Compilation of recent judicial pronouncements – direct taxes (EIRC Seminar dated 12.11.2021)

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2. Gist of above noted orders

2.1 Hon'ble Supreme court decisions/orders

a) ***Lakshya Budhiraja case*** : In this interim order, (transfer proceedings) before Hon'ble supreme court CBDT/revenue in context of faceless appeal scheme 2020 submitted that department is having a second look on the same and time of 3 months was sought to change the law if required (matter adjourned to 10.01.2022);

b) ***South Indian bank ltd case***: In this case on issue of sec.14A it is finally held that if investment is made from common funds and further in case assessee has available its own non interest bearing funds larger than investment in tax free securities no disallowance is warranted u/s 14A of the Act. Reference made to : Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd 3 (2019) 410 ITR 466 SC/ (2019) 20 SCC

478.;Following high court decisions noted with approval: CIT Vs. Suzlon Energy Ltd. 2013) 354 ITR 630 (Guj), CIT Vs. Microlabs Ltd (2016) 383 ITR 490 (Karn and CIT Vs. Max India Ltd. 2016) 388 ITR 81 (P & H);Earlier decision in case of Maxopp Investment Ltd. v. CIT (2018) 15 SCC 523 referred at length and reiterated; Godrej and Boyce Manufacturing Company Ltd. V. DCIT [(2017) 7 SCC 421 Also referred ;
(notable observations:
("29. In the above context, the following saying of Adam Smith in his seminal work – The Wealth of Nations may aptly be quoted: "The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person." Echoing what was said by the 18th century economist, it needs to be observed here that in taxation regime, there is no room for presumption and nothing can be taken to be implied. The tax an individual or a corporate is required to pay, is a matter of planning for a tax payer and the Government should endeavour to keep it convenient and simple to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue.")

c) ***Batanagar education & research trust***: In this matter Hon'ble supreme court while reversing impugned high court decision and restoring ITAT order confirm revocation of registration u/s 12AA(3) of the Act, the aspect of misuse of privileged charitable status as exposed in survey operation u/s 133A of the Act on trust ,which got further confirmed from statement of trustee etc and factum of bogus donation (later returned in cash) recd was firmly established , thus hon'ble apex court approved the withdrawal/cancellation of registration u/s 12AA(3) of the Act (note: section 12AA(5) inserted w.e.f 1.4.2021 nothing in section 12AA shall apply after 1.4.2021)
d) ***Mitsubishi corpn case***: In this matter Hon'ble supreme court on levy of interest u/s 234B of the Act read with sec. 209 of the Act as it stood at relevant time (prior to amendment by finance act

2012) on account of alleged short payment of advance tax consequence to non deduction of tax at source by payer concerned , applying the principle that in dealing with matters of construction, subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act, where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation; held prior to amendment by fiancé act 2012 , no interest liability u/s 209 r.w.s 234B of the Act can be fastened on assessee for alleged short part payment of advance tax resulting from failure to deduct tax at end of payer.

e) ***THE MAVILAYI SERVICE COOPERATIVE BANK LTD. & ORS (Three judge bench order):*** Held only ratio of a decision is of binding character, how to cull out ratio of a decision – analysed at length ; on marginal note to a provision held that "the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in K.P. Varghese v. Income Tax Officer, Ernakulam and Anr. (1981) 4 SCC 173 as follows…", on proviso interpretation held" A number of judgments have held that a proviso cannot be used to cut down the language of the main enactment where such language is clear, or to exclude by implication what the main enactment clearly states." Most importantly held that "Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee." (also reference to be made to another decision in case of Govt of Kerala vs Mother superior Adoration convent case order dated 01.03.2021- 2021 SCC online SC 151);

f) ***M.M.Aqua Technologies case***: with particular reference to Section 43B Explanation 3C of the Income Tax Act, 1961 where, as a matter of fact, that as per a rehabilitation plan agreed to between the lender and the borrower, debentures were accepted by the financial institution in discharge of the debt on account of outstanding interest and where that in the assessment of ICICI Bank, for the assessment year in question, the accounts of the bank reflect the amount received by way of debentures as its business income, held by hon'ble supreme court that *"…On the facts found*

in the present case, the issue of debentures by the assessee was, under a rehabilitation plan, to extinguish the liability of interest altogether. No misuse of the provision of Section 43B was found as a matter of fact by either the CIT or the ITAT. Explanation 3C, which was meant to plug a loophole, cannot therefore be brought to the aid of Revenue on the facts of this case. Indeed, if there be any ambiguity in the retrospectively added Explanation 3C, at least three well established canons of interpretation come to the rescue of the assessee in this case…" three canons referred/applied:

First, since Explanation 3C was added in 2006 with the object of plugging a loophole – i.e. misusing Section 43B by not actually paying interest but converting interest into a fresh loan, bona fide transactions of actual payments are not meant to be affected. In similar circumstances, in K.P. Varghese v. ITO, (1981) 4 SCC 173, this Court construed Section 52 of the Income Tax Act as applying only to cases where 'understatement' is be found – an 'understatement' is not to be found in the literal language of Section 52, but was introduced by this Court to streamline the provision in the light of the object sought to be achieved by the said provision.

Second, a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood.

Third, any ambiguity in the language of Explanation 3C shall be resolved in favour of the assessee as per Cape Brandy Syndicate v. Inland Revenue Commissioner (supra) as followed by judgments of this Court – See Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 at paras 60 to 70 per Kapadia, C.J. and para 333, 334 per Radhakrishnan, J.

g) ***Mohammed Meeran Shahul Hameed***: On issue of

"The short question of law which is posed for consideration before this court is, whether in the facts and circumstances of the case, the High Court and the learned ITAT are right in holding that the order passed by the learned Commissioner passed under Section 263 was barred by period of limitation provided under Section 263 (2) of the Act? Whether the High Court is right in holding that the relevant date for the

purpose of considering the period of limitation under Section 263(2) of the IT Act would be the date on which the order passed under Section 263 by the learned Commissioner is received by the assessee?" held "*On a fair reading of sub-section (2) of Section 263 it can be seen that as mandated by sub-section (2) of Section 263 no order under Section 263 of the Act shall be "made" after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore the word used is "made" and not the order "received" by the assessee. Even the word "dispatch" is not mentioned in Section 263 (2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263 (2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act. In the present case, the order was made/passed by the learned Commissioner on 26.03.2012 and according to the department it was dispatched on 28.03.2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the financial year 200809 would be 31.03.2012 and the order might have been received as per the case of the assessee – respondent herein on 29.11.2012. However as observed hereinabove, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263 (2) of the Act. Therefore the High Court as such has misconstrued and has misinterpreted the provision of subsection (2) of Section 263 of the Act. If the interpretation made by the High Court and the learned ITAT is accepted in that case it will be violating the provision of Section 263 (2) of the Act and to add something which is not there in the section. As observed hereinabove, the word used is "made" and not the "receipt of the order". As per the cardinal principle of law the*

provision of the statue/act is to be read as it is and nothing is to be added or taken away from the provision of the statue. Therefore, the High Court has erred in holding that the order under Section 263 of the Act passed by the learned Commissioner was barred by period of limitation, as provided under subsection (2) of Section 263 of the Act"

(Though it is the case on behalf of the respondent – assessee that by now the issue involved in the present appeal has become academic,..)

h) ***ADANI GAS LIMITED*** (three judge bench): Although in this case host of propositions are laid down but one significant proposition is on issue of "*Point No. 2 Whether Regulation 18 is ultra vires the PNGRB Act paragraph 102 onwards…"* where the hon'ble supreme court has discussed at length the principle of ultra vires in delegation legislation (said principle can be used in various cases);

i) ***THE CHUNAR UNIVERSAL ENTERPRISES (three judge bench):*** in this matter where no Show cause notice as prescribed and stipulated in relevant rule 15 of Classification and Enlistment of Contractors in the Public Works Department "Rules". Was given , held that entire process got vitiated and same stands quashed.

j) ***M/s Magadh Sugar & Energy Ltd***: on scope of article 226 (writ petition before Hon'ble high court); three judge bench, in this case , after extensively noting erlier decisions in cases of Whirpool Corporation v. Registrar of Trademarks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahni v. Indian Oil Corporation Ltd (2003) 2 SCC 107. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors 2021 SCC OnLine SC 334, Assistant Commissioner of State Tax v. M/s Commercial Steel Limited Civil Appeal No. 5121 of 2021, State of HP v. Gujarat Ambuja Cement Ltd 2005) 6 SCC 499, Executive Engineer v. Seetaram Rice Mill (2012) 2 SCC 108, Union of India v State of Haryana 2000) 10 SCC 482, held *In view of the law discussed above on the rule of alternate remedy, the High Court can exercise its writ jurisdiction if the order of the authority is challenged for want of authority and jurisdiction, which is a pure question of law (also court referred to* A three judge Bench of this court in Sree Meenakshi Mills Ltd. v Commissioner of Income Tax26

succinctly explained the tests for the identification of questions of fact, questions of law and mixed questions of law and facts. Justice T. L. Venkatarama Aiyar)

k) ***DAYLE DE'SOUZA***: in context of prosecution launched under provisions of Minimum Wages Act, 1948, the hon'ble supreme court after making threadbare analysis of the entire conundrum has succinctly held that

Sub-section (1) to Section 22C states that where an offence is committed by a company, every person who at the time the offence was committed was in-charge of and was responsible to the company for the conduct of the business, as well as the company itself shall be deemed to be guilty of the offence. By necessary implication, it follows that a person who do not bear out the requirements is not vicariously liable under Section 22C(1) of the Act. The proviso, which is in the nature of an exception, states that a person who is liable under sub-section (1) shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The onus to satisfy the requirements to take benefit of the proviso is on the accused, but it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 22C of the Act. The proviso is to give immunity to a person who is vicariously liable under sub-section (1) to section 22C of the Act. The proviso being an exception cannot be made a justification or a ground to launch and initiate prosecution without the satisfaction of conditions under sub-section (1) of Section 22C of the Act. The proviso that places the onus to prove the exception on the accused, does not reverse the onus under the main provision, namely Section 22C(1) of the Act, which remains on the prosecution and not on the person being prosecuted. The onus under sub-section (2) to Section 22C is on the prosecution and not on the person being prosecuted. The words 'in-charge of the company' and 'responsible to the company' are pivotal to sub-section (1). This requirement has to be satisfied for the deeming effect of subsection (1) to apply and for rendering the person liable to be proceeded against and, on such position being proved, punished. The necessities of sub-section (2) to Section 22C of the Act are different from sub-section (1) to Section 22C of the Act. Vicarious

liability under sub-section (2) to Section 22C can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day to day business of the company when the offence was committed. Vicarious liability is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company In the factual context present before us it is crystal clear that the complaint does not satisfy the mandate of sub-section (1) to Section 22C of the Act as there are no assertions or averments that the appellant before this Court was in-charge of and responsible to the company M/s. Writer Safeguard Pvt. Ltd. in the manner as interpreted by this Court in the cases mentioned above. There is yet another difficulty for the prosecution in the present case as the Company has not been made an accused or even summoned to be tried for the offence. n terms of the ratio above, a company being a juristic person cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well. The authorities bestowed with the duty to confirm compliance are often empowered to take stringent including penal action to ensure observance and check defiance. There cannot also be any quarrel on the need to enforce obedience of the rules as the beneficial legislation protects the worker's basic right to receive minimum wages. The rulebook makes sure that the workers are made aware of their rights and paid their dues as per law without unnecessary disputes or allegations as to absence, overtime payment, deductions, etc t the same time, initiation of prosecution has adverse and harsh consequences for the persons named as accused. In Directorate of Revenue and Another v. Mohammed Nisar Holia, 17 this Court explicitly recognises the right to not to be disturbed without sufficient grounds as one of the underlying mandates of Article 21 of the Constitution. Thus, the requirement and need to balance the law enforcement power and protection of

citizens from injustice and harassment must be maintained. Earlier in M/s. Hindustan Steel Ltd. v. State of Orrisa, 18 this Court threw light on the aspect of invocation of penalty provisions in a mechanical manner by authorities to observe: Almost every statute confer operational power to enforce and penalise, which power is to be exercised consistently from case to case, but adapted to facts of an individual case19 . The passage from Hindustan Steel Ltd. (supra) highlights the rule that the discretion that vests with the prosecuting agencies is paired with the duty to be thoughtful in cases of technical, venial breaches and genuine and honest belief, and be firmly unforgiving in cases of deceitful and mendacious conduct. Sometimes legal provisions are worded in great detail to give an expansive reach given the variables and complexities involved, and also to avoid omission and check subterfuges. However, legal meaning of the provision is not determined in abstract, but only when applied to the relevant facts of the case20 . Therefore, it is necessary that the discretion conferred on the authorities is applied fairly and judiciously avoiding specious, unanticipated or unreasonable results. The intent, objective and purpose of the enactment should guide the exercise of discretion, as the presumption is that the makers did not anticipate anomalous or unworkable consequences. The intention should not be to target and penalise an unintentional defaulter who is in essence law-abiding. Criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion, or when the violation of law is doubtful. It is the duty and responsibility of the public officer to proceed responsibly and ascertain the true and correct facts. Execution of law without appropriate acquaintance with legal provisions and comprehensive sense of their application may result in an innocent being prosecuted. Equally, it is the court's duty not to issue summons in a mechanical and routine manner."

