आयकर अपीलीय अधिकरण "J" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1007/Mum/2016

(**निर्धारण वर्ष /** Assessment Year: 2007-08)

ACIT CIR 3 2nd Floor, Rani Mansion, Murbad Road, Kalyan(W), Dist Thane 421301	**बनाम**/ v.	M/s. Rich & Royal The Raymond Shop, Zojwalla complex, Agra Road, Kalyan (W) 421301
		स्थायी लेखा सं./PAN : AADFR3357G
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Subodh Ratnaparkhi
Revenue by :	Shri. Saurabh Kumar Rai

सुनवाई की तारीख **/Date of Hearing : 05-02-2018**

घोषणा की तारीख **/Date of Pronouncement : 02-04-2018**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 1007/Mum/2016 for assessment year 2007-08 is directed against the appellate order dated 29.12.2015 passed by learned Commissioner of Income-tax (Appeals)-3,Nasik, (Camp Office-Thane)(hereinafter called "the CIT(A)") for assessment year 2007-08, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 31.10.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *" Whether on the facts and in the circumstances of the case, and in law, the Ld.CIT(A) was justified in restricting the addition to 25% of*

bogus purchases of Rs. 60,19,254/- out of the total purchases of Rs.3,96,67,787/- despite confirming that the said purchases of Rs. 60,19,254/ - were not genuine [para 12 on page 10 of the order of CIT(A)]

1.2. Whether on the facts and in the circumstances of the case, and in law, the Ld.CIT(A) was justified in overlooking the fact that even though the assessee failed to prove that the purchases of Rs. 60,19,254/- were actually made, the said fictitious purchases were booked by the assessee in its P&L account in the name of the said parties and the source of alleged actual purchases, if any had not been entered in the books of accounts and therefore 100% of the bogus purchases disallowed ought to have been upheld.

1.3 Whether on the facts and in the circumstances of the case, and in law, the Ld.CIT(A) was justified in not overlooking the fact that the assessee could not submit the quantitative details of the stock [para 10 on page 7 of the order of CIT(A)]

2. Whether on the facts and in the circumstances of the case, and in law, the Ld.CIT(A) was justified in not appreciating the fact that the assessee himself in his submission before the Ld.CIT(A) had admitted that the Interest accrued on the amount advanced by the bank was debited to its account, reducing the overall limit of the facility [para 13.2 on page 11 of the order of CIT(A)], which implied that the interest debited by the bank got converted into further liability [loan / advance] and was not actually paid and hence not allowable as per explanation 3D to section 43B(d)/(e).

3. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

4. The appellant craves leave to add, amend, alter or delete any ground of appeal."

3. The brief facts of the case are that the assessee is engaged in the retailing in readymade garments and cloth material/accessories. The assessee is authorised dealer for Raymond Brand. In this case notices u/s 148 of the 1961 Act was issued for reopening of the assessment based on the survey conducted by Revenue on Manoj Mills, Shree Ram Sales & Synthetics, Astha Silk Mills, wherein these parties admitted on oath that they were providing accommodation entries/bills. Thus, the AO was of the view that the assessee had made bogus purchases from these three parties to the tune of Rs.60,19,254 out of total purchases of 3,96,67,787/- made by the assessee during the previous year relevant to assessment year, as under:-

Sr. No	Name of the Party	Address	Transaction made during the year
1	Astha Silk Industries	285, Dharamraj Galli, M J Market, Kalbadevi Road, Mumbai- 400002	Rs.24,31,230/-
2.	Manoj Mills		Rs.16,08,016/-
3.	Shree Ram Sales & Synthetics		Rs.19,80,008/-
	Total		Rs.60,19,254/-

The AO made enquiries with the above three parties by issuing notices u/s 133(6) and the above stated three parties denied having any business of cloth trading with the assessee and they confirmed having issued accommodation bills to the assessee. The copies of replies received by the AO were confronted to the assessee. The assessee in reply submitted that purchases are genuine. The assessee also produced affidavit of Mr Rakesh Kumar Gupta and his family members who were proprietor of these concern to contend that the purchases were genuine. The AO relied upon statement recorded on oath u/s 131 of 1961 Act of Rakesh Kumar Gupta , his wife Mrs Hema R Gupta and Mr Mohit R Gupta, his son wherein in nut-shell they confirmed that they were providing accommodation bills without supplying any material. The A.O made additions to the tune of 100% of the alleged bogus purchases of Rs. 60,19,254/- vide assessment order dated 31.10.2014 passed u/s 143(3) r.w.s. 147 of the 1961 Act which additions were later reduced to 25% in the first appeal filed by the assessee before learned CIT(A) vide appellate order dated 29-12-2015. The learned CIT(A) followed the appellate order passed by learned CIT(A) in assessee's own case for AY 2009-10 and 2006-07 wherein additions were restricted to 25% of the alleged unproved bogus purchases to the tune of Rs. 60,19,254/- .

4. The assessee's appeal before the tribunal for the AY 2007-08 was decided by the tribunal in ITA no. 987/Mum/2016 vide orders dated 05.07.2017. Thus , while deciding the aforesaid appeal , the tribunal has discussed the issue on merits as well as reopening u/s. 147 . The reopening of the assessment u/s 147 was held to be valid by the tribunal in its order dated 05.07.2017 for AY 2007-08 . Thus, the ground of appeal raised by the assessee in its appeal with respect to reopening u/s 147 was dismissed by

the tribunal. However, on merit the tribunal reduced the additions to the tune of 12.5% of the alleged unproved bogus purchases.

5. Now , Revenue has come in appeal before the tribunal on the similar ground with respect to the relief granted by learned CIT-A by upholding additions to the tune of 25% for AY 2007-08. We have heard both the parties and we have also perused the tribunal decision dated 05-07-2017 for AY 2007-08 in ITA no. 987/Mum/2016 .We have observed the tribunal has passed an detail order wherein both the issues with respect to the reopening of the assessment u/s 147 as well as sustaining additions on merits were duly considered and adjudicated by tribunal. We have carefully gone through the said order of the tribunal and we could not find any reasons to interfere and deviate from the said order of tribunal in ITA no. 987/Mum/2016 dated 05.07.2017 and we confirm the said order of the tribunal , which held as under:-

> " *The assessee is aggrieved by the impugned order dated 29/12/2015 of the Ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to reopening of assessment u/s 147 of the Income Tax Act, 1961 (hereinafter the Act). The ld. counsel, Shri Avinash Chavan, advanced arguments, which is identical to the ground raised. On the other hand, the ld. DR, Shri Rajat Mittal, defended the reopening by supporting the decision of the Ld. Commissioner of Income Tax (Appeal).*
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> *2. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is a retailer, engaged in the business of selling of clothes, readymade garment and accessories etc. The assessee showed purchases amounting to Rs.60,19,254/- from various parties as mentioned in para 4.2 of the assessment order. The Ld. Assessing Officer treated the purchases as bogus as disallowed in Assessment Year 2005-06, 2006-07 and 2009-10. The Assessing Officer issued notice us/s 148 of the Act to the assessee to reopen the assessment. The assessee was asked to establish the genuineness of the purchases shown from such parties. The stand of the assessee is that the amounts were made through cheque. As per the Assessing Officer, the assessee could not produce the ledger account of the assessee and the books of the said suppliers. During enquiries, Shri Rakesh Gupta, Hema Gupta and Mohit Gupta furnished returned reply, which has been reproduced at page-3 of the appellate order also, wherein, it has been observed that accommodation bills were issued to the assessee and no genuine business of cloth trading was done with the assessee. Even the assessee vide letter dated 29/12/2005 submitted that it has not maintained quantitative details. The Ld. Commissioner of Income Tax (Appeal) in para 9.1 onwards of the order has discussed the background of the case of the assessee. The totality of facts indicates*

that the assessee made purchases from non-genuine dealers and such parties were even not found at the given addresses.

