was about 10-12 Cr. from trading of Sugar. As per record the loaner has filed the income tax return for the **A.Y. 2012-13 declaring total income of Rs.3,47,330/-, Rs.2,69,650/- in the A.Y. 2011-12, Rs.2,69,000/- in the A.Y. 2010-11 and Rs.4,72,440/- in the A.Y. 2009-10. Furthermore the capital of the loaner is shown at Rs. 14,47,304/-- only as on 31.03.2012 as per ITR for the A.Y. 2012-13. Thereafter, the loaner has not filed the Income tax return for the A.Y. 2013-14 and onwards. This all gives the conclusion that the loaner has no creditworthiness of advancing such a huge amount of Rs.7,12,50,000/- in legitimate way.**

(4) The loaner has been shown as having **huge liability towards National Spot Exchange Limited.** It is gathered that the loaner Sh. Gagan Suri, proprietor of M/s Yathuri Associates **is defaulter of National Spot Exchange Limited** of the amount of **Rs.264.96 crores** as mentioned in the official website of **National Spot Exchange Limited** vide order dated 18.12.2014. It seems that **the loaner is only an accommodation entry provider and he has provided the entry to the assessee only as he has no real creditworthiness on its own to provide the huge loan.**

13. The Ld. AO basis above has held as under in his assessment order dated 29/03/2016

In view of the above, out of Rs.7,12,50,000/-, a sum of Rs.1,95,00,000/- which has been claimed to be invested in purchase of property is treated as unexplained investment in the hands of the assessee and treated as deemed income from undisclosed sources under the provisions of section 69 of the IT. Act. **The balance amount of Rs.5,17,50,000/- is unexplained** money in the hands of the assessee and is treated as deemed income of the assessee from undisclosed sources by invoking the **provisions of section 69A of the IT. Act.** I am also satisfied that the assessee has concealed her income and furnished inaccurate particulars of income amounting to Rs.7,12,50,000/- for which penalty proceedings u/s 271 (l) (c) is initiated.

5. in view of the above the total income of the assessee is computed as under:-

1	Returned income	10,85,000/-
2	<b>Additions as discussed above</b>	<b>7,12,50,000/-</b>
3	Assessed Income	7,23,35,000/-
4	Income on which tax to charged in terms of section 115BBE of the income tax act by giving the treatment to the additions of Rs.1,95,00,000/- and Rs.5,17,50,000/-	7,12,50,000/-

14. The Ld. AO in his assessment order dt. 29/03/2016 on page 11 has held and observed as **office note** the following:

***The information is being passed on to the assessing officer, ITO, Ward 3(5), Chandigarh of Mr.Gagan Suri having PAN: ALDPS3238A with regard to his claim of advancing the amount of Rs.7,12,50,000/- during F.Y. 2012-13 relevant to A.Y. 201314 to my assessee for further necessary action as the aforesaid person has not filed the Income tax return for the A.Y. 2013-14 and onwards.***

15. That the Assessee being aggrieved by the assessment order dt. 29/03/2016 prefers **first appeal before the Ld. CIT(A)** who by **the impugned order** has **allowed the appeal of the assessee.** Some of his observations are reproduced below:

5.3 I have perused the assessment order and examined the reply of the assessee. The appellant along with her late husband **Sh. Onkar Anand purchased a property in Hauz Khas, New Delhi for Rs. 20 crores.** The payment for the purchase was made from saving bank account with Indusind Bank which was in the joint name of Late Sh. Onkar Anand and the appellant. The Assessing Officer verified the sources of these payments and came to the conclusion **that a single entry of Rs. 7,12,50,000/- was made from unexplained sources** and added it to the income of the appellant u/s 69 and 69A of the Act. **The impugned amount was received from the brother of the appellant Sh. Gagan Suri. Sh. Gagan Suri is proprietor of Yathuri Associates** which is member of **National Spot Exchange Ltd. (NSEL).** The payment was made from his bank account on **18.07.2012.** The Assessing Officer examined Sh. Gagan Suri who admitted that he had paid this amount and **tried to explain the**

source. He explained that a sum of Rs. 9,31,38,527/- was transferred to his account from the current account in HDFC from his proprietary firm Yathuri Associates which in turn received Rs. 9,69,05,000/- on 17.07.2012 as a result of settlement with that NSEL. He further submitted that his firm Yathuri Associates had an annual turnover of Rs. 93.93 crores during the year and submitted copies of balance sheet and profit & loss account to the Assessing Officer. He however had not filed return for that particular year. The Assessing Officer did not find that Sh. Gagan Suri creditworthiness was proved because **he had not filed his returns for the year, did not produce his books** stating them to be in custody of investigating agencies and did **not get his books audited**. The Assessing Officer further observed that Sh. Gagan Suri has shown **his own capital at Rs. 14,47,304/- in his Income Tax Return** for the year ending 31.03.2012 (A.Y. 2012-13) **which proves that he was man of no means**. Sh. Gagan Suri had **a huge outstanding liability totaling to Rs. 264.96 crores** to be paid to NSEL as per their official website. The Assessing Officer came to the conclusion that **Sh. Gagan Suri's creditworthiness is not proved** and he was **only entry provider**.