l) ***Supertech limited****:* 12 The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather6 . A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal

foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"]. 13 Further, there is another legal principle which is applicable in the present case. It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden7 . Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden8 . This Court too, has adopted this maxim9 . This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way. 6 See Meghmala v G Narasimha Reddy, (2010) 8 SCC 383 7 Taylor vs Taylor, 1875 (1) Ch D 426 8 Nazir Ahmed vs King Emperor, (1936) L.R. 63 IndAp 372 9 Parbhani Transport Co-operative Society Ltd. vs The Regional Transport Authority, Aurangabad & Others, AIR 1960 SC 801"

m) ***National cooperative case:*** *In this case most important observations of the hon'ble court are "* 2. In the end before parting we may refer to the legal legend Mr. Nani A. Palkhivala, who while addressing a letter of congratulations to Mr. Soli J. Sorabjee on attaining his appointment as the Attorney General on 11.12.1989 referred to the greatest glory of Attorney General as not to win cases for the Government but to ensure that justice is done to the people. In this behalf, he refers to the motto of the Department of Justice in the United States carved out into the Rotunda of the Attorney General Office: "The United States wins its case whenever justice is done to one of its citizens in the courts." The Indian citizenry is entitled to a hope that the aforesaid is what must be the objective of Government litigation, which should prevail even within the Indian legal system. In the words of

Martin Luther King, Jr., "We must accept finite disappointment, but never lose infinite hope." Secondly on real income principle it was held that "We may record here that income has to be determined on the principles of commercial accountancy. There is, thus, a distinction between 'real profits' ascertained on principles of commercial accountancy. In the case of Poona Electric Supply Co. Ltd. v. CIT Bombay City11 this Court has held that income tax is on the real income. In the case of a business, the profits must be arrived at on ordinary commercial principles. The scheme of the IT Act requires the determination of 'real income' on the basis of ordinary commercial principles of accountancy. To determine the 'real income', permissible expenses are required to be set off. In this behalf, we may also usefully refer to the judgment in CIT, Gujarat v. S.C. Kothari12 where the following principle was laid down: here is also a distinction between real profits ascertained on commercial principles and profits fixed by a statute for a specific purpose. Income tax is a tax on real income. …" Further on sec. 37 it is held that "The disbursement of grants has already been held to be the core business of the appellant-Corporation. Once that requirement is satisfied, the expenditure incurred in the course of business and for the 'purpose of business', would naturally be an allowable deduction under Section 37(1) of the IT Act. The source of funds from which the expenditure is made is not relevant. It is also not really relevant as to whether the expenditure is incurred out of the corpus funds or from the interest income earned by the appellant-Corporation. 31. We are also unable to accept the contention of the respondent that the payouts constitute a mere application of income, which does not tantamount to expenditure. The disbursement of non-refundable grants is an integral part of business of the appellant-Corporation as contemplated under Section 13(1) of the NCDC Act and, thus, is for the purpose of its business. The purpose is direct; merely because the grants benefit a third party, it would not render the disbursement as 'application of income' and not expenditure. 32. In support of the aforesaid view, we may rely on the judgment of this Court in CIT Kerala, Ernakulam v. The Travancore Sugar & Chemicals Ltd., 8 which gave an occasion to examine the issue whether the discharge of an obligation paid to the Government was application of income or diversion of profits. This Court came to the conclusion that from

any point of view, whether as revenue expenditure or as an overriding charge of the profit-making apparatus or laid out and expended wholly and exclusively for the purposes of trade, this was an allowable revenue expenditure" Further on classification issue it is held that "In a larger canvas the appellant-Corporation plans, promotes and makes financial programmes for the benefit of these societies and other entities to which such loans, grants and subsidies are advanced. We may say it is really in the nature of an intermediary with expertise in the financial sector to carry forward the intent of the Central Government to assist State Governments, Cooperative Societies, etc. Since this is the business activity, that is what has persuaded us to opine that the income generated in the form of interest on the unutilised capital is in the nature of business income. The objectives are wholly socio-economic and the amounts received including grants come with a prior stipulation for the funds received to be passed on to the downstream entities. .. The interest having been treated as revenue receipt on which taxes are paid, it must continue to retain the character of revenue receipt. If the nature of receipt is treated as capital receipt then consistent with the aforesaid approach, no taxes would have been payable on the amount. The corollary is that all expenses incurred in connection with the business are deductible."

2.2 Hon'ble high court decisions

a) ***Wipro Ltd (Karnataka high court):*** This is a treatise containing all useful propositions on tax laws where the hon'ble court has extensively and remarkably quoted from Kalidas, Chanakya, Palkivala, Walton, article 265 of Indian constitution, duty to refund excess taxes collected, nature of concept of assessment in income tax law, ideal approach of revenue authorities to order giving effect (OGE) concept, concept of finality of proceedings (parsuram potteries sc decision etc), are referred to finally allow petitioner prayer for quashing of impugned order and allowing additional interest @3%p.a u/s 153(5) read with section 244(1A)

b) ***Kalyan Buildmart case***: Writ petition filed against provisional attachment orders and confirmatory orders resp passed by

initiating officer and adjudicating authority u/s 24(4) and sec 26(3) PBPT Act; held firstly that issue of retrospective applicability of PBPT act to transaction prior to 1.11.2016, that " *From the judgments, which have been cited by both the parties and the interim orders passed by the Supreme Court, in the opinion of this court, the question regarding retrospectivity of the amendments made in the Benami Act, 1988 and brought into force w.e.f. 01.11.2016 is left open to be adjudicated only by the Supreme Court. Suffice it to notice that in some of the judgments i.e. Mangathai Ammal (supra) and Joseph Isharat (supra), the Supreme Court has observed benami transactions not to be applicable retrospectively. However, as SLP No.2784/2020, Union of India & Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd. is pending wherein the order of High Court has been stayed, this Court would refrain from making any observation with regard to applicability of the Act retrospectively or prospectively" Then on main issue of "The first aspect is whether the company incorporated under the Companies Act and holding any property in its name can be said to be a benamidar on the basis that funds which were taken by the Directors and invested in the company by way of shareholders which have been utilised for purchasing of the property of the company can be treated as a benami transaction and shareholders to be the actual beneficial owners" giving illustration that "38. Upon reading provisions of the Benami Act, 1988 and the definitions as above, it is thus apparent that a benami transaction would require one transaction made by one person in the name of another person where the funds are owned and paid by the first person to the seller while seller gets registered sale deed executed in favour of the second person i.e. from account of 'A', the amount is paid to 'C' who sells the property to 'B' and a registered sale deed is executed in favour of 'B'": the hon'ble court held that "39. While in the case of an individual, the aforesaid position may continue, however, in transaction for purchase of property by a company in favour of any person or in their own name would not come within the purview of benami transaction because the funds of the company are its own assets. If promoters of the company namely, the shareholders, their relatives or individuals who invest in the company by way of giving land or by way of gift or in any other manner, then such amounts/monies received, would be part of the net worth of the company and the company would be entitled to invest in any sector for which it has been formed. The persons who have put monies in the company, may be considered as their shareholders but such shareholders do not have right to own properties of the company nor it can be said that the shareholders have by virtue of their share in the company invested their amount as benamidars. The transactions of the company are independent transactions which are only for the purpose of benefit of the company alone. 40. It is a different aspect altogether that on account of benefit accruing to the company, the shareholders would also receive benefit and they may be beneficiaries to a certain extent. This would however not make shareholders as beneficial owners in terms of the definition as provided under Section*

2(12) of the Benami Act, 1988. 'Company' as defined under the Companies Act, 1956 and incorporated thereunder, therefore, cannot be treated as benamidar as defined under the Benami Act, 1988. The company cannot be said to be a benamidar and its shareholders cannot be said to be beneficial owners within the meaning of the Benami Act, 1988. 41. The entire fulcrum of this case, therefore, rests on misinterpretation of the provisions of the Benami Act, 1988. All the transactions in the corporate world made by the company would become benami transaction if the interpretation of definition as understood by the respondents is accepted by this Court. In view of the aforesaid, the entire proceedings initiated under the Benami Act, 1988 deserve to be quashed and set aside." On laches and inordinate delay in launch of impugned proceedings: "42. This Court also finds that that the proceedings initiated after 10 years of the said purchase made in 2007 are highly belated. Ordinarily, any proceeding relating to benami transactions ought to be taken up immediately or atleast within reasonable period of limitation of three years as generally provided under the Limitation Act, 1963." (further refer to Hon'ble Calcutta high court order dated 16.04.2021 in WPA 11123 of 2020 in Deific Abode LLP vs UOI and Tripura high court in Ari Arun Das vs Smr Aparna Das order dated 02.03.2021- motive test relevance explained- angle of fiduciary capacity analysed at length)

c) ***J K TYRE AND INDUSTRIES LTD:***

"100. In terms of the discussion above, the following are the findings on the issues raised above: i) What is the procedure to be followed by the ED when letters of request are received under Section 60 of the Act from a contracting state? • When a letter of request is received under Section 60 from a contracting state, the requisite safeguards contained in Chapters III and V of the Act, as well as the procedure mentioned in the Rules and Regulations framed under the Act have to be followed. The said requests cannot be treated at a higher threshold. The ED and the Adjudicating Authority, would have to adhere to all provisions relating to recording the 'reason(s) to believe' and supplying the 'Relied Upon Documents', as is required to be done in the case of domestic proceedings under the PMLA. ii) Whether the ED is duty bound to provide the 'reasons to believe' while passing orders under Section 17 of the PMLA, to the concerned parties? • The said question is pending for determination before the Supreme Court in SLP(C) No. 12865/2018 titled Union of India and Ors. vs. J. Sekar. iii) What is the procedure to be followed by the ED while forwarding the 'reasons to believe' and the application under Section 17(4) of the PMLA to the Adjudicating Authority seeking continuation of the freezing orders and confiscation? • Immediately upon a search and seizure/ freezing order being passed, the Director ED, or the person authorized has to forward a copy of the 'reasons to believe' recorded by the ED along with 'material in its possession' to the Adjudicating Authority, in a sealed cover, as per the provisions of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the manner of forwarding the reasons and material to the Adjudicating Authority,