2.1. In the light of the foregoing uncontroverted factual matrix, it is our bounded duty to examine the validity of reopening u/s 147 r.w.s 148 of the Act. Before adverting further we are reproducing hereunder the relevant provision of section 147 of the Act for ready reference and analysis:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

2.2. If the aforesaid provision of the Act is analyzed, we find that after insertion of Explanation-3 to section 147 of the Act by the Finance (No.2) Act of 2009 with effect from 01/04/1989 section 147 has an effect that Assessing officer has to assess or reassess income (such income) which has escaped assessment and which was basis of formation of belief and, if he does so, he can also assess or reassess any other income which has escaped assessment and which came to the notice during the course of proceedings. Identical ratio was laid down by Hon'ble jurisdictional High Court in CIT vs Jet Airways India Pvt. Ltd. (2010) 195 taxman 117 (Mum.) and the full Bench decision from Hon'ble Kerala High Court in CIT vs Best Wood Industries and Saw Mills (2011) 11 taxman.com 278 (Kerala)(FB). A plain reading of explanation-3 to section 147 clearly depicts that the Assessing Officer has power to make addition, where he arrived to a conclusion that income has escaped assessment which came to his notice during the course of proceedings of reassessment u/s 148. our view is fortified by the decision in Majinder Singh Kang vs CIT (2012) 25 taxman.com 124/344 ITR 358 (P & H) and Jay Bharat Maruti Ltd. Vs CIT (2010) Tax LR 476 (Del.) and V. Lakshmi Reddy vs ITO (2011) 196 taxman 78 (Mad.). The provision of the Act is very much clear as with effect from

01/04/1989, the Assessing Officer has wide powers to initiate proceedings of reopening. The Hon'ble Kerala High Court in CIT vs Abdul Khadar Ahmad (2006) 156 taxman 206 (Kerala) even went to the extent so long as the AO has independently applied his mind to all the relevant aspect and has arrived to a belief the reopening cannot be said to be invalid.

2.3. We are aware that "mere change of opinion" cannot form the basis of reopening when the necessary facts were fully and truly disclosed by the assessee in that situation, the ITO is not entitled to reopen the assessment merely on the basis of change of opinion. However, powers under amended provision are wide enough where there is a reasonable belief with the Assessing Officer, that income has escaped assessment, because the powers with effect from 01/04/1989 are contextually different and the cumulative conditions spelt out in clauses (a) and (b) of section 147, prior to its amendment are not present in the amended provision. The only condition for action is that the Assessing Officer "should have reason to believe" that income chargeable to tax has escaped assessment. Such belief can be reached in any manner and is not qualified by a pre-condition of faith and true disclosure of material facts by an assessee as contemplated in pre-amended section 147. Viewed in that angle, power to reopen assessment is much wider under the amended provision. Our view is fortified by the decision from Hon'ble Delhi High Court in Bawa Abhai Singh vs DCIT (2001) 117 taxman 12 and Rakesh Agarwal vs ACIT (1996) 87 taxman 306 (Del.). The Hon'ble Apex Court in CIT vs Sun Engineering works Pvt. Ltd. 198 ITR 297 (SC) clearly held that proceedings u/s 147 are for the benefit for the Revenue, which are aimed at gathering the 'escaped income'. At the same time, We are aware that powers u/s 147 and 148 of the Act are not unbridled one as it is hedged with several safeguards conceived in the interest of eliminating room for abuse of this power by the AO. However, the material available on record, clearly indicates that income chargeable to tax had escaped assessment,therefore, the ld. Assessing Officer was within his jurisdiction to reopen the assessment. The Hon'ble Apex Court in Ess Ess Kay Engineering Co. Pvt. Ltd. (2001) 247 ITR 818 (SC) held that merely because the case of the assessee was correct in original assessment for the relevant assessment year, it does not preclude the ITO to reopen the assessment of an earlier year on the basis of finding of his fact that fresh material came to his knowledge.

2.4. Under section 147, as substituted with effect from 01/04/1989, the scope of reassessment has been widened. After such substitution, the only restriction, put in that section is that "reason to believe". That reason has to be a reason of a prudent person which should be fair and not necessarily due to failure of the assessee to disclose fully and partially some material facts relevant for assessment (Dr. Amin's Pathology Laboratory vs JCIT (2001) 252 ITR 673, 682 (Bom.) Identical ratio was laid down by Hon'ble Delhi High court in United Electrical Company Pvt. Ltd. vs CIT (2002) 258 ITR 317, 322 (Del.) and Prafull Chunnilal Patel vs ACIT 236 ITR 832, 838 (Guj.). The essential requirement for initiating reassessment proceeding u/s 147 r.w.s 148 of the Act is that the ld. Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment

for any assessment year. The Hon'ble Gujara High Court in Prafull Chunnilal Patel vs ACIT (supra) even went to the extent that at the initiation stage formation of reasonable belief is needed and not a conclusive finding of facts. Identical ratio was laid down in Brijmohan Agrawal vs ACIT (2004) 268 ITR 400, 405 (All.) and Ratnachudamani S. Utnal vs ITO (2004) 269 ITR 272, 277 (Karnataka) applying Sowdagar Ahmed Khan vs ITO (1968) 70 ITR 79(SC).

2.5. So far as, the meaning of expression, "reason to believe" is concerned, it refers to belief which prompts the Assessing Officer to apply section 147 to a particular case. It depend upon the facts of each case. The belief must be of an honest and reasonable person based on reasonable grounds. The Assessing Officer is required to act, not on mere suspicion, but on direct or circumstantial evidence. Our view find support from the ratio laid down in following cases:-

i. Epica Laboratories Ltd. vs DCIT 251 ITR 420, 425-426 (Bom.),
ii. Vishnu Borewell vs ITO (2002) 257 ITR 512 (Orissa),
iii. Central India Electric Supply Company Ltd. vs ITO (2011) 333 ITR 237 (Del.),
iv. V.J. Services Company Middle East ltd. vs DCIT (2011) 339 ITR 169 (Uttrakhand),
v. CIT vs Abhyudaya Builders (P.) Ltd. (2012) 340 ITR 310 (All.),
vi. CIT vs Dr. Devendra Gupta (2011) 336 ITR 59 (Raj.),
vii. Emirates Shipping Line FZE vs Asst. DIT (2012) 349 ITR 493 (Del.).
viii. Reference may also made to following judicial decisions:-
ix. Safetag international India P. Ltd. (2011) 332 ITR 622 (Del.),
x. CIT vs Orient Craft Ltd. (2013) 354 ITR 536 (Del.)
xi. Acorus Unitech Wirelss Pvt. Ltd. vs ACIT (2014) 362 ITR 417 (Del.).
xii. Praful Chunilal Patel: Vasant Chunilal Patel vs Asst. CIT (1999) 832, 843-44, 844-45 (Guj.),
xiii. Venus Industrial Corporation vs Asst. CIT (1999) 236 ITR 742, 746 (Punj.),
xiv. Srichand Lalchand Talreja vs Asst. CIT (1998) 98 taxman 14, 19 (Bom.),
xv. Usha Beltron Ltd. vs JCIT (1999) 240 ITR 728, 736-37, 739 (Pat.)
xvi. Kapoor Brothers vs Union of India (2001) 247 ITR 324, 331, 332-33
xvii. Vippy Processors Pvt. Ltd. vs CIT (2001) 249 ITR 7, 8 (MP)

2.6. In Dilip S. Dahanukar vs Asst. CIT (2001) 248 ITR 147, 150-51 (Bom.). The Hon'ble jurisdictional High Court held as under:-

"Held, that there was material on record on the basis of survey and statement of person to show that the assessee had wrongfully claim deduction u/s 80IA. Therefore, the Assessing Officer had reason to believe that income had escaped assessment for assessment year 1994-95."