5.3.1 The arguments of the appellant were that since the property was purchased by Late Sh. Onkar Anand (husband of the appellant) from his own sources and the name of appellant was added for social security purposes and that in case of a joint account, funds are presumed to belong to first holder or **equally to both parties** and not exclusively to second holder, therefore the impugned amount could not be treated as income of the appellant. Further, the Ld. AR submitted, that without prejudice to the argument above the case was not covered u/s 69/69A but came under the purview of section 68 of the Act. The appellant argued that from the facts of the case, it is clear that all the requirements with respect to section 68 have been fulfilled.

5.3.2 In my opinion since the appellant is a joint holder of the bank account along with her husband the entire sum received in the account cannot be treated as her unaccounted income. Further, I am of the view that the addition cannot be made under section 69/ 69A of the Act. Since there is a sum credited in the accounts of the appellant, section 68 would come in force. The relevant provisions of section 68 are reproduced below for ready reference:-

"Cash credits.

*68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:"*

As per the requirement of section 68, the appellant is required to provide explanation regarding the nature and source of the amount received. Sh. Gagan Suri has admitted before the Assessing Officer that money was paid to the appellant and the same was given by means of RTGS from his bank account. The transaction is through the banking channels. As regards the source of funds, it is seen that Sh. Gagan Suri had sufficient funds in his bank account on the day on which the transaction took place. He had received the money from his proprietor concern which in turn had received money through the NSEL and all the transactions were made through bank. The Assessing Officer has not been able to prove that the money that Sh. Suri gave to the appellant belongs to her. Even if for a moment it is assumed that Sh. Gagan Suri was man of no means, it does not help the case of the revenue as the source of money cannot be traced back to the appellant. Therefore,

as far as the nature and source of funds is concerned, the same stands proved and no adverse view can be taken against the appellant with respect to these transactions.

6. In the result, the appeal is allowed.

16. The **Revenue** being aggrieved by the "impugned order " has preferred an appeal before us and has raised following grounds in Form No. 36 which is form of appeal to this Tribunal:

*1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*

**2. It is prayed that the order of the Ld. CIT(A) be cancelled and that of the assessing officer may be restored.**

*3. Whether in the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition amounting to Rs.7,12,50,000/- made u/s 69 of the Act, holding that the addition was to be made u/s 68 of the Act, when the amount was found credited in the bank account of the assessee and she was not maintaining books of accounts.*

*4. Whether in the facts & circumstances of the case Ld. CIT(A) has erred in deleting the addition of Rs. 7,12,00,000/- made u/s 69 of the Act holding that the amount was received through banking channel, **when the assessee could not prove the creditworthiness of the creditor.***

*5. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.*

17. **Record of hearing**

17.1 The hearing in the matter took place on 15/10/2024 when the Revenue was represented by Ld. DR and the assessee was represented by Ld. AR.

17.2 The Ld. Dr for and on behalf of the **Revenue** has **fully supported the aforesaid assessment order of Ld. AO dated 29/03/2016** were in correct **addition of Rs. 7,12,50,000/- has been made.**

The Ld. DR contended that aforesaid amount of Rs. 7,12,50,000/- was advanced to **her husband's and her account (joint) account** as and by way

of short term loan from Gagan Suri. The amount came from his Indusind Bank to Mr. Onkar Anand the husband of the assessee on 18/07/2012.

Shri Gagan Suri was examined on 15/02/2016. During the course of examination, the loaner Shri Gagan Suri was specifically asked to furnish the source of availability of funds with him. It was stated by him that he had received funding from NSEL(National Spot Exchange Limited). **However no documentary evidence at that time was produced by him in support thereof** and time was sought till 19/02/2016. On 22/06/2016 copy of current account of loaner Shri Gagan Suri and his proprietary concern M/s Yathuri Associates and NSEL Settlement account of M/s Yathuri Associates were filed but loaner **Shri Gagan Suri did not attend the office. That the counsel of the assessee on 22/02/2016 has admitted that the loaner Gagan Suri has not filed Income Tax Return and also has not got his accounts audited from any practicing CA** and also stated that his books of accounts are not available as the same are in the custody of **the investigation agency**. Thereafter by letter dt. 15/03/2016 the assessee was called upon to show cause why the amount of Rs. 7,12,50,000/- which is claimed to have been received from Gagan Suri be not treated as undisclosed income of the assessee as no credit worthiness to receive the amount as advance / short term loan has been proved. The salient features of said letter briefly can be summed up as under:

(1) During the assessment proceedings it is noticed that assessee have claimed to have received unsecured loan amounting to Rs. 7,12,50,000/- from Shri Gagan Suri.

(2) The bank account of the loaner Shri Gagan Suri has been examined and it is noticed therein that there are entries of credit and debit of small amounts only.

(3) It is also relevant that whenever there is credit entry, the almost same amount is debited on the same day or the next day leaving nominal closing balance only in the account.

(4) Also the entry of unsecured loan amounting to Rs. 7,12,50,000/- stated to be given by the loaner was credited in the account of assessee on 18/07/2012 and that proceeds transferred to assessee's account on same day. Similarly the same amount was received back by the loaner Gagan Suri as and by way of transfer proceeds out of assessee account with late Shri Onkar Anand on 01/03/2013 and 02/03/2013 which resulted in square up of account during the year itself with same amount.