Impounding and Custody of Records and the Period of Retention) Rules, 2005. The detailed procedure provided under the said Rules has to strictly be complied with to ensure that there is no tampering in the material sent by the ED to the Adjudicating Authority. iv) Whether the ED ought to transmit all the documents, which are in its possession, to the Adjudicating Authority while sending the same in a sealed cover under Rule 8 of The Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the manner of forwarding the reasons and material to the Adjudicating Authority, impounding and custody of records and the period of retention) Rules 2005? • Along with the application under Section 17(4), The Director ED or the person authorized has to transmit all the material in the possession of the ED in respect of the said case, to the Adjudicating Authority, in accordance with the procedure stipulated in Rule 8 of the 2005 Rules. It would not be permissible for the ED to retain some part of the material, and send partial documents to the Adjudicating Authority, at this stage, in as much as the statute contemplates sending of `the material in possession of the authority' and NOT 'material forming the basis of the 'reasons to believe''. No documents already in possession of the ED, can be shared by the ED with the Adjudicating Authority without following the due procedure provided within the 2005 Rules, or post the issuance of the show cause notice. v) What is the procedure to be followed by the Adjudicating Authority, upon receipt of the application under Section 17(4) of the PMLA? vi) What is the level of satisfaction to be recorded by the Adjudicating Authority prior to issuance of show cause notice under section 8(1) of the PMLA? • The Adjudicating Authority is an authority which adjudicates, i.e., which decides disputes between the parties on merits without bias or prejudice. It is independent and distinct from the ED. As per Section 8, upon receipt of a complaint/application filed by the ED under Section 17(4), the Adjudicating Authority has to record its 'reason to believe' that an act has been committed which constitutes money laundering under Section 3, or a person is in possession of 'proceeds of crime'. It has to record its satisfaction independent of the `reasons to believe' of the ED and only thereafter issue a show cause notice under Section 8(1) to be served upon the party/parties concerned. The said notice has to be issued in accordance with the Adjudicating Authority (Procedure) Regulations, 2013'. • The Adjudicating Authority cannot mechanically go by the reasons recorded by the ED, and has to have separate and independent grounds to believe that such an offence has been committed. The fact that the Adjudicating Authority is again required to have 'reason to believe' as per the provisions of the Act shows that there is a two-tier process which is to be followed prior to the issuance of the show cause notice, namely- satisfaction by the ED and thereafter, independent satisfaction by the Adjudicating Authority. vii) Whether while issuing the show cause notice, all the 'Relied Upon Documents' have to be supplied to the parties concerned? • A conjoint reading of Section 8(1) of the PMLA and Regulation 13(2) of the Adjudicating Authority (Procedure) Regulations, 2013, leaves no doubt that

the Adjudicating Authority is duty bound to serve all the documents, that it has 'relied upon' i.e., the 'Relied Upon Documents (RUDs)', while coming to its 'reason to believe' to the party concerned, in a bound paper book. The said service of documents can be effected through the ED, and the Adjudicating Authority has to ensure that the said service has been effected. A simple service of the show cause notice, without the RUDs would not be sufficient. The 30-day period notice would naturally have to be thus counted from the date when the complete RUDs are supplied to the parties concerned/ Defendants, as no effective opportunity to reply would be possible unless all the RUDs are received. viii) What is the procedure to be followed for providing inspection of records, and for giving a reasonable hearing to the parties, prior to passing of orders by the Adjudicating Authority under the PMLA? • No fee can be charged for supplying the 'Relied Upon Documents' by the Adjudicating Authority directly, or through the ED. Insofar as inspection is concerned it is clarified that the provisions relating to inspection and fees for inspection and copying, are in respect of records which are beyond the RUDs which may be part of `material in possession'. Inspection of such documents can only be given to the party concerned and not to any third parties. Strict confidentiality ought to be maintained. For obtaining inspection, parties may file an application in terms of Form 7 and Regulation 16 of the Adjudicating Authority (Procedure) Regulations, 2013, and deposit a fee as per Regulation 17 of the said Regulations. After inspection, the Defendant may request for copies of the documents as per Regulation 18, after paying the stipulated fee. The said inspection, if granted, ought to be facilitated in an expeditious manner The Adjudicating Authority has to, as per Section 8(2) of the PMLA, first consider the reply to the show cause notice filed by the defendants; secondly, hear all the parties in a meaningful manner; and thirdly peruse all the relevant material placed on record before it, and only then record a finding confirming the search or seizure/ confiscation/ freezing, after reaching a conclusion that the defendant(s) is involved in the offence of money laundering under Section 3 of the Act, or is in possession of proceeds of crime. It would not be permissible for the complainant-ED to show any documents or material to the Adjudicating Authority outside of the hearing being given, or behind the back of the parties concerned. The hearing has to also be transparent and in the presence of the parties concerned. Unilateral hearings in the absence of the opposing party would not be permissible before the AA."

d) ***Kamal Singhania****: Applying The Apex Court in 1Andaman Timber Industries Vs. Commissioner of C.EX., Kolkata-II held that not allowing a party to cross examine witnesses of the Adjudicating Authority whose statement was the basis of the show cause notice to demand duty is a serious flaw in as much as it amounted to violation of principles of natural justice. We have to note that the Commissioner refused permission to cross examine*

Thakkar notwithstanding the request made by respondent nos.1 and 2. In our view, permission to cross examine Thakker should have been granted mainly in view of the fact that appellant was relying on the statement of Thakkar and documents which were seized from Thakkar 14. A Division Bench of this Court (Goa Bench) in the case of 2Ciabro Alemao Vs. Commissioner of Customs Goa has held that a statement, like all testimony, must be subjected to the rigours of cross-examination and the fact that a statement is made and recorded may be relevant but does not mean it is proved. The Division Bench held that the statement on which a party relied upon cannot be said to have been proved unless that witness was made available for cross examination. 15. We therefore agree with the majority view that rejection of the request for cross examination of Thakkar would mean that Thakkar's statement cannot be relied upon

e) ***Underwater Services Company Limited***: In this landmark order (on writ petition filed by assessee against sec. 153A notice - reproduced in order by Hon'ble high court) the court remarkably held "4 We have no quarrel with the proposition submitted by Mr. Chhotaray. Section 153A is couched in mandatory language once there is a search, the assessing officer has no option but to call upon the assessee to file the returns of the income for the earlier six assessment years. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the assessing officer which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section 153A only on the basis of seized material. 5 Issuance of a show cause notice is the preliminary step which is required to be undertaken. The purpose of show cause notice is to enable a party to effectively deal with the case made out by respondent (Om Shri Jigar Association vs Union Of India 5). 6 Because Section 153A provides that an assessment has to be made under the said Section only on the basis of seized material, the notice dated 29th November 2018, which is impugned in this petition, should have mentioned whether the seized material was under Section 132 or books of account, other documents or any assets

are requisitioned under Section 132A. The notice is absolutely silent as could be seen from above. The notice says "you are required to prepare true and correct return of income" and "setting forth such other particulars". Petitioner had filed their returns for the Assessment Year in question, which they thought was the true and correct return of income and that it contained all other particulars as prescribed. If respondent felt that was not enough and petitioner should file a fresh true and correct return of income because of the search, then respondent should certainly indicate in its notice what were the seized material under Section 132 or books of accounts or other documents or any assets requisitioned under Section 132A. Otherwise an assessee would file a copy of what it had filed earlier, which respondent anyways had in its file. Petitioner has also been seeking from respondent to make available copy of the alleged incriminating material found/seized during the search based on which the notice has been issued. Mr. Chhotaray states that such material has been given later. We are not going into that aspect at this stage because what we find is that the notice issued under Section 153A is bereft of any material. Nothing prevented respondent from mentioning in the notice the basis for issuing the notice under Section 153A so that petitioner could comply with the same as prescribed."

f) ***Smt. Smrutisudha Nayak***: In this case also Hon'ble orissa high court similar to above Bombay high court (underwater case) has held that " 13. It is clear that the exercise under Section 153A is not to be undertaken mechanically. In other words, it is not possible to accept the contention of the Department that there was an obligation to initiate the assessment proceedings under Section 153-A of the Act only because a search has been conducted, even though no incriminating materials whatsoever have been found during search. It does not matter that the original assessment was not completed under Section 143(3) of the Act for that purpose… 17. In the present cases, with there being absolutely no incriminating materials found or seized at the time of search, there was no justification for the initiation of assessment proceedings under Section 153A. On this ground therefore the writ petitions ought to succeed." (**ALSO REFER ORISSA HIGH COURT DECISION IN CASE OF SAI CASHEWS CASE AT 438 ITR 407)**

g) ***Galiakot Containers Pvt. Ltd. Mumbai***:
Sub section (1) of Section 72, therefore provides that where for any assessment year, the net result of the computation under the head "profits and gains of business or profession" is a loss to the assessee, it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year. Section 72(1) of the Act employs the expression "computation under the head profits and gains of business or profession", whereas, Section 72(1) (i) does not use the said expression but it says "against profits and gains, if any of any business or profession". Therefore, what is required to be seen is whether profits and gains against which the loss is sought to be set off was part of the business activity of the assessee or business asset of the assessee. Admittedly, in this case the assessee had sold block of assets, i.e., buildings / development, factory building, plant and machinery and had shown short term capital gain of Rs.1,55,63,915/- plus long term capital gain of Rs.72,70,984/- by sale of immovable property. The assessee was in the business of manufacturing metal containers and the computations of gain was under a different head nevertheless the profit or gain on sale of depreciable assets to extent of recoupment of depreciation is nothing but business income in substance. The assessee is entitled to set off brought forward loss against income which has the attributes of business income even though the same is assessible to tax under head other than profit and gain from business. We find support for this view from Principal Commissioner of Income Tax Vs. Alcon Developers 1 and Nandi Steels Ltd. Vs. Assistant Commissioner of Income Tax, Circle -12(2), Bangalore 2021) 128 taxmann.com 267 (Karnataka).

h) ***Sec.115BBE Andhra Pradesh high court order***: In the present cases, explanations have been offered by the assessees that excess stock was a result of suppression of profits from business over the years and is a part of the overall stock found. In ITTA Nos.9 & 14 of 2021, the assessees concerned gave further clarification that the excess stock had been admitted in Schedule 'L' under the heading, 'other operating income' under the head "Profits and Gains of the Business" in Part A of the Return filed for the relevant Assessment Year. Hence, the excess stock could not have been treated as 'undisclosed investment' under Section 69 of the Act. As

explanations pursuant to the Show-cause notices issued by the Assessing Officer had been submitted claiming that the nature and source of the excess stock fell under the heading 'Profits and Gains of the Business' and such stock was not specifically identifiable from the profits which had accumulated from earlier years and such explanations being considered and accepted by the Assessing Officer, which came to be approved by the Joint Commissioner, Income Tax, it cannot be said that the condition precedents for holding that the excess stock as 'undisclosed investment' under Section 69 of the Act are satisfied.

In the present cases, the Assessing Officer had issued show-cause notices calling for explanations from the assessees whether excess stock be not treated as 'undisclosed investment' under Section 69 of the Act. In response to the notices, elaborate explanations were offered by the assessees, which were fortifiable by consistent views by various Benches of the Tribunal as well as the High Courts. The Assessing Officer, upon consideration, accepted the explanation and taxed the additional income as 'business income' @ 30% instead of 60% as per Section 115BBE of the Act. No contrary view either of any High Court or the Apex Court has been placed before us to demonstrate that the explanations offered by the assessees in the course of assessment were either perverse or contrary to law. In view of such matter, we are constrained to hold no case of perversity or lack of enquiry on the part of the Assessing Officer is made out so as to render his decision erroneous under Explanation 2 of Section 263 of the Act. Thus, the revisional powers under the said provision were illegally invoked by the Principal Commissioner and his order was rightly set aside by the Tribunal.

i) ***Trendsutra Client Services Pvt. Ltd***: To summarize, Section 144B provides for (a) issuance of a show cause notice to the assessee, providing draft assessment order if any modification or variation prejudicial to interest of the assessee is proposed; (b) granting reasonable time to the assessee to submit its reply; (c) extension of time to reply by the assessee; (d) consideration of reply filed by the assessee before passing the assessment order; and (e) granting of personal hearing if a request is made in this regard and such request is the one prescribed. It has been clearly held by this Court that the principles of natural justice cannot be violated and a show

cause has to be issued before passing any order prejudicial to the assessee. It is clear from reading of Section 144B that the assessee is required to be given an opportunity in case the variation proposed in the draft assessment order upon its examination by NaFAC is prejudicial to the interest of assessee by having served upon him a show cause notice calling upon him to show cause as to why the proposed variation should not be made. This would be equally applicable in case variation is proposed in a revised draft assessment order which is prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order. In that case too an opportunity shall be provided to the assessee by serving a show cause notice calling upon him to show cause as to why the proposed variation should not be made. It has been further provided in sub-section (9) of Section 144B that in the event that the final assessment order is not made in accordance with procedure laid down under Section 144B for faceless assessment, the assessment order shall be non est. Thus, Sub-section (a) of Section 144B makes it amply clear that the Section 144B is a mandatory provision and noncompliance thereof would make the assessment order non-est

j) ***BRAHMA CENTRE DEVELOPMENT PVT. LTD 437 ITR 285***

.: Section 263 all principles analysed in 360 degree manner:

10. The standard to be adopted while dealing with the issue as to whether or not an AO has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the AO applied his mind. 10.1. The fact that the AO has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. Therefore, scrutiny of the record, is necessary and while scrutinising the record the Court has to keep in mind the difference between lack of enquiry and perceived inadequacy in enquiry. Inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the Act can be invoked to interdict an assessment order. The observations made in this behalf, by the Division Bench of this Court, in Commissioner of Income-tax vs. Sunbeam Auto Ltd., [2010] 189 Taxman 436 (Delhi)/[2011] 332 ITR 167 (Delhi) being apposite, are extracted hereafter. his view was followed by another Division Bench of this Court in Commissioner of Income-tax vs. Anil Kumar Sharma, (2010) 194 taxman 504 (Delhi)

The assessment order can be interdicted under Section 263 of the Act, if two conditions are met, i.e., that the order is erroneous and is prejudicial to the interests of the revenue. [See Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax, [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC) and CIT vs. Max India Ltd., (2007) 295 ITR 282 (SC)]

Notable ratio: *11.1. Therefore, the error should be one that is not debatable or a plausible view. Section 263 of the Act invests a power of revision in a superior officer and therefore, by the very nature of the power, does not allow for supplanting or substituting the view of the AO. The appreciation of material placed before the AO is, exclusively within his domain which cannot be interdicted by a superior officer while exercising powers under Section 263 of the Act only on the ground that if he had appraised the said material, he would have come to a different conclusion. [See Parashuram Pottery Works Co. Ltd. v. ITO, [1977] 106 ITR 1 (SC)]*

12. According to us, the AO, having received a response to his query about the adjustment of interest, in the concerned AYs, against inventory, concluded that, there was a nexus between the receipt of funds from investors located abroad and the real estate project, which upon being invested generated interest. Thus, it cannot be said that the conclusion arrived by the AO, that such adjustment was permissible in law, was erroneous.

Furthermore, in our view, we need not detain ourselves and examine as to whether Clause (a) and (b) of Explanation 2 appended to Section 263 of the Act could have been applied to the AYs in issue, since on facts, it has been found by the Tribunal that an enquiry was, indeed, conducted by the AO. (ALSO REFER KARNATAKA HIGH COURT ON SEC. 263 LATEST ORDER REPORTED AT 437 ITR 249)

k) ***COFORGE LIMITED (FORMERLY KNOWN AS NIIT TECHNOLOGIES LTD***): Notably the hon'ble high court has answered this question in assessee's favor "Whether the Tribunal erred in law in travelling beyond the scope of the appeal and the case set-up by the assessing officer/CIT(A) and argued by the Revenue, contrary to the mandate of Section 254 of the Act, and that too, without confronting the said reasoning/basis to the Appellant (through its counsel) at the time of hearing?" Further on sec. 14A reversing ITAT order and allowing assessee's appeal

held that " 3. Therefore, what emerges is, if the assessee claims a certain amount of expenditure was incurred by him to earn the income which does not form part of the total income, the AO is required to examine the accounts, and thus, satisfy himself as to the correctness of the claim made by the assessee about the expenditure incurred in that regard. It is when an AO is not satisfied as to the correctness of the claim made by the assessee, about the expenditure said to have been incurred by him on such income which does not form part of the total income under the Act, he then proceeds to determine the amount of expenditure, by following such method as is prescribed, i.e., Rule 8D of the Rules. 1 3.1. This methodology, as envisaged under Rule 8D of the Rules, is required to be followed even where the assessee claims that no expenditure was incurred by him concerning income which does not form part of the total income under the Act. 13.2. The approach of the Tribunal has been that, since a disallowance was made, it follows logically, that the AO was not satisfied. This, according to us, is not what is envisaged under the provisions of Section 14A of the Act. The satisfaction has to be arrived at by the AO having regard to the assessee"s accounts and not otherwise. Concededly, there is nothing in the record to suggest that the AO examined the accounts from this perspective. 13.3. Furthermore, in our view, because the appellant/assessee had itself offered an amount which could be disallowed under Section 14A of the Act, the onus shifted onto the revenue to ascertain, after examination of the accounts, as to whether or not the appellant's/assessee's claim was correct. It is only after the aforesaid exercise was conducted, could the AO have taken recourse to the prescribed method i.e. Rule 8D of the Rules, for determining the expenditure, which, according to him, needed to be disallowed under Section 14A of the Act." On consistency and sec 35DD issue the hon'ble court held that: 11.3. Secondly, having regard to the fact that the deduction claimed by the appellant/assessee under the provisions of Section 35DD of the Act was allowed in the earlier AYs i.e. AY 2004-2005 to 2006-2007, the same should not have been disallowed in the AYs in issue i.e. 2007-2008 and 2008-2009 based on reasoning which does not comport with a plain reading of the provisions of Section 35DD of the Act, and the understanding of how a demerger scheme operates. The interpretation of such

provisions should align, wherever possible, with how ordinary men of commerce construe such business structuring operations.

l) ***Sozin Flora Pharma LLP***: In this case Hon'ble court in context of stamp duty and registration fees etc demanded on petitioner request for change of name in the revenue record resulting from conversion of the petitioner from 'Partnership Firm' to 'Limited Liability Partnership, the respondent asked petitioner for levy of stamp duty and registration charges consequent upon its conversion from 'Partnership Firm' to LLP held by court after extensively quoting from income tax jurisprudence in cases of Bombay High Court in Commissioner of Income-Tax vs Texspin Engg. & Mfg., (2003) 180 CTR 497; Commissioner of Income Tax, Udaipur Versus M/s. Chetak Enterprises Pvt. Ltd., AIR 2020 SC 4305, ; Andhra Pradesh High Court in Vali Pattabhirama Rao and another Versus Sri Ramanuja Ginning and Rice Factory (P.) Ltd. and others, AIR 1984 AP 176. Held that" In view of provisions of Section 58(4)(b) of the Limited Liability Partnership Act, consequent upon conversion of firm to limited liability partnership, there is automatic vesting/transfer of all assets of firm to the LLP. Sub-section (4) of Section 58 of LLP Act starts with nonobstante clause 'notwithstanding anything contained in any other law for the time being in force'. Therefore, principles of statutory vesting of properties will apply to the instant case as well." "Next arises the question about necessity of execution of an instrument upon conversion of a partnership firm to limited liability partnership. In the judgments cited above, it has been held that noseparate conveyance or instrument of transfer etc. is required to be executed in cases of statutory vesting. LLP is required to notify the concerned authority about the conversion. After the conversion, firm getting converted into LLP does not remain in existence." "The registration fee is payable on an instrument compulsorily registerable under Section 17 of the Registration Act. Once there is no transfer of immovable property under an instrument, then the question of compulsory registration of that non-existent instrument and payment of stamp duty on it is not warranted. Neither the stamp duty nor the registration fee, therefore, is payable in such circumstances" "Another facet to be determined is whether conversion of firm to LLP involves change in constitution. Conversion of petitioner-firm to LLP is admittedly

without any consideration. Neither any sale deed nor any conveyance deed has been executed. Transfer of assets of erstwhile partnership firm to LLP is by operation of law. Conversion to LLP is normally undertaken for restructuring exercises. One of the object of Limited Liability Partnership Act is to view it as an alternative corporate business vehicle providing the benefits of limited liability, while allowing its members the flexibility of organizing their internal structure as a partnership, based on a mutually arrived agreement. Owing to flexibility in its structure and operation, LLP has been considered a suitable vehicle for small enterprises. Petitioner firm's legal entity is not changed after conversion. Only the identity of the petitioner firm as a legal entity gets changed without any change in the constitution of petitioner-firm."

"From the above discussion, following conclusions are drawn:- 5(a). Upon conversion of a registered partnership firm to an LLP under the provisions of the Limited Liability Partnership Act, all movable and immovable properties of erstwhile registered partnership firm, automatically vest in the converted LLP by operation of Section 58(4)(b) of the Limited Liability Partnership Act. 5(b). The transfer of assets of firm to the LLP is by operation of law. Being statutory transfer, no separate conveyance/instrument is required to be executed for transfer of assets. 5(c). Since there is no instrument of transfer of assets of the erstwhile partnership firm to the limited iability partnership, the question of payment of stamp duty and registration charges does not arise as these are chargeable only on the instruments indicated in Section 3 of the Indian Stamp Act and Section 17 of the Indian Registration Act. 5(d). Partnership firm's legal entity after conversion to limited liability partnership does not change. Only the identity of the firm as a legal entity changes. Such conversion or change in the name does not amount to change in the constitution of partnership firm. 5(e). Stamp duty and registration fee cannot be levied upon conversion of a partnership firm to LLP. Therefore, permission under Section 118 of the H.P. Tenancy and Land Reforms Act for recording such change of name in the revenue documents, i.e. M/s Sozin Flora Pharma to M/s Sozin Flora Pharma LLP cannot be made dependent upon deposit of

stamp duty and registration fee. For the foregoing discussion, we allow the instant writ petition"

m) ***COCHIN MALABAR ESTATES & INDUSTRIES LTD:***" Now reverting back to the case on hand, the assessee was the owner of agricultural/plantation land. The assessee agreed to sell the schedule property without the burden of rubber trees. The cutting and the carrying away of rubber trees do not change the classification of land from agricultural to non-agricultural land. The assessee continued to treat the schedule property as agricultural land for the Financial Year ending 31.03.1995. The assessee cannot be expected to have control over the activities of his buyer once the transfer is completed. The incidence of exigibility of assessee/vendor is not dependent on an act of commission or omission of vendee. The vendor has no control on future use. What is very important is whether on the date of sale the land was agricultural land, both in record and use. The incidence to pay capital gains tax cannot be and ought not to be traced to an act of commission or omission by the transferee of the assessee. Being an absolute owner the transferee is always free to put the land to best use as the transferee thinks fit and proper. In the case on hand, the assessee both factually and legally did not change the character of land from agriculture to nonagriculture. The assessee has demonstrated that the classification of land continued to be agricultural land in the revenue records even as on the date of sale. Though it is a peripheral, it is an important matter in appreciating the character of land sold by the assessee; namely, had the land been converted for the non-agricultural purpose/laid out in plots, then the stamp duty payable on registration would be on the nature of land sold at the relevant point of time. The schedule property was described as land in conveyance deed. The schedule property consists of vast extents of agricultural land, admittedly outside a notified area. There is no change of user at the instance of assessee. The burden fastened on the assessee in the circumstances of the case has been discharged and the findings recorded by the Tribunal are available in the facts and circumstances of the case. We apply the principles enunciated in the cases referred to supra to the case on hand and the tests taken out as relevant by the Revenue and examined as tenable or not.

The findings of fact recorded by the Tribunal, in the circumstances of the case, do not warrant interference of this Court. The three objections raised against the findings recorded by the Tribunal since are without merit, the substantial questions are answered in favour of the assessee and against the Revenue. The following substantial questions of law are raised by the Revenue: "1. Whether on the facts and on the circumstances of the case the Tribunal was right in holding that the land converted into a barren land to establish an industrial estate was an agricultural land u/s.2(14) and therefore, profit on sale not assessable to income tax for capital gains? 2. Whether, on the facts and in the circumstances of the case and in the light of the decision of Supreme Court in 204 ITR 631 - a) Can not the consideration on sale of land be subjected to income tax for capital gains? b) is not the conclusion of the Tribunal against law and perverse? 3. Whether, the Tribunal is right in finding that the subject land is admittedly agricultural land"; "the land was used for agricultural purpose", "the assessee used the land for agricultural operation till the date of sale and are not the findings factually wrong baseless unsupported by evidence and perverse?"

n) ***BRAHMOS AEROSPACE THIRUVANANTHAPURAM LTD***: The appellant raises the following substantial questions of law: "1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the interest received from banks on deposits of surplus funds received by the Appellant from DRDO/ISRO, both Government of India Departments, for setting up specific projects on their behalf and returned to the DRDONSRO is to be assessed in the hands of the Appellant? 2) Whether on the facts and in the circumstances of the case interest on deposits out of funds provided by the DRDO/ISRO, both Government of India Departments, for specific projects is taxable? 5.1 At the outset let us refer to the decisions relied on by the assessee and examine to what extent the ratio laid down in those cases would be applicable to the case on hand, and have persuasive force on us in appreciating the fact in issue between the parties. Commissioner of Income Tax v. Karnataka Urban Infrastructure Development and Finance Corporation (2006) 284 ITR 582; Commissioner of Income Tax v. Karnataka Urban Infrastructure Development and Finance Corporation (2009) 315

ITR 301 (Karn) . Commissioner of Income-Tax v. Delhi State Industrial Development (2007) 295 ITR 419 (Del); Infrastructure Development Authority v. Commissioner of Income Tax (TDS) (2010) 321 ITR 278 (Patna); judgment in ITA No.07/Coch/2016 of ITAT Cochin in the case of Vizhinjam International Seaport.; In the case on hand, we prefer to appreciate whether the interest earned from the investment made by the assessee whether constitutes income of the assessee or the assessee is a mere recipient as custodian of the respective Departments, by examining the documents which have bearing on the issue. For we are convinced that the Revenue and the Tribunal have neither considered the MoUs in right perspective nor, if considered, concluded the issue with unavailable conclusion. This is both a perverse finding warranting correction under Section 260A of the Act. In the case on hand, there is no deflection, for, right through the funds transferred belong to DRDO/ISRO, and, as a corollary, interest earned belongs to DRDO/ISRO. The Fixed Deposits are opened in the name of assessee, the Banks are correct in effecting TDS and issuing TDS certificate to the assessee. The assessee once establishing no tax liability on this component, the TDS is referred to be made over to DRDO/ISRO. In the armchair of revenue, the above aspects sound atypical to taxation. The Government Departments, since are not under obligation to pay income tax, the funds merely because are in the hands of the assessee and earn interest, the reasoning whichever way it is stated is not convincing to tax the interest income in assessee's return and the Revenue looked at the transactions from the kaleidoscope of the letter of Income Tax Department but without appreciating the spirit of documents which have bearing on the adjudication of the issue. It is appropriate to observe that an assessee is under obligation to pay tax on its real income or income derived from one source or the other by the assessee, but not on every receipt recognized in the books of the assessee. The burden is discharged by the assessee to not go by recognition of entries in books of account, but appreciate all the circumstances while treating whether the interest is computable or non-computable income of the assessee. Hence, in the circumstances of the case, the interest income for the Assessment Year 2009-10 is noncomputable income of assessee. The contrary findings recorded by the orders

under appeal are illegal and unavailable. Hence, liable to be set aside and is set aside accordingly."

o) ***Peter Vaz case***: Section 255, read with section 153C, of the Income Tax Act, 1961 and rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Procedure of (Cross-objections) - Assessment years 2006-2007 to 2011-2012 - Assessees were partners holding 50 per cent stake respectively in a partnership firm - Pursuant to search, assessees responded to notices under section 153C, submitting inter alia that returns originally filed by them under section 139(1) may be treated as returns in response to notices under section 153C - Assessing Officer vide assessment order made additions to income of assessee - On appeal, Commissioner (Appeals) allowed appeals of assessee - Thereafter, revenue instituted appeals before Tribunal - During pendency of appeals, assessees requested Assistant Commissioner to furnish them a copy of 'satisfaction' for issuance of notice under section 153C - Tribunal prevented assessees from raising this jurisdictional issue inter alia on ground that there was a necessity of filing cross-objections expressly raising such a jurisdictional issueAssessees filed cross-objections before Tribunal accompanied by an application seeking condonation of delay of 248 days in filing cross-objections - Tribunal allowed appeals filed by revenue but dismissed cross-objections filed by assessees by refusing to condone delay of 248 days in filing of same - Whether Tribunal should not have stopped assessees from raising issue in appeals instituted by revenue, without necessity of filing any cross objections when admittedly, Tribunal in impugned order had come to conclusion that issues raised in cross-objection were legal issues - Held, yes - Whether Tribunal had not focused on issue of whether there was sufficient cause for explaining 248 days delay in instituting cross-objections, but rather had faulted assessees for not raising issue of non-compliance with jurisdictional parameters - Held, yes - Whether these were not relevant considerations at stage of deciding whether sufficient cause was shown to explain 248 days delay in instituting cross-objections - Held, yes - Whether therefore, matter was to be remanded to Tribunal for fresh consideration of appeals instituted by revenue after permitting assessees to raise issue of non-compliance with in

jurisdictional parameters of section 153C - Held, yes [Paras 38, 39 and 52] [Matter remanded]

p) Reopening Saga:

i) ***Allahabad high court on issue of notices issued under old law after new law is operationalized*: "***75. As we see there is no conflict in the application and enforcement of the Enabling Act and the Finance Act, 2021. Juxtaposed, if the Finance Act, 2021 had not made the substitution to the reassessment procedure, the revenue authorities would have been within their rights to claim extension of time, under the Enabling Act. However, upon that sweeping amendment made the Parliament, by necessary implication or implied force, it limited the applicability of the Enabling Act and the power to grant time extensions thereunder, to only such reassessment proceedings as had been initiated till 31.03.2021. Consequently, the impugned Notifications have no pplicability to the reassessment proceedings initiated from 01.04.2021 onwards. 76. Upon the Finance Act 2021 enforced w.e.f. 1.4.2021 without any saving of the provisions substituted, there is no room to reach a conclusion as to conflict of laws. It was for the assessing authority to act according to the law as existed on and after 1.4.2021. If the rule of limitation permitted, it could initiate, reassessment proceedings in accordance with the new law, after making adequate compliance of the same. That not done, the reassessment proceedings initiated against the petitioners are without jurisdiction"*

ii) ***R Systems International Ltd:*** After reproducing the "reasons to believe", recorded by the assessing authority in extenso, the Additional Commissioner has merely recorded his approval order to conduct a reassessment proceedings. While recording his satisfaction, the Additional Commissioner would remain obligated to record in brief the reasoning to reject the objections raised by the assessee/petitioner to the "reasons to believe" stated by the assessing authority to initiate reassessment proceedings. A brief discussion emanating from due application of mind made by the Additional Commissioner must be self apparent from the order passed by him. In its absence, the approval

granted by him to the reassessment proceedings may remain a mechanical exercise of power. If the power is mechanically exercised by the Additional Commissioner unmindful of the objections raised by the assessee/petitioner that either the material necessary for formation of the reasons did not exist or that no reasons existed for the belief, requirement to obtain the prior sanction would be rendered redundant or an empty formality. It would be clearly contrary to the provision of Section 29(7) of the Act. Applying the aforesaid test, the present order passed by the Additional Commissioner is found to be wholly deficient and inadequate in law. Accordingly, the order dated 08.01.2019 and consequently the notice dated 14.01.2019 are hereby set aside. Writ petition is allowed. Needless to clarify that since the direction is being issued by this Court, the bar as to limitation would stand waived in terms of the decision of this Court in S.K.Traders vs. Additional Commissioner 2007 NTN (Vol.34)345.

iii) ***M/S. R.J. TRADING CO***: We have heard learned counsel for the parties and carefully examined the record. According to us, the pivotal issue, which arises for consideration, is: as to whether or not, requisite statutory ingredients were present to enable the concerned respondents to exercise the power vested upon them under Section 67(2) of the CGST Act. Since we are exercising jurisdiction Article 226 of the Constitution, it is this, and only this question, that we intend to address ourselves to, and not delve upon aspects, which may require further investigation. What is crystal clear upon a perusal of the provisions of subsection (1) and (2) of Section 67 is that the expression “reasons to believe” controls the exercise of powers under the said provisions. Therefore, unless the basic jurisdictional facts exist, in a case, the power conferred under subsections (1) and (2) of Section 67 cannot be exercised. The expression "reasons to believe" is found in various statutes concerned with revenue laws, and therefore, has undergone a forensic analysis, metaphorically speaking, by Courts, in several cases. The width and amplitude of this expression have been expounded upon by Courts, in particular, the Supreme

Court. Therefore, it is well-established that the expression reason to believe does not carry the same connotation as say reason to suspect; the standard of belief is that of a reasonable and honest person and not one based on surmises and conjectures, or mere suspicion. It is open to the concerned authority to form a prima facie view based on evidence that may be direct or circumstantial. In other words, the belief of the concerned authority should be based on some actionable material that he has had an opportunity to peruse. Furthermore, the material placed before the concerned authority, i.e., the proper officer should have nexus with the formation of the belief. [See: ITO vs. Lakhmani Mewal Das, 1976 3 SCC 757; Ganga Saran & Sons Pvt. Ltd. vs. ITO, 1981 3 SCC 143; and Synfonia Tradelinks (P.) Ltd. vs. Income-tax Officer, [2021] 127 taxmann.com 153 (Delhi)] 9.4. Concededly, in this case, the search and seizure at RJT's premises; was not conducted pursuant to an inspection carried out under subsection (1) of Section 67. The conduct of search and seizure, in this case, appears to have been carried out under the cover of the omnibus term „otherwise" provided in subsection (2) of Section 67. In other words, the communication dated 05.03.2021 gives no clue that "any" goods of RJT were liable for confiscation or "any" documents, or books or things which would be useful for or relevant for proceedings under the CGST Act had been secreted to any place; a prerequisite for the formation of belief, and therefore, for the exercise of powers concerning search and seizure. 9.6. As noticed above, both the order of seizure of documents and the order of prohibition, simply replicate the language of subsection (2) of Section 67 and the corresponding Rule i.e. Rule 139(2). Thus, according to us, the very trigger for conducting the search [i.e. the authorization issued by the Additional Commissioner, CGST Delhi North Commissionerate] was flawed and unsustainable in law. 11. As indicated at the beginning of the discussion, the scope of the writ petition has been confined by us to the examination of the issue, as to whether, the authorization for conducting search and seizure at RJT"s premises had been given

bearing in mind, the prerequisites provided in Section 67(2) of the CGST Act. 12. Having regard to the foregoing discussion, we are of the opinion that the Additional Commissioner, CGST Delhi North Commissionerate exercised his powers for according authorization to conduct search and seizure, at RJT's premises, even though the jurisdictional ingredients were absent.

iv) ***Peninsula Land Limited***: The reasons for reopening of assessment as held in Aronic Commercials Ltd. Vs. Deputy Commissioner of Income Tax & Anr. 1 has to be ested / examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen the assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and /or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice (Jainam Investments Vs. Assistant Commissioner of Income Tax 2) In the reasons for issuance of notice in this case it is recorded that the return of income for the assessment year under consideration was filed on 28th September 2012, further revised return of income was filed on 28th March 2014 and 9th May 2015, the return of income was processed under Section 143(1) of the Act and the assessment order under Section 143(3) read with Section 153A of the Act was passed by the Assessing Officer on 30th December 2016. The entire basis if one considers the reasons for issuance of notice is that information was received from the Dy. Director of Income Tax Mumbai that a search and survey action under Section 132 of the Act was carried out in the case M/s Evergreen Enterprises and based on the statement recorded of the partner of M/s Evergreen Enterprises and documentary evidences found in the search

of the premises of M/s Evergreen Enterprises unearthed an undisclosed activity of money lending and borrowing in unaccounted cash being operated at the premises of M/s Evergreen Enterprises. It is also recorded in the reasons that based on statements recorded of partners of M/s Evergreen Enterprises and employees of M/s Evergreen Enterprises, it came to light that one of the individuals / business concerns has lent cash of Rs.30,00,000/-. It is alleged that petitioner has lent cash loan of Rs.30,00,000/- in Financial Year 2011-2012 and therefore, petitioner has been indulging in lending of cash loan and therefore, the amount of Rs.30,00,000/- has escaped assessment within the meaning of Section 147 of the Act Therefore, there is absolutely no mention as to how either the partners of M/s Evergreen Enterprises or the employees of Ms/ Evergreen Enterprises or this Bharat Sanghavi is connected to petitioner. Mr. Suresh Kumar relied upon the affidavit in reply to submit that Bharat Sanghavi was an employee of petitioner and, therefore, the reasons have been correctly recorded and the Assessing Officer has reason to believe that income had escaped assessment. 8 As noted earlier, the reasons for reopening of assessment has to be tested / examined only on the basis of the reasons recorded and those reasons cannot be improved upon and/or submissions much less substituted by an affidavit and/or oral submission. In the reasons for the reopening, the Assessing Officer does not state anywhere that Bharat Sanghavi was an employee of petitioner. Further in the reasons for reopening, the Assessing Officer does not even disclose when the search and survey action under Section 132 of the Act was carried out in the case of M/s Evergreen Enterprises, whether it was before the assessment order dated 30th December 2016 in the case of petitioner was passed or afterwards. The reasons for reopening is absolutely silent as to how the search and survey action on M/s Evergreen Enterprises or the statement referred or relied upon in the reasons have any connection with petitioner.

v) ***Jainam Investment :*** *The reasons for reopening of assessment, as held in Aroni Commercials Ltd. (Supra), has*

to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice

vi) **. *NIRUPA UDHAV PAWAR:*** Thus, the legal position is quite clear that the validity of notice for reopening of an assessment is to be examined based on the reasons recorded at the time of issuing the notice and the impugned notice cannot be supported by any additional material which does not find a place in the reasons recorded while issuing the notice . As noted earlier, the reasons proceeded on the basis that an amount of `3 crores was in fact received by the petitioners during the Assessment Year 2010-11. The submission now made before the Court is not based on any factum of receipt but rather, based on "accrual". This was not at all the reason that prompted the assessing officer to reopen the assessment. A fresh reason or a new reason, cannot be advanced either orally or by filing an affidavit to add to or supplement to the reasons already recorded. This is impermissible in terms of the law laid down in Hindustan Lever Ltd. (supra). This decision was reiterated in GKN Sinte Metals Ltd. (supra). Applying this principle, therefore, the impugned notices are required to be quashed and set aside. 29. Even in Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra) the Hon'ble Supreme Court has held that the function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. True, at this stage, what is required is "reason to believe", but not the established fact of

escapement of income. Even sufficiency of material is not to be gone into at this stage but at the same time, as was explained in Lakhmani Mewal Das (supra) it is open to the assessee to contend that the assessing officer did not hold the belief that there had been non-disclosure. The existence of the belief could always be challenged though not the sufficiency of the reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction. The reason must be held in good faith. It cannot be merely a pretense. More importantly, it is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the section. To this extent, the action of the assessing officer is open to challenge in a Court of law. 30. In Oriental Insurance Co. v. Commissioner of Income-tax – 378 ITR 421 (Delhi), it was held that powers under Section 147 of the said Act can be invoked only in cases where the assessing officer has reason to believe that income chargeable to tax has escaped assessment. The reason to believe must be based on tangible material and cogent facts. The powers cannot be exercised merely on suspicion or apprehension. A bonafide reason to believe is a necessary pre-condition that clothes the assessing officer with the power to reopen the assessment that has otherwise attained finality. The reason to believe must have a direct nexus and a live link with the formation of the opinion that taxable income has escaped assessment. Therefore, where notice of reopening was based on an erroneous assumption of fact, such notice was quashed. 31. In Dr. Ajit Gupta v. Assistant Commissioner of Income Tax – 383 ITR 361 (Delhi), the reason for reopening the assessment was a mistaken factual premise that the assessee had changed the system of accounting from the mercantile to cash system. Since this factual premise was found to be erroneous, the reopening of the assessment was held unsustainable. 32. In Calcutta Discount Co. v. ITO – 41 ITR 191 (SC), the Hon'ble Supreme Court has explained the circumstances in which a writ petition can be entertained to question a notice seeking

to reopen the assessment. It was held by the Bench of five judges that where the jurisdictional parameters were not satisfied, it became the duty of the courts to grant relief to the assessee and the courts would be failing to perform their duty if relief were refused. In Jeans Knit Private Ltd. v. Deputy Commissioner of Income Tax – 390 ITR 10 (SC), the Hon'ble Supreme Court distinguished CIT V. Chhabil Das Agarwal 357 ITR 357 (SC) and relying on Calcutta Discount (supra) set aside the High Court's order dismissing petitions challenging notices under Section 148 of the said Act seeking to reopen assessment that had attained finality

vii) ***Ess Advertising*** : 15.5. Besides this, there is another aspect of the matter which requires to be highlighted. This aspect concerns the grant of approval under Section 1515 for issuance of notice under Section 148 of the Act. As noted in the narration of the facts, concerning the above captioned writ petitions, the ACIT, while granting approval on 28.03.2018, made the following identical endorsement. "This is fit case for issue of notice u/s 148 of the IT Act, 1961. Approved" 15.7. Given this backdrop, the ACIT while giving approval under Section 148 of the Act, ought to have applied his mind, to the crucial question as to whether any new or fresh facts had come to the notice of the AO for triggering the provisions of Section 147/148 of the Act. The ACIT, on the other hand, mechanically replicated the language of the provision [i.e., Section 151 of the Act] by making the aforesaid endorsement in both cases. 15.8. What the ACIT forgot was that this endorsement was really his conclusion and the reasons which were to form a link between the material that was placed before him and was required to be appraised by him, were missing. The approval, thus, given by ACIT, in our view, is flawed in law and cannot pass muster. The observations made in Synfonia Tradelinks (P.) Ltd. vs. Income-tax Officer, [2021] 127 taxmann.com 153 (Delhi) being apposite are extracted hereafter

viii) Karnataka State Cooperative Apex Bank Limited: In this case, Hon'ble Hihg court allowing assessee's appeal and reversing ITAT order held that where there is no prior

regular assessment and reopening u/s 148 is first assessment for the concerned AY , then assessee is not precluded from making new claims otherwise maintainable in law. Reference made to SC decisions in cases of i) Sun ENgg Works reported at 198 ITR 297 , V Jagmohan rao 75 ITR 373 , Mewalal Dwarka prasad 176 ITR 529, K.L.Srihari HUF 250 ITR 193,

3. ***Hon'ble ITAT decisions***

a) ***Shailesh Patel HUF***: 8. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case the long term capital gain declared by the assessee on sale of shares of two companies namely M/s Life Line Drugs & Pharma Ltd (LLDP) and M/s Mahavir Advance Remedies Ltd (MARL) was treated as bogus and manipulated, leading to the addition by the AO under section 68 of the Act. The view of the AO was based on certain factors which have been elaborated in the preceding paragraph. Subsequently, the learned CIT (A) upheld the finding of the AO. 8.2 We also note that the AO has referred to the investigation carried out by the directorate of investigation wing of Kolkata wherein it was unearthed that the various broker have used the script of impugned companies for generating bogus long-term capital gain, eligible for exemption under section 10(38) of the Act. However, there was no information available on record whether the name of the assessee was appearing in the investigation carried out by the investigation wing of Kolkata or any other investigation carried out by the Income Tax Department. 8.3 The alleged scam might have taken place on generating LTCG to avoid the payment of tax. But it has to be established in each case, by the party alleging so, that the assessee in question was part of this scam. The chain of events and the live link of the assessee's action that he was involved in the scam should be established based on cogent materials. The allegation as discussed above implies that cash was paid by the assessee and in return the assessee received LTCG, which is an income exempted from tax, by way of cheque through banking channels. This allegation that cash had changed hands, has to be proved with evidence, by the Revenue. 8.4 There is no dispute raised by the Revenue with respect to the

following facts: (i) All the evidence of sale and purchase of shares, including contract notes were submitted. No fault with these documents has been found. (ii) The payments are received through account payee cheques on the sale of scripts. (iii) Transaction of sale is done through stock exchange after the payment of STT. The transactions have been confirmed by brokers. (iv) Inflow of shares is reflected in Demat account. Shares are transferred through Demat account. The assessee does not know the buyer. (v) There is no evidence that assessee has paid cash to purchase LTCG. (vi) The assessee is not a party in the alleged rigging up the prices of the shares. He has no nexus with the company, its directors or operators. He is not concerned with the activity of broker and has no control over the same. (vii) It may have got only incidental benefit of price rise. (viii) The purchase and sale of shares have been duly recognized by the concerned company. They are also reflected in the balance sheet of the assessee. (ix) The assessee invested in penny stocks which gave rise to huge capital gains in a short period, does not mean that the transaction is bogus as all the documents and evidences have been produced. (x) Opportunity of cross examination was not given which was essential for deciding the issue on hand. 8.5 In our view, just the modus operandi, generalisation, preponderance of human probabilities cannot be the only basis for rejecting the claim of the assessee. Unless specific evidence is brought on record to prove that the assessee was nvolved in the collusion with the entry operator/ stock brokers for such a scheme. In absence of such finding how it is possible to link others wrong doings with the assessee. Further the case laws relied by the AO are with regard to test of human probabilities which may be of greater impact but the same cannot used blindly to dispose of the evidence forwarded by the assessee especially without bringing any evidences from independent enquiry to corroborate the allegation. In holding so we draw support and guidance from the judgment of Hon'ble Delhi High court in case of Pr. CIT vs. Smt. Krishna Devi reported in 126 taxmann.com 80 … 8.6 Respectfully following the judgment of Hon'ble Delhi High Court (Supra), we hold that in absence of any specific finding against the assessee in the investigation wing report, the assessee cannot be held to be guilty or linked to the wrong acts of the persons investigated as far as long term capital gain earned on sale of share of both companies is concern."

b) ***Prakash Chand Kothari:*** "36. In the instant case as well, we find that after recording the information received from the office of DCIT Central Circle-3 Jaipur, in the second part of the reasons so recorded, the Assessing officer has stated as to what analysis he has done with the information so collected/received and he says that "from the perusal of the information, it is found that the assessee has paid cash loan of Rs 25,00,00,000/- out of his income from undisclosed in A.Y 2011-12 and received interest accordingly." What analysis he has done to arrive at the belief that the information so received pertains to the assessee, the nature of transactions are in nature of cash loans only and not otherwise, who are the persons to whom these alleged cash loans have been provided and their identities and whereabouts, and we find that there is nothing which has been stated in the reasons so recorded and apparently, the basis of such conclusions and not just the reasons is the enquiry conducted by the Investigation Wing and as we have noted above, nothing from the report of the Investigation Wing is set out in the reasons and thus, the crucial link between the information and formation of belief that income has escaped assessment is clearly absent in the instant case and the ratio laid down in the aforesaid decision rendered by the Hon'ble Delhi High Court squarely applies in the instant case…. 8. Looking at the matter from another perspective, it is a matter of record that the information which has been received by the Assessing officer from the DCIT Central Circle-3, Jaipur has been collected during the course of search action u/s 132 in case of Ramesh Manihar Group. Where the Assessing Officer was so sure and clear that the enquiries made by the Investigation wing and the information so collected during the course of search action in case of Ramesh Manihar Group shows that certain transactions of cash loans have been found which are pertaining to the assessee, the question is what precluded the Assessing Officer from taking action u/s 153C of the Act instead of section 148 of the Act. After the amendment made by the Finance Act with effect from 01.06.2016 where any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to person other the person who has been searched, the action under section 153C can be taken which is notwithstanding anything contained in section 147 and section 148 of the Act. The ld PCIT/D/R has contended that there are conditions specified in section 153C which needs to be fulfilled and only in such cases where the conditions so specified are fulfilled, the

Assessing officer can take recourse to section 153C of the Act. It was submitted that in the instant case, the conditions specified in section 153C are not fulfilled and hence, basis receipt of information, the Assessing officer recorded the reasons for escapement of income and initiated the proceedings u/s 147 by issuance of notice u/s 148 of the Act. 39. On perusal of the aforesaid provisions, it is noted that firstly, the Assessing officer of the searched person has to record satisfaction that any books of account or documents etc, seized during the course of search pertains or pertain to, or any information contained therein, relates to any other person other than the person who has been searched. Once such a satisfaction is recorded, the books of account or documents or assets seized are required to be handed over to the Assessing Officer having jurisdiction over such other person. Thereafter, the Assessing Officer having jurisdiction over such other person has to record his own satisfaction that the books of account or documents seized have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A. Once the said satisfaction is recorded, he can then proceed against each such other person and issue notice and assess or eassess the income of the other person in accordance with the provisions of section 153A of the Act. 40. In the instant case, the fact that the Assessing officer has not invoked the provisions of section 153C, it shows that there was no satisfaction which has been recorded by the Assessing officer having jurisdiction over Ramesh Maniar Group that any books of account or documents etc, seized during the course of search pertains or pertain to, or any information contained therein, relates to the assessee and in absence of satisfaction so recorded, the books of account or documents seized during the course of search were not handed over to the Assessing Officer having jurisdiction over the assessee. In absence of satisfaction so recorded and handing over of the seized material by the Assessing officer of the searched person, the Assessing officer could not by himself have invoked the provisions of section 153C of the Act. It is also manifest that in absence of any such satisfaction that documents so found and seized during the course of search pertains to the assessee or any information contained therein relates to the assessee, no linkage or nexus has been

established with the assessee and what has been received by the Assessing officer is pure raw data in abbreviated form and information which per se cannot constitute as tangible material, as we have noted earlier, and unless and until the said data and information is properly analysed and examined and necessary linkage and nexus established with the assessee, the same cannot form the basis for initiating action u/s 147 in hands of the assessee. It cannot be a case that since action could not be taken under section 153C, the Assessing officer is free to initiate action u/s 147 of the Act as the Courts have held from time to time that reopening of assessment proceedings is a potent power which cannot be casually and mechanically invoked and lightly exercised by the Assessing officer and the invocation of such powers is based on satisfaction of certain cardinal tests and principles as we have discussed above and which have not been fulfilled in the instant case. …. 68. Here, first and formost issue that arise for consideration is regarding on whom the initial onus lies which needs to be discharged. Whether it is Revenue or the assessee who has to discharge the initial burden of proof that such unaccounted money belongs to the assessee and secondly, the same has been advanced by the assessee by way of cash loans through Ramesh Manihar Group to third parties and he has earned interest thereon and the same has remain unaccounted in the books of accounts. Therefore, we agree with the contentions advanced by the ld A/R that the initial onus lies on the Assessing officer to establish through leading positive evidence that the assessee has infact invested the money by way of cash loans through Ramesh Manihar Group and therefore, we believe that merely stating that the same has not been recorded in the books of accounts so maintained by the assessee is not sufficient enough to discharge the initial burden cast on the Assessing officer… 76. The assessee has also challenged the reliance on such extracts and print outs of the excel sheets stating that the AO has not complied with the provisions of section 65A and 65B of the Evidence Act, 1872 and no satisfaction has been recorded by the AO that the output of the pen drives/computer records were analysed on “as is” basis by the Department and there was no risk of the data being tempered by anyone and which has been relied upon by the Assessing officer. In his submissions, the ld PCIT/D/R submitted that there is a well laid down procedure and protocols are strictly followed by the department regarding seized documents and it is unlikely that the search data can

be tempered with by any officials of the Revenue department and once, the information has been received from another Assessing officer, there is a presumption that such data and information is shared on "as is" basis and therefore, where there is no basis for raising any suspicion in the mind of the Assessing officer, no further action has been taken regarding verifying the authencity of the data so received and recording any satisfaction in this regard. It was accordingly submitted that it is merely an apprehension on the part of the assessee and the same cannot be a basis for not relying on the data so collected and received by the Assessing officer and which forms part of the assessment records. 77. We find that though Evidence Act is not strictly applicable to the income tax proceedings, however the general principles so laid down therein can be applied by leading certain positive evidence which can authenticate the data which has changed hands apparently from the Investigation Wing to the Assessing officer of the searched person and then, finally to the Assessing officer who has placed reliance on the same and has passed the impugned order. It may be an apprehension on part of the assessee that the data while shared/handed over to the Assessing officer might have been either modified, altered or tempered with, however, where such an apprehension has been raised by the assessee and more so, it would also be interest of Revenue where there is heavy reliance placed by the Revenue on such data, such apprehension so raised by the assessee needs to be appropriately addressed by leading positive evidence and recording of satisfaction by the Assessing officer which we find has not happened in the instant case….

c) ***Shri Rajeev Ratanlal Tulshyan***: 4.3 We also concur with the submissions of Ld. AR that the provision of Section 56(2)(vii) were anti-abuse provision inserted post abolition of Gift Tax Act. The same is evident from CBDT Circular No. 05/2010 dated 03/06/2010 which provided that Section 56 is being introduced as an anti-abuse measure. The same is fortified in CBDT Circular No. 01/2011 dated 06/04/2011 which also provided that these provisions are antiabuse provisions which were applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision. Further, the provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of

unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income...." On the basis of the same, it could be inferred that provisions of section 56(2)(vii) were introduced as an antiabuse measure and to prevent laundering of unaccounted income under the garb of gifts, after abolition of the Gift Tax Act. Upon perusal of orders of lower authorities, we find that there are no such allegations and no case of tax evasion or tax abuse has been made out against the assessee. In fact, the transactions are ordinary transactions of issue of right shares to existing shareholders in proportion to their existing shareholding and therefore, no case of abuse or tax evasion could be made out against the assessee. 4.4 This proposition is supported by the fact that in line with the intent of legislatures, CBDT issued another Circular No. 10/2018 on 31/12/2018 clarifying that keeping in view the legislative intent to apply anti-abuse measures, Section 56(2)(viia) of the Act shall not be applicable in case of receipt of shares as a result of fresh issuance of shares, including by way of issue of bonus shares, rights shares and preference shares. However, the said circular was withdrawn immediately vide another Circular No.02/2019 dated 04/01/2019 and new Circular No. 03/2019 dated 21/01/2019 was issued wherein it was mentioned that the view taken in Circular No.10/2018 (subsequently withdrawn by Circular No.02/2019) that section 56(2)(viia) of the Act would not apply to fresh issuance of shares, would not be a correct approach, as it could be subject to abuse and would be contrary to the express provisions and the legislative intent of section 56(2)(viia) or similar provisions contained in section 56(2) of the Act. Nevertheless, the fact that intent of introducing the provisions was anti-abusive measures still remain intact and there is no reason to depart from the understanding that the provisions were counter evasion mechanism to prevent laundering of unaccounted income. Therefore, the same do not apply to genuine issue of shares to existing shareholders. This position is duly supported by the decision of Bangalore Tribunal in DCIT V/s Dr. Ranjan Pai (ITA No. 1290/Bang/2015) which is further affirmed by the Hon'ble Karnataka High Court in ITA No. 501 of 2016 dated 15/12/2020.

d) ***Shri Sardari Lal***: In our opinion once the assessing officer had reopened and examined the case of the assessee by treating the receipt

deposited in the bank accounts as the business receipts, then the assessing officer has twooptions either to reconcile the bank entries by drawingthe trading account based onbank entries and compute profit of the assessee or treat the entire bank deposits as turnover of the assessee and apply gross profit over that. n our considered opinion, once the assessment is made based on the undisclosed bank accounts, the debit and the credit in the bank accounts were required to be considered for making the addition under section 68 of theAct.The income that has accrued to the assessee is taxable as per law. What income has really occurred to be decidedbased onmaterial available with the AO, not by reference to physical receipt of income(credit entry in Bank), but by also giving the benefit/ adjustment of debit entry (in the bank account), the difference would solely represent the income of the assessee, in the present case n the light of the above, we have only left the second recourse, whereby the assessee's income was required to be computed by treating the entire deposits in the Bank as business receipts and applying the G P rate over that.As mentioned by the assessing officer, the assessee was not maintaining any books of account in respect of the business carried out by the assessee nor was the assessee able to show that he was registered with the VAT department. In other words the books of account as required under section 2(12A) were not maintained by the assessee, in our view it is this requirement of invoking section 68 of the act that the assessee should have maintained the books of account and the entries have not been shown in the books of account. Section 68 is a deeming provision, which provides that if any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation…….. then the sum so credited may be charged to income tax as the income of the assessee. 33. For the purpose of invoking section 68, it is essential to have the existence of the books of account,In other words when a deeming fiction like section 68 here is applied, it is not allowable for the AO to presume or deem the existence books of account orcredit of amount in the said deemed books of account, especially when the books of account otherwise lack ex-facie. AO order had categorically mentioned nonmaintenance of books of account by the assessee, nor it is the case of AO that Bank accounts of the assessee would be treated as books of account. In our opinion the best rate which can be applied in the given set of facts would be 8% GP on the turnover in all the assessment

years. This will be tune with the 44AD of the IT Act.The profit forall three years, after applying GP rate of 8% would come to Rs 76,90,622.88/-, however, if we compute the profit based on trading accounts for all three years , it will come to Rs 38,99,852/-. Further, we are supported by the decision in the matter of M/S BANSAL STRIPS PRIVATE LTD in ITA 103/2021, CM APPLs. 12292-93/2021 held by Delhi High Court vide order dated 26.3.2021asunder We may also rely upon the decision in the matter of ITA No.1652/Ahd/2011Shri PavankumarBhagatram Sharma decided by Ahmedabad Tribunal wherein it was held as under :"

e) ***Rubamin Limited:*** 52. Now it becomes important to understand shell or paper company. In this regard we note that the shell /paper company has not been defined under the Act or in any other Act applicable for the time being in in India. However, we find that the Organization for Economic Co-operation and Economics Development (In short OECD) has defined shell companies as "A shell company is a firm that does not conduct any operations in the economy (other than in a pass-through capacity), but it is formally registered, incorporated, or legally organized in the economy." 53. Similarly, the U.S. Securities and Exchange Commission defines a "shell" company as follows: Shell company: The term shell company means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has: (1) No or nominal operations; and (2) Either: (i) No or nominal assets; (ii) Assets consisting solely of cash and cash equivalents; or (iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets 53.1 Recently the Hon'ble High Court of Guwahati in its judgment in the case of Assam Co. India Ltd vs. Union of India reported in [2019] 103 taxmann.com 160 (Gauhati) also referred the shell Companies as detailed under: "company having only nominal existence i.e. it exists only on paper without having any office and employee. Such company is a corporate entity without having active business operation or significant assets. Such company may be used as deliberate financial arrangement providing service as a tool or vehicle of others without itself having any significant assets or operation; " 54. From the above it is transpired that, a shell company is a company that exists only on paper. It does not have any actual active business operations nor any significant number of assets. These companies do not engage in any economic activities but have some corporate legal

personality. 55. We also note that some of the shell or paper companies have been used for illegal activities such as tax evasion, money laundering and in black money activities. In order to curb this practice of shell or paper companies, the Government of India constituted a Taskforce headed by Revenue Secretary of Ministry of corporate affairs which includes representative from Financial Services, SFIO, CBDT, RBI, SEBI, CBEC, CBI, ED, FIU-IND, DG GSTI, and DG-CEIBs. By their efforts there were thousands of shell or paper companies identified who were indulged into the illegal activities and accordingly action have taken against those companies under respective laws. But the existence of shell company is not prohibited or being shell / paper company is not illegal unless and until it engaged any of the any illegal activities. There are instances where shell or paper companies have been used as special purpose vehicle of business under the framework of law….. 60. Without prejudice to the above, the question also arises whether the paper company as discussed above is engaged in any tax evasion. Any company falling within the definition of paper/shell company in the manner as discussed above does not mean that it is engaged in the activity which is illegal in nature. In other words the formation of the paper company is not prohibited. These companies can be created for multipurpose. For example, a company namely XYZ Ltd engaged in the manufacturing activity, requires different kind of manpower i.e. qualified, semiqualified and skilled/unskilled, labours etc. on regular basis. For this purpose, M/s XYZ Ltd incorporates another company under the name and style of M/s XYZ recruitment Ltd. The main purpose of XYZ recruitment Ltd is to hire the employees as per the need of XYZ Ltd. In-fact, M/s XYZ recruitment Ltd does not work for any other 3rd party. Thus there would not be any commercial activity, in such XYZ recruitment Ltd. Accordingly, XYZ recruitment Ltd can be categorised as a paper company within the definition as discussed above. But its activities are not illegal in nature and therefore there will not be any consequences of tax liability. In other words the existence of the paper companies cannot be denied. In practical situations, in many organisation the different companies which carries out the transactions on papers only but for numerous reasons. A company in order to avoid its reputation does not deal directly with the particular company but deals indirectly through a company which is created only for the limited purpose of routing the transactions. To

our understanding, such companies do not violate any provisions of law and therefore nothing adverse can be drawn against such companies until and unless the transactions of the paper companies were violating the provisions of law

f) ***B.H.Basha case***: 29. In the present case, as stated above, the purported search action did not leadto discovery of any unaccounted money, bullion, jewellery or other valuable article or thing. Further, no books of accounts or any undisclosed transaction of the assessee were found during the course of search. The entire assessment order revolve around scribbling in loose sheet of paper received from assessee in course of such action. It is the fact that the said rough loose sheet on paper scribbled by some anonymous person seized in the course of search cannot be termed as 'document' having any evidentiary value within the meaning of sec. 132 or sec.132(A) of the Act. Thus, entire addition made at Rs.25 lakhs in the case of assessee in these assessment years is incorrect and thus to be deleted. 30. In our opinion, the loose sheet found during the course of search are undated and did not bare the signature of the assessee or any other person. Hence, they are not in the nature of self speaking documents having no evidentiary value and cannot be taken as sole basis of determination of undisclosed income of the assessee. When document like loose sheets of paper are recovered and the revenue wants to make use of it, the onus is on the revenue to collect cogent evidence to corroborate the noting. The revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized paper reveled the unaccounted income of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewelry or investment outside the books of account was found in the course of search action in the case of assessee. Thus, the impugned addition was made by the AO on gross relief in advocate material or rather no sufficient material at all and as such neither to be deleted. We are of the view that an assessment carried out in pursuance of such action, no addition can be made on the basis of un-corroborative noting and scribbling on loose paper made by unidentified person having no evidentiary value, is unsubstantiated and is bad in law. 31. Thus, we are agreeing with the contention of ld. AR that placing reliance on the seized material is not proper and all the additions on the basis of the above are deleted on the following reasons :- 1) no opportunity to cross-examine the

persons whose statements have been relied upon is afforded; 2) some of the statements have been recorded under section 131 by the by the Revenue which cannot be relied upon without confronting to the same to the concerned parties subsequent to completion of search; 3) the seized material are in the form of various loose sheets, scribbling and jottings having no signature or authorization from the assessee's side. These are unsubstantiated documents and there is nothing to suggest any undisclosed assets of assessee found during the course of search. More so, search action not resulted in recovery of any undisclosed assets in the form of landed property, building, investments, money, bullion, jewellery or any kind of movable or immovable assets. 32. Accordingly, the addition made by the AO u/s 69A of the Act is deleted. (***also refer Mumbai bench ITAT decision in case of Ekta Housing Pvt ltd ITA 1732-1733/Mum/2019 order dated 24.05.2021- on money real estate assessee- approach held only income element assessable;to be taxed in year in which sale transaction would be accounted by assessee as per its regular method of accounting; evidentiary value of data retrieved from mobile phone- books -sec. 68- held no- host of other issues also; also refer bangalore bench itat decision in case of Sri Devraj Urs Educational trust for backward classes (regtd) ITA 500 to 506/Banq/2020 order dated 16.08.2021; para 233,234,240, 247,248)***

g) ***Sur Buildcon case***: Delhi Bench of ITAT in case of Sur Buildcon case ITA 6174/Del/2013 in paragraph numbers 7.9 to 7.14 has held as under (in context of violation of section 142(3) and its resultant impact on validity of the assessment):*"…7.9 We shall now proceed to adjudicate the next Cross Objection taken by the assessees, which is in respect to the violation of Principles of Natural Justice since the enquiries made by the Department and the subsequent Inspector Reports which formulated the foundation of the impugned addition(s) were never confronted to either of the assessees at any stage of the reassessment proceedings. On a perusal of the Assessment Orders, it is amply clear that the A.O., primarily, had relied upon the Inspectors Reports that was based on the field enquiries conducted to ascertain the genuineness of the investor companies. As is made evident from the Assessment Orders itself, the Inspectors, vide their respective Reports, have stipulated that upon enquiry, either the concerned parties were not found to be existing at the given address, or the addresses were not found, or the premises was found locked. The results of such field enquiries were not brought to the knowledge of the assessees prior to the passing of the Assessment Orders. This fact, when pointed out by the Ld. A.R. has not been disputed by the Ld. CIT D.R. also during the course of hearing before us. The enquiries were, thus, conducted by the A.O. behind the back of the assessees. These enquiries were then utilized for the purpose of making the additions without confronting the same to the assessees, which as per Section 142 of the Income*

Tax Act, is impermissible in law. 7.10 To elaborate, Section142 of the Act provides for the procedure to be followed by the A.O. while making the requisite enquiries before concluding an assessment. Section 142(1) of the Act empowers the A.O. to call for information/material from the assessee. Section142 (2) empowers the A.O. to make such enquiry as may be necessary for the purpose of such assessment. Section 142 (3) mandates that the information/evidence collected pursuant to the enquiry conducted u/s 142(2), which is proposed to be utilized during the assessment, shall first be put to the assessee to provide him/her with an opportunity of being heard before the same is even utilized to make an addition/disallowance u/s 143(3). There is, thus, a specific procedure that must be followed by the A.O. while making an assessment under the Income Tax Act. Section 142 (3) uses the word 'shall', thus, rendering the same to be by no means discretionary upon the whims and fancies of the A.O. 7.11 Applying the law to the case at hand, it is evident that the Inspector Reports, that had been relied upon by the A.O., have been reproduced in length for the first time in the Assessment Orders only. The A.O.,by failing to confront the assessees with the evidence he had gathered u/s 142(2) Act, has, therefore, erroneously skipped the mandatory intermediary step prescribed u/s 142(3) of the Act. Thus, when the A.O. has directly gone on to pass the Assessment Orders u/s 147/143(3) of the Act to make the impugned additions u/s 68, the same is in direct violation of the procedure of enquiry prescribed in the Statute that inherently encompasses the Principle(s) of Natural Justice. We derive support to our line of reasoning from the decision of the coordinate Bench of the Hon'ble Kolkata Tribunal in M/s. SPML Infra Ltd. vs. DCIT, ITA No. 1228/Kol/2018 wherein it has been held as under "14. To conclude: We note that none of the statements were recorded by the assessing officer of the assessee company, and no opportunity for cross examination has been provided to the assessee company. The mandate of law to conduct enquiry by the Assessing Officer on due information coming to him to verify authenticity of information was not done as per section 142 of the Act.Therefore, mere receipt of unsubstantiated statement recorded by some other officer in some other proceedings more particularly having no bearing on the transaction with the assessee does not create any material evidence against the assessee. This is because section 142(2) mandates any such material adverse to the facts of assessee collected by AO u/s 142(1) has to be necessarily put to the assessee u/s 142(3) before utilizing the same for assessment so as to constitute as reliable material evidence through the process of assessment u/s 143(3) of the Act." 7.12 We also draw support from the judgment of the Hon'ble Apex Court in Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818, where the Hon'ble Supreme Court has clearly held that "Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and no other. No wider right than that provided by the statute can be claimed nor can the right be narrowed." 7.13 We further observe that the statement of Shri B.S. Bisht as stated in the 'Reasons Recorded' has not been utilized by the A.O. as the basis for passing the Assessment Orders. Therefore, we are of the view that the question of whether this statement had been provided to the assessees for cross examination or not, is not required to be gone into. However, it would not be out of place to hold that for the reasons specified above, even the statement of Shri B.S. Bisht recorded behind the back of the assessees could not unilaterally be used by the A.O. without testing the same on the anvil of cross examination as is now the settled law per the judgment in Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3. 7.14 Since the results of the enquiries conducted by the A.O. u/s 142(2) of the Act have not been confronted to the assessees, we are inclined to agree with the Ld. A.R. that there has

been a violation of the Principle(s) of Natural Justice implied within Section142 (2) of the Act and such statutory non-compliance vitiates the entire assessment proceedings, therefore, rendering it to be null and void. Thus, the Cross Objection taken on the violation of the Principle(s) of Natural Justice is also allowed in favour of the assessees." This case law is at case law compilation filed by appellant at pages 218 to 282.

Also refer : *Mumbai bench of ITAT decision in case of Sinnar Thermal Power Ltd ITA ITA No.251/Mum/2020 ORDER DATED 05.05.2021 ;*

Hon'ble Ahmedabad bench ITAT decision in case of EI Dorado reported at **186 ITD 661; Also refer: Hon'ble Delhi high court decision in case of Manoj Hora reported at 402 ITR 175 and recent Hon'ble Delhi high court decision in case of Anand Jain HUF case reported at 432 ITR 384**

h) ***The Ceylon Pentecostal Mission*** : "8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that 143(1) intimation is not an assessment. Time and again, various Courts have categorically held that 143(1) intimation cannot be considered as a regular assessment. Therefore, once there is no regular assessment, then question that needs to be considered is whether the Assessing Officer can make adjustments towards capital gains and accumulation of income u/s.11(2) of the Income Tax Act, 1961, while processing return u/s.143(1) of the Act. The provisions of section 143(1) deals with summary adjustment, as per which, where a return has been filed u/s.139, such return shall be processed in the following manner. As per said section, except as provided under Explanation, no adjustment can be made towards total income reported by the assessee. Further, adjustments provided under Explanation to section 143(1) are that only prima-facie adjustments which can be made on the basis of return filed by the assessee, without going into examine any other evidences.

The proviso further specifies that no such adjustment shall be made unless an intimation is given to the assessee of such adjustments either in writing or electronic mode. In this case, admittedly no such intimation was given to the assessee before making adjustment towards capital gain and accumulation of income u/s.11(2) of the Income Tax Act, 1961. Therefore, on this count itself adjustment made by the Assessing Officer towards capital gain and accumulation of income u/s.11(2) of the Income Tax Act, 1961 deserves to be deleted. 11. There is no dispute on this legal aspect, but what is to be considered is whether intimation issued u/s.143(1) is an assessment and the Assessing Officer can make adjustment towards rejection of accumulation of income u/s.11(2) of the Income Tax Act, 1961 or not has to be seen. It is well settled position of law by the decision of various courts that 143(1) intimation is not a regular assessment. Therefore, once an intimation issued by the Assessing Officer u/s.143(1) is not an assessment, then next question that needs to be considered is whether the Assessing Officer can make adjustments to total income for non-submission of Form No.10 along with return of income. In our considered view, except as provided under Explanation to section 143(1), no adjustments can be made to total income. In this case, the Assessing Officer has made adjustment to total income by rejecting accumulation of income u/s.11(2) and said adjustment is not in accordance with law. It is also an admitted fact that an appeal being continuation of original proceedings, appellate authority has co-terminus and co-extensive powers that of the Assessing Officer. Therefore, when the assessee has filed Form No.10 before the CIT(A),NFAC, he ought to have admitted Form No.10 filed by the assessee to consider accumulation of income u/s.11(2) of the Income

Tax Act, 1961. This view is supported by decision of the Hon'ble Calcutta High Court in the case of CIT Vs. Hardeodas Agarwalla Trust reported in 198 ITR 511, where it was held that appeal being continuation of original proceedings, appellate authority has power to accept Form No.10 and direct the Assessing Officer to redo assessment. We further noted that accumulation of income u/s.11(2) of the Income Tax Act, 1961 is a beneficial provision allowed to an assessee to application of income for charitable purposes in subsequent years, in case trust or institution is not able to apply its income in full during the relevant financial year. Therefore, while considering such beneficial provision, the CIT(A) should have considered issue without going into technicalities or procedural lapses. In this case, the assessee has made available Form No.10 before the CIT(A), but he rejected Form No.10 filed by the assessee. The Hon'ble Jurisdictional High Court of Madras in the case of Chandraprabhuji Maharaj Jain Vs. DCIT in TCA No.517 of 2019 dated 26.07.2019 had considered a similar issue of belated filing of Form No. 10 for accumulation of income u/s.11(2) of the Act and held that when the assessee was entitled to statutory benefit it was incumbent upon concerned authority to examine admissibility of benefit than to foreclose assessee on technicalities" (also refer delhi bench ITAT decision in Maskat Technologies Pvt Ltd decision in ITA 1540/Del/2020 order dated 30.06.2021)

i) ***Dalmia Bharat and Industries Ltd***: Out of litany of issues adumbrated in this locus classicus one notable aspect is "When the additions made in the hands of the other entity on substantive basis is deleted by the learned CIT – A, can the protective addition in the hands of the assessee is still sustainable." To which hon'ble bench

answered the same as: “It is also a settled precedent that when the substantive additions are deleted, the protective additions also cannot survive. It can survive in one of the situation where there is a finding in the case of the person in whose hands _substantive addition‘ is made that the income belongs to the person in whose hands _protective additions‘ are made. We could not find such finding by any authority in the case of assessee in whose hands _substantive additions‘ are deleted. Thus, we are of the view that when the _substantive additions‘ is deleted in the hands of another assessee without holding that income does not belong to that assessee but to this assessee, _protective additions‘ cannot be sustained in the hands of this assessee”