Identically in the case of Srichand Lalchand Talreja v. Asst. CIT, (1998) 98 Taxman 14, 19 (Bom), where the information regarding acquisition of the asset was not available with the Assessing Officer during the

relevant assessment year 1992-93 and such information was disclosed in the return for the assessment year 1995-96, the Hon'ble jurisdictional High Court held that the Assessing Officer can form a bona fide belief that there was escapement of income in relation to assessment year 1992-93.

2.7. The Hon'ble jurisdictional High Court in Export Credit Guarantee Corporation of India Ltd. v. Addl. CIT, (2013) 350 ITR 651 (Bom), where there had been no application of mind to the relevant facts during the course of the assessment proceedings by the Assessing Officer, the reopening of the assessment was held to be valid.

2.8. The Hon'ble jurisdictional High Court in Girilal & Co. v. S.L. Meena, ITO, (2008) 300 ITR 432 (Bom), held that in order to invoke the extraordinary jurisdiction of the court the petitioner must also make out a case that no part of the relevant material had been kept out from the Assessing Officer). The information was in the annexures and consequently Explanation 2(c)(iv) of section 147 would apply. The reassessment proceedings after four years were valid.

2.9. In the case of Deputy CIT v. Gopal Ramnarayan Kasat, (2010) 328 ITR 556 (Bom), it was not the case of the assessee that the notice issued was after the expiry of the time limit provided in section 153(2). The reassessment proceedings were held to be valid. In Indian Hume Pipe Co. Ltd. v. Asst. CIT, (2012) 348 ITR 439 (Bom), both in the computation of taxable long-term capital gains in the original return of income and in the computation that was submitted in response to the query of the Assessing Officer there was a complete silence in regard to the dates on which the amounts were invested, as such there being a failure to disclose fully and truly material facts necessary for assessment. The reassessment proceedings were held to be valid. This view was also confirmed in following cases:-

a. Dalmia P. Ltd. v. CIT, (2012) 348 ITR 469 (Del);
b. CIT v. K. Mohan & Co. (Exports), (2012) 349 ITR 653 (Bom);
c. Remfry & Sagar v. CIT, (2013) 351 ITR 75 (Del);
d. OPG Metals & Finsec Ltd. v. CIT, (2013) 358 ITR 144 (Del).

2.10. In the case of Venus Industrial Corporation v. Asst. CIT, (1999) 236 ITR 742, 746 (P & H) [Where initiation was started within four years for re-examining the deduction under section 80HHC, was held to be wrongly allowed in the original assessment. Identically, in the case of Happy Forging Ltd. v. CIT, (2002) 253 ITR 413,416-17 (P & H), where excise duty paid in advance was shown as an asset in the balance sheet and was allowed as a deduction, reassessment notice on the ground that excise duty was shown as an asset in the balance sheet and was not routed through the profit and loss account. The reopening at this stage was held to be valid. In the case of Vipan Khanna v. CIT, (2002) 255 ITR 220, 230 (P & H), where from the facts it was clear that the assessee had claimed depreciation in the return at the rate of 50 per cent and he had nowhere disputed the fact that the admissible rate of depreciation to him was 40 per cent., such fact alone was sufficient to initiate reassessment proceedings under section 147 and, therefore, such initiation was sustained. The Hon'ble Punjab &

Haryana High Court in Mrs. Rama Sinha v. CIT, (2002) 256 ITR 481, 483, 486, where the reassessment notice has been issued on the basis of definite information from CBI regarding investments by the assessee which had not been disclosed during the original assessment proceedings, such initiation has been upheld.

2.11. In the case of Pal Jain v. ITO, (2004) 267 ITR 540, 544-45, 548, 549 (P & H), applying Phool Chand Bajrang Lal v. ITO, (1993) 203 ITR 456 (SC), although the transaction of sale of shares was disclosed and accepted in the original assessment, but the subsequent discovery by the DDI (Investigation) revealed that the transaction was not genuine, a reassessment notice after four years has been held to be valid because there was no true disclosure of the material facts. In this regard, the petitioner-assessee cannot draw any support from the statement for challenging the validity of the notice for reassessment. It goes without saying that for the purpose of making the assessment, the Assessing Officer shall have to confront the petitioner with the entire material in his possession on the basis of which he proposes to make the additions. In Punjab Leasing Pvt. Ltd. v. Asst. CIT, (2004) 267 ITR 779, 781-82 (P & H), where depreciation was allowed to the assessee, who was engaged in the business of financing of vehicles and consumer durables on 'hire-purchase basis' as well as on 'lease/rent basis', a reassessment notice issued after four years has been held not to suffer from any illegality as the same was based on the bona fide action of the competent authority to determine whether or not the vehicles in respect of which the petitioner had been claiming depreciation, were actually owned by it.

2.12. In Jawand Sons v. CIT(A), (2010) 326 ITR 39 (P & H), in the initial assessment, the benefit of deduction of the duty drawback and DEPB under section 80-IB was wrongly granted to the assessee, for which it was not entitled. Therefore, reassessment proceedings to withdraw the deduction were held to be valid. Likewise, in CIT v. Hindustan Tools & Forgings P. Ltd., (2008) 306 ITR 209 (P & H), where, the assessee in the regular assessment had been allowed deduction more than actually allowable under section 80HHC. Therefore, the action initiated by the AO for reassessment under section 147(b) could not be held to be invalid.

2.13. In the case of Markanda Vanaspati Mills Ltd. v. CIT, (2006) 280 ITR 503 (P & H), wherein, the information furnished by the assessee gave no clue to the payment of liability in regard of the sales tax collected in excess. The Assessing Officer was held to be validly initiated the reassessment proceedings under section 147 for both the years under consideration. In the case of Sat Narain v. CIT, (2010) 320 ITR 448 (P & H), the document did not form the sole basis for the Assessing Officer to initiate reassessment proceeding but he also took into consideration the letter written by the Assistant Commissioner as well as the fact that no return had been filed by the assessee for assessment year 1995-96. Thus, it was held that the Assessing Officer had rightly invoked the jurisdiction to initiate the reassessment proceedings under section 147. In the case of CIT v. Hukam Singh, (2005) 276 ITR 347 (P & H), it was held that the respondents did not have the locus standi to question the orders of reassessment on the

ground of lack of notice. Non-issuance of notice to some of the legal heirs of the late P was merely an irregularity and the same did not affect the validity of the reassessment orders. Likewise, in Tilak Raj Bedi v. Joint CIT, (2009) 319 ITR 385 (P & H), wherein, facts coming to light in a subsequent assessment year could validly form the basis for initiating reassessment proceedings, in view of Explanation 2 to section 147. The action of the income tax authorities in reopening the assessment of the assessee and restricting the deduction under section 80-IB was held to be valid.

2.14. In the case of Smt. Usha Rani v. CIT, (2008) 301 ITR 121 (P & H), there was nothing on record to show the relationship between the donor and the donee, capacity of the donor to make gifts and the occasion therefore. The assessee had failed to discharge the onus to prove the gifts. The reassessment proceedings were held to be valid. In the case of Usha Beltron Ltd. v. Joint CIT, (1999) 240 ITR 728, 736-37, 739 (Pat), where the investigation report indicated that the Officer had reason to believe that on account of failure on the part of the petitioner-assessee to disclose true and full facts, income had been grossly under assessed, reassessment proceedings were held validly initiated.

2.15. In the case of Kapoor Brothers v. Union of India, (2001) 247 ITR 324, 331, 332-33 (Pat), where the material evidence for the purpose of reopening of the assessment already completed has been brought to the notice of the authority during the course of enquiry. The notice was held to be valid by the Hon'ble High Court. In the case of Vippy Processors Pvt. Ltd. v. CIT, (2001) 249 ITR 7, 8 (MP), where the need to issue notice arose due to noticing of vast difference in value of properties disclosed by the assessee and that of the report of the Valuation Officer and the reasons that led to the issue of the notice were duly recorded and the same were also adequate and based on relevant facts and material, initiation was upheld. In Triple A Trading & Investment Pvt. Ltd. v. Asst. CIT, (2001) 249 ITR 109, 110-11 (MP), where the notice was issued after recording reasons in that regard, initiation was upheld.

2.16. Likewise, Hon'ble Gujarat High Court in Garden Finance Ltd. v. Add/. CIT, (2002) 257 ITR 481, 489, 494-95, special leave petition dismissed by the Supreme Court: (2002) 255 ITR (St.) 7-8 (SC), where the assessee was holding shares in an amalgamating company and he was allotted shares in the amalgamated company and such shares were sold by him and he has disclosed the market price of such shares as on the date of amalgamation as the cost of acquisition of such shares and has not disclosed the cost of acquisition of shares in the amalgamating company in accordance with section 49(2) read with section 47(vii), initiation of reassessment proceedings after four years has been sustained because there was failure on the part of the assessee to disclose material facts necessary for assessment. Likewise, in Suman Steels v. Union of India, (2004) 269 ITR 412,418-19 (Raj), where the return of the assessee for assessment year 1995-96 was processed under section 143(1)(a) accepting the net profit rate declared by the assessee, who carried on con- tract business, initiation of reassessment proceedings by issuing a notice dated 15-5-2001 proposing to reassess petitioner-assessee at higher rate in view of the

presumptive rate prescribed under section 44AD has been sustained. In the case of Dr. Sahib Ram Giri v. ITO, (2008) 301 ITR 294 (Raj), the reassessment proceedings were initiated after recording reasons in writing by the AO. The non-availability of a few documents demanded by the assessee would not make the reassessment proceedings initiated for the reasons recorded in detail illegal.

2.17. In the case of Desh Raj Udyog : Chaman Udyog v. ITO, (2009) 318 ITR 6 (All), in the assessment years in question, the matter was still to be decided finally by the assessing authority whether the income should be treated under the head 'Business income' or 'property income'. The assessee would get opportunity to show sufficient cause to the assessing authority during the course of assessment. Thus, it could not be said that there was no relevant material to initiate proceedings under section 147. In the case of Kartikeya International v. CIT, (2010) 329 ITR 539 (All), in view of the matter, the petitioner was not entitled for the deduction on the duty drawback amount under section 80-IB and since it had been allowed in the assessment order passed under section 143(1), it had escaped assessment. On these facts the initiation of the proceedings under section 147 read with section 148 for assessment years 2005-06 and 2006-07 was legal and in accordance with law.

2.18. Likewise, in the case of Sunil Kumar lain: Suresh Chandra lain v. ITO, (2006) 284 ITR 626 (All), notwithstanding the fact that the amount had been assessed to tax in the hands of P, he had taken a stand that the amount did not belong to him and instead belonged to S. Thus, it was not clear as to in whose hands the amount in question had to be assessed. The ITO was justified in taking proceedings under section 147 for assessing the amounts in the hands of the petitioners according to the claim made by the petitioners. Likewise, Hon'ble Kerala High Court in CIT v. Dr. Sadique Ummer, (2010) 322 ITR 602 (Ker), where, the Assessing Officer collected further information to complete the reassessments which was also permissible under the Act. The finding of the first appellate authority as well as the Tribunal, that the Assessing Officer had no material to believe that the income had escaped assessment was wrong and contrary to facts. The assessee had not maintained any books of account. Therefore, the reopening of assessments was held to be valid and within time. In the case of CIT v. Uttam Chand Nahar, (2007) 295 ITR 403 (Raj), the notice requiring the assessee to file the return within 30 days was in accordance with section 148 as it must be deemed to be in force with effect from 1-4-1989, and in force as on the date notice was issued. There was no violation of section 148 in respect of the specified period within which the return is to be submitted. The reassessment proceedings were held to be valid.

2.19. In the case of CIT v. C. V. layachandran, (2010) 322 ITR 520 (Ker), where, the assessee did not concede the income on capital gain either under the un-amended provision or un-der the amended provision, the recourse open to the Department was to bring to tax income escaping assessment under section 147 which was not time barred or otherwise invalid. Likewise, in Atul Traders v. ITO, (2006) 282 ITR 536 (All), the account books or record and other material were

all common which were being considered by the CIT(A) in the proceedings relating to three appeals. The petitioner had notice and opportunity of being heard. The reassessment proceedings were held to be validly initiated. In the case of Inductotherm (India) P. Ltd. v. lames Kurian, Asst. CIT, (2007) 294 ITR 341 (Guj), the Assessing Officer had found that there were errors in the computation of allowances. The reassessment proceedings were held to be valid. In the case of Papaya Farms Pvt. Ltd. vs. DCIT, (2010) 323 ITR 60 (Mad), where the assessee had furnished incorrect particulars and therefore, the reopening of the assessment was held to be justified.

2.20. In the case of CIT v. Kerala State Cashew Development Corporation Ltd., (2006) 286 ITR 553 (Ker), wherein, the assessee was following the mercantile system of accounting should not have claimed deduction of penal interest which had accrued not in the previous year relevant to the assessment year but in earlier years. This the assessee had not disclosed. The reassessment was held to be valid. Likewise, in Kusum Industries P. Ltd. v. CIT, (2008) 296 ITR 242 (All), as the award had become final it would be taken that the directors of the assessee had accepted the factum of earning of secret profit not reflected in the books of account, which was also binding on the company. The non-appearance of one of the arbitrators and one of the directors in respect of the summon issued under section 131 would not make the reassessment invalid. The Hon'ble Kerala High Court in CIT v. Indo Marine Agencies (Kerala) P. Ltd., (2005) 279 ITR 372 (Ker), held that the entry would amount to an order under section 144. The mere fact that it was not communicated to the assessee would not make such an assessment recorded in the order sheet illegal and that would not bar further proceedings under section 147. Thus, the assessment was held to be validly reopened under Explanation 2(c) to section 147. Likewise, in CIT v. N. Jayaprakash, (2006) 285 ITR 369 (Ker), where, the assessee could not, after having persuaded the assessing authority to withdraw the notice dated 1-10-1993, pointing out that it was not in conformity with law, be allowed to contend that the notice was valid due to the omission of the time-limit by the Finance (No.2) Act, 1996, with effect from 1-4-1989. In the absence of specific provision in the Finance (No. 2) Act, 1996, invalidating proceedings initiated by the Income-tax Officer, the action taken by him applying the then existing law could not be said to be invalid.

2.21. Likewise, in CIT v. S.R. Talwar, (2008) 305 ITR 286 (All), the factum of taking advances or loan from T and K, in which the assessee was one of the directors had not been disclosed nor a copy of the ledger account of the assessee maintained by the company filed. In view of the absence of these details, the Assessing Officer could not examine the taxability of advances or loan raised by the assessee. There was failure to disclose material facts necessary for assessment. The reassessment proceedings were held to be valid. In another case, the Hon'ble Allahabad High Court in Chandra Prakash Agrawal v. Asst. CIT, (2006) 287 ITR 172 (All), wherein, the Income-tax Department had sent a requisition on 27-3-2002, under section 132A requisitioning the books of account and other documents seized by the Central Excise Department. The record of the proceeding dated 18-4-2002, showed that the requisition was not fully executed as all the books of account

and other documents had not been delivered to the requisitioning authority. The proceedings initiated under section 147 was held to be valid.

2.22. In Ramilaben Ratilal Shah v. CIT, (2006) 282 ITR 176 (Guj), held that the noting in the diary constituted sufficient information for the escapement of income by either non-declaration of correct sale consideration or furnishing of inaccurate particulars as regards sale consideration. Thus, the Tribunal was justified in holding that the assessee had failed to disclose fully and truly all material facts necessary for the assessment of the relevant assessment year. The reassessment proceedings had been validly initiated.

2.23. Likewise, in CIT v. Abdul Khader Ahamed, (2006) 285 ITR 57 (Ker), it was clear from the reasons recorded by the Deputy CIT that he prima facie had reason to believe that the assessee had omitted to disclose fully and truly the material facts and that as a consequence income had escaped assessment. The reassessment was held to be valid. In the case of U.P. State Brassware Corporation Ltd. v. CIT, (2005) 277 ITR 40 (All), the principles laid down by the Calcutta High Court in CIT v. New Central Jute Mills Co. Ltd. : (1979) 118 ITR 1005 (Cal) did constitute information on a point of law which should be taken into consideration by the ITO in forming his belief that the income to that extent had escaped assessment to tax and, the reassessment was held to be valid. In Sunder Carpet Industries v. ITO, (2010) 324 ITR 417 (All), held that the Departmental Valuer's Report constituted material for entertaining a belief of escaped income in the years under consideration. The reassessment proceeding was held to be valid.

2.24. In Aurobindo Sanitary Stores v. CIT, (2005) 276 ITR 549 (Ori), there being a substantial difference between the figures of liabilities towards sundry creditors in the party ledgers of the assessee-firm and the figures of liabilities towards sundry creditors in the balance-sheet of the assessee-firm for the previous year relevant to the assessment year 1989-90. These materials had a direct link and nexus for formation of a belief by the Assessing Officer that income of the assessee-firm had escaped assessment because of failure of the assessee to disclose fully and truly all material facts necessary for the assessment. In the case of CIT v. Best Wood Industries & Saw Mills, (2011) 331 ITR 63 (Ker), the assessee challenged the validity of the reassessment on the ground that the AO had exceeded his jurisdiction under section 147 and both the first appellate authority as well as the Tribunal accepted the contention of the assessee holding that so far as the reassessments related to assessment of unexplained trade credits, they were invalid. On appeal, it has been held that the reassessments were to be valid. In Honda Siel Power Products Ltd. v. Deputy CIT, (2012) 340 ITR 53 (Del), there being omission and failure on the part of the assessee to disclose fully and truly material facts Thus reassessment proceedings were held to be valid.

In Atma Ram Properties Private Ltd. v. Deputy CIT, (2012) 343 ITR 141 (Del), as the books of account and other material were not produced and no letter was filed, the order passed by the Commissioner (Appeals) in the assessment year 2001-02 would constitute 'information' or material

from any external source and, as such, the reassessment proceedings for the assessment year 2000-01 were held to be valid. Likewise, in the case of CIT v. Smt. R. Sunanda Bai, (2012) 344 ITR 271 (Ker), the reassessment in question were held to be valid on the fact that the assessee claimed and was given relief under section 80HHA for the three preceding year which disentitled her for deduction under section 80HH for the assessment years 1992-93 and 1993-94.

2.25. In the case of Aquagel Chemicals P. Ltd. v. Asst. CIT, (2013) 353 ITR 131 (Guj), since there being sufficient material on record for the Assessing Officer to form a belief as regards the escapement of income in relation to the claim of depreciation in respect of the building of coal fire boiler, the reassessment was held to be valid. In the case of Convergys Customer Management v. Asst. DIT, (2013) 357 ITR 177 (Del), where there being prima facie material in the possession of the Assessing Officer to form a tentative belief that section 9(1)(i) held attracted, said reason by itself constituted a relevant ground to reopen the assessment of the assessee.

Reference may also be made to

i. Ajai Verma v. CIT [(2008) 304 ITR 30 (All)];
ii. Ashok Arora v. CIT [(2010) 321 ITR 171 (Del)];
iii. CIT v. Chandrasekhar BaLagopaL [(2010) 328 ITR 619 (Ker)];
iv. Jayaram Paper Mills Ltd. v. CIT [(2010) 321 ITR 56 (Mad)];
v. Kerala Financial Corporation v. Joint CIT [(2009) 308 ITR 434 (Ker)];
vi. Mavis Satcom Ltd. v. Deputy CIT [(2010) 325 ITR 428 (Mad)];
vii. CIT v. Madhya Bharat Energy Corporation Ltd. [(2011) 337 ITR 389 (Del)];
viii. Kone Elevator India P. Ltd. v. ITO [(2012) 340 ITR 454 (Mad)];
ix. Vijay Kumar Saboo v. Asst. CIT [(2012) 340 ITR 382 (Karn)];
x. Siemens Information Systems Ltd. v. Asst. CIT [(2012) 343 ITR 188 (Bom)];
xi. I.P. Patel & Co. v. Deputy CIT [(2012) 346 ITR 207 (Guj)];
xii. Dishman Pharmaceuticals & Chemicals Ltd. v. Deputy CIT [(2012) 346 ITR 228 (Guj)];
xiii. Video Electronics Ltd. v. Joint CIT [(2013) 353 ITR 73 (Del)];
xiv. A G Group Corporation v. Harsh Prakash [(2013) 353 ITR 158 (Guj)];
xv. Inductotherm (India) P. Ltd. v. M. GopaLan, Deputy CIT [(2013) 356 ITR 481 (Guj)]; CIT v. Dhanalekshmi Bank Ltd. [(2013) 357 ITR 448 (Ker)];
xvi. Sitara Diamond Pvt. Ltd. v. ITO [(2013) 358 ITR 424 (Bom)];
xvii. Rayala Corporation P. Ltd. v. Asst. CIT [(2014) 363 ITR 630 (Mad)].

2.26. So far as, the decision in the case of CIT vs Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) is concerned, the Hon'ble Apex Court, while coming to a particular conclusion, only in a situation, when not a single piece of paper or document was recovered, therefore, the Hon'ble Court held that since there was no tangible material found and the addition was merely on the basis of statement only then reopening

of assessment u/s 147 of the Act was not permissible. Likewise, in the case of CIT vs S. Khader Khan Son (2012) 254 CTR 228 (SC), affirming the decision of Madras High Court in (2008) 300 ITR 157 (Mad.), the whole addition was made solely on the basis of statement u/s 133A and no other material was found, in that situation, it was held that the such statement has no evidentiary value.

If the material available on record and the judicial pronouncements discussed hereinabove are kept in juxtaposition with the facts of the present appeal, we find that the Ld. Assessing Officer was genuinely of the view that income chargeable to tax has escaped assessment as the assessee could not prove the genuineness of the purchases. It is also noted that Shri Rakesh Gupta, Hema Gupta and Mohit Gupta have categorically admitted before that they have only given accommodation entries to the assessee. The assessee was unable to prove that he made purchases from the parties which are recorded in the books of account. Even otherwise, the assessee has not maintained quantitative details. In the absence of genuineness of the purchases, in our view, the ld. Assessing Officer was justified in reopening the assessment. Thus, this ground of the assessee is dismissed.

3. The next ground pertains to upholding the addition to the extent of Rs.15,04,815/- made u/s 69C of the Act on account of unproved purchases debited to the profit and loss account by the assessee firm.

3.1. Before adverting further and to analyze, the facts of the present appeal before us, we deem it appropriate to consider various decisions from Hon'ble High Courts/Hon'ble Apex Court, so that we can reach to a proper conclusion. The Hon'ble Gujarat High Court in Sanjay Oilcakes Industries vs CIT (2009) 316 ITR 274 (Guj.) held as under:-

"11. Having heard the learned advocates appearing for the respective parties, it is apparent that no interference is called for in the impugned order of the Tribunal dated April 29, 1994, read with the order dated September 29, 1994, made in miscellaneous application. In the principal order the Tribunal has recorded the following findings :

"8.3. We have considered the rival submissions and perused the facts on record. In our opinion, the action of the Commissioner of Income-tax (Appeals) confirming 25 per cent. of the amounts claimed is fair and reasonable and no interference is called for. The Commis sioner of Income-tax (Appeals) has gone through the purchase prices of the raw material prevalent at the time and rightly came to the con clusion that the disallowance to the extent of 25 per cent. was called for. It is established that the parties were not traceable ; they opened the bank accounts in which the cheques were credited but soon thereafter the amounts were withdrawn by bearer cheques. That fairly leads to the conclusion that these parties were perhaps creation of the assessee itself for the purpose of banking purchases into books of account because the purchases with bills were not feasible. Thus, the abovenoted parties become conduit pipes between the assessee-firm and the sellers of the raw materials. Under the circumstances, it was not impossible for the assessee to inflate the prices of raw materials. Accordingly, an addition at the rate of 25 per cent. for extra price paid by the assessee than over and above the prevalent price is fair and

reasonable and we accordingly confirm the finding of the Commissioner of Income-tax (Appeals)."

12. Thus, it is apparent that both the Commissioner (Appeals) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by account payee cheques, the cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a different conclusion, different from the one recorded by the Commissioner (Appeals) and the Tribunal concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by set of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law."

In the aforesaid case, the Hon'ble High Court accepted that the apparent sellers, who issued the said bills were not traceable and the goods received from parties other than the persons, who had issued the bills for such goods. The purchases were shown to have been made by making payments, through banking channel and thus the apparent sellers were not genuine or were acting as conduit between the assessee and the actual seller. In such a situation, the conclusion drawn by the Ld. Commissioner of Income Tax (Appeal) as well as by the Tribunal was affirmed. Hon'ble Apex Court in Kachwala Gems vs JCIT (2007) 158 taxman 71 observed that an element of guesswork is inevitable in cases, where estimation of income is warranted.

3.2. The Hon'ble Gujarat High Court in CIT vs Bholanath Poly Fab. Pvt. Ltd. (2013) 355 ITR 290 (Guj.) held/observed as under:-

"5. Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the

assessee. Therefore, the purchases of the entire 1,02,514 metres of cloth were sold during the year under consideration. The Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of Sanket Steel Traders and also made reference to the Tribunal's decision in the case of Vijay Proteins Ltd. v. Asst. CIT [1996] 58 ITD 428 (Ahd).

6. We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CIT [2009] 316 ITR 274 (Guj). Such decision is also followed by this court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT v. Kishor Amrutlal Patel. In the result, tax appeal is dismissed."

3.3. Likewise, the Hon'ble Gujarat High Court in CIT vs Vijay M. Mistry Construction Ltd. (2013) 355 ITR 498 (Guj.) held/observed as under:-

"6. As is apparent from the facts noted hereinabove, the Commissioner (Appeals) after appreciating the evidence on record has found that the assessee had in fact made the purchases and, hence, the Assessing Officer was not justified in disallowing the entire amount. He, however, was of the view that the assessee had inflated the purchases and, accordingly, by placing reliance on the decision of the Tribunal in the case of Vijay Proteins (supra) restricted the disallowance to 20 per cent. The Tribunal in the impugned order has followed its earlier order in the case of Vijay Proteins to the letter and enhanced the disallowance to 25 per cent. Thus, in both cases, the decision of the Commissioner (Appeals) as well as that of the Tribunal is based on estimate. This High Court in the case of Sanjay Oil Cake [2009] 316 ITR 274 (Guj) has held that whether an estimate should be at a particular sum or at a different sum can never be a question of law.

7. The apex court in the case of Kachwala Gems [2007] 288 ITR 10 (SC) has held that in a best judgment assessment there is always a certain degree of guess work. No doubt, the authorities should try to make an honest and fair estimate of the income even in a best judgment assessment and should not act totally arbitrarily but there is necessarily some amount of guess work involved in a best judgment assessment.

8. Examining the facts of the present case in the light of the aforesaid decisions, the decision of the Tribunal, being based on an estimate, does not give rise to any question of law so as to warrant interference.

9. In so far as the proposed questions (C), (D) and (E) are concerned, the same are similar to the proposed question (A) wherein the Tribunal has restricted the addition to 25 per cent. on similar facts. In the circumstances, for the reasons stated hereinabove, the said grounds of appeal do not give rise to any question of law.

10. As regards the proposed question (B) which pertains to the deletion of addition of Rs. 7,88,590 made on account of inflation of expenses paid to Metal and Machine Trading Co. (MMTC), the Assessing Officer has found that MMTC was a partnership firm of Shri Nitin Gajjar along with his father and brother operating from Bhavnagar. A perusal of their transactions with the assessee indicated that there is some inflation of expenses as detailed in paragraph 6.1 of the assessment order. After considering the evidence on record, the Assessing Officer disallowed the amount Rs. 7,88,590 on account of payment made to MMTC.

11. The assessee preferred an appeal before the Commissioner (Appeals), who upon appreciation of the evidence on record found that the Assessing Officer had not rejected the genuineness of the purchases made from MMTC while making the disallowance. His observations were based on inflation of rates which were being charged from the assessee. According to the Commissioner (Appeals), though MMTC in some respect could be attributed to be associated with the assessee-company, still it could not be expected that MMTC was carrying out its business without any motive or profit. According to the Commissioner (Appeals), it was proved by the assessee that the rates charged by MMTC were comparable with the prevailing market rates, no such addition can stand. The Commissioner (Appeals) took note of the fact that it was not the case of the Assessing Officer that the purchases had been directly effected from third parties and not directly from MMTC ; the difference could not be the net profit in the hands of MMTC ; and that while conducting the entire exercise MMTC would have to incur certain expenditure in transportation, in engaging personnel in the office and other operations and was accordingly of the view that there was no case of actual inflation of rates and deleted the addition.

12. The Tribunal, in the impugned order, has concurred with the findings recorded by the Commissioner (Appeals) and has found that the assessee had made purchases from MMTC at the prevailing market rates and that MMTC had incurred certain expenditure in engaging personnel in the office and other operations and would make some income from the entire exercise. In the circumstances, the purchases made by the assessee from MMTC would not be hit by the provisions of section 40A(2) of the Act.

13. Thus, the conclusion arrived at by the Tribunal is based on concurrent findings of fact recorded by the Commissioner (Appeals) as well as the Tribunal. It is not the case of the Revenue that the Tribunal has taken into account any irrelevant material or that any relevant material has not been taken into consideration. In the absence of any material to the contrary being pointed out on behalf of the Revenue, the impugned order being based on concurrent findings of fact recorded by the Tribunal upon appreciation of the evidence on record, does not give

rise to any question of law in so far as the present ground of appeal is concerned.

14. In relation to the proposed question (F) which relates to the deletion of addition of Rs. 44,54,426 made on account of purchase of crane and allowing depreciation on the same, the Assessing Officer observed that the assessee had purchased a crawler crane for an amount of Rs. 24,61,000 excluding the cost of spare parts of Rs. 14,98,490. The Assessing Officer after examining the evidence on record and considering the explanation given by the assessee, made addition of Rs. 44,54,426, Rs. 39,59,490 being the purchase price of the crane along with its spare parts and Rs. 4,94,936 being depreciation claimed by the assessee. The Commissioner (Appeals), upon appreciation of evidence on record, was of the view that the Assessing Officer has not appreciated the facts of the case properly and had made disallowance which was not permitted by the Income-tax Act. It was held that disallowance could only have been made in respect of expenses debited to the profit and loss account whereas in the present case the purchase of crane and spare parts of the crane and other machineries were in the nature of acquisition of capital asset. According to the Commissioner (Appeals), the disallowance could have been made on depreciation only if at all the Assessing Officer conclusively proved that the purchases of crane and other parts are bogus. Upon appreciation of the material on record the Commissioner (Appeals) found that the Assessing Officer has simply brushed aside all the evidence on account of technical infirmities and that the evidence such as octroi receipt ; hypothecation of the crane to the bank; existence of the crane even till date with the assessee conclusively proved that the crane was purchased and it was in use even as on date with the assessee. The Commissioner (Appeals) accordingly found that there was no scope for any disallowance and accordingly deleted the disallowance made on account of purchase of crane and allowed the depreciation as claimed by the assessee.

15. The Tribunal, in the impugned order, has noted that the cost of crane was never claimed by the assessee in the return of income. Before the Tribunal, the assessee produced the evidence that the crane in question was registered with the RTO and the same was wholly and exclusively used for the purposes of its business. The Tribunal, therefore, held that the Commissioner (Appeals) was legally and factually correct in deleting the disallowance of cost of crane as well as depreciation thereon.

16. From the facts emerging from the record, it is apparent that the assessee had never claimed the cost of the crane in the return nor had it debited the expenses to the profit and loss account, and as such the question of disallowing the same and adding the same to the income would not arise. Moreover, in the absence of any evidence to indicate that the purchase was bogus or that the crane in fact did not exist, the question of disallowing the deprecation in respect of the same also would not arise. When the assessee had conclusively proved the purchase and existence of the crane, and had not debited the expenses to the profit and loss account, no addition could have been made in respect of the purchase price nor could have depreciation been

disallowed in respect thereof. The Tribunal was, therefore, justified in deleting the addition as well as disallowance of depreciation.

17. In the light of the aforesaid discussion, it is not possible to state that there is any legal infirmity in the impugned order made by the Tribunal so as to warrant interference. In the absence of any question of law, much less, a substantial question of law, the appeal is dismissed."

3.4. The Hon'ble jurisdictional High Court in the case of CIT vs Ashish International Ltd. (ITA No.4299/2009) order dated 22/02/2011, observed/held as under:-

"The question raised in this appeal is, whether the Tribunal was justified in deleting the addition on account of bogus purchases allegedly made by the assessee from M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. According to the revenue, the Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. in his statement had stated that there were no sales / purchases but the transactions were only accommodation bills not involving any transactions. The Tribunal has recorded a finding of fact that the assessee had disputed the correctness of the above statement and admittedly the assessee was not given any opportunity to cross examine the concerned Director of M/s. Thakkar Agro Industrial Chem Supplies P. Ltd. who had made the above statement. The appellate authority had sought remand report and even at that stage the genuineness of the statement has not been established by allowing cross examination of the person whose statement was relied upon by the revenue. In these circumstances, the decision of the Tribunal being based on the fact, no substantial question of law can be said to arise from the order of the Tribunal. The appeal is dismissed with no order as to costs."

3.5. The Hon'ble jurisdictional High Court in CIT vs Nikunj Exim Enterprises Pvt. Ltd. (2015) 372 ITR 619 (Bom.) held/observed as under:-

"7. We have considered the submission on behalf of the Revenue. However, from the order of the Tribunal dated April 30, 2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement, i.e., reconciliation statement but also in view of the other facts. The Tribunal records that the books of account of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department, i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the Commissioner of Income-tax (Appeals), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a

reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated April 30, 2010, of the Tribunal."

3.6. The Hon'ble Gujarat High Court in CIT vs M.K. Brothers (163 ITR 249) held/observed as under:-

"Being aggrieved by the aforesaid order, the assessee went in second appeal before the Tribunal. It was urged on behalf of the assessee that the transactions in question were normal business transactions and the assessee had made payments by cheques. The parties did not come forward and if they did not come, the assessee should not suffer. However, on behalf of the Revenue, it was urged that detailed inquiries were made and thereafter the conclusion was reached. The Tribunal found that there was no evidence anywhere that these concerns gave bogus vouchers to the assessee. No doubt, there were certain doubtful features, but the evidence was not adequate to conclude that the purchases made by the assessee from the said parties were bogus. The Tribunal accordingly, did not sustain the addition retained by the Appellate Assistant Commissioner. Hence, at the instance of the Revenue, the aforesaid question has been referred to this court for opinion.

On a perusal of the order of the Tribunal, it clearly appears that whether the said transactions were bogus or not was a question of fact. The Tribunal has also pointed out that nothing is shown to indicate that any part of the fund given by the assessee to these parties came back to the assessee in any form. It is further observed by the Tribunal that there is no evidence anywhere that these concerns gave vouchers to the assessee. Even the two statements do not implicate the transactions with the assessee in any way. With these observations, the Tribunal ultimately has observed that there are certain doubtful features, but the evidence is not adequate to conclude that the purchases made by the assessee from these parties were bogus. It may be stated that the assessee was given credit facilities for a short duration and the payments were given by cheques. When that is so, it cannot be said that the entries for the purchases of the goods made in the books of account were bogus entries. We, therefore, do not find that the conclusion arrived at by the Tribunal is against the weight of evidence. In that view of the matter, we answer the question in the affirmative, that is, in favour of the assessee and against the Revenue. Accordingly, the reference stands disposed of with no order as to costs."

3.7. The Mumbai Bench of the Tribunal in the case of DCIT vs Rajeev G. Kalathil (2015) 67 SOT 52 (Mum. Trib.)(URO), identically, held as under:-

"2.2.Aggrieved by the order of the AO, assessee preferred an appeal before the First Appellate Authority(FAA).Before him it was argued that assessee had filed copies of bills of purchase from DKE and NBE, that both the suppliers were registered dealers and were carrying proper VAT and registration No.s, that ledger accounts of the parties in assessee's books showed bills accounted for, that payment was made by cheques, that a certificate from the banker giving details of cheque payment to the said parties was also furnished. Copies of the

consignment, received from the Government approved transport contractors showing that material purchased was actually delivered at the site was furnished before the AO. It was also argued that some of the material purchased from the said parties were lying part of closing stock as on 31.03.2009 as per the statement submitted on record. After considering the assessment order and the submissions made by the assessee, FAA held that the transactions were supported by proper documentary evidences, that the payments made to the parties by the assessee were in confirmation with bank certificate,t hat the suppliers was shown as default under the Maharashtra VAT Act could not be sufficient evidences to hold that the purchases were non-genuine, that the AO had not brought any independent and reliable evidences against the assessee to prove the non-genuineness of the purchases, that there was no evidence regarding cash received back from the suppliers. Finally, he deleted the addition made by the AO .

"2.3.Before us, Departmental Representative argued that both the suppliers were not produced before the AO by the assessee, that one of them was declared hawala dealer by VAT department, that because of cheque payment made to the supplier transaction cannot be taken as genuine. He relied upon the order of the G Bench of Mumbai Tribunal delivered in the case of Western Extrusion Industries. (ITA/6579/Mum/2010-dated 13.11.2013). Authrorised representative (AR) contended that payments made by the assessee were supported by the banker's statement, that goods received by the assessee from the supplie was part of closing stock,that the transporter had admitted the transportation of goods to the site.He relied upon the case of Babula Borana (282 ITR251), Nikunj Eximp Enterprises (P) Ltd. (216Taxman171)delivered by the Hon'ble Bombay High Court.

2.4.We have heard the rival submissions and perused the material before us. We find that AO had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. We agree that it was a good starting point for making further investigation and take it to logical end. But, he left the job at initial point itself. Suspicion of highest degree cannot take place of evidence. He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account. We find that no such exercise was done. Transportation of good to the site is one of the deciding factor to be considered for resolving the issue. The FAA has given a finding of fact that part of the goods received by the assessee was forming part of closing stock. As far as the case of Western Extrusion Industries. (supra)is concerned, we find that in that matter cash was immediately withdrawn by the supplier and there was no evidence of movement of goods. But, in the case before us, there is nothing, in the order of the AO, about the cash traial. Secondly, proof of movement of goods is not in doubt. Thererfore, considering the peculiar facts and circumstances of the case under appeal, we are of the opinion that the order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the AO. So, confirming the order of the FAA, we decide ground no.1 against the AO."

3.8. The ratio laid down in the case of M/s Neeta Textiles vs Income Tax Officer 6138/Mum/2013, order dated 27/05/2013, Shri Jigar V. Shah vs Income Tax Officer (ITA No.1223/M/2014) order dated 22/01/2016, M/s Imperial Imp. & Exp. vs Income Tax Officer ITA No.5427/Mum/2015, order dated 18/03/2016 supports the case of the assessee and the conclusion drawn in the impugned order. However, as relied by the Ld. DR, the Hon'ble Gujarat High Court in the case of N.K. Industries Ltd.,etc vs DCIT (supra) considering various decisions decided the issue in favour of the Revenue and the Hon'ble Apex Court dismissed the SLP vide order dated 16/01/2017 (SLP No.(c) 769 of 2017). We find that in that case, during search proceedings, certain blank signed cheque books and vouchers were found and thus the purchases made from these concerns, were treated as bogus by the Assessing Officer.

3.9. The Hon'ble Gujarat High Court in N.K. Industries Ltd. vs DCIT (IT Appeal No.240, 261, 242, 260 and 241 of 2003), vide order dated 20/06/2016 considered the decision of the Tribunal and various judicial decisions including the case of Vijay Proteins and Sanjay Oilcakes Industries ltd., M/s Woolen Carpet Factory vs ITAT (2002) 178 CTR 420 (Raj.), the Tribunal was held to be justified in deciding the case against the assessee. The Hon'ble Apex Court confirmed the decision of the High Court for adding the entire income on account of bogus purchases (SLP (C) No.s 769 of 2017, order dated 16/01/2017.

3.10. Broadly, the Ld. DR place reliance upon the decision from Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. vs DCIT (IT Appeal No.240 of 2003 & etc.). and in the case of N.K. Proteins Ltd. vs DCIT (SLP No.769 of 2017), which was dismissed, confirming the decision of the Hon'ble High Court for making the addition of entire income on account of bogus purchases, whereas, the order of the Ld. Commissioner of Income Tax (Appeal) is based upon various decisions including Hon'ble jurisdictional High Court in the case of CIT vs M/s Nikunj Eximp Enterprises Pvt. Ltd. (ITA No.5604 of 2010) and in ACIT vs Mahesh K. Shah (ITA No.5194/Mum/2014) Order dated 31/01/2017, CIT vs Ashish International (ITA No.4299/2009) (Bom.) and Income Tax Officer vs M/s Vaman International Pvt. Ltd. (ITA No.794/Mum/2015) order dated 16/11/2016.

3.11. In such type of cases, broadly, the Ld. Commissioner of Income Tax (Appeal) as well as this Tribunal has followed the decisions from Hon'ble Gujarat High Court in the case of Simit P. Seth (2013) 356 ITR 451 (Guj.), CIT vs Vijay M. Mistry Construction Ltd. (2013) 355 ITR 498 (Guj.), CIT vs Bhola Nath Poly Fab. (P.) Ltd. (2013) 355 ITR 290 (Guj.) and various other decisions of the Tribunal and the decision of M/s Nikunj Eximp(supra) from Hon'ble jurisdictional High Court, wherein, the aggregate disallowance was restricted to 12.5%. The case of the Revenue is that there is bogus nature of purchases made from suppliers and the parties were not found existing at the given addresses. Admittedly, without purchases, there cannot be any sale, thus, to put an end to the litigation, we direct the Ld. Assessing Officer to calculate the profit at the rate of 12.50% of the bogus purchases made by the assessee. Thus, this ground is partly allowed.

Finally, the appeal of the assessee is partly allowed."

Thus, in our considered view, the view taken by the tribunal in ITA no. 987/Mum/2016 vide orders dated 05-07-2017 needs to be upheld as we could not found any good reasons to deviate from the said order of the tribunal and accordingly appeal of the Revenue is disposed of. We order accordingly.

6. There is a second ground which is raised by the Revenue in its appeal before the tribunal with respect to the bank interest which was debited to the Profit and Loss Account. The AO observed that the bank has debited interest to OD/CC account which has increased principle amount advanced by the bank and payments were made after the interest got merged with the O.D./CC Account and there is no compliance of Section 43B(d)/(e) r.w. explanation 3D. The A.O refused to grant deduction on the ground that the interest got merged with the O.D./CC Account and hence there is no reasons to allow deduction as the interest has lost its identity and it is hit by provisions of Section 43B(d)/(e) r.w. explanation 3D. The Ld. CIT-A after hearing the contentions of the assessee granted relief to the assessee by holding as under:-

"13.3. I have gone through the facts of the case which are similar to AY 2006-07 where CIT-A has held as under:-

8. I have carefully considered the facts of the case, findings of the A.O submission of the Ld. AR, material placed on record and noticed that the AO has wrongly interpreted the facts of the issue and provisions of the section. The perusal of bank account statement reveals that the appellant has never exceeded the O.D limit granted by the bank. It is further noticed that the bank has issued the necessary certificate regarding payment of interest liability, within due time, as per banks requirement. It is also noticed that there are huge deposits, made during the year, against withdrawal made by the appellant. It is further noticed that the appellant has not exceeded the CC limit allowed by the bank. Keeping in view the facts of the case, provisions of the section, certificate issued by the bank, deposits made from time to time, etc., it is hereby held that there is no violation of the said provision and the appellant has paid the interest liability well in time, hence, disallowance of Rs. 3,04,564/- made by the A.O. is, hereby deleted. This ground of appeal is allowed.

The facts of appellant case for the year under consideration are identical with the facts of appellant case for AY 2006-07. Therefore the decision of earlier years is equally applicable during the year under

consideration. It is therefore held that the AO was not justified in making addition of Rs.2,43,465, which needs to be deleted."

Thus, the learned CIT(A) followed the decision passed by learned CIT(A) for earlier years. We do not find any good reason to interfere with the well reasoned appellate order passed by learned CIT-A which we confirm/affirm as the assessee in-fact duly made the payment to the bank although interest got merged with O.D/CC account but the payments were duly made by the assessee even after closure of the financial year but before the filing of return of income u/s 139(1) and the same will be appropriated firstly towards the interest and remaining towards principal as per the principle of appropriation . Thus, this ground of appeal filed by the Revenue stood dismissed. We order accordingly.

7 In the result appeal of the revenue is dismissed in the manner indicated above.

Order pronounced in the open court on 02.04.2018

आदेश की घोषणा खुले न्यायालय में दिनांकः 02.04.2018 को की गई ।

Sd/- Sd/-

(MAHAVIR SINGH) (RAMIT KOCHAR)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Mumbai, dated: 02.04.2018

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, H
6. Master File

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BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI