

IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.

BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER

I.T.A. No. 173/Jodh/2023

Assessment Year: 2014-15

Indu Bala Porwal 84, Inside Kole Pole, Udaipur-313001.	Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Udaipur.
PAN/GIR No.: AEKPP3897E		
Appellant		Respondent

Appellant by	Sh. Prakul Khurana, Advocate, Sh. Mukesh Soni, C.A. & Sh. Anil Jain, C.A.
Respondent by	Sh. Sanjay Dhariwal, CIT-DR)

Date of Hearing	07/05/2025
Date of Pronouncement	18/06/2025

ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

The present appeal is filed against the order of Ld. CIT(A) dated 19.03.2023 passed against the assessment order dated 30.09.2021 passed by DCIT Central Circle -1, Udaipur for assessment year 2014-15.

2. The Assessee has taken the following grounds of appeal:

“1.Under the facts and the circumstances of the case and in law, the order dated 14.02.2023 passed by the Learned Commissioner of Income Tax, Appeal, CIT (Appeals)-2, Udaipur [hereinafter referred to as “Ld. CIT (A)”] u/s 250 of the Income

Tax Act, 1961 [“the Act”] is perverse, arbitrary, and bad in law, non-speaking and without jurisdiction.

2. *Under the facts and circumstances of the case and in law, Ld. CIT (A)’s Order is without application of mind, perverse and untenable in law which requires to be set aside.*

3. *Under the facts and the circumstances of the case and in law, Ld. CIT (A) erred in :*

a. *upholding that of Assessment Order being without DIN.*

b. *dismissing the ground on the basis that the Assessing Officer (“A.O.” in short) in Remand Report has provided a copy of the front page of DIN generated order ignoring the fact that a look of the said DIN generated Order would reveal an order different from the Assessment Order passed through manual to system functionality in ITBA with vital omissions in the said impugned DIN generated Order.*

4. *Under the facts and the circumstances of the case and in law, Ld. CIT(A) has erred in holding that the prior approval given vide letter No.700 dated 30/09/2021 under Section 153 D of the Act given by Ld. Additional Commissioner of Income Tax, Central Range, Udaipur to the Assessment Order dated 30/09/2021 does not suffer from non-application of mind, more so in a situation when there are two different Assessment Orders with different contents.*

5. *Under the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in upholding:*

a. *that assessment u/s 153A of the Act is valid instead of 153C of the Act.*

b. *the impugned assessment u/s 153A of the Act.*

6. *Under the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in upholding that:*

a. *Impugned additions of alleged unexplained assets, alleged interest, dividend income in hands of Appellant and against the law.*

b. *foreign bank account operated and controlled by the Appellant.*

7. *Under the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in upholding that:*

a. *assessment order passed without issuing show cause notice.*

b. *adequate opportunity of being heard was provided to the Appellant.*

8. *Under the facts and circumstances of the case and in law, the Ld. CIT(A), is not justified in upholding impugned references from FT&TR division.*

9. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that Assessment Order was correctly passed by Ld. AO under Section 153 A of the Act based on “incriminating material” found from premises of Shri Nikhil Jain.*

10. a) *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that the Appellant maintained a bank account with Hinduja Bank, Switzerland (“HBS” in short) opened on 19/07/2013.*

b) *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that no reliable documentary evidence was brought on record to establish that the finds belong to Family Trust which finding is contrary to facts on records.*

11. *Under the facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that the “document” allegedly recovered from the laptop of Shri Nikhil Jain in the course of search under Section 132 of the Act at his premises belonged to her and further erred in attributing to the appellant, without any enquiry, the instructions contained in the said document and thereby concluding that the account with HBS belongs to her in contravention to the provisions contained in Sections 65A & 65B of the Indian Evidence Act, 1872.*

12. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that loan of USD 5,00,000/- to Shanvi International FZC UAE was given by the Appellant from HBS account and was given on her instructions as the bank account was controlled by the Appellant and name of the BWR Trust is used to avoid tax liability.*

13. *Under the facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that the Bank itself is not a Trustee but service provider and Appellant herself is only beneficiary for credit entries and income earned which fact is contrary to facts on record.*

14. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in law in holding that the claim of the appellant that initial fund was given to BWR Trust by Dr. K. K. Jain, her brother- in- law has no evidence which finding is again contrary to facts on record.*

15. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that the Appellant in her Return of Income filed under Section 153 A of the Act, herself claimed as owner of the HBS Account ignoring the duly verified notes appended to the said return of income.*

16. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in applying the theory of Pith and Substance in relation to HBS Account.*

17. *Under the facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that the Appellant was required to file declaration under Chapter VI of the Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015.*
 18. *Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the impugned additions u/s 69 and 69A of the Act in the hands of Appellant on account of alleged unexplained foreign assets.*
 19. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in confirming the addition of Rs. 20,07,18,875/- and of Rs. 80,10,38,174/- on account of Credit entries and market value of foreign assets as reflected in the bank account of BWR Trust*
 20. *Under the facts and circumstances of the case and in law, Ld. CIT(A) has erred in upholding addition of Rs. 57,54,66,256/-out of total addition of Rs. 80,10,38,714/- made by Ld. AO.*
 21. *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in upholding the addition of Rs. 19,32,546/- out of total addition of Rs. 1,41,97,692/- made by Ld. AO.*
 22. *Without prejudice to above, Ld. CIT (A) under the facts and in the circumstances of the case and in law, erred in confirming additions to of entire foreign assets and entire foreign income as reflected in the account of HBS in financial year 2013-14 relevant for the assessment year under consideration.*
 23. *Without further prejudice to the above, Ld. CIT (A) erred in confirming addition of Rs. 80,10,38,174/- being value of foreign assets in the hands of the appellant for financial year 2013-14 relevant for assessment year under consideration in contravention of provision the B.M. Act which is beyond jurisdiction.*
 24. *Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in levying interest u/s 234B of the Act.*
 25. *that the above grounds are independent and without prejudice to one another. The appellant craves leave to add, amend, alter. Revise and modify any of the grounds of appeal on, before or in the course of hearing of the appeal.”*
3. Ground No. 1 and 2 are general in nature and accordingly, shall be adjudicated with other grounds of appeal.

4. The Ground No. 3 relates to the challenge to Assessment Order on the ground that the same was issued without document identification number (“DIN”) as mandated by CBDT.

5. The Ld. AR for the Appellant has raised technical objections that from the face of the impugned Assessment Order, it is evident that no DIN as mandated by CBDT in its Circular No. 19/2019 [F No. 225/95/2019-ITA.II] dated 14.08.2019 has been indicated. The Ld. AR of the assessee has asserted that in terms of Para No. 3 of the said Circular the manual issuance of the Assessment Order is permitted only in certain exceptions only and there is no case made out by the department that Assessee case falls in any of the aforesaid exception like PAN not available, wrong PAN, delay in PAN migration etc.. Thus, in view of the Para No. 4 of the said circular any communication/order not in conformity with the Para No.2 of the said circular, is treated as invalid and deemed to have never been issued/passed.

6. The Ld. DR has vehemently objected to this by asserting that Assessment Order in this case was passed through ITBA system through manual to system functionality in ITBA and DIN was also generated as is evident from Para No. 14 of the Ld. CIT(A) Order and also from remand report of the AO wherein he has contended that DIN was generated and DIN generated Assessment Order was also given to the Assessee.

7. We have heard rival submissions, and it is noted that that Ld. CIT(A) has adjudicated this ground in Para No. 14 of its Order by giving following findings:

“14. In the ground no. 2 the appellant raised the issue of order without DIN. In the remand report the AO has clarified that the order in the case was passed through manual to system functionality in ITBA and DIN was also generated. A copy of front page of DIN generated order is enclosed herewith for ready reference. The appellant has not pointed out any infirmity in this regard. Therefore, this ground of appeal is treated as dismissed.”

8. We find that it is not disputed that Assessment Order with DIN was available in the income tax portal itself and shared with Assessee, though there were some missing contents, which is protected by Section 292B of the Act. We accordingly find no infirmity in the findings of the Ld. CIT(A) and accordingly, dismiss this technical ground raised by the Assessee. Thus, this ground of appeal is **dismissed**.

9. Ground No. 4 relates to challenging jurisdiction and passing of Assessment Order on the ground of invalid approval u/s 153D of the Act.

10. We note that AO has recorded that the Assessment Order has been passed with the approval of Ld. Additional Commissioner of Tax, Central Range, Udaipur vide letter no. 700 dated 30.09.2021.

11. The Assessee has assailed this issue before the Ld. CIT(A), which has dealt with this issue in Para No. 6 from page no. 32-34 wherein written submission by the Assessee has been recorded. Thereafter, CIT(A) has given its

findings dismissing the ground raised by Assessee in Para No. 15 from page no. 100-101.

12. During the proceedings, the Ld. AR has drawn our attention to the fact that the approval of Ld. JCIT was given mechanically and without application of mind as much as the approval has been given on the same day on which date, Assessment order has been passed. He has further argued that AO has made an addition of about Rs. 100 Crore in the hands of the Assessee and further the Assessment order was signed and passed without mentioning the DIN. He has placed reliance on the following judicial precedents in support of his arguments:

ITAT Agra Bench in Rajesh Ladhani vs. CIT in appeal No. ITA No. 106, 107 and 108/Agra /2019 on 06.11.2019

Hon'ble ITAT, Mumbai Bench in the case of Smt. Shree Lekha Damani vs. DCIT reported in 173 TTJ 332 (Mum.)

Hon'ble ITAT Mumbai Bench in case of I.T.A. No. 6656/Mum/2017 Arch Pharmalabs Ltd & Arch Impex P. Ltd.

13. On the contrary, the Ld. DR has objected and placed reliance on Order of Ld. CIT(A) at para no. 100-101. He has further asserted that assessment proceedings commenced from 03.02.2020 with issuance of notice u/s 153A of the Act and sufficient time has been taken by AO in passing the Assessment Order on 30.09.2021 and during this period, such kind of central circle cases are always discussed and apprised with respective higher authorities on regular

basis. Thus, arguments raised by Ld. AR are not sufficient to prove non-application of mind.

14. We have considered the rival submission and material placed on record. Bench is of the view that except for the allegation of approval being given on same day and Assessment Order being passed without DIN, there are no other objections by the Assessee. The Assessment Order has been upheld on the grounds of DIN as per our decision supra. Further, Bench is of the view that various case laws relied upon by the Assessee are clearly distinguishable from the case in hand, thus, cannot be applied. Moreover, none of the parties has brought on our record, the said approval for our examination, therefore, merely on the ground that approval is given on same day, the Assessment Order cannot be held invalid. It is always possible that approval letter is signed on particular date, but in principle approval and case discussion between AO and concerned superior authority happens on a regular basis. Thus, this ground of appeal raised by Assessee is **dismissed** as indicated above.

15. Ground No. 5, 9 and 11 relates to challenge jurisdiction u/s 153A in the absence of incriminating material for completed assessment whereas Ground No. 6,7, 10,12,13,14,15,16,17,18,19,20,21,22,23 of the appeal memo relates to the addition of Rs. 57,54,66,256/- being the asset and addition of Rs. 19,32,546 being income which is agitated to be not belonging to Assessee.

16. The Bench is of the view that these grounds are interlinked and would require examination of the facts and documentary evidence on record and therefore, the same are being dealt and adjudicated together for the sake of convenience.

17. It is noted that Ld. AO in his Assessment Order has recorded that search and seizure proceedings were carried out at Udaipur in GBH American Hospital Group at Udaipur and based on the same notice u/s 153A of the Act was issued on 03.02.2020 to the Assessee. Thereafter, in compliance thereof Assessee filed its return of income along with notes to return of income, which is available at page no. 2-15 of Paper Book Vol 1.

18. The Ld. AO in para No. 5.1 has mentioned that search proceedings were conducted in the premises of Mr. Nikhil Jain at Udaipur on 03.02.2019, during the course of which a laptop was recovered and back up of laptop was taken in pen drive. From the said Pen Drive a Word file containing draft letter was found wherein a letter was written from Smt Indu Bala to Shri Anil Chaturvedi, Managing Director, Hinduja Bank, Geneva, for transfer of 5 Lakh USD to company named Shanvi International FZC. The said letter is reproduced in Para No. 5.1.2 at page no. of Assessment order and also finds place at page no. 58 of PB Vol. 1.

19. During post search proceedings, Assessee was asked to appear before AO and summon were issued u/s 131 of the Act and in her statement recorded u/s 131 of the Act, assessee has stated that she has no bank account or property in any foreign country. However, department proceeded further with inquiries and obtaining of information by FT & TR Division and post two references certain bank accounts statements from Hinduja Bank were made available.

20. Thereafter, based on this information available from FT & TR post search proceedings, the AO proceeded to make assessment on the basis of these bank statements being bank accounts maintained with Hinduja Bank, Switzerland. During the assessment proceedings, the Assessee denied the ownership of these bank statements or portfolio statement or any asset outside India or in any foreign country, however, the AO made the addition of entire portfolio with Hinduja Bank as on 31.12.2013 in the hands of the Assessee at Rs. 20,07,18,875/- vide Para No. 5.15.3 of Assessment order and Rs. 1,41,97,602/- in respect of coupon or dividend or interest income vide Para No. 5.18.1 of Assessment Order and Rs. 80,10,38,714/-u/s 69/69A vide Para No. 5.19.1 and 5.20 of Assessment Order.

21. The Assessee assailed the Assessment Order before CIT(A) and raised the legal objection with respect to wrong invocation of the provisions of section 153A of the Act and also contended that the additions were wrongly made in hands of the Assessee merely on the basis of bank accounts or information in

relating to accounts, wherein she is just authorized signatory and entire asset/income belong to BWR Trust, which is family trust formed outside India.

22. It is noted that AO in the Assessment Order has mentioned that Assessee filed its return of income u/s 153A of the Act but it did not disclose the foreign asset and income earned as reflected in bank statement of Hinduja Bank with name “Tera Panth”, which is code name as per the assessing officer. As stated above, AO proceeded with the present proceeding based on word file/draft letter (Page No 58 PB Vol. 1) found in laptop of Mr. Nikhil Jain. Thereafter, based on two references made by FT & TR (referred at Para No. 5.4 page no. 5-10 of Assessment Order) and information received thereafter, the AO was of the view that Assessee maintained a bank account with Hinduja Bank, Switzerland in the name of Terapanth Account no. 0011634001000840 and portfolio account no 00116341001.

23. The Ld. AO has mentioned in Para No. 5.9 of the Assessment Order that notice u/s 142(1) of the Act dated 25.01.2021 was issued to Assessee to seek her explanation on the bank accounts and source thereof. Assessee has filed its response on 18.03.2021 (PB No. 34-39, AO Page No. 12-16) claiming that asset/income does not belong to Assessee in individual capacity, but it belongs to BWR Trust, which formed outside India being Family Trust in view of the Family Settlement cum Partition Deed dated 23.08.1995 (PB No. 106-108, Vol.1).

24. The Ld. AO in Para No. 5.10, 5.11 and thereafter in Para No. 5.12 of the Assessment Order has dealt with the issue of ownership of bank account and concluded his finding in Para No. 5.12 of the Assessment Order, whereby he has not accepted the explanation of the Assessee that asset/income belong to BWR Trust/Family Trust or that source of funds is duly explained. The AO has averted that Assessee failed to make disclosure in return u/s 139(1) or 153A of the Act of foreign asset/income. In the return filed u/s 153A of the Act she has owned up the bank accounts situated outside India. The theory of funds belonging to BWR Trust or Terapanth Trust Fund is clearly an afterthought and thus various documentary evidence filed by Assessee are not reliable.

25. The Assessee challenged the Assessment Order before Ld. CIT(A) and this issue of various additions made in individual hands has been dealt by Ld. CIT(A) in para-No. 19 at page no 109-110, Para No. 22, 23, 24, 25, 26, 26.3.2 at page no. 106-137 of CIT(A) Order. Though the CIT(A) has accepted the version of the Assessing Officer that bank accounts/portfolio investment/statements belong to the Assessee. However, Ld. CIT(A) has granted partial relief to the extent of Rs. 43,85,56,389/-, on account of duplicity/multiplicity or double addition, claim of notional gain being assessed in the hands of the Assessee. Accordingly, Ld. CIT(A) has granted relief as per the information in the following chart submitted by Assessee, which has been perused;

Summary of Additions made/Relief granted by CIT(A)							
Addition made the AO				Status as per CIT(A)			
S.No	Basis	Amount (Rs.)	AO reference	Basis of Grant of Relief by CIT(A)	Addition Deleted	Addition Sustained	CIT Order Pg No.
1	<i>Credit entries in HBS A/c</i>	20,07,18,875	<i>Para 5.15 Pg. 23-24</i>	<i>Double addition</i>	20,07,18,875	0	<i>Para 22.4 Pg 119</i>
2	<i>Interest and Dividend Income</i>	1,41,97,602	<i>Para 5.18 Pg 28</i>	<i>Reversal of certain entries in Bank A/c and deductions</i>	1,22,65,056	19,32,546	<i>Para 26.3.2(c) Pg 137</i>
3	<i>Portfolio assets</i>	80,10,38,714	<i>Para 5.19 Pg 28-29</i>	<i>1. Difference amount of Rs. 3,62,82,410 being market value to cost value 2. Net value of assets by granting set off against the negative current A/c balance</i>	22,55,72,458 (3,62,82,410 + 18,92,90,047)	57,54,66,256	<i>Para 25.2 Pg 128-129</i>
	Total	1,01,59,55,191			43,85,56,389.00	57,73,98,802	
Summary of Additions made/Relief granted by CIT(A)							
Addition made the AO				Status as per CIT(A)			

<i>S.No</i>	<i>Basis</i>	<i>Amount (Rs.)</i>	<i>AO reference</i>	<i>Basis of Grant of Relief by CIT(A)</i>	<i>Addition Deleted</i>	<i>Addition Sustained</i>	<i>CIT Order Pg No.</i>
1	<i>Credit entries in HBS A/c</i>	<i>20,07,18,875</i>	<i>Para 5.15 Pg. 23-24</i>	<i>Double addition</i>	<i>20,07,18,875</i>	<i>0</i>	<i>Para 22.4 Pg 119</i>
2	<i>Interest and Dividend Income</i>	<i>1,41,97,602</i>	<i>Para 5.18 Pg 28</i>	<i>Reversal of certain entries in Bank A/c and deductions</i>	<i>1,22,65,056</i>	<i>19,32,546</i>	<i>Para 26.3.2(c) Pg 137</i>
3	<i>Portfolio assets</i>	<i>80,10,38,714</i>	<i>Para 5.19 Pg 28-29</i>	<i>1. Difference amount of Rs. 3,62,82,410 being market value to cost value</i> <i>2. Net value of assets by granting set off against the negative current A/c balance</i>	<i>22,55,72,458 (3,62,82,410 + 18,92,90,047)</i>	<i>57,54,66,256</i>	<i>Para 25.2 Pg 128-129</i>
	<i>Total</i>	<i>1,01,59,55,191</i>			<i>43,85,56,389.00</i>	<i>57,73,98,802</i>	

26. The Ld. AR during the proceedings has drawn our attention to the fact that Assessee is an old aged lady, who is solely dependent upon her family/relative and also drew attention to the notes to return available at page no. 23-24 of PB Vol-1 filed along with return of income so formed the part of the return of income which has not been dealt by Ld. AO nor by Ld. CIT(A), wherein it has been categorically submitted in notes to return that return filed is in the absence of pending information/documents available with her at the time of filing of return of income and accordingly, subject to revision.

27. The Ld. AR has drawn our attention to page no. 106-108 of PB Vol 1 showing the family settlement cum partition deed dated 23.08.1995, wherein in Para No. 8-9 it has been categorically stated that Mr. K K Jain in terms of family settlement would contribute USD 12 Million or Equivalent to her family. The Ld. AR has drawn our attention to written submission placed on record and which are also found mentioned at page no. 53-56 of CIT(A) Order.

28. The Ld. AR has submitted that family settlement was there in the family of Assessee and other family members, whereby Mr. K. K. Jain was obliged to provide funds to the family of Assessee. , Pursuant to the said family settlement deed dated 23.08.1995, a Trust named BWR Trust was formed with instrument of Trust Deed dated 22.02.2000 available at page no. 81-105 of PB Vol. 1, wherein Assessee brother-in-law was protector, and Assessee was named as Settlor of Trust. The said Trust utilized the investment company, named

Vibrant Properties Limited incorporated in the year 2000, in which BWR Trust was only shareholder for making investment of the trust funds. The said fact is verifiable from BWR Trust Documents as well as Vibrant Properties Ltd first Balance sheet as on 31.12.2002 available at page no. 175-180 of PB Vol. 1 and page no. 281, 297 of PB Vol. 2.

29. The Ld. AR has further submitted that it is the said Company, wherein Mr. K K Jain contributed about USD 7.2 Million, which he was obliged to contribute in terms of family settlement deed dated 23.08.1995. The said company utilized the contributions received for making investment of trust fund, which is verifiable from bank account statement and other verification trail submitted in the form of chart in written synopsis.

30. The Ld. AR has further argued in the written submissions as under:

1. *Appellant submitted various documentary evidence including trust deed of BWR Trust, its incorporation documents and other supporting documents establishing the fact of creation of BWR Trust in pursuance of family settlement dated 23.08.1995. In terms of said family settlement, trust funds were later transferred by Non-Resident trustee to account name "Tera Panth", wherein for KYC Compliance, Appellant KYC documents were submitted. The said account represents trust relationship only while holding of entire funds of family for the benefits of beneficiaries under Trust. The list of documentary evidences which supports the contention of the appellant:*

a.	<i>The copy of the Trust Deed of BWR Trust</i>	81-105
b.	<i>The copy of the family settlement deed dated 23.08.1995</i>	106-108
c.	<i>The copy of the confirmation from Dr. Kirti Kumar Jain</i>	109
d.	<i>The copy of financials statement of BWR Trust for FY 2012-13 to FY 2017-18</i>	110-151
e.	<i>Memorandum and articles of association of Vibrant Properties Limited</i>	152-174

f.	Financial statements for the period of FY 2001-02 to 2012-13.	175-257
g.	Copy of the Bank Statements from year 2002 to 2013. Bank ledger in the books of Vibrant Properties Limited for the year 2000.	Volume-2 258
h.	The copy of the deed of appointment of new trustees	259-260
i.	The copy of the statement of assets at December 31, 2013 of Tera Panth bank account.	261-265
j.	The copy of the ledger copies on December 2013 of BWR Trust portfolio.	266-271

2. *All the documentary evidences were placed on record before the Ld. AO and the Ld. CIT(A), the perusal of which adequately demonstrate that all the transactions occurred are clearly verifiable and genuine. Documentary evidence duly supports the explanation of the Assessee, that ownership of the bank accounts as well as funds belongs to BWR Trust and not to the Appellant, therefore, the addition made in the hands of the Appellant is not justified.*
3. *The initial funds poured in the trust fund by Mr. KK Jain of about USD 7.2 million approximately as a result out of family settlement deed was transferred by him in the account of the BNP Paribas held by the Vibrant Company Ltd under the control of trust for the purpose of investment. The same has been affirmed in the Confirmation of Mr. KK Jain at Pg 109 of the PB Vol 1. The entries in the bank statement of BNP Paribas are verifiable from Pg No. 281 & 297 of PB Volume 2. Thus, the source of the fund in the BNP Paribas Bank A/c held by the Vibrant Properties Ltd is established and also the Ld. AO has not pointed out any infirmity in the source of the funds held by the Vibrant properties Ltd.*

BNP Paribas					
S. No	Page No.	Date of Transaction	Description	Value as on Date	Amount
US Dollars					
1	281 (PB Vol 2)	06.03.2000	Payment Order	06.03.2000	37,26,191.17
2	297 (PB Vol 2)	27.11.2000	Payment Order	27.11.2000	35,41,071.36
Total Amount					Rs. 72,67,262 (Approx 7.2 million)

4. *The funds initially poured in are also duly reflected in the financial statements of the Vibrant Properties Ltd as a loan payable from the BWR Trust at Pg 180 of PB Vol 1.*

In the BWR Trust Financials also for the year end 31.12.2002, the loan advanced to the Vibrant Properties Ltd is shown duly as loans receivable at Pg 6 of PB Vol 4. Thus, the source of funds initially received in Vibrant properties Limited is thus established and proved and clearly verifiable from the documentary evidences placed on record.

5. *Later in year 2013, the trust funds were transferred to the Hinduja Bank A/c from the BNP Paribas Bank A/c held by the Vibrant properties Ltd. (which fact is also verifiable from relevant bank entries as in the following verification chart:*

BNP PARIBAS WEALTH MANAGEMENT A/C					
S.No.	PB Page No.	Date of Transaction	Description	Value as on Date	Amount
US Dollars					
1	875	18.07.2013	OTT FVG	18.07.2013	2922495.23
2	891	06.02.2014	OTT FVG	06.02.2014	341090.03
EURO					
3	873	18.07.2013	OTT FVG	18.07.2013	60058.57

HINDUJA BANK, SWITZERLAND A/C					
S. No	Page No.	Date of Transaction	Description	Value as on Date	Amount
US Dollars					
1	893 (Vol 3)	19.07.2013	Swift inflow ASW76676/18 0713 origin:/813689 3 Vibrant properties Limited PO Box 158 BNP House anley ST ST helier jersey	19.07.2013	2922425.82
2	907 (Vol 3)	11.02.2014	Swift inflow origin: /8136893 Vibrant properties Limited Reg No. 359433	10.02.2014	341049.43
EURO					

3	Pg 24 (Supplementary PB)	23.07.2013	Eurosic inflow origin: Vibrant properties Limited PO Box 158 BNP House anley ST ST helier jersey JE4 8RD Channel Islands jersey isla	23.07.2013	59983.57
---	--------------------------------	------------	--	------------	----------

6. *The AO has also mentioned these entries in assessment order at page no 28-29 – para 5.19, 5.20. However, the Ld. AO has only disbelieved the entire explanation backed by documentary evidence by merely relying upon reference by FT & TR division.*
7. *The funds transferred through entries which have been alleged by the Ld. AO to be non-genuine is a clearly baseless allegation as the said fund has only been transferred from the Vibrant Properties Ltd Bank a/c to the Hinduja Bank A/c and the same has been also reflected in the transaction description mentioned in the Bank statements itself and the source is established and the genuine.*
8. *In view of the above, the source as well as ownership of the funds being belonging to Trust – BWR Trust is duly established. Thus, no addition u/s 69A in the hands of the Appellant is justified.*
9. *The Ld. AO made the addition of USD 1,29,62,840 i.e. Rs. 80,10,38,714 u/s 69 made on account of the portfolio assets/investments. The CIT(A) confirmed the deletion of USD 30,63,193 amounting to Rs.18,92,90,047 on account of reducing the current account balance (liability) and taking the value of net amount of assets and also deleted the addition of Rs. 3,62,82,410 being difference arising on account of market valuation as against cost. Thus, the addition in INR was reduced to Rs. 57,54,66,185 by the Ld. CIT(A) which in terms of USD amounts to \$ 93,12,504 which is verifiable from the BWR Trust Financials while holds the HBS A/c.*

BWR Trust Financials – 31.12.2013			CIT (A) Order		
<i>Particulars</i>	<i>Amount</i>	<i>PB Pg Reference</i>	<i>Particulars</i>	<i>Amount (1 USD = 61.795)</i>	<i>CIT Order Reference</i>
<i>Net Current Assets</i>	<i>93,12,504</i>	<i>113</i>	<i>CIT (A) has deleted the addition of 3,62,82,410 being market value to cost value & has taken net value of assets and</i>	<i>57,54,66,185</i>	<i>128-129</i>

			<i>difference amount of USD 30,63,193 amounting to Rs.18,92,90,047 deleted.</i>		
--	--	--	---	--	--

10. *The Ld. AO made the addition of Rs. 80,10,38,714, from which the CIT(A) confirmed the deletion of Rs. 3,62,82,410 being the difference arising on account of market valuation as against cost & other deletion by reducing the difference amount of liability current amount and taking the net value of assets of USD 30,63,193 amounting to Rs.18,92,90,047 which reduced the addition to Rs. 57,54,66,185.*
11. *The amounts of gross assets/investments and current account negative balance and net value of assets is clearly verifiable from the BWR Trust Financial statements and the CIT(A) has taken up the figures duly according to the books of accounts maintained by the Trust, thus there is no dispute over the source of money and the funds transferred are genuine.*
12. *The aforesaid verification is also being explained from following verification chart which tallies the investments as reflected in balance sheet of BWR Trust (PB No. 113), with addition wrongly made in the hands of Appellant taken up by the Ld. AO from the HBS Statement with the Trust Financials/documents.*

Verification Chart (Year ending 31st December 2013)					
S. No	Portfolio Statement (PB Page 266-271/261-265)			Market Value in INR (1 USD = Rs. 61.795)	Investment as per B/s of BWR Trust as on 31.12.2013 (PB Page 110-116)
	Investment	Market Value (USD)	Cost Value (USD)		
1	Bonds	1197623	1189555	74007082	<i>Quoted Investments (Cost Price)- USD 12,375,698.34 (PB Page No. 113 Vol 1)</i>
2	Shares	961524	883060	59417354	
3	Equity Funds	6206894	5814131	383555026	
4	Bonds Funds	1623759	1594271	100340190	
5	Portfolio Funds	1000310	961969	61814130	
6	Commodity Funds	96679	98549	5974279	
7	Alternative Funds	679202	668868	41971292	
8	Dividend Right Certificate	56202	53852	3473007	
9	Hybrid On Shares	1140648	1111439	70486354	
Total		1,29,62,840	1,23,75,694	80,10,38,714	

<i>Ld. CIT (A) in his order at page 128-129 in Para 25.2 has granted relief on account difference arising on account of market valuation as against cost. The cost value reflected in portfolio statement is duly reflected in Financial Statements of BWR Trust at PB Page No. 113 Vol 1</i>					
<i>BWR Trust Financials – 31.12.2013</i>			<i>HBS Bank A/c Portfolio Statements</i>		
<i>Particulars</i>	<i>Amount</i>	<i>PB Pg Reference</i>	<i>Particulars</i>	<i>Amount</i>	<i>PB Pg Reference</i>
<i>Current Account Balance</i>	<i>-30,63,193.58</i>	<i>113</i>	<i>Total CURRENT ACCOUNT Balance</i>	<i>-30,63,193.58</i>	<i>266</i>

13. *The Ld. Assessing officer has alleged the HBS Bank Account to be belonging to Assessee on the basis of mere presumption and has not validated any facts and there was no questioning done from Mr. Nikhil Jain from whose premises the alleged incriminating material was found and not even from the corporate trustees and the managing signatories of the holding BWR Trust. The notes to returns filed by the assessee during the course of assessment proceedings were not at all considered by the Ld. AO and not even no basis was given as to how and why the explanation given by the appellant was not found sufficient.*
14. *Therefore, the allegations levelled up by the Ld. AO that the BWR Trust owned and operated foreign bank account with Hinduja Bank, Switzerland, under the code name "Tera Panth" belongs to the appellant is clearly rebutted from documentary evidences placed on record.*
15. *The BWR Trust ("Family trust") is the real and beneficial owner of the funds and has claimed its ownership through their official documents where the same has been duly reflected, thus there arises no dispute over the fact that the same do not belong to Assessee/Appellant. The Foreign Bank Account belongs to the BWR Family Trust, for which she was merely an authorized signatory.*
16. *The appellant has provided sufficient documentary and supporting evidences including trust deeds, incorporation documents of Vibrant Properties Limited, family settlement deeds, Deed of change in trustees, Confirmation from Dr. KK Jain, financial statements of BWR Trust and Vibrant Properties Ltd. including Bank Statements and Ledgers etc. to support the claim that the funds belonged to the BWR Trust, which is managed and controlled by non-resident trustees which was not at all considered by the Ld. AO and was termed as unreliable and not genuine without even conducting proper inquiry or examination of the documents. Reliance is placed on the case of **Principal Commissioner of Income-tax v. Sreeleathers [2022] 143 taxmann.com 435 (Calcutta)** wherein it was held that the assessing officer while deeming the documents placed on record by the assessee as non-genuine and unreliable has to record reasons as to why the documentary evidences doesn't not put*

up a satisfactory explanation as to the source of the money. Relevant extract of the ruling is hereby reproduced below:

*“As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the assessing officer to say so but **he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22-12-2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A).** The Tribunal re-appreciated the factual position and agreed with the CIT(A). The Tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under section 133(6) of the Act to the lenders were duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.”*

17. *Further, the Reliance is placed on the case of **Most Rev Dr. Joseph Marthoma v. ITO [2015] 60 taxmann.com 172 (Cochin-Trib.)** wherein it has held that the monies in bank account held by the assessee in the fiduciary capacity of trust cannot be held to be unexplained u/s 69A in his hands. (Reference is further invited to written submissions placed before CIT (A) at Pg W.S 49 of PB Vol 1 at Para No. 96)*
18. *The Ld. AO has not discharged the burden of proof as to how the unexplained income or investment belongs to the appellant. The mere fact that certain valuables were found does not justify the invocation of Section 69A. A foundational requirement for applying this provision is that the assessee must be conclusively established as the owner of the money, bullion, jewellery, or other valuable articles in question. In the present case, the appellant has consistently disclaimed ownership of the said Bank Account and has provided a plausible explanation regarding their source and possession. Once such a denial is made, the burden squarely shifts to the Revenue to establish ownership with credible evidence having a nexus to the appellant. The AO has not brought any material on record to substantiate that the appellant was the actual owner of the alleged unexplained assets. The inference drawn by the AO, based merely on possession, is legally untenable. It is affirmed in subsequent judicial precedents, wherein it has been held that possession alone is insufficient to invoke Section 69A unless ownership is first established. Accordingly, the addition made is without proper foundation and deserves to be deleted. In support of the above contentions the reliance is placed on the following judicial precedents:*
 - ***Mangilal Agarwal v. Assistant Commissioner of Income-tax [2007] 163 Taxman 399 (Rajasthan)***
 - ***Sukhdayal Rambilas v. CIT [1982] 136 ITR 414 (Bom.)***
 - ***Salek Chand Agarwal v. CIT [2008] 300 ITR 426 (All.)***
 - ***Cosmos Infra Engineering (India) Ltd. V. DCIT [2017] 88 taxmann 761***
19. *In view of the above, the addition made deserves to be deleted.”*

31. The Ld. AR has vehemently argued that except doubting the documents for unknown reasons, nothing has been brought on record to controvert these documentary evidences which were placed on record during assessment proceedings.

32. To the contrary, the Ld. D/R has argued that Ld. AO as well as Ld. CIT(A) has rightly made the addition in the hands of the Assessee and stated that Assessee has itself owned up these bank accounts in her return of income. Further, the explanation is just afterthought and department has relied on the information received from FT and TR division.

33. As far as the legal issue of invoking jurisdiction is concerned, the Ld. AR challenging the findings of the Ld. CIT(A) in Para No. 16 at page no. 102-106 argued that undisputedly it's a case of unabated assessment proceedings as per date of search on 02.01.2019 and the said assessment attained finality as no notice u/s 143(2) of the Act or 148 of the Act was issued before the date of search in case of Assessee. Further no incriminating material was found for alleged unaccounted asset or income in the hands of the Assessee and the very basis of additions in the hands of the Assessee is mere word file/draft letter found from laptop/pen drive of Mr. Nikhil Jain who is nowhere connected to the Assessee. The addition for bank balances or portfolio statement belonging to Trust is also based on information received post search proceedings and no such

bank account statements/existence thereof were found during search in the case of the Assessee.

34. The Ld. AR has drawn our attention to initial para of the Assessment Order, wherein it is mentioned that search was in case of GBH American hospital group and Ld. AO directly issued notice u/s 153A of the Act whereas the basis of entire impugned assessment is information/bank statement or portfolio statements obtained post search proceedings. Thus, he argued that Ld. AO was not justified to issue notice u/s 153A of the Act, when the basis of addition is not the incriminating material found during search in case of the Assessee, but the third-party information/material found in case of another person. The Ld. AR has further argued that in such a situation the better course available with Assessing Officer is to follow the procedure prescribed u/s 153C of the Act, subject to fulfillment of conditions specified therein, which admittedly has not been followed.

35. The Ld. AR has vehemently objected and supported the legal position that once the assessment proceedings are not pending on the date of search and there is no incriminating material found during search, the completed assessment proceedings could not be disturbed. He has placed reliance on judgment in the case of CIT Vs Kabul Chawla 380 ITR 573 (Del) and also cited reliance on following judicial precedents:-

PCIT, CENTRAL IT, NEW DELHI V. MEETA GUTGUTIA [2018] 96 TAXMANN.COM 468 (SC)
PCIT, DELHI 2 V. BLUEBIRD SOFTWARE P. LTD. [2020] 119 TAXMANN.COM 348 (SC)
COMMISSIONER OF INCOME-TAX-20 V. DEEPAK KUMAR AGARWAL [2017] 398 ITR 586 (BOMBAY-HC)
Jai Steel (India) Vs Asstt Commissioner of Income Tax (2013) 259 CTR (Raj) 281.
M/s Jadau Jewellers & Manufacturers Pvt. Ltd., B-1, Trimurti Circle, Govind Marg, Jaipur in ITA No. 686/JP/2014 dated 14.12.2015
ALL CARGO GLOBAL LOGISTICS LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE-44 [2012] 18 ITR(T) 106 (MUMBAI) (SB)
PRINCIPAL COMMISSIONER OF INCOME-TAX-18 V. MS. LATA JAIN [2016] 384 ITR 543 (DELHI)
Gurinder Singh Bawa v. Deputy Commissioner of Income-tax, Central Circle 29 [2012] 28 taxmann.com 328 (Mumbai - Trib.)
Shri Anil Mahavir Gupta vs. The ACIT/DCIT, Cen. Cir.45, Mumbai ITAT Mumbai in C.O.No.179 to 182/Mum/2012 (Arising out of TANO.9215,9216,9225&9226/Mum/2010
Anand Kumar Jain v. PCIT [2021] 133 taxmann.com 289 (SC)
Pradeep Kumar Sharma v. Deputy Commissioner of Income-tax, Central Circle,Noida [2021] 132 taxmann.com 41 (Delhi - Trib.)
Gambhir Silk Mills v. ACIT [2011] 45 SOT 20 (Ahmedabad-Trib.)
of Senate v. Deputy Commissioner of Income Tax, CC - 1(3), Bangalore [2016] 68 taxmann.com 223 (Bangalore - Trib.)

36. The Ld. AR of the Assessee has also drawn our attention to the fact that no satisfaction u/s 153C of the Act was recorded and no notice u/s 153C of the Act was ever issued, despite the fact that as per the claim of the Assessing Officer, the material relied upon was found during search in the case of Mr. Nikhil Jain. The Ld. AR contented the issued to be covered by judgment of Hon'ble Apex Court in the case **PCIT Central-3 V/s Abhisar Buildwell (P) Ltd [2023] 149 taxmann.com 399 (SC)** and drawn our attention to the relevant para of the said judgment wherein the law is laid down that in case no

incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during search under section 132 or requisition under section 132A of the Act, 1961 in the case of the assessee.

37. The Ld. AR further drew our attention to the fact that the issuance of notice u/s 153A of the Act has been confirmed by Ld. CIT(A) merely on the ground that search was conducted in the case of the Assessee and admittedly there is no adverse finding on the position that assessment for the year under consideration was not pending and duly completed before the date of search in case of the Assessee. He has further asserted that absence of incriminating material found during the search in case of the Assessee is not under dispute and it is also not disputed that no assessment is pending for year under consideration at the time of search.

38. On the contrary, the Ld. DR has argued that search was there in the case of the Assessee and accordingly, in view of the specific section 153A of the Act, the AO was justified in issuing notice u/s 153A of the Act to Assessee calling upon filing of the return of income u/s 153A of the Act within 30 days. The Ld. DR has argued that since jurisdiction u/s 153A of the Act was validly assumed therefore, the AO was justified in making addition in respect of

information/material gathered during post search proceeding based on letter written which was found in pen drive/laptop of Mr. Nikhil Jain. He has further relied upon the findings of the CIT(A) in Para No. 16/16.1 of its Order and supported his findings by relying upon the judgment of Principal Commissioner of Income-tax v. Mehndipur Balaji [2023] 147 taxmann.com 201 (Allahabad) 447 ITR 517 (Allahabad).

39. The Bench has considered the rival submissions, material placed on record including written submissions, synopsis, judicial precedents referred by both parties.

40. It is noted that there was family settlement cum partition between Assessee family and family of Mr. Kirti Kumar Jain who is brother-in-law of the Assessee. The said family settlement cum partition deed (page no. 106-108 of PB No. Vol. 1) also mentions that Assessee had two kids and assessee /appellant is widow of late Shri Bhanwar Lal who died on 30.01.1994 and accordingly, in terms of family settlement cum partition deed it was settled that Assessee would be provided funds of approximately USD 12 Million by Mr. Kirti Kumar Jain, who is practicing doctor in America and brother-in-law of the Assessee. It is also observed that in the notes to return (PB No. 23-24 of PB Vol. I) filed along with return u/s 153A of the Act, the Assessee has clarified that bank account was opened out of the funds of the Trust only, which primary disclosure has been made at the time of filing return of income itself, however,

since complete details/information were not available, therefore, particulars in relevant schedule of the ITR were not filed properly. The said notes to return of income forming part of the return of income filed reads as below:

NOTES TO RETURN OF INCOME U/S 153A OF THE INCOME TAX ACT 1961
ASSESSMENT YEAR 2013-14 TO 2018-19

I, Smt. InduBala Porwal, aged about 71 years, having PAN AEKPP3897E and residing at 6, Technocrate Society, Moti Mangri Scheme, Udaipur. I am regularly filing my return of Income with the income tax department. I am having income from House Property, some Interest income from Bank accounts as well as some income from certain investments and other sources. The said income and sources have been declared by me in returns of income filed with Income Tax department.

I am an old lady with multiple medical problems including heart condition, diabetes, rheumatoid arthritis, osteoarthritis, thyroid condition and hyperlipidemia. My husband died in 1994 leaving behind four kids. I have two married sons and two married daughters. Since I am not very educated, I have been making my investments and other decisions based on the - suggestions/advice from my family members and friends or through informal advisors/ Investment agents. I live with my elder son who is mentally challenged person since his birth. My younger son has lived away from me.

There was a search on 10.01.2019 at offices of the GBH American Hospital and residential premises of Directors including my residential premises located at 6 Technocrate Society, Moti Mangri Scheme, Udaipur by Income Tax department. At the time of search, I was not present at the search premise, however, my statement was recorded later u/s 131 of the Act during post search proceedings. During the course of search, some Cash & Jewellery were found which was explained out of the available sources declared by me. However, I have not yet carried out reconciliation of various items of assets as it takes time to obtain copies of relevant documents / information. In addition to this, some other information/documents etc. are also required to cross verify the details/information found so as to make full and accurate disclosure. I have already taken necessary steps to gather the said information in this regard, however, soliciting, compiling and preparation of such details/information would take some time please.

I further state that the best of my memory there was a bank account with M/s Hinduja Bank in Geneva which was opened with funds from a foreign Trust. Thereafter, with the funds available in the said bank account, An investment was made in company namely Shanvi International FZC in free trade zone, in Dubai, of which I was one of the shareholders. The said company was incorporated around the year 2016, and I along with other local UAE Resident shareholder, was holding shares in the said company. The operation and management of the said company was looked after by said local person in Dubai: I am trying to

obtain necessary details and relevant bank statements so that I can submit all the details of transaction and trail whenever complete documents are received.

Recently, I received notice(s) dated 03.02.2020 u/s 153A of the Act for relevant assessment years (A.Y. 2013-14 to 2018-19) through which I am asked to file my respective returns of income in prescribed form within 30 days of receipt of the said notice(s). However, relevant information and documentary evidences such as relevant bank account statements for past period, accounts/balance sheet of company namely above -mentioned Information, working and determination of additional income, if any, are pending and the said information/details are being arranged. In the absence of the details, I am unable to ascertain the likely impact of such details on these tax returns. Yet, since the statutory time limit to file return u/s 153A is expiring, I am constrained to file my returns of income within the prescribed time period without incorporating the details/information of any such income or transactions. Needless to mention that no documents/material was found during the search from my premises.

Though primary disclosure of facts relevant for the purpose of return of income is made by me by way of these notes to return of income, however, in the absence of complete details/documents, relevant columns/tables of income tax return form could be filed only after such details/information/documents are received and necessary working basis such information/documents is made.

After receipt of complete details, if required, I will file further details to reflect accurate position for the captioned assessment years for tax assessment purposes.

I am in the process of getting full bank statement and related details for the purpose of ascertaining impact of such details on my returns and intimate your goodself accordingly as soon as possible for tax assessment purpose.

I sincerely hope that your goodself will understand my position / Medical condition, limitation as well as my personal situation and allow me sufficient time so as to bring on record full information. It is my desire & endeavor to fully cooperate with the tax department. I also hope that your goodself will appreciate my bonafide intention and cooperation. I intend to fully cooperate with your department now as well as later.

I am filling these returns in good faith and reserve all my rights available to me under the law to protect myself.

Thanking You

[InduBala]

41. From the Trust Deed, i.e. Deed of Instrument available at PB page no. 81-105 of PB Vol.1, it is evident that family Trust (BWR Trust) was created on 22.02.2000 itself (PB No. 101, Vol. 1) with corporate Trustees being BNP Jersey

Trust Corporation Limited and BNP Private Bank & Trust Cayman Ltd. holding the Trust funds. In the confirmation of Dr Kirti Kumar Jain (Page No. 109 of PB Vol. 1), he has confirmed that he has provided the funds to Trust about USD 7.2 Million.

42. The amount of USD 7.2 Million was credited in the bank accounts of Vibrant Properties Ltd. Jersey Island on 6.03.2000 and 17.11.2000 and is verifiable from page no. 281 and 297 of PB Vol. 2.

43. Vibrant Properties Ltd was incorporated in the year 2000 (page no. 152 of PB Vol. 1) as per the memorandum of association and subscriber statement. The first balance sheet of the said company is available at page no. 175-180 wherein Approx USD 7.2 Mn is reported as loan payable to BWR Trust and BWR Trust is shown as single shareholder from the said Balance sheet page available at page no. 180 of PB Vol. 1. The said investment has been found verifiable and confirmed from the Balance Sheet of BWR Trust as on 31.03.2002 available on page no. 6 of Supplementary PB.

44. The inflow of funds in the Hinduja Bank is also verifiable from the relevant bank statement available at page no. 893 of PB Vol. 1, which is in the name of Vibrant Properties Ltd. The deed of appointment of new Trustee available at page no. 259-260 of PB Vol. 1 also supports the fact that due to a change in trustee, the funds of the Trust were transferred on as is where is basis from control and possession of BNP Trustees to new Trustee, of which deed of

appointment is available at page no. 259-260 of PB Vol. 1. The Bench also notes that the bank account was opened on 19.07.2013 from the initial transfer of funds from Vibrant Properties Company Ltd, which entry is duly verified from relevant bank statement of Vibrant Properties Ltd (PB No. 893, 875 Vol 3), these credits are apparently visible in the bank statement, which are extracted here for sake of ready reference:

Pg 893 of Vol 3

893



STATEMENT OF ACCOUNT

CURRENT ACCOUNT USD - US DOLLAR

Name TERAPANTH

Account Number 0011634.001.000.840

IBAN CH5008827001163401840

Period 01.07.2013 30.12.2015

Geneva, 08.04.2020

Page 1 / 46

Date	Text	Reference	Value Date	Debit	Credit	Balance
01.07.2013	OPENING BALANCE					0.00
19.07.2013	SWIFT INFLOW ASW76676/180713 Origin : /8136893 VIBRANT PROPERTIES LTD VIBRANT PROPERTIES LTD PO BOX 158 B NP HOUSE ANLEY ST ST HELIER JERSEY	404-698138	19.07.2013		2'922'425.82	2'922'425.82



COPY

Statement of Account

Client VIBRANT PROPERTIES LTD
Account Description CUSTOMER CURRENT ACCOUNT IN US DOLLAR
Account Number 8136893.001.000.840

Period from 01/07/2013 to 31/07/2013

OPENING BALANCE AS OF 01/07/2013 (CR)						71.00
DATE	DESCRIPTION	VALUE	DEBIT	CREDIT	REF.	
01/07/2013	SPOT USD/SGD Exchange rate 1.26094977	03/07/2013	37,238.47		200-0748005	
01/07/2013	DIVIDEND 4,711.00 BANK OF AMERICA CORPORATION	28/06/2013		32.98	190-0452730	
03/07/2013	TERM DEP. MATURE Contract n° 0579019 from 02/07/2013 to 03/07/2013 Rate 0.020000%	03/07/2013		3,066,673.17	413-0579019	
03/07/2013	TERM DEP. INTEREST Contract n° 0579019 from 02/07/2013 to 03/07/2013 Rate 0.020000%	03/07/2013		1.70	413-0579019	
04/07/2013	SPOT USD/GBP Exchange rate 1.52940000	05/07/2013	2,289.51		200-0749290	
04/07/2013	OTT FVG TRIDENT TRUST COMPANY	05/07/2013	377.50		110-1147961	
04/07/2013	TRANSFER TO 8135220	05/07/2013	4,566.66		100-1148020	
05/07/2013	SPOT GBP/USD Exchange rate 1.50130000	05/07/2013		28.52	200-0750086	
16/07/2013	DIVIDEND 5,000.00 FRANKLIN TIF-TEMP GLB BD FD-A-DIS	16/07/2013		160.00	190-0457449	
18/07/2013	OTT FVG	18/07/2013	2,922,495.23		110-1152210	
25/07/2013	HANDLING FEE FOR TRANSFER-SP35442	25/07/2013	2,612.12		509-1154426	
25/07/2013	OUT OF POCKET FEE-SP35442	25/07/2013	1,008.00		509-1154427	
25/07/2013	SPOT USD/GBP Exchange rate 1.54045202	25/07/2013	13.86		200-0757325	

Name TERAPANTH
Account Number 0011634.001.000.840
IBAN CH5008827001163401840
Period 01.07.2013 30.12.2015

Geneva, 08.04.2020 Page 15 / 46

Date	Text	Reference	Value Date	Debit	Credit	Balance
31.01.2014	SALE (SPOT) PARVEST EQUITY BRAZIL FD CAP USD LU0265266980 Executed on :2014/01/28 Rate : 100.11000 Gross Ammount :123565.37 Commission :0.00 Brokerage : 0.00 Federal Stamp :185.35	120-926119	31.01.2014		123'380.02	-408'315.64
03.02.2014	COUPONS STATE BANK INDIA 4.125% 12-01.08.17 USU85528AB04 Amount :200000 Rate : 4 1/8% Year Nbr Payment :2	190-205359	03.02.2014		4'125.00	-404'190.64
10.02.2014	DIVIDENDS GOLDMAN SACHS DEPOSIT SHARES US38145G2093 Amount :3000 Rate : Year Nbr Payment :0	190-205437	10.02.2014		780.95	-403'409.69
11.02.2014	SWIFT INFLOW Origin : /8136893 VIBRANT PROPERTIES LTD VIBRANT PROPERTIES LTD REG NO.: 359433	404-733295	10.02.2014		341'049.43	-62'360.26

891

COPY



Statement of Account

Client VIBRANT PROPERTIES LTD
Account Description CUSTOMER CURRENT ACCOUNT IN US DOLLAR
Account Number 8136893.001.000.840

Period from 01/02/2014 to 28/02/2014

OPENING BALANCE AS OF 01/02/2014 (CR) 341,840.03

DATE	DESCRIPTION	VALUE	DEBIT	CREDIT	REF.
06/02/2014	OTT-FVG	06/02/2014	341,090.03		110-1262812
20/02/2014	SEMI-ANNUAL CUSTODY FEE	20/02/2014	750.00		908-0000610

CLOSING BALANCE AS OF 28/02/2014 (CR) 0.00

COPY



Statement of Account

Client VIBRANT PROPERTIES LTD
Account Description CUSTOMER CURRENT ACCOUNT IN EURO
Account Number 8136893.001.000.978

Period from 01/07/2013 to 31/07/2013

OPENING BALANCE AS OF 01/07/2013 (CR) 0.00

DATE	DESCRIPTION	VALUE	DEBIT	CREDIT	REF.
03/07/2013	TERM DEP. MATURE Contract n° 1552248 from 19/06/2013 to 03/07/2013 Rate 0.050000%	03/07/2013		60,057.40	400-1552248
03/07/2013	TERM DEP. INTEREST Contract n° 1552248 from 19/06/2013 to 03/07/2013 Rate 0.050000%	03/07/2013		1.17	400-1552248
18/07/2013	OTT FVG	18/07/2013	60,058.57		110-1152413
25/07/2013	OUT OF POCKET FEE-SP35442	25/07/2013	9.00		509-1154430
25/07/2013	SPOT USD/EUR Exchange rate 1.32709700	25/07/2013		9.00	200-0757326

CLOSING BALANCE AS OF 31/07/2013 (CR) 0.00

Pg 24 of Supplementary PB



STATEMENT OF ACCOUNT

CURRENT ACCOUNT EUR - EURO

Name TERAPANTH
Account Number 0011634.001.000.978
IBAN CH7308827001163402978
Period 01.07.2013 30.12.2015

Geneva, 08.04.2020

Page 1 / 4

Date	Text	Reference	Value Date	Debit	Credit	Balance
01.07.2013	OPENING BALANCE					0.00
23.07.2013	EUROSIC INFLOW Origin : VIBRANT PROPERTIES LTD PO BOX 158 B NP HOUSE ANLEY ST ST HELIER JERSEY JE4 8RD CHANNEL ISLANDS JERSEY ISLA	406-698588	23.07.2013		59'983.57	59'983.57

45. Similarly, the portfolio statements (PB No. 261-265 PB Vol. 1) as on 31.12.2013 reflects total value of various assets at USD 12375698.34, which is reported to be the value of asset at cost with Hinduja Bank and current account liability at USD 3063193.58. The said portfolio balance is duly reflected in the balance sheet of BWR Trust (PB No. 113 of Vol. I) and statement of assets and portfolio statements available at page no. 261-265 and 266-270 of PB Vol. 1. Thus, it is evident that investment is also owned by BWR Trust. Moreover, as we have already noted above that first credit in the bank account statement named "TeraPanth" has come from Vibrant Properties Ltd on 19.07.2013, which is the date of account opening. The relevant entry of bank credit on 19.07.2013 is found verified from Page No. 893 of PB Vol 3 and further credit at page no. 891 of PB Vol. 3, which matches and gets verified from corresponding debit in

relevant bank account statement of Vibrant Properties itself as available at page no. 875 and 907 of PB Vol. 3. Similarly, opening account credit entry in Hinduja account no. 0011634.001.000.978 is dated 22.07.2013, which is also verifiable from corresponding debit in bank account of Vibrant Properties Limited available at page no. 873 of PB Vol. 3.

46. Considering totality of facts and circumstances, the Bench is of the view that Appellant has demonstrably proved that bank account with Hinduja Bank was opened with the Funds of the Trust and Hinduja bank account and portfolio of various assets maintained in account named Terapanth also belongs to BWR Trust and the said portfolio of assets is duly reflected in the Balance Sheet of BWR Trust as on 31.03.2013. It is also noted that the relevant disclosure of investment made by BWR Trust with Hinduja Bank in portfolio assets at cost is also reflected in notes forming part of the balance sheet available at page no. 116, 123, 130, 137, 144, 151 of PB Vol. 1.

47. We also note that Ld. CIT(A) has itself given the relief of notional gain added by considering market rate as compared to cost of investment. The notional gain of Rs. 3,62,82,410/- has been considered by Ld. CIT(A) and consequential relief has been given by deleting it while arriving the cost of portfolio investment. If the cost is derived by deducing this notional gain itself from market valuation of Rs. 80,10,38,714/- computed by Ld. AO in Para No. 5.19 of his Assessment Order (which is based on portfolio statement available at

page no. 265-270 of Paper Book Vol. 1), the cost of portfolio assets comes at Rs. 76,47,56,279/- i.e. USD 12,375,698.34 equivalent (1USD=61.795). The cost of portfolio in Hinduja Bank at USD 12,375,698.34 along with current liability of USD 3063193.58 is reflected in Balance of BWR Trust and same matches with portfolio statement received by AO through information from FT & TR division No. 266-270, and 261-265 of PB Vol 1).

48. Thus, when the said investment is duly owned and reflected by BWR Trust in its Balance Sheet and existence of BWR Trust is duly established by Deed of Instrument, its financial statements, bank account statements in which flow of funds have taken place, there is no basis for making addition of any foreign asset in the hands of the Assessee and in any eventuality source of funds stands satisfactorily explained.

49. It is observed that the authorities below merely brushed aside the aforesaid documentary evidences without assigning any cogent reasons and merely on the pretext of having information from F T & TR division, no inquiries have been made. Nothing has been brought on record in rebuttal of documentary evidence brought by the Appellant on record.

50. It is trite law if the AO is not satisfied with any documentary evidence, then he is free to conduct necessary inquiries, however, Ld. AO as well Ld. CIT(A) as placed one sided reliance on ITR disclosure as contained in form of the ITR, whereas the factual position and primary disclosure made in the notes

to return of income (PB No. 23-24 of PB Vol 1) has not been considered at all, wherein the Assessee has duly explained that she was signatory in the bank accounts only and source of funds emanated from Trust Funds, which were contributed by Mr. Kirit Kumar Jain in terms of deed of family settlement and partition deed available at page no. 106-108 of PB Vol. 1. The declaration of Mr. KK Jain of having contributed the funds to the trust remains uncontroverted.

51. It is also noted that no documentary evidence has been brought on record to establish whether any income or asset was distributed to Assessee. Bench also notes that Assessee is not the beneficiary of the BWR Trust rather than as per Part C of the BWR Trust instrument of formation available at page no. 101 of PB Vol 1, the issues of first Protector and Settlor are the initial beneficiaries.

52. The Ld. AO as well as Ld. CIT(A) have not controverted the existence of the family settlement deed, BWR Trust, Vibrant Properties Pvt Ltd. The existence of the same is evident from family partition deed, incorporation certificate, MOA and AOA and Trust documents available at page no. 106-108, 152-174, 81-106, 109 of PB Vol. 1. Thus, once the existence of the Trust and source of funds as well as entries in the bank statement reflecting credit therefrom from Vibrant Properties Limited is established by the Assessee, we find substance in the explanation of the Assessee that asset or income in the bank account maintained with Hinduja Bank does not belong to Assessee in her individual capacity and rather of BWR Trust and Assessee is just signatory to

the bank account maintained with Hinduja Bank, Switzerland and not even a beneficiary.

53. In view of the aforesaid, addition made u/s 69A of the Act deserves to be deleted as ownership of investment or assets has been duly established to be not belonging to Assessee-Appellant.

54. In view of the above, addition of Rs. 57,54,66,256/- in respect of net asset of BWR Trust, in the hands of Assessee is not justified and is directed to be deleted.

55. Consequently, for the parity of reasons and findings given above, the income of Rs. 19,32,546/- is also directed to be deleted in the hands of the Assessee.

56. In view of the above, Ground No. 6,7,10,12,13,14,15,16,17,18,19,20,21,22,23 is allowed in favor of the Assessee with directions to delete the additions made.

57. As far as the legal issue of assumption of jurisdiction u/s 153A of the Act is concerned, the Bench is of the view that there is force in the argument of Ld. AR that in the absence of incriminating material the Ld. AO was not justified to disturb the completed assessment for year under consideration. We note that no incriminating material was found during search at the premises or possession of the Assessee and the very basis of assessment is information received from F T

& TR division pursuant to draft word file letter found in laptop of Mr Nikhil Jain. Further, it is also noted that there is no statement or fact brought on record that such draft letter/word file was stated to be belonging to Assessee by Mr. Nikhil Jain. Even in post search proceedings, statements of Assessee were recorded u/s 131 of the Act but there was no reference to any material found from her possession during search in case of Assessee herself. The assessment for year under consideration was not pending at the date of search and well before the same, it got completed and attained finality.

58. The Ld. CIT(A) has upheld the invocation of section 153A of the Act on the premise that there was a search in case of the Assessee herself. However, the factual foundation of absence of discovery of incriminating material found during search in case of the Assessee has been completely overlooked. Thus, Bench is of the view that resort to Section 153A without there being any incriminating material for year under consideration, is not justified merely on the ground that there was search u/s 132 of the Act in case of the Assessee.

59. Thus, following the law laid down by the Hon'ble Apex Court in **PCIT Central-3 V/s Abhisar Buildwell (P.) Ltd [2023] 149 taxmann.com 399 (SC)** that completed assessment could not be disturbed in the absence of incriminating material, we hold that present assessment made u/s 153A is bad in law.

60. In the result, ground no 5, 9 and 11 appeal is also allowed in favor as indicated above.

61. For the reasons indicated above, Ground No. 8 which relates to challenge to reference made by FT & TR division does not require separate adjudication and accordingly dismissed for statistical purpose.

62. Ground No. 24 and 25 are consequential in nature and thus do not require any adjudication.

63. In the result, the appeal of Assessee is partly allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(Dr. Mitha Lal Meena)
Accountant Member

Sd/-

(Dr. S. Seethalakshmi)
Judicial Member

Dated 18/06/2025

*Santosh

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order