(5) That during the course of examination the loaner Gagan Suri was examined on 15/02/2016 and that during the course of examination, the loaner Shri Gagan Suri was specifically asked to furnish the source of availability of funds with him. It was stated by him that **he had received the funding from NSEL.**

(6) On 22/02/2006 copy of current account of loaner Shri Gagan Suri and his proprietary concern M/s Yathuri Associates and NSEL Settlement account of M/s Yathuri Associates were filed but loaner Shri Gagan Suri did not attend the office. It was found that loaner Gagan Suri had not filed income tax return and has not got his accounts audited from any practising CA. His books of accounts are with investigating agencies. Hence in the absence of any income tax return, audit reports and books of accounts, the credit

worthiness of loaner Shri Gagan Singh is not established, further Gagan Suri the loaner has stated that prior to financial year 2012-13, he was engaged in the business of manufacturing of carry bags and that he discontinued that business about the closing of the year 2011 as he suffered losses and thereafter shifted to the business of trading of sugar. Further he submitted that during the F.Y. 2012-13 relevant to A.Y. 2013-14 the tentative turnover was about 10-12 crores from trading of sugar.

(7) It was averred therein the letter that basis above facts, it can be safely inferred that the loaner Shri Gagan Suri from whom unsecured loan of Rs. 7,12,50,000/- claimed to have been received, **had no credit worthiness to advance such huge amount** and therefore it is proposed to be assessed as assessee's undisclosed income. Photocopy of the statement of Shri Gagan Suri was enclosed with the letter dt. 15/03/2016.

17.3 Per contra the assessee defence / reply to above letter dt. 15/03/2016 can be briefly summarised as follows:

(1) Confirmation letter of Shri Gagan Suri dt. 19/01/2016 evidencing payment of short term unsecured loan of Rs. 7,12,50,000/- is on record of Ld. AO.

(2) Bank account statement of **M/s Yathuri Associates Proprietor Gangasuri in HDFC as NSEL settlement account bearing** no. 00990680025086 showing the receipt of funds amounting to Rs. 9,67,05,000/- on 17/07/2012 already on record as a valid source. Out of the above amount a sum of Rs. 9,31,38,527/- was transferred in the **firm's C A No.** 010703400001167 on 18/07/2012 from which a sum of Rs. 7,12,50,000/- was subsequently transferred

in **Gagan Suri personal account bearing no. 10001540397** and then **finally transferred in the account of the assessee.**

- (3) Gagan Suri is a member of NSEL.
- (4) **Unaudited balance sheet** of M/s Yathuri Associates evidencing turnover of Rs. 93,93,38,675/- (sale and purchase of sugar) for year end 31/03/2013 and liability of Rs. 293,06,51,567/- towards NSEI relied upon.
- (5) Summation of M/s Yathuri Associates Account No. 00990630025086 (NSEL) settlement account) and summation of M/s Yathuri Associates account no. 01070340001167 CCA) given.
- (6) **Tentative turnover** on sugar of Shri Gagan Suri is Rs. 10-12 crores for F.Y 2012-13 excluding his turnover in exchange proof enough to establish his credit worthiness.
- (7) Mere non filing of ROI, unable to get accounts audited does not mean that Gagan Suri has unexplained source of income and liable to be taxed in the hands of assessee Mrs. Renu Anand being recipient of unsecured loan from Gagan Suri. Documents are self explanatory in nature and shows valid source of payments hence not liable to be taxed in the hands of the assessee u/s 68 of the Act.

17.4 It was then contended by Ld. DR on above factual narration which are all incorporated in the Ld AO's order dt. 29/03/2016 under section 143(3) that the Ld. AO has tested above parameters vis a vis three important ingredients under section 68 of the Act which are (1) identity of the creditor (2) the capacity of the creditor to advance money (3) genuineness of transaction. The Ld. AO has rightly held that explanation offered that Gagan Suri has

**received funding from NSEL is not proved by any evidence whatsoever.** No ITR is on record of Shri Gagan Suri. **No audited balance sheet is on record of Shri Gagan Suri despite voluminous assertion about huge volume of both sugar trading and trading on NSEL.**Hence creditworthiness not proved at all. Further against assertion of tentative turnover of 10-12 Crores in sugar during F.Y. 2012-13, A.Y. 2013-14 the loaner Gagan Suri ITR for **A.Y. 2012-13 declares total income of Rs. 3,47,330/-, Rs. 2,69,650/-in A.Y 2011-12, Rs. 2,69,000/-in A.Y. 2010-11 and Rs. 4,72,440/- in A.Y 2009-10. No ITR for A.Y 2013-14 and onwards** loaner Shri Gagan Suri,**lacks credit worthiness** to advance loan of **Rs. 7,12,50,000/- in legitimate way(good money)**. Loaner has huge liability towards NSEL. He is defaulter of NSEL to the tune of **Rs. 264.96 crores**. He is an entry provider and has no creditworthiness. Hence addition of Rs. 7,12,50,000/- rightly made by Ld. AO and **his order should be restored.**

17.5 The Ld. DR then contended that the impugned order of Ld. CIT(A) is **totally illegal, not proper** and is **bad in law**. It ought to be set aside by this Tribunal as Ld. CIT(A) has miserably **failed to appreciate the bare minimum facts of the present case which are gross perse**. There is **total non consideration of material facts (supra) by the Ld. CIT(A)in his impugned order**. The Ld. CIT(A) has allowed the appeal of the assessee without appreciating the core and hard facts of the case. **There is no denial by the assessee that she never received the short term loan from Shri Gagan Suri**. She has miserably failed to **establish source of** the original source of money / short term loan as good money. She has failed to **establish credit worthiness** of the loaner by any **material document all by herself**. During the course of the

assessment proceedings she **presents her brother as a source for** huge sum of Rs. 7,12,50,000/-. **Upon query made to the brother** Gagan Suri he too miserably fails to establish **his own credit worthiness** at the outset and threshold itself of assessment proceedings a little later he **turns around and disappear** from **scence of the assessment proceedings. Here records of the case speaks about his conduct.** Be that **as it may AR too who represents him/them further fails to establish credit worthiness of Shri Gagan Suri** basis legal documents **like duly audited balance sheet of his and his concerns. ITR's speaks that he is** a person of no **means** or less means having **genuine** and **bonafide capacity** to lend money / loan worth Rs. 7,12,50,000/- **basis genuine** and **legal documents. Huge turnover** of his be in sugar trading or commodity trading is not established on **basis of any documents whatsoever. Mere assertion of turnover in crores without any supporting is not sufficient** compliance of law **on credit worthiness of a person.** The Ld. CIT(A) has not correctly appreciated bare facts of the case which are all recorded in the order of Ld. AO dt. 29/03/2016 which **were not effectively rebutted in appeal before CIT(A).** The Ld. DR effectively submitted that chain of transaction as it relates backward from date of receipt of **loan are gross leaving source** and source of sources unexplained / unexplainable even though funds have come from normal banking channel. Merely because funds / loan amount has come from banking channel that ipsofacto cannot lend to a inference that source of money is adequately explained. The entire transaction of loan is **sham and make believe arrangement solely with** a view to evade tax **deliberately an approach wholly untenable in law on basis of facts found by Department of Income Tax.**

17.6 Per contra the Ld. AR of the assessee has supported the impugned order of Ld. CIT(A). They have placed on record of this Tribunal a paper book dt. 05/08/2021 containing pages 1 to 159 under different captions in index to paper book. We have perused the same, very minutely. They have also placed on record another paper book dated 14/10/2024 from pages 1 to 101 wherein copy of assessment order for A.Y 2013-14 of Gagan Suri and papers related to further appeal to CIT(A) are enclosed. We have perused the same carefully. They have placed on record compilation of judgement from page 1 to 51 (not recited at Bar).

17.7 The Ld. DR vide letter dt. 14/10/2024 has brought to the notice of this Tribunal following:

F.No. CIT{DR-I}/ITAT/CHD/2024-25/478 Dated: 14.10.2024

To,

The Assistant Registrar  
ITAT, Sector-9,  
Chandigarh

Madam,

Sub: - Appeal before Hon'ble ITAT vide ITA No. 1353/Chd/2() 18 in the ease of Smt. Renu Anand, A.Y. 2013-14 (PAN- AASPA1140M) -Reg.

Kindly refer to the above cited subject.

2. In this context, it is submitted that this office has requested a report from the jurisdictional Assessing Officer regarding Sh. Gagan Suri (PAN-ALDPS3238A) from whom the assessee has taken loan for Rs. 7,12,50,000/. In the report certain issues like whether Sh. Gagan Suri was filing the Income Tax Return for A.Y. 2012-13, 2013-14 and 2014-15. In the response the Assessing Officer has submitted his report according to that Sh. Gagan Suri (PAN-ALDPS3238A) has filed his ITR for A.Y. 2012-13, 2013-14 and 2014-15 and filed appeals before the CIT(A) for the A.Y. 2013-14 and 2014-15. The Jurisdiction Assessing Officer has also submitted **a dossier report in the case of Sh. Gagan Suri (PAN-ALDPS3238A)** which is given as below: -

**A total demand of Rs 309.89 Crore is outstanding for A.Y. 2013-14 and AY 2014-15 in this case. The assessee is in appeal before CIT (A).**

**i) All notices served upon the assessee are being returned un-served. Moreover, the assessee has not filed any latest return. The last returns filed by assessee pertain to AY 2013-14 and AY 2014-15.**

ii) A letter was written to EOW, Mumbai Police on 22.11.2023. As per information received the assessee is in judicial custody of Hon'ble Session Court, Court Room No 52 City Civil and session Court Mumbai in NSEL Case Cr. No. 89/2013.

(iii) Letter dated 21.11.2023 was written to Director of Income Tax (Recovery) to gather any actionable intelligence. The reply is still awaited.

The Inspector was deputed to make enquiries of the assets so as to make recovery of the demand. As per Inspector report, **no such asset could be located on making enquiries.** This office is looking at **other sources of intelligence and taking steps for recovery.**

17.8 The Ld. AR basis paper book dt. 18/06/2019, 05/08/2021 and 14/10/2024 has additionally submitted as under during the course of hearing.

1. That the Shri Gagan Suri the brother of the assessee has remitted sum of Rs. 7,12,50,000/- to her and her husband on 18/07/2012 from his Indusind Bank Account.

2. That the aforesaid amount stands repaid to Shri Gagan Suri in March 2013 i.e; in the year under consideration itself. (Page 103 of paper book Indusind Bank A/ c No. 100001540397 – Gagan Suri Personal Account)

**3. The flow of fund is as under:**

(i) Bank account statement of M/s Yathuri Associates proprietor Gagan Suri in HDFC as NSEL Settlement Account No. 00990680025086 showing receipt of funds amounting to Rs. 9,67,05,000/- on 17/07/2012. (Page 112 of paper book HDFC- Yathuri Associates- NSEL settlement account)

(ii) Out of above amount a sum of Rs. 9,31,38,527/- was transferred to the firm's CA account no. 010703400001167 on 18/07/2012 (page 140 of paper book)(credit)(HDFC Bank)

(iii) Out of above amount at (ii) above sum of Rs. 7,12,50,000/- was transferred [page 140 of paper book (debit (HDFC Bank))] to Gagan Suri persona account no. 100001540397 page 100 of paper book (Indusind Bank).

(iv) The above amount at (iii) above were then transferred to Assessee's joint account with her husband [(page 29 of paper book)(Indusind Bank Saving Bank Account No. 100001449713) of assessee (joint)]

17.9 The Ld. AR of the assessee in addition to above financial flow of Rs. 7,12,50,000/- has placed on record of this Tribunal vide paper book dt. 14/10/2024 status of assessments framed and appeal filed in the case of Gaga Suri brother of the assessee which are as under:

- (i) Copy of assessment order for A.Y 2013-14
- (ii) Copy of order of CIT(A) for A.Y. 2013-14 wherein delay in filing the appeal was not condoned.
- (iii) Copy of Hon'ble ITAT Chandigarh Bench order wherein delay was condoned and matter remitted back to CIT(A).
- (iv) Copy of assessment order for A.Y. 2014-15.
- (v) Copy of appeal before CIT(A) (For 35) which is pending.

## 18. **Observation & Findings and Conclusions**

18.1 We now have to adjudge and adjudicate this second appeal basis premises laid down by us (supra). We have to decide the legality validity and propriety of the impugned order which is challenged before us by **Revenue**. The challenge by Revenue is strongly resisted by the assessee by relying upon the **impugned order itself** which according to them is legal and proper and calls for no interference by this Tribunal.

18.2 We have heard both the parties. We have examined rival contentions too besides perusing the papers and proceedings of the entire case as

placed before us by both the parties. We are of the considered view **basis** the peculiar facts and circumstances of the present case that we have to decide legality, validity and propriety of the impugned order which has set at **naught** the **order of Ld. AO dt. 29/03/2016** passed under section **143(3)** of the **Income Tax Act, 1961**.

18.3 We have to decide the legality, validity and propriety basis the reasons given in the impugned order. We have to simultaneously analyse whether the Revenue who wants restoration of the assessment order dt. 29/03/2016 is correct in law. Per contra assessee is contending that the impugned order of Ld. CIT(A) is correct in law and should not be disturbed. We note that material facts are already well analysed and crystalised in both the orders i.e order of AO an order of the Ld. CIT(A).

18.4 The core issue which has finally emerged for our consideration is whether the loan of sum of Rs. 7,12,50,000/- which is added to the returned income of the assessee making total assessed income as 7,23,35,000/- [10,85,000/- (returned income) + 7,12,50,000/-(addition)] passes the test of credit worthiness of the loaner Shri Gagan Suri, who advanced the loan to his sister Smt. Renu Anand the assessee herein ?

18.5 We hold that basis the inquiry and the verification conducted during the course of the assessment proceedings the Ld. AO by due process of law has rightly held that Shri Gagan Suri is not a person who could be called credit worthy to such an extent to have advanced loan of Rs. 7,12,50,000/-. The Ld. AO has arrived its finding by following the due process of law. The Ld. AO has rightly held that in the absence of income tax return s of Gagan Suri,

the audit report and books of accounts the credit worthiness of the loaner is not established, in the first instance itself. The Ld. AO has drawn this unrebuttal conclusion **basis assertion** of the counsel of the assessee on 22/02/2016 wherein counsel has admitted that the "loaner has not filed income tax return and not got his accounts audited from any practicing CA and also stated that his books of accounts are not available as the same are in the custody of investigation agencies."

18.6 The Ld. AO has rightly held "*The assessee has now furnished the copy of **unaudited balance sheet of the loaner as on 31.03.2013**. During the course of examination the loaner has stated that his, books of accounts are not available with him. It is now not understandable as to how the so called unaudited balance sheet has been prepared. Moreover, unaudited balance sheet has no value in the eyes of law as the loaner was required to get his accounts audited since the turnover exceeds the prescribed limited for getting the accounts audited u/s 44AB of the IT. Act. Hence the creditworthiness of the loaner is not established by any stretch of imagination.*"

18.7 The Ld. AO has rightly held "*The loaner Sh. Gagan Suri during the course of recording of his statement has stated that prior to financial 2012-13 he was engaged in the business of manufacturing of carry bags and he discontinued that business about the closing of the year 2011 as he suffered losses and thereafter shifted to the business of trading of sugar. Further he submitted that during the financial 2012-13 relevant to A.Y 2013-14 tentative turnover was about 10-12 Cr. from trading of Sugar. As per record the loaner*

has filed the income tax return for the A.Y. 2012-13 declaring total income of Rs.3,47,330/-, Rs.2,69,650/- in the A.Y. 2011-12, Rs.2,69,000/- in the A.Y. 2010-11 and Rs.4,72,440/- in the A.Y. 2009-10. Furthermore the capital of the loaner is shown at Rs. 14,47,304/-- only as on 31.03.2012 as per ITR for the A.Y. 2012-13. Thereafter, the loaner has not filed the Income tax return for the A.Y. 2013-14 and onwards. This all gives the conclusion that the loaner has no creditworthiness of advancing such a huge amount of Rs.7,12,50,000/- in legitimate way."

18.8 The Ld. AO further rightly held "The loaner has been shown as having huge liability towards National Spot Exchange Limited. It is gathered that the loaner Sh. Gagan Suri, proprietor of M/s Yathuri Associates is defaulter of National Spot Exchange Limited of the amount of Rs.264.96 crores as mentioned in the official website of National Spot Exchange Limited vide order dated 18.12.2014. It seems that the loaner is only an accommodation entry provider and he has provided the entry to the assessee only as he has no real creditworthiness on its own to provide the huge loan."

18.9 The Ld. AO basis above has rightly held that out of Rs. 7,12,50,000/- a sum of Rs. 1,95,00,00 which has been claimed to be invested in purchase of property is treated as unexplained investment in the hands of the assessee and treated as deemed income from undisclosed sources under provisions of Section 69 of the Act. We notice that language of section 69 is express and clear and we reproduce the same.

"Where in the financial year immediately preceding the assessment year the assessee has made **investments** which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the **investments** or the explanation offered by him is not, in the opinion of the [Assessing Officer] [ Substituted by Act 4 of 1988, Section 2, for

"Income-tax Officer" (w.e.f. 1.4.1988).], satisfactory, the value of the **investments** may be deemed to be the income of the assessee of such financial year."

We find no infirmity in the order of Ld. AO and Ld. CIT(A) has erred in law in not appreciating the letter and spirit behind section 69 of the Act and has wrongly allowed the appeal of the assessee.

18.10 We hold that by virtue of provisions contained in section 69A of the Act which we reproduce below:

*"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of **acquisition** of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the ] [ Substituted by Act 18 of 1992, Section 35, for Explanation 3 (w.e.f. 1.4.1993).][Assessing Officer] [ Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).][, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year".*

The remainder amount of Rs. 5,17,50,000/- is rightly treated as unexplained money by Ld. AO and we find no legal infirmity in the same. The remainder sum of money is not silent on nature and source of acquisition of the money and further the explanation offered by the assessee is not satisfactory. The Ld. CIT(A) has erred in law by setting aside the assessment order of the Ld. AO.

18.11 We hold that the impugned order is illegal, bad in law and not proper. The Ld. CIT(A) ought not have set aside the order of Ld. AO as the Ld. AO after carefully perusing all the papers documents and other records have come to a definite conclusion that the assessee has failed to disclose source of money basis credit worthiness of loaner. The explanation offered by her has failed the test of creditworthiness of loaner on sound grounds. The assessee has failed to explain before us as to where the Ld. AO has gone wrong in applying the test on credit worthiness of the loaner.

18.12 The finding of Ld. CIT(A) in para 5.3.2 is wrong. The assessee's explanation on creditworthiness has not found to be satisfactory at all. The Ld. CIT(A) has erroneously placed reliance on explanation given by Shri Gagan Suri that money was paid by him to assessee sister by means of RTGS from his bank account. The transaction is through banking channels. We hold that merely because payment of money is done through RTGS through **bank that by itself does not establish creditworthiness of the loaner**. We are of the considered view that Ld.CIT(A) miserably failed to appreciate that Ld. AO had properly analysed the creditworthiness parameters in the assessment order and had given sound reasoning in support of the same. The Ld. CIT(A) has laid much emphasis on loan transaction been done through banking channels failing to realise that loaner at the material time and place before Ld. AO had failed to give any documentary material in support of his income to such an extent that would have established his credit worthiness. In fact no documents whatsoever were produced before Ld. AO to prove creditworthiness. Loaner failed to produce before Ld. AO any documents worth a credence which would have established that whatever money he had or money advanced as a short term loan to sister assessee was indeed a money for which he had capacity. **We also observe at this stage basis paper book filed by the assessee's AR that loaner had a bad money**. Needless and suffice to say that bad money tends to drive out good money in an economy and finally ruins it and consequentially nations fails. Bad money is like a devil to those who have good money i.e **honest tax payers**. The Ld. CIT(A) erred in holding that the Ld. AO has not been able to prove that money loaner gave to his sister assessee belongs to her only. The Ld. CIT(A) failed to appreciate

that the transaction was one of short term loan and not of ownership of money, law recognises short term loan to be adequately proved and explained satisfactory as per well laid down parameters. The assessee failed to discharge satisfy / explain those parameters especially on creditworthiness of loaner hence addition was rightly made by Ld. AO when /whether source of money cannot be traced back to assessee is no criteria to determine character of loan transaction especially in the absence of creditworthiness of loaner. The acquisition of money and its sources and further failure to offer a suitable explanation by assessee is of importance. In the present case the credit worthiness is just not prove of the loaner. Hence, the acquisition of money is not satisfactorily explained. What is of importance is that at the material time and place huge money as and by way of short term loan was with the assessee and that she gave an explanation of such short term loan which was not found to be satisfactorily explained. From the point of view of credit worthiness of the loaner. It is required to be noted and appreciated that the provisions of Section 68, 69, 69A, 69B, 69C and 69D are not charging section but are deeming provisions by virtue of which certain income of the assessee are deemed in law to be income of the assessee from the point of view of tax which requires plausible explanation. If no plausible explanation in manner known to law is offered then legal consequences of such deeming provisions follows.

18.13 The Ld. CIT(A) erred in concluding that as far as the nature and source of funds is concerned, the same stands proved and no adverse view can be taken against the appellant with respect to these transactions. The Ld. AR has **now placed before us copy of assessment order for A.Y 2013-14 of loaner**

**Shri**Gagan Suri who had advanced short term loan to the assessee. On a bare and simple perusal of same we notice that assessed income is quantified as Rs. 2,33,94,110/- The assessment order is u/s 143(3) r.w.s 144. The following are salient features of the assessment order:

- (i) Shri Gagan Suri is proprietor of M/s Yathuri Associates
- (ii) A survey u/s 133A of Income Tax Act, 1961 was conducted on 22/08/2013.
- (iii) Survey was carried on basis of information received from DGIT Investigation Mumbai relating to 4 entities involved in commodity trading at NSEL.
- (iv) As per said information the warehousing receipts issued by 24 entities were not fully supported by the actual stock and contracts for sale were entered into with a view to raise finance and not with the intention to provide the delivery of commodities. M/s Yathuri Associates Proprietary concern of Shri Gagan Suri was one of 24 entities involved in commodity trading at NSEL.
- (v) A notice under section 148 of Income Tax Act, 1961 on 24/07/2017 was issued after recording following reason:

*"Survey in this case was conducted on 22.8.2013 at the business premises of M/s Yathuri Associates, proprietary concern of Shri Gagan Sun, SCF 55, 1st Floor, Sector 5,MDC, Panchkula. The survey was conducted on the basis of information received from DGIT(Inv.), Mumbai relating to 24 entities involved in commodity trading at National Spot Exchange Ltd.. As per the information, the warehousing receipts issued were not fully supported by the actual stock and contracts for sale were entered into with a view to raise Finance and not with the intention to provide delivery of commodities.*

*As per information available with this office, it is noticed that the assessee has made utilization of funds received from M/s NSEL at Rs 361.40 crores and utilized the same. The assessee failed to provide any supporting vouchers to justify the nature of receipts or payments. From the record/ information available that:*

*a) The assessee has made transaction with M/s Naraingarh Sugar Mills Ltd. of Rs. 149 69 crores during the F. Y.2012-13 relevant to assessment 2013-14 of which no details were available. As no details are available, the same is treated as unexplained and needs to be verified.*

*b) The assessee has made transaction with M/s Rahul Sales Ltd. of Rs. 55.55 crores during the F. Y.2012-13 relevant to assessment 2013-14 of which no details were available. As no details are available, the same is treated as unexplained and needs to be verified.*

c) The assessee has made transaction with M/s Macro Enterprises of Rs. 151.06 crores during the F. Y.2012-13 relevant to assessment 2013-14 of which no details were available. As no details are available, the same is treated as unexplained and needs to be verified.

d) The assessee has made payments to M/s Vinayak Merchants at Rs. 693577978/- from 1.4.2012 to 31.03.2013. As no details are available, the same is treated as unexplained and needs to be verified.

e) The assessee has made payments to M/s Himalayan Traders of Rs. 7.85 Crores during the F. Y. 2012-13 relevant to assessment year 2013-14 of which no details were available. As no details are available, the same is treated as unexplained and needs to be verified.

f) The assessee has made transaction with M/s Vidur Sales Corporation of Rs. 6.81 crores during the F.Y. 2012-13 relevant to assessment 2013-14 of which no details were available. As no details are available, the same is treated as unexplained and needs to be verified.

Further, as per the information and records available with this office, it is seen that the assessee has not filed his TTR pertaining to the relevant period i.e. A Y 2013-1-1 In the absence of any further detail, source of transactions cannot be examined.

The information available was carefully studied and a thorough analysis of the same was made. After doing so, it was found that the nature and sources of the said transactions to the tune of Rs. 440.31 crores remained unexplained.

Thus, after independent analysis of the information available on record with respect of the above stated facts I have reason to believe that the amount to the tune of Rs. 4-10.31 crores has escaped the ambit of taxation and has also escaped assessment within the meaning of section 147 of the Income Tax Act 1961. Hence, I propose to assess aforesaid escaped income and any other income which may come to the knowledge during the assessment proceedings for the FY 2012-13 relevant to A Y 2013-14.

**(vi) Assessee has not filed any ITR for the A.Y 2013-14 in response to notice under section 148 dt. 24/07/2017.**

(vii) Notice under section 142(1) dt. 23/08/2018 could not be served on the assessee as nobody was found at the given address.

**(viii) In brief there is no response to any notices of the Department, no reply is on record, the assessee is not available, ITR is not filed. Hence assessment order was passed.**

18.14 We observe that above assessment order for A.Y. 2013-14 corresponds to the year under consideration in the present appeal and there **is no clue whatsoever of flow of funds (supra)** in the aforesaid order which per se speaks about creditworthiness of the loaner Shri Gagan Suri.

18.15 We have also perused the assessment order of Gagan Suri for A.Y. 2014-15 dt. 15/10/2018 which too is u/s 143(3) r.w.s 144 on page 15& 16 of the said assessment order following is recorded:

**NSEL in its reply dated 10.10.2018 to information sought u/s 133(6) has also enclosed the money trail report as per EOW, which shows that M/s Yathuri Associates has divested the funds to the tune of Rs. 361.56 Crores to various entities as detailed below:**

**(The flow of fund chart was perused by us)**

*The money so diverted by the Assessee is nothing but the money he raised on the NSEL platform during the duration 26.06.2013 to 26.07.2013 by trading in commodities but did not settle the said trades which remain outstanding uptill current date. This amounts to a total of net outstanding of Rs. 424.64 Crores and as the same has been added to the income of the assessee u/s 28(iv) of the Act, no separate addition on the issue of diversion of funds being made.*

In the said assessment order on page 17 following is recorded

i) Letter u/s 133(6) of the Income Tax Act, 1961 has been sent to the following banks for furnishing copy of bank account statements in respect of account numbers held by the above mentioned assessee for the F.Y. 2013-14 and Current status & balance in the said bank accounts:-

Sr. No.	Name of Bank	Account No.
1.	HDFC Bank, Sector-9, Panchkula	13212340000017
2.	Axis Bank, SCO-10, Sector-10, Panchkula	912020055103077
3.	Indusind Bank, Sector-11, Panchkula	0014W56052050(New Account No. 200001615344

In response to the letter issued u/s 133(6), the banks have furnished the following information:

Sr. No.	Name of Bank	Account No.	Cash Deposits
1	HDFC Bank, Sector-9, Panchkula	13212340000017	3,09,000/-
2.	Axis Bank, SCO-10, Sector-10, Panchkula	912020055103077	40,000/-
3.	Indusind Bank, Sector-11, Panchkula	0014W56052050 (New Account No. 200001615344	20,000/-

The above replies of the banks has been duly considered and examined. After examination the same, it is found that the total cash deposits of the assessee is Rs. 3,69,000/- and assessee has failed to explain the same.

In the aforesaid assessment order in para 16 following is recorded

“ Subject to the above discussion, the income of the assessee is computed as under:

1	Loss as per Profit and Loss account disallowed	12,27,301/-
2	Addition as per discussed in Para 11.1 above	424,64,00,000/-
3	Addition as per discussed in Para 12 above	3,69,000/-
4	Addition as per discussed in Para 13 above	62,19,130/-
5	Addition as per discussed in Para 14 above	10,85,000/-
6	Addition as per discussed in Para 15 above	61,06,836/-
7	Total Assessed Income	426,14,07,267/-
8	R/o Income u/s 288A	426,14,07,270/-

18.16 Basis above two assessment order for A.Y. 2013-14 and A.Y. 2014-15 we notice that Shri Gagan Suri who was before the Ld.AO at the time of assessment proceeding of the assessee the loaner besides having no credit worthiness has antecedents which are of very doubtful nature. Perse Gagan Suri seems to be a person involved in fraudulent activities and also perse deals with bad money. We restrict ourself from commenting further and we hold that in so far as **his credit worthiness is concerned** even Revenue vide their letter dt. 14/10/2024 (supra) have stated in **adverse manner**.

18.17 We hold that upon verification of credit worthiness the assessee has failed to establish credit worthiness of the loaner Shri Gagan Suri. Credible explanation is both not furnished either by the assessee or by the loaner i.e; **Gagan Suri who was present during the course of assessment proceeding before the Ld. AO**. The return of the short term loan amount in March 2013 even for sake of argument is required to be analysed then the assessment order of 2014-15 of Gagan Suri does not reflect the said amount of Rs. 7,12,50,000/- in any of the bank accounts stated therein. **The financial flow-chain of money trail shows that assessee and Gagan Suri are in fact part and parcel of financial transaction at least as loaner and loanee**. They are siblings

too. **There is mutuality of interest and financial flow.** Suffice to say mysterious are ways of short term loan amounts. The very basis and roots of it is not on sound legal foundation. Money perse does not appears to be hard earned through legitimate means. We restrain our self to comment further on bad money aspect of the loanerleast we say **credit worthies is not established of Shri Gagan Suri.** Tax liability imposed on assessee is justifiable in law. We unhesistantly hold that assessee has failed to establish creditworthiness as well **as sound genuineness of the short term loan transaction. It is a make believe exercise and huge amount in guise of short term loan stands parked as and by way of acquisition in form of short term loan in the hand of assessee at the material time and place.** It is rightly been brought to tax liability /exigible to tax at the hands of the assessee. Assessee has not been able to successfully discharge the burden on key parameters of credit worthiness. What is seriously doubted is not the identity **but credit worthiness of loaner is not established in lawful manner. There is total absence of material document to establish credit worthiness of the loaner.** The assessment records produced by Ld. AR **fails to establish creditworthiness of loaner.** Suffice to say **there is lot of adversial material against loaner;** both **from point of view of taxation** and **otherwise also** as has been pointed out to this Tribunal as final fact finding authority. We hold that explanation offered by assessee is rightly held to be not satisfactorily explained before Ld. AO and CIT(A) has erroneously set aside the assessment order. We hold that capacity to advance money has fallen apart as 'both firm name, name of Gagan Suri and of NSEL' to say least is/are in the bad books of taxation and law enforcement authorities, basis assessment orders and reports placed on record by Ld. AR and DR before

us as final fact finding authority. The assessee in no manner has denied receiving short term loan. Sources of source is not an issue but credit worthiness of the loaner is in issue by not offering any plausible explanation on Rs. 7,12,50,000/- the assessee has failed to discharge the onus consequently such short term loan amount is deemed in law to be her income. We find Ld. CIT(A) has failed to appreciate this concept of deemed income in law and has given erroneous finding.

19. In the premises laid down by us as aforesaid we hold that there is no infirmity legal or otherwise in the AO order dt. 29/03/2016 and we upheld the same and set aside the impugned order of CIT(A) as not legal and proper.

20. In the result appeal of the Revenue is allowed.

Order pronounced in the open Court on 12/12/2024.

Sd/-  
विक्रम सिंह यादव  
( VIKRAM SINGH YADAV )  
लेखासदस्य/ ACCOUNTANT MEMBER

Sd/-  
परेश म. जोशी  
( PARESH M. JOSHI )  
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar