IN INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI. SOUNDARARAJAN K, JUDICIAL MEMBER

ITA Nos.1617and1618/Bang/2024
Assessment Years : 2015-16and 2017-18

Shri. Kogod Basavaraju Jayachandra, 1 Gulagalale Estate, Bhage Post, Sakaleshpura Taluk, Hassan Gulagalale Estate 573 214, Karnataka. **PAN :AEWPJ 4330 E**	Vs.	DCIT, Central Circle – 1(2), Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri. Ramesh, CA
Revenue by	:	Shri.Shivanand Kalakeri, CIT(DR)(ITAT), Bangalore.

Date of hearing	:	14.05.2025
Date of Pronouncement	:	26.05.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

These two appeals are filed by the assessee against order passed by the CIT(A) 27.06.2024 with SEPARATE DIN ITBA/APL/M/250/2024-25/1066130511(1) & DIN ITBA/APL/M/250/2024-25/1066130390(1 RESPECTIVELY on the following grounds of appeals:

Grounds of appeal in ITA No.1617/Bang/2024

1. *The entire assessment proceedings are bad in law and null and void as the notice u/s.148 was not issued to the Appellant on 31.03.2021 and the said notice was issued in E –portal on 01.04.2021. Hence, the*

assessment done under old provisions of section 148 is to be squashed, as these provisions were no longer applicable from 01.04.2021.

2. *The Assessment order passed u/s 148 is bad in law as the AO has not recorded the reason by himself, for reopening of assessment u/s.148 of the Act and not provided copy of reasons recorded by AO.*

3. *The CIT (A) has erred in assuming that without recording of reasons, there will not be approval from PCIT. The CIT (A) has made an assumption instead of obtaining the assessment records from AO for verification of the copy of reasons recorded by AO.*

4. *The Assessment order passed u/s.148 is bad in law as the AO has not generated DIN on the reasons recorded for initiation of re-opening of assessment u/s.147 as stated in section151 approval of PCIT.*

5. *The entire assessment u/s.148 is bad in law as the Captioned assessment is subject matter of section 153C proceeding as the AO has concluded the assessment based on the materials/information impounded during the course of survey u/s.133A and later a search u/s.132(4) of the Act.*

6. *The assessment proceedings u/s.147/148 are bad in law as the case was re-opened based on the borrowed satisfaction as the AO has not recorded independent satisfaction for initiation of proceedings u/s.147 of the Act.*

7. *The assessment framed on Appellant was not correct as per provisions of the Act as D S Nandish has stated in survey statement that he has deposited cash in Appellant Bank account. Hence it should have been added in the hands of D S Nandish and not in the hands of Appellant.*

***<u>ON MERITS</u>**:*

8. *On the facts and circumstances of the case, learned CIT (A) has erred, as A.O. was not correct in not accepting the explanation that the cash deposits made by Mr. Nandish are out of Borrowed Funds. Hence the addition made by AO treating entire cash deposit as unexplained income in the hands of the Appellant is not correct.*

9. *On the facts and circumstances of the case, learned CIT (A) has erred in both on facts and in law in confirming addition made by AO for entire cash deposits of Rs. 1,49,42,000/- instead of net income as the*

Appellant has claimed expenditure being Interest expenses in the Return of Income . Hence only net income should have been added.

10. *On the facts and circumstances of the case, learned CIT (A) has erred in both on facts and in law in confirming in not considering the Interest on loan paid Rs. 1,55,16,000/- to lenders through Banking Channels by AO, which was claimed in Return of Income filed in response to notice u/s.148.*

11. *The CIT (A) and The A.O. have failed to send letters for confirmation of loans taken from Lenders and also interest paid to them by invoking provisions of section 133(6), as all the lenders, Name and Address were provided during the course of Assessment Proceedings by the Appellant and the CIT (A) simply stated that the Appellant has not maintained books, hence no need to invoke section 133(6). Hence, the averments of the CIT (A) are not as per law.*

12. *The Appellant objects the levy of interest u/s.234A and B consequential to the addition made by AO.*

13. *The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal.*

Grounds of appeal in ITA No.1618/Bang/2024

1. *The entire assessment proceedings are bad in law and null and void as The A.O. has not restricted to scrutiny norms as per CBDT instruction as the scrutiny was selected under CASS*

2. *The assessment order passed u/s.143(3) was bad in law and null and void as the AO has converted into complete scrutiny without obtaining approval from competent authority and not informing the Appellant also.*

3. *The assessment framed on Appellant was not correct as per provisions of the Act as D S Nandish has stated in survey statement that he has deposited cash in Appellant Bank account. Hence it should have been added in the hands of D S Nandish and not in the hands of Appellant.*

ON MERITS:

4. *On the facts and circumstances of the case, learned CIT (A) has erred, as A.O. was not correct in not accepting the explanation that the cash deposits made by Mr. Nandish are out of Borrowed Funds. Hence the addition made by AO treating entire cash deposit as unexplained income in the hands of the Appellant is not correct.*

5. *On the facts and circumstances of the case, learned CIT (A) has erred in both on facts and in law in confirming addition made by AO for entire cash deposits of Rs. 1,92,58,000/- instead of net income as the Appellant has claimed expenditure being Interest expenses in the Return of Income . Hence only net income should have been added.*

6. *The CIT (A) has erred in not appreciating the fact that the AO himself has stated that the cash deposits made by DS Nandish, however he has not declared in his return, hence it is added in the hands of the Appellant. Hence the AO has not established that the cash deposits are relating of Appellant and not even verified the bank statements.*

7. *The Appellant objects the levy of interest u/s.234A and B consequential to the addition made by AO.*

8. *The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal.*

ITA No. 1617/Bang/2024

2. Briefly stated, the facts of the case are that a survey under section 133A of the Act was carried out in the case of M/s. Xentrix Studios Pvt. Ltd., on 03.05.2017. It was found that Shri. D. S. Nandish had floated several companies / firms / business concerns and utilized the bank accounts of these entities for depsoting unaccounted and unexplained cash, wherein the account of the appellant has also ben utilized for depositing such cash. Subsequently, search seizure operation was carried out on 28.08.2017 and statements were recorded of Shri. D. S. Nandish under section 132(4) of the Act dated 28.08.2017 in which it

was accepted by Shri D S Nandish has deposited cash in the assessee's bank account of rs. 1,49,42,000/-

3. During the coure of survey while detailing the name of the companies, name of the assessee is appearing in tthe table prepared but there is amount found as cash deposited in the case of the assessee. Accordingly, after recording the reasons and duly taking approval from the competent authority, the notice was issued on 31.03.2021 at 4:12 P.M with DIN = ITBA/AST/S/148/2020-21/1032051019(1) and notice was digitally signed and issued. Time was allowed to the assessee to file return of income within 30 days from the date of service of notice. In response to the notice under section 148 of the Act, assessee filed return of income on 16.04.2021 declaring loss of RS. 5,74,000/- . Thereafter notice u/s 143(2) was issued & served to the assessee on 28.06.2021 . In this regard, questionnaire under section 142(1) of the Act dated 02.11.2021 to furnish the details regarding nature of business carried out during the yea,. the details of parties to whom advance had been given and business purpose of the same details of parties to whom interest had been paid with TDS deduction for the business purpose of the same. The cash deposited in bank account held by the assessee for the year under consideration with supporting documentary evidence. In response to the above notice, assessee had submitted reply on 03.11.2021 copy of balance sheet, profit and loss account, interest paid. Further, a notice u/142(1)s was issued to the assessee on 07.02.2022 providng another opportunity to the assessee to comply the earlier notice. On 10.02.20222, assessee submitted the reply alonwith interest paid details financial statement in ITR form computation of income. The AO observed that in spite of giving various opportunities to the assessee, assessee has not provided details of source of cash deposits made into the above bank account. Hence, in the absence of documentary evidence to substantiate the source of cash deposits in bank account the AO observed from the documents available that during the survey proceedings in the case of M/s. Xentric Studios Pvt. Ltd., on 03.05.2017, sworn in statement of Shri. D. S.

Nandish was recorded under section 131 of the Act. During the course of recording of sworn statement under section 131 of the Act, Shri D. S, Nandish was confronted about the source of cash deposited in various bank accounts. In the statement recorded Shri D S Nandish stated that there is no books of the books of accounts maintained and not recorded in the books. The amount of unexplained cash deposit in the account of assessee for the year works out to Rs. 1,49,42,000/- for the year under consideration in search proceedings. Further, the voluntary disclosure made during the course of survey proceedings were confirmed durng the sworn in statement recorded under section 132(4) of the Act dated 28.08.2017 Shri D. S. Nandish has accepted that it is his unexplained money. Since during the coure of assessment proceedings, the assessee was unable to substantiate the source of cash deposits even after providing multiple opportunities. the source of the same remains unexplained and assessee did not furnish business activity carried out of which cash deposits were made. Hence the contention of the assessee that amount deposited out of her business activity was not substantiated, since, the assessee could not substantiate the source of cash deposits in bank account of Rs.1,49,42,000/- for the impugned Assessment Year, the source of which remains unexplained cash credit under section 68 of the Act. Further, from the financial statements, assessee has claimed an amount of Rs.1,55,16,0000/- as interest paid. However, the assessee has not furnished any details regarding the expenses claimed as interest paid. In this regard, assessee neither submitted any documentary proof nor provided the nature of business activity carried out to substantiate the interest expenditure claimed for the year under consideration. Further, it was asked to the assessee regarding TDS on such interest payment in the light of provisions of section 40(a)(ia) of the Act but there is no compliance of the provision of section 40(a)(ia) of the Act by the assessee since on this issue, the assessee was unable to substantiate the genuineness of expenditure incurred for business purposes as well as for non-compliance of section 40(a)(ia) of the Act the interest expenditure were disallowed. But while computing assessed income The disallowance of interest was not added and loss

claimed in the return was disallowedAccordingly, the AO completed the assessment on 24.03.2022.

4. Aggrieved from the above Order, assessee filed appeal before the CIT(A). The legal grounds challenging the notice issued under section 148 of the Act, approval under section 151 of the Act and date of issue of notice, etc., assessee furnished return submissions. The learned CIT(A) called for remand report from the AO. The learned CIT(A) has incorporated the approval granted under section 151 of the Act and remand report in order and remand report was provided to the assessee.

5. After considering the submissions, The learned CIT(A) dismissed all legal grounds raised by the assessee. The learned CIT(A), after considering the survey/search statement , dismissed the appeal of the assessee. During the appellate proceedings, as per opinion of the learned CIT(A), assessee was unable to explain the source of cash deposits and interest payment in terms of section 37(1) of the Act. Accordingly, he dismissed the appeal of the assessee on merits also.

6. Aggreived from the above Order, assessee filed appeal before the ITAT. The learned Counsel reiterated the submissions made before the lower authorities. Assessee has filed written synopsis. Which is as under:-

ON POINT OF LAW

Ground No.1: The entire assessment proceedings are bad in law and null and void as the notice u/s.148 was not issued to the Appellant on 31.03.2021 and the said notice was issued in E –portal on 01.04.2021. Hence, the assessment done under old provisions of section 148 is to be squashed, as these provisions were no longer applicable from 01.04.2021

7. The Appellant has raised legal ground during the course of First Appellate Proceedings that the AO has issued notice u/s.148 on 01.04.2021 under old provisions of section 148 as reflected in E Portal and the same are not applicable and the AO should have proceeded under New provisions of section 148 rws148A, after 01.04.2021.

8. Based on the above legal ground, the CIT (A) has called for the remand report from AO. Accordingly, the AO has submitted the Remand Report to CIT (A). However in the Remand Report, the AO has stated that the notice u/s.148 was generated on 31.03.2024 and also enclosed the order sheet.

9. In this regard, the Appellant submits that in the order sheet of the AO there is no record to show that the AO has issued the said notice on 31.03.2021. However in the E –Portal of the Appellant, it is clearly mentioned that the notice was issued and served on 01.04.2021, which corroborates with the sheet sent by AO.

10. Without prejudice to the above submission, the Appellant submits that even if considered that the notice u/s.148 was generated on 31.03.2021. The said notice was not issued and served to the Appellant on 31.03.2021. As per provisions of section 148, the notice shall be issued on Appellant with in stipulated period. Hence just because the notice was generated on 31.03.2021, it doesn't mean that it was issued. Hence the provisions of section 148 are very clear that the notice shall be issued/served on Appellant and generating and keeping in the file of the AO has not statutory backing.

11. Further the CIT (A) has stated that the DIN number generated for the notice u/s.148 shows that the FY 2020-21 and the presence of a DIN associated with FY 2020-21 confirms that the notice was indeed issued within that FY and

this discrepancy invalidates that appellant's contention and affirms the procedural correctness of the notice's issuance.

Further it is stated that the case of the Appellant falls under the provisions of section 292BB as it is curable.

12. In this regard the Appellant wishes to submit that the DIN can be generated at later date by mentioning the financial year. Even CBDT has issued notification for generation of DIN within 15 Days from the generation of any notice/order if certain conditions are fulfilled. When DIN can be generated on later date, financial year can be select while generating the DIN and not relates to the date of generation of DIN. Hence the averment of CIT (A) is not correct and reliable.

13. Hence, the notice issued/served on Appellant on 01.04.2021, which is reflected in E portal, establishes that the AO has actually issued/served notice on Appellant on 01.04.2021. Hence old provisions of section 148 are not applicable to the Appellant and hence, the proceedings u/s.148 under old provisions are bad in law and null and void.

14. In this regard the Appellant relies on the decision of Hon'ble Telengana High Court in the case of Kalyan Chillarn Vs DCIT [2024] 465 ITR 729 (Telangana HC) order dt 14.06.2024, where it is held that the notice u/s.148 had been issued (not served) on 01.04.2021 or on a later date. And had been dispatched from the department on or after 1st April 2021, which itself was beyond the period of limitation. The notice issued u/s.148 dated 31.03.2021 was barred by limitation u/s.148 and 149.

15. The above case is squarely applicable to the Appellant as the notice dated 31.03.2021 was issued on Appellant on 01.04.2021. Hence, the Appellant prays before Hon'ble ITAT to follow the above decision and squash the order passed u/s.147 read with section 148.

16. Ground No. 2: The Assessment order passed u/s 147 is bad in law as the AO has not recorded the reason by himself, for reopening of assessment u/s.148 of the Act and not provided copy of reasons recorded by AO.

The AO has passed the assessment order u/s.147 on 24/03/2022 for AY 2015-16. In the said assessment order there are no details mentioned about recording of satisfaction by A.O. himself before issuing of notice u/s.148 as to whether the income has escaped as contemplated u/s.147 of the Act

17. During the course of Assessment proceedings, the AO has not supplied the reasons recorded and sanction from competent authority. Hence, during the course of Appellate Proceedings, the Appellant has sought from AO, copy of the reasons recorded for initiation of proceedings U/s.148 and satisfaction obtained from competent authority. On Direction of First Appellate Authority, the AO has provided copies of Approval given u/s.151 of the Act, by PCIT (Central) dated 28.03.2021

18. However, the AO has not provided the copy of reasons recorded by him, but has given only a copy of approval given by the PCIT (Central). Hence, the AO has not given any details in respect of reasons recorded by himself before obtaining approval from PCIT (Central). This was brought to the knowledge of CIT (A) vide submission dt 06.06.2024. However the CIT (A) has stated that without recording of reasons there cannot be a approval from PCIT. However the CIT (A) has not obtained the copy of reasons recorded by AO himself for initiating action u/s 148 read with section 147 of the Act. Hence, in the absence of the same, entire proceeding u/s.147 is bad in law and null void.

19. Ground No.3: The CIT (A) has erred in forecasting that without recording of reasons, there will not be approval from PCIT. The CIT (A) has

made an assumption instead of obtaining the assessment records from AO for verification of the copy of reasons recorded by AO

The Appellant has made submission before CIT (A) that the AO has not supplied copy of reasons recorded by himself on 23.03.2021 for AY 2015-16. However, the CIT (A) has made assumption that the without recording of reasons there will not be approval from PCIT. Further the CIT (A) has failed to call for the assessment record for verification of the copy of reasons recorded by AO himself.

20. Ground No.4: The Assessment order passed u/s.148 is bad in law as the AO has not generated DIN on the reasons recorded dated 23/03/2021 for initiation of re-opening of assessment u/s.147 as stated in the 151 approval of PCIT

The Appellant wishes to submit that the AO has not supplied reasons recorded by AO him dt 23.03.2021. Further Copy of Annexure A was enclosed along with Approval copy of PCIT u/s.151, which was supplied by AO during Remand proceedings. The CIT (A) has assumed that the said Annexure itself is reasons recorded by AO. In such case there was no DIN generated for the said reasons recorded. Hence, without DIN, the copy of the reasons recorded is invalid and hence the assessment proceeding u/s.147 is bad in law and null and void.

21. Ground No.5: The entire assessment u/s.148 is bad in law as the Captioned assessment is subject matter of section 153C proceeding as the AO has concluded the assessment based on the materials/information impounded during the course of survey u/s.133A and search u/s.132(4) of the Act

The Appellant submits that entire proceeding u/s.148 is bad in law as the captioned Appeal is subject matter of section 153C proceeding, as the AO has concluded the assessment u/s.148 based on the material/information impounded during the course of survey u/s.133A and also search conducted against Mr. D S Nandish u/s.132(4) of the Act.There is a direct proximity to the survey and search conducted on Mr D..Nandish and his 3 companies, where returns under section 153A were filed and assessment completed thereat.

22. Further the AO has solely relied upon the Survey and Search statement recorded from Mr. D S Nandish and Bank statements alleged to have been impounded during survey proceedings. Hence, assessment should have been done u/s.153C of the Act and not u/s. 147 the Act.

23. In addition to the writtens synopsis, the learned Counsel further submitted that the notice under section 148 of the Act dated 31.03.2021 was issued to the assessee on 01.04.2021 udner old provisions of section 148 of the Act as reflected in e-portal and the same are not applicable and the AO should have proceeded as per new provision of section 148 r.w.s. 148A of the Act, aftger 01.04.2021. In the remand report submitted by the AO, the AO has stated tht the notice under section 148 of the Act was generated on 31.03.2021 and from the Order sheet nowhere it is mentioned that the notice was issued on 31.03.2021 . However, in the e-portal it is iclearly mentioned that the notice was issued / served on 01.04.2021. Therefore, the entire proceedings carried out by the AO in old regime becomes wrong, therefore,, Order passed by the AO is null and void.Furhter, the learned Counsel submitted that the AO has not recorded the reasons for reopening of assessment under sections 147/148 of the Act. Copy of reasons was not provided to the assessee. The Assessment Order passed under sections 147/148 of the Act is bad in law as AO has not generated DIN on the reasons recorded dated 31.03.2021 for initiation of reoperning of assessment under section 147 of the Act as stated in section 151 of the Act after obtaining

approval of PCIT. The learned Counsel for the assessee submitted that the entire assessment under sections 147/148 of the Act is bad in law as the captioned assessment is subject matter of section 153C of the Act proceedings as the AO has concluded the assessment based on the materials / information impounded during the course of survey under section 133A of the Act and searchstatements under section 132(4) of the Actthe name and quantum is appearing in the list. Therefore, it is clear that the very basis for reopening and completing assessment is on the basis of section 132(4) of the Act. Therefore, the assessement should have been completed under section 153C of the Act. Therefore,assessment completed under sections 147/148 of the Act is completely bad in law as held by the following judgments:

- *Sai Krupa Developers Vs ACIT (ITAT Ahmedabad), I.T.A. Nos. 248 to 250/Ahd/2023 order dated 23/08/2024 AY 2014-15*

- *Hon'ble High court of Rajastan in the case of Tirupati Construction Co Vs ITO (2024) 465 ITR 611 (Raj)*

- *Jurisdictional Hon'ble Bangalore ITAT decision in the case of M/s. Ickon Projects Vs ITO ward 4(3), in ITA No. ITA Nos. 771 & 772/Bang/2017 AY2006-07 vide order dated 26.10.2023*

- *Karnataka High Court in Sri Dinakara Suvarna Vs. Deputy Commissioner of Income Tax in Income Tax Appeal No.16/2015 on 08.07.2022*

- *Bombay High Court in the case of M/s. Aditi Constructions Vs. Deputy Commissioner of Income Tax & Ors. in Writ Petition No.783/2016 dated 04.05.2023*

- *Shyam Sunder Khandelwal V/s. Assistant Commissioner Of Income Tax, Central Circle 2*

- *Samanthapudi Lavanya Vs ACIT, In ITA No. I.T.A.No.704Niz/2019 to 706/Viz/2019 AY 2019-10 to 2011-12*
- *ITO vs. Vikram Sujitkumar Bhatia, reported in (2023)453 ITR 417*

- *Rajat Saurabh Chatterji v. ACIT ITA NO. 2430/De1/2015*

24. Further, the learned Counsel relied on the judgment of Co-ordinate Bench of the Tribunal in ITA Nos.1568 to 1570/Bang/2024 in the case of N9 Sports & Leisure Holdings Pvt. Ltd., Vs. DCIT, Order dated 24.03.2025.

25. On the other hand, the learned DR relied on the Order of lower authorities and submitted that the entire legal grounds raised by the assessee are baseless. Regarding issuance of notice, the learned DR referred to the order of ld. CIT (A) where the movement of the case is clearly mentioned date wise and he further submitted that the learned CIT(A) has dealt the issue regarding date of issuance of notice that the notice was issued on 31.03.2021 with prior approval under section 151 of the Act of the by the competent authority as per prevailing law and he referred to CIT(A)'s Order at para No.5.6.3 & 5.6.4. The delivery stamp for Assessment Year 2015-16 is 31.03.2021 at 4.12 PM. The learned DR submitted that the moment the noice is digitally signed, it has left the control of the AO and notice is deemed to have been issued. In the instant case, notice was digitally signed on 31.03.2021. Accordingly, it would have been taken up for delivery in the same path by the ITBA (Income Tax Business Application). Notice was issued on 31.03.2021 as per the remand report submitted by the AO to the CIT(A). The authority has approved for reopening the case and given approval under section 151 of the Act. The copy ofreasons were provided to the assessee. He further submitted that in respect of the assessement, should have been made under section 153C the Act instead of section 147 of the Act. The learned DR stated that prima facie at the time of issue of notice under sections 147/148 of the Act, the AO must have reason to believe that the particular income of the assessee is escaped income . That is why the AO had reason to believe that there was escapement of income in the hands of the assessee. Therefore, initiation of proceedings under sections 147/148 of the Act is in accordance with law. Further, in respect of merits of the case, huge cash was deposited by Shri. D. S. Nandish and he has categorically accepted and during the course of statements recording

during the search proceedings, the source of cash deposits by Shri. D. S. Nandish in the assessee's bank account could not be explained with documentary evidence. In respect of interest payments, there was no evidence produced by the assessee which could be considered in terms of section 37(1) of the Act and assessee has not deducted TDS on such interest payment. Assessee was also unable to establish the nature of business carried out . The Learned DR further submitted that the assessee has claimed interest expenditure of Rs.1,55,16,,000/- which is also not substantiated.

26. Considering the rival submissions and perusing the materials available on record and Order of the authorities below, we noted that search under section 133A of the Act was conducted in the case of M/s. Xentrix Studios Pvt. Ltd., on 03.05.2017. During the survey, it was found that Shri. D. S. Nandish had business companies / firms and utilized the bank account of these entities for depositing cash in assessee's bank account , Shri D S Nandish has deposited cash in the impugned Assessment Year Rs.1,49,42,000/-, During the course of assessment proceedings, assessee was unable to substantiate the source of cash. From the approvalso we noted that for issuance of notice under sections 147/148 of the Act, the AO has relied on survey materials found and statement recorded under section 131 of the Act. We also have gone through the survey statement recorded under setion 131 of the Act on 04.05.2017 which is placed at Paper Book Page Nos.25 to 41. At Page No.39 & 40 the list of parties names are there with quantification for the different Assessment Years. At Sl. No.06, the name of assessee is appearing but there amount is quantified in the breakup of Rs.68,45,21,295/-. Further, a search was conducted under ection 132(1) of the Act on 28.08.2017 and the statement has been recorded under section 132(4) of the Act and details of parties in whose bank accounts Shri D S Nandish has deposited cash. In the list prepared where the name of theassessee is at Sl. No.06 where the amount appearing is Rs.1,49,42,,000/- is appearing and it is included in the total disclosuremade by Shri. D. S. Nandish. It clearly shows that for

recording reasons for escapement of income on the basis of survey material, there is escapement of income. As confirmed, the survey statement recorded under section 131 of the Act, during the course of ssearch proceedings where the amount is quantified in the name of assessee also in the table since at the time of recording the reason, there wwas reason to believe that the assessee had escapement of income. The reasons were recorded after the search, therefore, it can not be said that the assessee had no escapement of income. Since the assessee did not file regular return of income u/s 139 of the Act and the AO had information in the form of statements recorded which is definite information. In a nutshell we can say that at the time of recording reasons for initiating assessment u/s 147 there is reason to believe for escapement of income. Accordingly, we hold that the issuance of notive u/s 148 is justified , relying on the judgment of Hn'ble Apex Court in the case of PCIT Vs. Abhisar Buildwell P. Ltd. (2023) 149 taxmann.com 399 (SC).Therefore, we rejecte the arguments of the learned Counsel rearding initiation of proceedings under sections 147/148 of the Act instead of section 153C of the Act.

27. Further, the learned Counsel for the assessee has riased issue that notice was issued to the assessee on 01.04.2021. From the notice issued under section 148 of the Act and Order of the learned CIT(A), we noted that the notice wasdigitaly signed by the AO on 31.03.2021 at 4.12p.m.and the moment the notice is signed it automatically goes to the assessee's email provided. The AO can not alter after DIGITALY SIGNED & generating DIN. ThE din WAS GENERATED ON 31.03.2021, Therefore the allegation on this point raised by the l. AR is not correct. Accordingly, notice was issued on 31.03.2021 but not on 01.04.2021. The ld. CIT (A) has rightly dealt this issue. For initiation of proceeding under sections 147/148 of the Act, notice must have been issued within the specified time which is clear as per sections as under:

[Income escaping assessment.

[20] ***147.*** *If the* [21]*[Assessing] Officer* [22]*[has reason to believe*[23]*] that any income chargeable to tax has escaped assessment*[23] *for any assessment year, he* [23]*may, subject to the provisions of sections 148 to 153, assess or reassess*[23] *such*[23] *income* [23]*and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings*[23] *under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Provided *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year*[24]*, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure*[24] *on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts*[24] *necessary for his assessment, for that assessment year:*

[25]*[**Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]*

[26]*[**Provided*** [27]*[**also**] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]*

Explanation 1.—Production[28] *before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily*[28] *amount to disclosure within the meaning of the foregoing proviso.*

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

[29][(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate[30] ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

[31][(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]

[32][(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

[33][Explanation 3.—For the purpose of assessment or reassessment[30] under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

[34][Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, 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.]

As per the above section the notice u/s 148 was issued within the specified time as prescribed in the Act. Therefore, this ground raised by the assessee also fails.

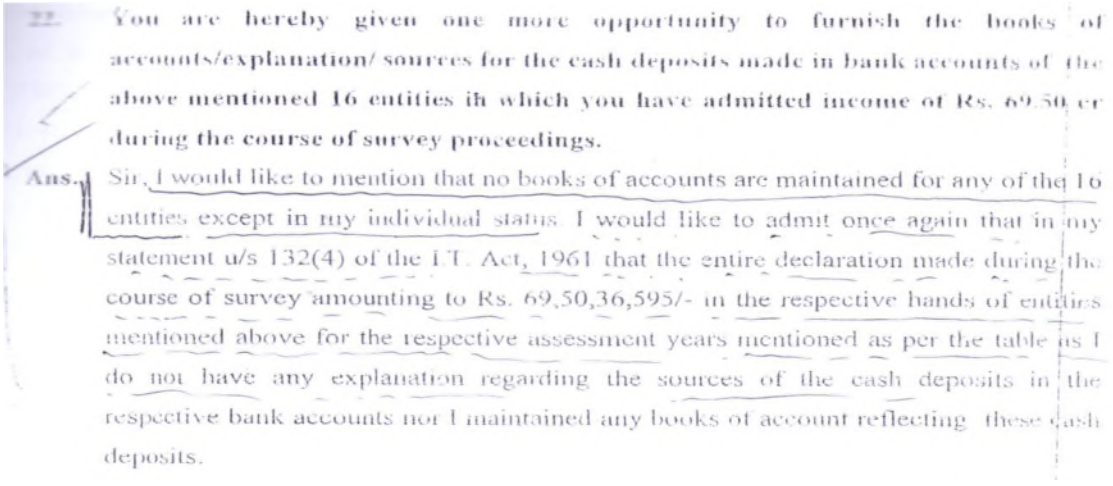
28. Further we have also gone through the statements recorded during the course of survey under ection133A of he Act as well as search under section 132(4) of the Act. During the course of survey, question and answer No.40 is as under:

> **40.It is seen from the table submitted by you in the above answer, that** the cash **deposited in to different accoun[i] is totalling to Rs. 68,45,21,295/- Also, you have stated in the above answer that you are unable to explain the source of these cash deposits. In view of this, you tare hereby given one more opportunity to explain** the source of the cash deposits failing which the same may be construed as unaccounted income. Please explain the source of these cash deposits andstatewhether all these cash deposits are accounted under the above mentioned entities in respective financial years?

Ans. Sir, I once again confirm and clarify that I am unable to explain the source of all these cash deposits made in the bank accounts. I also state that I have not maintained any books of accounts for any of my entities except M/s Xentrix Studios Pvt. Ltd. I also submit and accept that the cash deposits totaling to Rs. **68,45,21,295/-** as per the above table submitted by me is not at all accounted. I consider this opportunity and voluntarily agree to offer this unexplained cash receipt of Rs. **68,45,21,295/-** as unaccounted income in the hands of respective entities as per the details of the table mentioned above. Further, I am once again reproducing the table as below:

ACCOUNT NAME	AY 11-12	AY 12-13	AY 13-14	AY 14-15	AY 15-16	AY 16-17	AY 17-18	TOTAL DEPOSITS
Brainwave Innovations Private Limited	-	-	9,00,000	32,00,000	2,96,33,500	2,64,62,400	93,61,000	6,95,56,900
Diamond Investments	-	-	-	-	1,59,77,000	1,89,66,500	1,68,28,500	5,17,72,000
Docket Tech Solutions Private Limited		-	-	-	-	-	3,91,000	3,91,000
H & F Games Pvt Ltd	-	-	51,09,000	1,25,30,000	1,07,31,500	2,12,60,000	2,07,56,000	7,03,86,500
Hungry And Foolish Intellectual P P Ltd	-	-	62,50,000	41,96,000	1,93,62,000	3,08,36,000	1,81,14,500	7,87,58,500
Jayachandra K B	-	-	-	-	1,49,42,000	1,97,45,000	1,92,58,000	5,39,45,000
Mitrin Advisors Private Limited	10,50,000	1,00,000	89,00,000	25,00,000	1,34,12,000	1,00,00,000	26,99,000	3,86,61,000
N9 Sports & Leisure Holdings Pvt Ltd	-	-	32,22,000	18,09,500	1,05,06,500	2,44,78,500	1,27,19,000	5,27,35,500
Nandish Shivanna Dommallur	-	-	-	-	-	-	5,00,000	5,00,000
Nikhil Enterprises	-	7,00,000	87,94,000	43,03,500	34,34,000	-	-	1,72,31,500
Nishita N	-	-	-	-	-	-	-	-
Paprikaas Studios	-	-	-	-	2,08,37,000	3,75,06,000	2,12,83,800	7,96,26,800
Payism Technologies India Pvt Ltd	-	-	-	-	-	65,000	4,38,165	5,03,165
Pro-in Entertainment Pvt Ltd	1,99,500	53,12,000	2,50,000	33,99,500	85,01,500	82,79,000	47,99,500	3,07,41,000
Scribble Media And Entertainment Pvt Ltd	-	-	-	34,35,430	2,42,74,500	2,97,89,500	1,48,60,000	7,23,59,430
Xentrix Technologies	-	-	-	-	2,13,37,000	3,16,21,500	1,43,94,500	6,73,53,000
TOTAL	12,49,500	61,12,000	3,34,25,000	3,53,73,930	19,29,48,500	25,90,09,400	15,64,02,965	68,45,21,295

29. We have also gone through the statements recorded during the course of search under section 132(4) of the Act of question and answerNo.22 which is as under :



22 You are hereby given one more opportunity to furnish the books of accounts/explanation/ sources for the cash deposits made in bank accounts of the above mentioned 16 entities in which you have admitted income of Rs. 69.50 cr during the course of survey proceedings.

Ans. Sir, I would like to mention that no books of accounts are maintained for any of the 16 entities except in my individual status. I would like to admit once again that in my statement u/s 132(4) of the I.T. Act, 1961 that the entire declaration made during the course of survey amounting to Rs. 69,50,36,595/- in the respective hands of entities mentioned above for the respective assessment years mentioned as per the table as I do not have any explanation regarding the sources of the cash deposits in the respective bank accounts nor I maintained any books of account reflecting these cash deposits.

30. From the above statements, we noted that during the course of survey Shri D. S. Nandish has specifically mentioned that I have not maintained any books of accounts for any of my entities except M/s. Xentrix Studios Pvt. Ltd. During the course of survey and during the search, Shri. D. S. Nandish has stated that no books of accounts are maintained for any of the 16 entities except in my individual status. It is very much relevant that statement recorded during the course of search under section 132(4) of the Act has much evidentiary value and the very basis for making addition by the AO is mainly only from the statement recorded during the search/survey under section 132(4) of the Act. During the statement recorded under sction 132(4) of the Act, Shri. D. S. Nandish stated that there is no books of accounts maintained for the other entities except in individual capacity . The Cit (A) has also noted regarding not maintain the books of accounts Therefore, relying on the judgment of Hon'ble Apex Court in the case of Roshan Lal Sanchiti v. PCIT (2023) 452 ITR 229/ 292 Taxman 69 (SC) the statements recorded are correct that there is no books of accounts maintained by the assessee either directly or by Shri D.S. Nandish. the AO has made addition under section 68 of the Act. For the sake of convenience, we are reproducing section 68 of the Act as under:

> ***"68. Cash credits.***
> *- 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] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.[Provided that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless— (a)the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and(b)such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:[Provided*

further] that nothing contained in the first proviso 81[or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

31. From the above section, it is very much clear that the assessee must have maintained books of accoutns in which the sum found / credited in the books of accounts of the assessee but it is here clear that there is no books of accounts maintained. Therefore, no addition can be made. A similar issue has been decided by the Co-ordinate Bench in ITA No. ITA Nos.1568 to 1570/Bang/2024 in the case of N9 Sports & Leisure Holdings Pvt. Ltd., Vs. DCIT (supra) in which it has been held as under which is also part of the above search / survey proceedings case and in this case, the addition made by the AO towards interest expenditure has also been dealt in which it has been held that the very purpose of reopening of the case is not sustainable then subsequent addition made by the AO which are not part of the very basis for reopening and addition made on the basis of other issure which are not part of reasons recorded are not sustainable.. Therefore, during the course of proceedings under sections 147/148 of the Act and further addition made by AO are not sustainable. But in the case on hand the AO has discussed the disallowance of interet but while assessing the income in has not been considered. For the sake of convenience, we are reproducing the same:

"8. Considering the rival submissions, we note that a survey was conducted in the case of in the case of M/s Xentrix Studios P Ltd on 03.05.2017 and statements were recorded u/s. 131 of the Act, of Mr. D.S. Nandish which was reaffirmed in the statement recorded u/s. 132(4) during the search proceedings that he has deposited cash in various bank accounts. The AO on the basis of information recorded during the survey in the case of Shri D.S. Nandish the reasons have been recorded for issue of notice and sought approval from the. Pr.CIT which is incorporated by the CIT(A) in his order. The very basis for reopening of the case is on the basis of survey conducted in the case of M/s. Xentrix Studios P Ltd. but not on the basis of search conducted u/s. 132. In view of this, the notice issued by the AO u/s. 148 is correct. Therefore the assessee's objection raised that notice should be issued u/s. 153C fails. For the sake of convenience, we are reproducing the reasons recorded in ITA No.1568/Bang/2024:-

" Reasons for reopening of the Assessment in case of M/s N 9 Sports & Leisure Holdings P Ltd for Asst Year 2013-14 u/s 147 of I T Act

1. Brief Details of the assessee: The assessee filed its return of income on 26.09.2013 declaring loss of Rs.27,771/-. In the return of income filed the assessee has declared interest income of Rs.1,37,398/- from bank fixed deposits. There is no other income declared in the return of income.

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

Survey u/s 133A of the Income-tax Act, 1961 was carried out in the case of M/s Xentrix Studios P Ltd on 03.05.2017. During the survey, it was found that Shri D S Nandish had floated several companies/firms/business concerns and utilised the bank accounts of these entities for depositing unaccounted and unexplained cash. It was also found that none of these entities were carrying any business activities, nor maintaining any books of account for the transactions in bank accounts and also not filing their returns of income. Shri D S Nandish accepted in his statement that entire cash deposits in these bank accounts were made by him from his unaccounted sources of income. During survey, it was found that there were cash deposits of Rs.33,22,000/- in the bank account of M/s. N 9 Sports & Leisure Holdings P Ltd during the Fin Year 2012-13. In absence of any books of accounts, documentary evidence or explanation to show the sources of unaccounted cash deposits, Mr D S Nandish admitted to disclose an additional income of Rs.32,22,000/- in the hands of M/s N 9 Sports & Leisure Holdings P Ltd in the capacity of promoter/director of the company.

3. Analysis of information collected/ received : From the above information received, it is clear that M/s N 9 Sports & Leisure Holdings P Ltd was having other income for Asst Year 2013-14 and had not declared the same in its return of income.

4.Enquiries made by the AO as sequel to information collected /received : On verification from the ITD system, it is found that return of income filed for Asst Year 2013-14 by the assessee company does not declared its true income.

5. Findings of the AO : It is found that the assessee is having bank account no. 845603477 with Axis Bank, Karthik nagar, Bangalore. There were total cash deposits of Rs.32,71,500/- in bank account during the period 01.04.2012 to 31.03.2013. A copy of bank statement for the period 01.04.2012 to 31.03.2013 is on record. Further, it is seen that the assessee has made many transactions in its bank account but the same is not declared in its return of income filed.

6.Basis of forming reason to believe and details of escapement of income : On going through the statements of Shri D S Nandish dated 03.05.2017 and 28.08.2017 and enquiries made thereafter, it is clear that the assessee company was having unexplained income of Rs.32,71,500/- chargeable to tax in A.Y. 2013-14 and has not filed its return of income. After due

consideration of the facts of the case, I have reason to believe that income chargeable to tax has escaped assessment for Asst Year 2013-14.
7. Applicability of the provisions of section 147/151 to the facts of the case: In this case return of income was filed for the Asst Year 2013-14, but no scrutiny assessment u/s 143(3) was made. Accordingly in this case, the only requirement to initiate proceedings u/s I47 is reason to believe which has been recorded above as per para 5 & 6.
It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated under section 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the I T Act. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from Pr Commissioner of Income Tax as per the provisions of section 151 of the Act."

9. The AO has also communicated copy of the reasons recorded with proper DIN to the assessee which is clear from the remand report submitted by the AO. The AO has made addition u/s. 68 of the Act. for want of explanation in terms of section 68 of the Act. On going through the above reasons recorded, we note that assessee has not maintained any books of account. Therefore, addition made u/s. 68 will not survive. The pre-condition for invoking section 68 is any amount credited in the books of account. For the sake of reference, we are reproducing section 68 of the Act:-
"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 :
[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless--
(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:"
10. From the above section it is clear that the pre-condition to invoke section 68 is any sum 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. The assessing officer is very much sure while recording the reasons for reopening that the assessee has not maintained books of accounts. Here in the present case, it is clear that the AO himself is satisfied that no books of account was maintained by the assessee and therefore addition cannot be made u/s. 68. The coordinate bench of ITAT has explained the books of accounts in the case of DCIT vs GSNR Rice Industries S(P.) LTD REPORTED IN [2021] 128 taxmann.com 433 (Chennai - Trib.)/[2021] 90 ITR(T. In this judgement it has been held as under:-

"From the definition of 'books' or 'books of account', it is abundantly clear that books of account means regular books of account maintained by the assessee for any previous year to record day to day transactions of its business including ledgers, day-books, cash books, account books and other books. The term other books does not mean to include some dumb documents like diary, note book or deleted entries of computer CPU. The term other books refers to any other books which are relevant and in consonance with ledgers, day-books, cash books, account books, etc. Therefore, in order to include any other books of account maintained by the assessee within the ambit of term 'other books', those books must be relevant in the business of the assessee to keep track of transactions. Hence, other books refers to in the ordinary course of any business of the assessee are stock books maintained in the ordinary course of business to record movement of stocks, books of account maintained for recording salary and wages as required under the Wages Act and other statutory books prescribed under any other law. But, it does not include diary, note book and some other dumb documents maintained by any person for any reason. Thus, diary, note book and retrieved data from computer CPU are not books or books of account as defined under section 2(12A) and hence, those diary, note book and retrieved data cannot be considered as books for invoking provisions of sections 68 and 69/69A/69C."

It has been held that if there is no books of account maintained, no addition can be made u/s. 68 of the Act. The above judgment is squarely applicable in the present case on hand.

11. Further the addition made by the AO towards interest payment u/s. 37also fails. In this case, the very purpose of reopening of the case is not sustainable, then subsequent addition made by the AO which are not part of the very basis for reopening or part of the reasons recorded , therefore during the course of reassessment proceedings any further addition is made by AO is also not sustainable. Our view is supported by the decision of the coordinate Bench of ITAT Agra reported in [2014] 41 taxmann.com 380 in the case of Asha Kansal wherein it is held as under:-

" 7. Section 147 provides that if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153,

assess or reassess such income "and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section." Explanation 3 to Section 147 inserted by Finance Act 2009 specifically provides that the "Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue has come to the notice subsequently in the course of proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under such Section 2 of Section 148". Elaborating upon the scope of these provisions, and dealing with the question whether any addition can be made on account of issues other than the issue in respect of which reasons for reopening have been recorded in a situation in which no additions are made for the reasons recorded, Hon'ble Bombay High Court, in the case of CIT v. Jet Airways (I.) Ltd. [2011] 331 ITR 236/[2010] 195 Taxman 117, has observed as follows :--

'Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income, which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and", as well as "also"

have been used together and in conjunction.

The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in

respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the season to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.'

8. The legal position is thus clear. When the reasons for reopening the assessment itself is incorrect, as evidenced by the fact that the Assessing Officer accepts that position by not making related addition, no further additions can be made in the course of such reassessment proceedings. The very initiation of reassessment proceedings in such a case ceases to be of any effect. In other words, the resultant reassessment proceedings are rendered infructuous. The underlying principle is not difficult to fathom. When it is a position accepted by the Assessing Officer that no addition can be made on the basis of reasons for which reassessment proceedings were initiated, there cannot be any legal basis for the resultant reassessment proceedings either.

9. Taking the above principle to a little further, we find that whether such an addition is not made by the Assessing Officer himself or whether the Assessing Officer does not challenge the CIT(A) deletion of such additions made by the Assessing Officer, the legal situation remains the same. In both the situations, the Assessing Officer accepts that addition cannot be made on the basis of reasons recorded by him while reopening the assessment. The common thread in both these situations is that the Assessing Officer accepts the situation that based on the reasons recorded, while reopening the assessment, legally sustainable additions cannot be made or deletion of such additions cannot be challenged. Once he accepts such a position, whether at the stage of assessment by not making the related addition, or at a later stage by not challenging CIT(A)'s order deleting such an addition, the reassessment proceedings are rendered infructuous because no other additions, even if any, made by the Assessing Officer can survive the legal scrutiny. It is also important to bear in mind that while deleting the addition before us, as we have seen earlier in this order, learned CIT(A) has given

categorical findings which run contrary to the reasons recorded while reopening the assessment and yet the revenue authorities have not raised, either in appeal or by any other mode, even a whisper against such findings which have thus reached finality. While on this issue, it is also important to note that, as is the settled legal position, the reasons recorded for reopening the assessment are to be read exactly as these are recorded and it cannot be open to the Assessing Officer to fill in the gaps, even if any, while justifying the reassessment proceedings. Nothing can be added to these reasons nor anything can be deleted from the same. To highlight this aspect of the matter, we may refer to the following observations made by their Lordships in the case of Prashant S. Joshi v. ITO [2010] 324 ITR 154/189 Taxman 1 (Bom.).

'Sec. 147 provides that if the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of ss. 148 to 163, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The first proviso to s. 147 has no application in the facts of this case. The basic postulate which underlines s. 147 is the formation of the belief by the AO that any income chargeable to tax has escaped assessment for any assessment year. The AO must have reason to believe that such is the case before he proceeds to issue a notice under s. 147. The reasons which are recorded by the AO for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided.

The reason recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well settled that the question as to whether there was reason to believe, within the meaning of s. 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the AO. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under s. 148.

10. A Division Bench of this Court speaking through Mrs. Justice Sujata Manohar (as the learned Judge then was) held thus in N.D. Bhatt, IAC v. I.B.M. World Trade Corpn. [1995] 216 ITR 811 (Bom):

"It is also well-settled that the reasons for reopening are required to be recorded by the assessing authority before issuing any notice under s. 148 by virtue of the provisions of s. 148(2) at the relevant time. Only the reasons so recorded can be looked at for sustaining or setting aside a notice issued under s. 148. In the case of Equitable Investment Co. (P) Ltd. vs.

ITO (1988) 73 CTR (Cal) 236 : (1988) 174 ITR 714 (Cal), a Division Bench of the Calcutta High Court has held that where a notice issued under s. 148 of the IT Act, 1961, after obtaining the sanction of the CIT is challenged, the only document to be looked into for determining the validity of the notice is the report on the basis of which the sanction of the CIT has been obtained. The IT Department cannot rely on any other material apart from the report."

11. The same principle was reiterated in a judgment of the Division Bench of this Court in Hindustan Lever Ltd. v. R.B. Wadkar [2004] 268 ITR 332/137 Taxman 479 (Bom):

".....the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the AO to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the AO. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The AO, in the event of challenge to the reasons must be able to justify the same based on material available on record. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the AO cannot be supplemented by filing affidavit of making oral submission, otherwise, the reasons which are lacking in material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.'

10. For the reasons set out above, and in view of the fact the Assessing Officer has not challenged the CIT(A)'s deletion of quantum addition made on the basis of reasons recorded for reopening the assessment, we hold that the reassessment proceedings were infructuous and no other additions could have been made by the Assessing Officer either. As we have also observed earlier in this order, learned CIT(A) has given categorical findings which run contrary to the reasons recorded while reopening the assessment and yet the revenue authorities have not raised, either in appeal or by any other mode, even a whisper against such findings which have thus reached finality. In response to specific question by us, learned Departmental Representative could not find out any infirmity in the action of the CIT(A) or factual inaccuracies in the observations made by the CIT(A) on this issue. The very reassessment proceedings were also thus based on, what is now a settled position, erroneous reading of facts which cannot lead to a legally sustainable addition. The reassessment proceedings were thus infructuous and invalid. The assessee succeeds for this short reason alone. In any case, the reasons recorded while reopening the

assessment are disapproved, on merits, by the CIT(A) and those findings remain unchallenged and controverted. In this view of the matter, we also see no need to deal with many other erudite contentions raised by the learned counsel. All those aspects will be academic in the situation before us."
12. Respectfully following the above decision, we delete the addition u/s. 37 . The ld. DR has also filed written synopsis and relied on the case laws on the merits as well as on legal issue of the addition which do not support the case.
13. In the result, the appeal of the assessee for AY 2013-14 is partly allowed.

32. Respectfully following the above judgment, we hold that the addition made by the AO are deleted and appeal filed by the assessee is partly allowed.

ITA No. 1618/Bang/2024

33. Briefly stated, the facts of the case are that a survey under section 133A of the Act was carried out in the case of M/s. Xentrix Studios Pvt. Ltd., on 03.05.2017 and statement was recorded on 04.05.2017. It was found that Shri. D. S. Nandish had floated several companies / firms / business concerns and utilized the bank accounts of these entities for depsoting unaccounted and unexplained cash, wherein the account of the appellant has also ben utilized for depositing such cash in which it was observed that the cash of Rs.1,92,58,000/- was deposited in the bank account of the assessee maintained with Bharath Co-operative Bank Ltd., Indiranagar Branch, Bangalore, in account No.02301210000863. The case was selected for limited scrutiny under CASS and examined 2 issues viz., (1) Agricultural Income (2) Cash deposited during demonetization period.

34. Accordingly, notice under section 143(2) of the Act was issued on 14.08.2018. Subsequently, the other statutory notices were issued to the assessee. Notice under section 142(1) of the Act dated 29.05.2019 was issued and served on the assessee calling for details. The AO noted that assessee has declared

agricultural income of Rs.22,76,110/- and has declared cash deposit of Rs.15,11,000/- during demonetization period on 09.11.2016 and 13.11.2016 in following bank accounts:

BANK ACCOUNT	**ACCOUNT No.**	**CASH DEPOSIT**
1. HDFC BANK	10441070001532	4,44,000
2. VIJAYA BANK	1079085010000004	2,00,000
3. SBM	64103418958	7,57,000
4. VIJAYA BANK	10790701100016	1,00,000

35. During the assessment proceedings, assessee submitted details of agricultural income stating that there have owen 55 acres of coffee plantation and has received amount of Rs.45,88,152/- from coffee sales, copy of land holdings were also submitted. During the coure of survey proceedings under section 133A of the Act on 03.05.2017, it was noticed that Shri. D. S. Nandish has deposted cash in the account of the assessee in Mahindra Co-operative Bank Ltd., of Rs.1,92,58,000/- and it was also noted that Shri. D. S. Nandish had floated several companies firms/ business concerns and utilized bank account of these entities for depositing unaccounted and unexplained cash. It was also found that none of these entities were carrying any business activities nor maintaining any books of accounts for the transactions and not filing their return of income. During the survey proceedings, the bank statements of the entities were called for and verified and it was noted that huge cash has been deposited. During the survey proceedings, Shri. D. S. Nandish accepted in his statement that the entire cash deposits into these bank accounts were made from unaccounted source of income and offered the cash deposits as additional income in respective cases. The bank statement was called from bank under section 133(6) of the Act and during the Financial Year it was noted that assessee had made cash deposits to the extent of Rs.1,92,58,000/- and from bank opening form it was observed that Shri. K. B. Jayachandra is a single owner of the accounts and he is operating the bank account. During the coure of assessment proceedings, assessee failed to

explain the source of cash deposits and said that Shri. D. S. Nandish had carried out certain transaction on his behalf and that he had accepted his transactions to be included in his personal assessment. However, after verification, it was found that Shri. D. S. Nandish had not included the cash deposits in Bharath Co-operative Bank Ltd., in his accounts while filing return of income for the Assessment Year 2017-18. The AO noted that the said cash amount has not been included by the assessee while filing return of income under section 139(1) of the Act. Accordingly, the same is treated as undisclosed income and added to the total income u/s 69A of the Act.. The cash deposit of Rs.1,92,58,000/- in the bank account was treated as unexplained money under sections 69A of the Act and 115BBE of the Act was applied.

36. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A) raising various grounds. During the course of appellate proceedings, assessee filed written submissions. After considering the submissions of the assessee, the learned CIT(A) observed that expanding the limited scrutiny to complete scrutiny is weakend by the inclusion of cash deposits totaling to Rs.1,92,58,000/- in search and seizure operation on 24.08.2017 which coincided with the demonetization period since the investigation of these deposits directly relates to the initially specified reasons for selection of scrutiny viz., transactions during demonetization period. There was no deviation from the predetermined scope of investigation. The alignment of these cash deposits with the objectives of limited scrunity underscores the absence of need for conversion to complete scrutiny. Therefore, the procedures adhered to were strict in accordance with the guidelines for limited scrutiny and the appellant’s claim of procedural lapse to the necessity to annul the proceedings are unfounded and meritless.

37. Aggrieved by the above Order, assessee filed appeal before the ITAT.

38. The learned Counsel reiterated the sumissions made before the lower authorities and submitted and and in support of his arguments he has filed a written synopsis which is as under:-

ON POINT OF LAW

Ground No.1: The entire assessment proceedings are bad in law and null and void as The A.O. has not restricted to scrutiny norms as per CBDT instruction as the scrutiny was selected under CASS

The appellant submits that his case was selected for scrutiny under CASS. Accordingly notice u/s 143(2) was served on the appellant notice dt. 14.08.2018. The notice specifically states that the reason for selection of scrutiny under CASS is for the following reasons

1. Agricultural income
2. Cash deposited during demonetization period.

It is pertinent to note that the A.O. has issued 4 notices dt. 29.05.2019, 07.06.2019, 06.08.2019 and 13.09.2019 under section 142(1) of the act, calling for certain information and records pertaining to the return filed.

In none of the above said notices, the details regarding cash deposited in bank account, as per statement of D.S.Nandish, were asked for to be submitted. In the questionnaire of notice u/s 142(1), certain details of my income declared for the year were sought for and the same were submitted during the course of action.

Further, if the scrutiny under CASS was converted into a total scrutiny, the approval from appropriate statutory authority should have been taken and such approval/sanction should be intimated to the Assessee. Such approval or sanction details are not mentioned in the order. Hence, the appellant is of the belief that no approval for total security was obtained hence the entire assessment proceedings are vitiated and same is to be set aside

We rely on the following decisions

1.Venkata Ramana Reddy v.ACIT (Hon'ble ITAT Hyderabad Appeal No.ITA Nos 1395 &1396 /HYD/2019 AY 2015-16 Where it was held that A.O. to communicate if case falls under limited scrutiny or complete scrutiny.

2.ChaitanyaBansibhaiNagori v.PCIT (AhmmadabadITAT)

3.RajnikanthS.Bhalavat,Ahmedabad v.ACIT (ITAT Ahmedabad) (23.12.2022)

Ground No.2: The assessment order passed u/s.143(3) was bad in law and null and void as the AO has converted into complete scrutiny without obtaining approval from competent authority and not informing the Appellant also

The Assessment order passed u/s.143(3) was bad in law and null and void as the scrutiny selected under CASS for verification of the following issues

1. Agricultural income

2. Cash deposited during demonetization period

However, the AO has concluded the assessment based on the survey statement recorded from Mr. D S Nandish (searched person u/s.153A) and there was no enquiry in respect of above issues on which scrutiny was selected.

Further, the scrutiny was selected for limited verification of above issues. However the AO has concluded the assessment beyond the scrutiny norms. However there was no approval obtained from the competent authority for conversion of limited scrutiny to complete scrutiny.

Further the AO has not provided details to Appellant for conversion of limited scrutiny to complete scrutiny and there was no discussion during the assessment proceedings.

However, the CIT (A) has stated that the argument for expanding the scrutiny from limited to complete is weakened by the inclusion of deposits

totaling Rs.1,92,58,000/- in a search and seizure operation on 24/08/2017, which coincided with the demonetization period.

From the above observation made by CIT (A) it can be noted that, the Assessment was concluded based on the search proceedings conducted on Mr. D S Nandish (searched person) and not as per the reasons selected for scrutiny under CASS. Hence, the entire proceedings u/s.143(3) of the Act is bad in law and null and void.

Ground No.3: The assessment framed on Appellant was not correct as per provisions of the Act as D S Nandish has stated in survey statement that he has deposited cash in Appellant Bank account. Hence it should have been added in the hands of D S Nandish and not in the hands of Appellant

The AO has stated in the assessment order that he has concluded the assessment based on the survey statement recorded from Mr. D S Nandish. However, in the said statement, Mr. D S Nandish has stated that he has deposited entire cash in Bank Account of Appellant. In such a case, the AO should have been assessed in the hands of Mr. D S Nandish and not in the hands of the Appellant.

Further the AO has not collated any information and details as per the reasons selected for scrutiny norms under CASS and the assessment was done solely based on the survey and search statements recorded from Mr. D S Nandish. Even the Bank statement which was recorded in the survey statement was also not verified and not provided to the Appellant for rebuttal. Hence the proceeding u/s.143(3) are bad in law and null and void in this account.

ON MERITS

Ground No.4 : On the facts and circumstances of the case, learned CIT (A) has erred, as A.O. was not correct in not accepting the explanation that the cash deposits made by Mr. Nandish are out of Borrowed Funds. Hence the addition made by AO treating entire cash deposit as unexplained income in the hands of the Appellant is not correct

Ground No.5: On the facts and circumstances of the case, learned CIT (A) has erred in both on facts and in law in confirming addition made by AO for entire cash deposits of Rs. 1,92,58,000/- instead of net income as the Appellant has claimed expenditure being Interest expenses in the Return of Income . Hence only net income should have been added

The AO has made additions of cash deposits of Rs.1,92,58,000/- in the captioned year based on the sworn statement given by Mr. D S Nandish in survey proceedings conducted in case of third party Xentrix Group cases on 03.05.2017 and also search proceedings u/s.132(4) dated 28.08.2017. Further this cash deposit was not relating to Appellant as the searched person Mr. D S Nandish (u/s.153A) has himself confirmed that the said cash deposits are relating to him and deposited by him.

If at all, Mr D.S.Nandish has given a statement that he deposited cash, the natural corollary is that such cash deposit should have been included in his assessment for the said year, and not in the hands of the appellant.

Further we understand that the said cash deposits are relating to Loans from the private lenders as the private lenders have denied to provide any details in respect of cash loans, Mr. D S Nandish has declared as income in the Return and claimed the relevant interest paid to private lenders as expenses. Further Mr. D S Nandish has floated Appellant's Bank account for his business purpose being production of film. However he incurred huge loss from the productions and hence he has utilized this company for cash deposits which was taken as loans from private lenders.

Further the AO has stated in the assessment order that the Mr. D S Nandish had carried out certain transactions on his behalf and that he had accepted his transactions to be included in his personal assessment. However after verification it is found that the said D S Nandish has not included the cash deposits in Bharat Co-op Bank Ltd in his accounts while filing his Return of Income for AY 2017-18.

From the above observation made by AO it is to be noted that the AO himself was aware that the cash deposits are relating to Mr. D S Nandish and not relates

to Appellant. Merely because D S Nandish has not declared in his Return of Income the cash deposits, it cannot be added in the hands of the Appellant though it is established that cash deposits are not relating to Appellant. AS confirmed by AO the said cash deposits are not relating to Appellant, hence, there cannot be any addition on those cash deposits in the hands of the Appellant.

Ground No.6.The CIT (A) has erred in not appreciating the fact that the AO himself has stated that the cash deposits made by DS Nandish, however he has not declared in his return, hence it is added in the hands of the Appellant. Hence the AO has not established that the cash deposits are relating of Appellant and not even verified the bank statements.

The AO has categorically stated in the assessment order itself that the Cash deposits are made by Mr. D S Nandish in Appellant's Bank Account and he has only operated the said Bank account which was opened in Bangalore Branch. However, while concluding the assessment the entire cash deposits made in Bharat Co-op Bank are assessed in the hands of the Appellant stating that the said cash deposits are not declared in the return of Income filed by Mr. D S Nandish for AY 2017-18 and hence the same is assessed in the hands of the Appellant.

The AO has not established that the said cash deposits are relating to Appellant and solely relied upon the statement recorded during survey conducted on Mr. D S Nandish.

The Appellant has not aware of the transaction made in Bharat Co-op Bank ltd by Mr. D S Nandish as the Appellant is staying in Hassan and basically he is a agriculturalist and there is no other business conducted by the Appellant.

Hence, the addition made by AO on account of Cash deposits are liable to be deleted in the hands of the Appellant.

Ground No.7: The Appellant objects the levy of interest u/s.234A and B consequential to the addition made by AO

The Appellant objects the levy of interest u/s.234A, B and C consequential to the addition made by AO.

Ground No.8: The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal

General in nature.

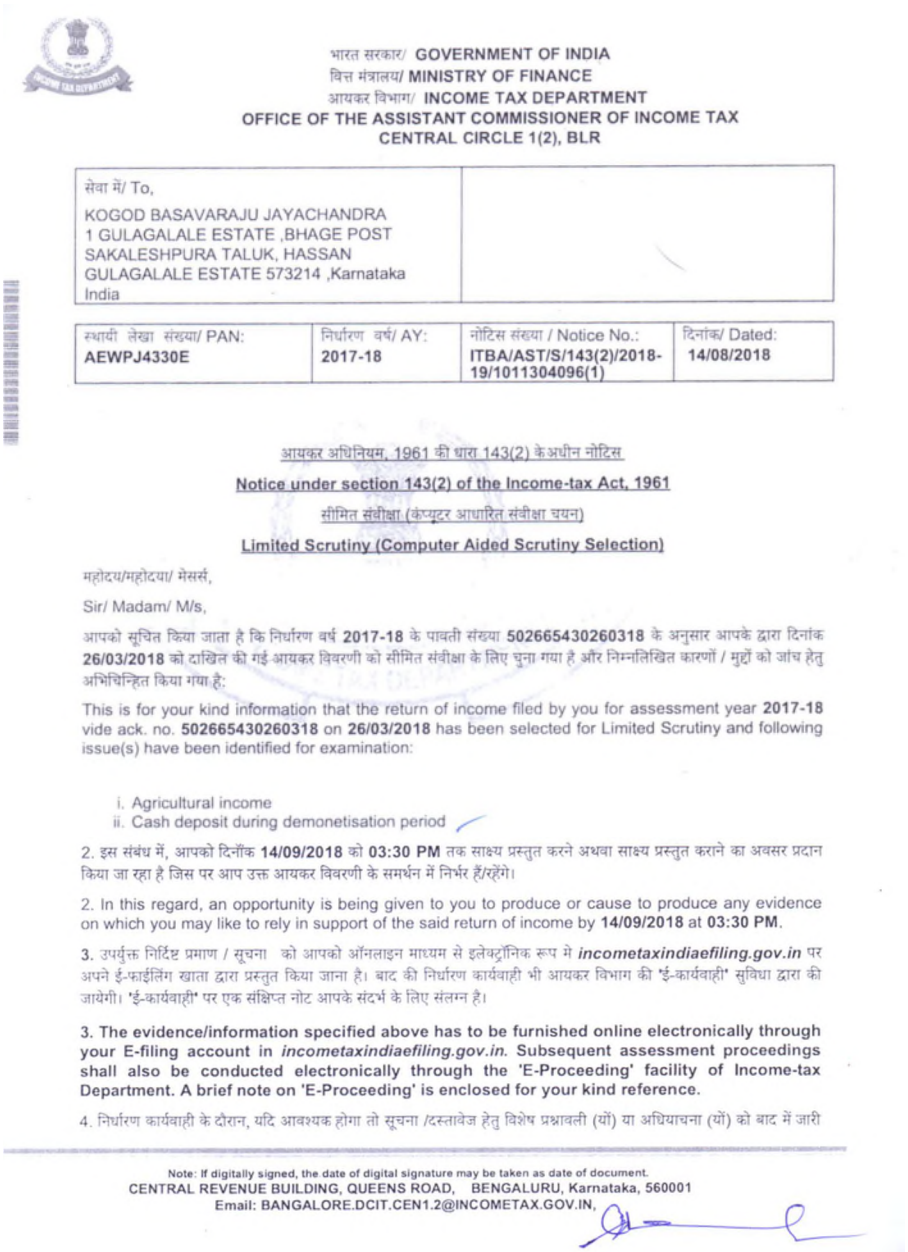
Wherefore on the above grounds and on such other grounds the Appellant prays the Appellate Authority to delete the additions as above and may pass such other as the Appellate Authority deems fit.

39. On the other hand, the learned DR relied on the Order of the lower authorities and submitted that the learned CIT(A) has examined the issues in detail. He has sought remand report from the AO and the objections raised by the assessee are baseless. The very purpose for selection of scrutiny is cash deposits made during the demonetization period which has been met as during the course of search and seizure proceedings in the case of Shri. D. S. Nandish, huge cash has been deposited in the assessee's bank account. However, it has not been substantiated with credible evidence during the course of assessment proceedings. However, the source of cash deposits has not been explained during the course of assessment proceedings as well as in the appellate proceedings even before the ITAT. Therefore, the AO has correctly made addition under section 69A of the Act as unexplained money.

40. On the rejoinder, the learned Counsel submitted that the AO has not specified the amount of cash deposited in Bharat Co-operative Bank Ltd., during the demonetization period. The entire amounts have been added. However, the assessee has deposited cash in four bank accounts during the demonetization period of Rs.15,11,000/- which have been accepted and clearly shows that as per the bank statement available with the AO, there is no cash deposit made during the demonetization period. However, the AO has gone beyond power from

limited scrutiny to complete scrutiny without taking approval from the competent authority. Therefore, the appeal of the assessee should be allowed.

41. Considering the rival submissions, we noted that the case has been selected for scrutiny under limited scrutiny through CASS and notice has been issued under section 143(2) of the Act dated 14.08.2018. For the sake of convenience, we are reproducing the same as under:



भारत सरकार/ **GOVERNMENT OF INDIA**
वित्त मंत्रालय/ **MINISTRY OF FINANCE**
आयकर विभाग/ **INCOME TAX DEPARTMENT**
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 1(2), BLR

सेवा में/ To,	
KOGOD BASAVARAJU JAYACHANDRA 1 GULAGALALE ESTATE ,BHAGE POST SAKALESHPURA TALUK, HASSAN GULAGALALE ESTATE 573214 ,Karnataka India	

स्थायी लेखा संख्या/ PAN:	निर्धारण वर्ष/ AY:	नोटिस संख्या / Notice No.:	दिनांक/ Dated:
AEWPJ4330E	**2017-18**	**ITBA/AST/S/143(2)/2018-19/1011304096(1)**	**14/08/2018**

आयकर अधिनियम, 1961 की धारा 143(2) के अधीन नोटिस

Notice under section 143(2) of the Income-tax Act, 1961

सीमित संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन)

Limited Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ मेसर्स,

Sir/ Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष **2017-18** के पावती संख्या **502665430260318** के अनुसार आपके द्वारा दिनांक **26/03/2018** को दाखिल की गई आयकर विवरणी को सीमित संवीक्षा के लिए चुना गया है और निम्नलिखित कारणों / मुद्दों को जांच हेतु अभिचिन्हित किया गया है:

This is for your kind information that the return of income filed by you for assessment year **2017-18** vide ack. no. **502665430260318** on **26/03/2018** has been selected for Limited Scrutiny and following issue(s) have been identified for examination:

i. Agricultural income
ii. Cash deposit during demonetisation period

2. इस संबंध में, आपको दिनाँक **14/09/2018** को **03:30 PM** तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by **14/09/2018** at **03:30 PM**.

3. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप मे ***incometaxindiaefiling.gov.in*** पर अपने ई-फाईलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in *incometaxindiaefiling.gov.in*. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना /दस्तावेज हेतु विशेष प्रश्नावली (यों) या अधियाचना (यों) को बाद में जारी

Note: If digitally signed, the date of digital signature may be taken as date of document.
CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU, Karnataka, 560001
Email: BANGALORE.DCIT.CEN1.2@INCOMETAX.GOV.IN,

किया जाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने तक निर्धारण कार्यवाही आपके द्वारा वर्णित की गई ई-मेल के माध्यम से या मैन्युअल रूप से (यदि ई-मेल उपलब्ध नहीं है) की जाएगी।

5. Please note that para 3 is applicable if you have an E-filing account. Till the time such an account is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक : यथोपरि

Enclosure : as above

सील/Seal

भवदीय,

Yours faithfully,

PRAVEEN SINHA
CENTRAL CIRCLE 1(2), BLR

42. From the above notice, we noted that the case was selected for limited scrutiny through CASS for examination of the above two points. During the course of assessment proceedings, the AO has accepted the agricultural income declaring in the income tax return and the cash deposits in the above mentioned table in four bank accounts of Rs.15,11,000/- and the sale proceeds of coffee for Rs.44,88,152/- also have been accepted. However, the AO has added the entire cash deposts in Bharat Co-operative Bank Ltd., Indiranagar Branch, Bangalore, in the aforesaid bank account has been added without obtaining approval from the competent authority for converting the limited scrutiny into complete scrutiny. During the coure of assessment proceedings, the AO should have specified cash amount deposited in Bharat Co-operative Bank Ltd. during the demonetization period, but he has not done so. The finding of the ld. CIT (A) noted in para NO. 7.6.5 are on presumption basis without giving definite finding that the csh aws deposited during the demonitazation period. We noted that both the authorities below have not quantified the cash deposits prior to 09.11.2016, after 09.11.2016 to 30.12.2016 and from 31.12.2016 to 31.03.2017 in spite of having bank account of the bharat co-operative ltd. Therefore, it is presumed that there was no cash deposits made during the demonetization period and AO has

made other additions which is not permissible. The Assessing officer has exceeded his jurisdiction. The ld. Dr also could not establish that there is cash deposits during 09.11.2016 to 30.12.2016 in the aforesaid bank account. A similar issue has been decided by the Co-ordinate Bench of the Tribunal in the case of Srimanta Kumar Shit Vs. ACIT in ITA No.1911/Kol/2024 in which it has been held that where case is selected for limited scrutiny to verify cash deposits during demonetization period, the AO had not made addition on account of such issue. Other addition made in Assessment Order is not sustainable. The CBDT had issued notification No.225/2017/ITA-II dated 23.06.2017. The AO has not followed this notification while completing the scrutiny assessment. The relevant part of judgment is as under:

8. Ld. Counsel for the assesese further appraised us as to how notices under section 142(1)(*ii*) & (*iii*) of the Act are also required to be issued. Copy of the notice issued under section 143(2) dated 24.09.2018 is placed at pages no. 9 to 12 of the paper book. The heading of this notice do contemplates that it was issued for scrutiny under Computer Aided Scrutiny Selection System. The notice was issued on 24.09.2018 *i.e.* after the Board Circular dated 23.06.2017, whereby a format was laid down by the Board to be used by the ld. Assessing Officer. He further contended that a perusal of the assessment order would indicate that the case of the assessee was selected for limited scrutiny *i.e.* for verifying the cash deposits during demonetization. If scope of this limited scrutiny is required to be extended, then appropriate approval from the competent authority was required to be taken by the ld. Assessing Officer, otherwise he cannot enlarge the scope of the assessment. The Board has issued an Instruction bearing No. 5 of 2016, where it has been propounded that if a return was selected for limited scrutiny and the scope is to be enlarged, then, the ld. Assessing Officer is required to adopt the procedure as formulated in Instruction No. 5 of 2016, which reads as under:- "Instruction No. 5/2016

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi, the 14th of July, 2016

Subject: Direction regarding scope of enquiry in cases under 'Limited Scrutiny' selected through CASS 2015 & 2016-regd.-

Vide Instruction No.20/2(J15 dated 29.12.2015 in File of even number, Board has laid down Standard Operating Procedure for handling of cases under 'Limited Scrutiny' which were

selected through Computer Aided Scrutiny Selection in 'CASS Cycle 2015'. In these cases, it was stated that the general scope of enquiry in scrutiny proceedings should be restricted to the relevant parameters which formed the basis for selecting the case for scrutiny. However, in revenue potential cases, it was further provided that 'Complete Scrutiny' could be conducted, if there was potential escapement of income above a prescribed monetary limit, subject to the approval of administrative Pr. CIT/CIT/Pr. DIT/DIT.

2.In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny* into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(*d*) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny7 in a case which was originally earmarked for 'Limited Scrutiny7, the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(*d*) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3.Further, while forming the reasonable view, the Assessing Officer would ensure that:

(*a*) there exists credible material or information available on record for forming such view;

(*b*) this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

(*c*) there must be a direct nexus between the available material and formation of such view.

4.It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny7 after following the procedure outlined above, the AO may examine the additional issues besides the issue(*s*) involved in 'Limited Scrutiny7. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.

5.It is also clarified that once a case has been converted to 'Complete Scrutiny, the AO can deal with any issue emerging from ongoing scrutiny proceedings notwithstanding the fact that the reason for such issue have not been included in the Note.

6 .To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny to 'Complete Scrutiny', it is suggested that provisions of section 144A of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

7 .The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016.

8 .The contents of this Instruction may be brought to the notice of all for necessary compliance.

9 .Hindi version to follow.

Sd/-

(Rohit Garg)

Deputy Secretary to the Government of India".

9. Since in this case ld. Assessing Officer has not taken due care for converting the limited scrutiny to a full scrutiny, therefore, assessment order is not sustainable. For buttressing his contention, he relied upon the judgment of the Hon'ble Jurisdictional High Court in the case of *Principal Commissioner of Income-tax* v. *Weilburger Coatings (India) (P.) Ltd.* [2023] 155 taxmann.com 580/296 Taxman 205/463 ITR 89 (Calcutta), *Commissioner of Income-tax* v. *Venkatesa Spinners (P.) Ltd.* [2008] 296 ITR 205 (Madras).

10. On the other hand, ld. D.R. relied upon the order of ld. Assessing Officer and submitted that perusal of page no. 9 of the paper book, wherein copy of the notice under section 143(2) has been placed, would reveal that no expression exhibiting the limited scrutiny is being used by the ld. Assessing Officer. The notice would indicate that the case was selected for scrutiny assessment.

11. We have duly considered the rival contentions and gone through the record carefully. At the cost of repetition, we deem it necessary to take note of the format propounded by the CBDT for the use of ld. Assessing Officer while issuing notice under section 143(2) in a limited scrutiny case. Paragraphs 1 & 2 of this format are being emphasized by us, which read as under:-

Limited Scrutiny (Computer Aided Scrutiny Selection)

Notice under Section 143(2) of the Income-tax Act. 1961

PAN No:.....

Dated:.....

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year filed *vide* ack. No.....on..... has been selected for Scrutiny. Following issue(*s*) have been identified for examination:

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

12. A perusal of the above format would indicate that though in the heading, it exhibits limited scrutiny (Computer Aided Scrutiny Selection) but thereafter in the first paragraph, it only talks of scrutiny and then in second paragraph, it talks upon the opportunity being provided to the assessee what he wants to say in support of the return. It is pertinent to observe that in para one, the ld. AO has to identify the issues for examination. If this proforma is being read with the first paragraph of the assessment order, then, it would reveal that in the third line of the first paragraph, ld. Assessing Officer has used the expression "this return was

selected for scrutiny in "CASH" on the issue of cash deposits during demonetization period". It would indicate that the case was selected for scrutiny but for the issue of cash deposit during demonetization, this mention of the issue would indicate that it was for a limited purpose of scrutinizing the cash deposits during demonetization. Its scope for making other additions would only be enlarged by following due procedure laid down by the CBDT *vide* its Instruction No. 5 (reproduced supra).

13. The Hon'ble Jurisdictional High Court had an occasion to consider an identical situation in the case of *Weilburger Coatings (India) (P.) Limited* (*supra*), wherein Tribunal has followed the CBDT's Instruction bearing No. 5 of 2016. The questions before the Hon'ble High Court were -

(*a*) whether in the facts and circumstances of the case and in law, the ld. Tribunal has committed substantial error in law in deleting the disallowance of carry forward of losses of earlier years?

(*b*) whether the Learned Tribunal has substantially erred in law in holding that the Assessing Officer exceeded his jurisdiction in enquiring into those issues which were beyond the scope of limited scrutiny, without taking into consideration the fact that the claim of the assessee pertaining to carried forward losses was inadmissible since the beginning itself and therefore the Assessing Officer was justified in disallowing the same without converting the case into complete scrutiny?

These questions have been decided in favour of the assessee and against the revenue. The Hon'ble High Court concurred with the ITAT that due procedure was not followed while converting limited scrutiny case to a full scrutiny.

14. Similarly, the order of the ITAT, Visakhapatnam Bench in the case of *VUDATHA VANI RAO* v. *Income-tax Officer* [2024] 159 taxmann.com 1394 (Visakhapatnam - Trib.) was relied upon by the ld. Counsel for the assessee. This 'SMC' order of the ITAT is also in the line of Hon'ble High Court's decision. The ld. Assessing Officer has not made any addition of cash deposit during demonetization period. The assessee has deposited small amounts, which have been accepted by the ld. Assessing Officer. Therefore, the assessment order itself is not sustainable because it has been passed by the ld. Assessing Officer by exceeding his limited powers. The ld. Assessing Officer ought to have followed the procedure contemplated in CBDT Instruction bearing No. 5 of 2016 for converting a limited scrutiny assessment into a full scrutiny. Accordingly, we quash the assessment order. Since we have quashed the assessment order, therefore, we do not deem it necessary to adjudicate the other issues on merit because they become academic in nature. Accordingly, we allow the appeal of the assessee.

43. Respectfully following the above judgement we allow the appeal of the assessee.

44. To sum up in the result the ITA No.1617/BANG/2024 is partly allowed and ITA No.1618/BANG/2024 is allowed.

Pronounced in the court on the date mentioned on the caption page.

Sd/-	Sd/-
(SOUNDARARAJAN K)	**(LAXMI PRASAD SAHU)**
Judicial Member	**Accountant Member**

Bangalore,
Dated : 26.05.2025.
/NS/*

Copy to:

1. Appellant 2. Respondent 3. Pr.CIT4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.