

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.718/CHD/2022

निर्धारणवर्ष / Assessment Year : 2012-13

Evershine Recreation Private Limited, SCO 14, Sector 7-C, Chandigarh	Vs. बनाम	The DCIT, Central Circle-2, Chandigarh
स्थायीलेखासं./PAN No. AABCE7500M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

सुनवाई की तारीख / Date of Hearing : 01.06.2023 & 13.09.2023
उदघोषणा की तारीख /Date of Pronouncement : 15.09.2023

&

आयकर अपील सं./ITA No.16/CHD/2023

निर्धारणवर्ष / Assessment Year : 2012-13

The DCIT, Central Circle-2, Chandigarh	Vs. बनाम	Evershine Receptions Pvt. Ltd., SCO 14, 4 th Floor, Sector 17-C, Chandigarh
स्थायीलेखासं./PAN No. AABCE7500M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

सुनवाई की तारीख / Date of Hearing : 06.06.2023 & 13.09.2023
उदघोषणा की तारीख /Date of Pronouncement : 15.09.2023

निर्धारिती की ओर से/Assessee by : Sh. Rohit Goel, CA,
Ms. Shruti Khandelwal, Adv. &
Sh. T.N. Singla, CA

राजस्व की ओर से/Revenue by : Sh. Vivek Nangia, CIT DR,
Sh. Rohit Sharma, CIT (DR) &
Smt. Amanpreet Kaur, Sr. DR

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आदेश/Order

Per A.D. Jain, Vice President:

ITA 718/CHD/2022 - ASSESSEE'S APPEAL

This is an appeal filed by the assessee, which is a company, against the order dated 31.10.2022 passed by the learned Commissioner of Income Tax (Appeals)-3,

Gurgaon, for the Assessment Year 2012-13, raising the following Grounds of Appeal:

1. *That the order of the learned Commissioner of Income Tax (Appeals) is bad and against the facts and Law.*
2. *That the learned Commissioner of Income Tax (Appeals) has wrongly upheld reliance by the Assessing officer upon third party information without application of his own mind and without verifying the facts from the record before issuing notice under section 148 of the Income Tax Act, 1961.*
3. *That the learned Commissioner of Income Tax (Appeals) has wrongly upheld reassessment which was bad in law being made without following the principles of natural justice, equity and fair play.*
4. *That the learned Commissioner of Income Tax (Appeals) has wrongly upheld the reopening under section 148 against the provisions of the Income Tax Act, 1961 after four years of completion of original assessment under section 143(3) of the Income Tax Act, without any allegation by the learned Assessing Officer that all material facts necessary for the assessment had not been disclosed fully and truly during assessment.*
5. *That the learned Principal Commissioner of Income Tax has wrongly granted approval without application of his mind and without verifying the facts from the record before granting approval for issue of notice under section 148 of the Income Tax Act, 1961.*
6. *That the learned Commissioner of Income Tax (Appeals) has wrongly upheld the initiation of action under section 147 of the Income Tax Act on the basis of information contained in the search material found during search of a third party, which is contrary to law in view of the non-obstante clause in Section 153A/153C specifically prohibiting action under section 147 of the Income Tax Act.*

7. *That even otherwise, the initiation of proceedings under section 148 of the Income Tax Act and the consequent assessment under section 147 thereof is contrary to law in the absence of any incriminating material to form reason to believe based on the report of the Investigation Wing, which only suggests to the Assessing Officer to examine the details and only after examination, to determine whether there could be any justification for initiation of action under section 147 of the Income Tax Act. Thus, the issue of notice under section 148 of the Income Tax Act and consequent re-assessment under section 147 thereof is without the authority of law and do not provide jurisdiction to the Assessing Officer to make reassessment under section 147 of the Income Tax Act.*
8. *That the learned Commissioner of Income Tax (Appeals) has wrongly upheld the reopening on the basis of wrong or irrelevant reasons recorded for the formation of belief of escapement of income chargeable to income tax, recorded by the Assessing Officer before issue of notice under section 148 of the Income Tax Act, 1961 and also the permission from the learned Principal Commissioner of Income Tax was taken by stating wrong & irrelevant facts before him.*
9. *Whether any information based on the statement of the searched person can be relied upon without providing opportunity of cross examination of such person, as requested by the appellant.*
10. *That the learned Commissioner of Income Tax (Appeals) has wrongly made addition of Rs. 3,90,00,000/- under section 68 of the Income Tax Act.*
11. *That the learned Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the additions on account of wrongly alleged accommodation entries or credits received from wrongly alleged shell entities, merely following the investigation report and treating the vague and general information of the Investigation wing as sacrosanct, ignoring the voluminous evidence to the contrary brought on record by the assessee.*
12. *That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before the final hearing.*

GROUND NO. 1

2. Ground No. 1 is general in nature.

GROUND NOS. 2, 3, 6 to 8 AND 11

3. As per Ground No.2, the learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the Assessing Officer's action whereby he issued notice under section 148 of the Income Tax Act, 1961 (hereinafter called 'the Income Tax Act') by merely relying on third party information without application of mind and without first verifying the facts from the record. This Ground corresponds to Original Ground No. 2 and Additional Ground Nos. 1, 5 and 7, taken by the assessee company before the learned Commissioner of Income Tax (Appeals), as follows:

4. Original Ground No.2 taken before the learned Commissioner of Income Tax (Appeals):

"2. That the learned Assessing Officer has wrongly reopened the completed assessment under section 148 of the Income Tax Act."

5. Additional Ground No. 1 taken before the learned Commissioner of Income Tax (Appeals):

“That the learned Assessing Officer has wrongly relied upon third party information without application of his own mind and without verifying the facts from the record before issuing notice under section 148 of the Income-tax Act, 1961.”

6. Additional Ground No. 5 taken before the learned Commissioner of Income Tax (Appeals):

“That even otherwise, the initiation of proceedings under section 148 and the consequent assessment under section 147 is contrary to law in the absence of any incriminating material to form reason to believe based on the report of the Investigation Wing, which only directs the Assessing Officer to examine the details and only after examination, to determine whether there could be any justification for initiation of action under section 147. Thus, the issue of notice under section 148 and the consequent assessment under section 147 is without the authority of law and do not provide jurisdiction to the Assessing Officer to make reassessment under section 147.”

7. Additional Ground No. 7 taken before the learned Commissioner of Income Tax (Appeals):

“That the learned Assessing Officer has erred on facts and in law in making addition on account of wrongly alleged accommodation entries or credits received from wrongly alleged shell entities, merely following the investigation report and treating the vague and general information of the Investigation Wing as sacrosanct, ignoring the voluminous evidence to the contrary brought on record by the assessee”.

8. Ground No. 3 states that the learned Commissioner of Income Tax (Appeals) has wrongly upheld the reassessment which was bad in law, being made without following the principles of natural justice, equity and fair play. The Ground corresponds to Original Ground No. 3 and Additional Ground No. 6 taken before the learned Commissioner of Income Tax (Appeals).

9. Ground No. 6 corresponds to Additional Ground No. 4 raised before the learned Commissioner of Income Tax (Appeals). As per this Ground, the initiation of re-opening proceedings was wrongly upheld, since such initiation was based on information contained in the search material found during the search of a third party, which is contrary to the non-obstante clause contained in Sections 153A/153C of the Income Tax Act.

10. As per Ground No. 7, since there was no incriminating material available with the Assessing Officer to enable formation of any reason to believe

escapement of income chargeable to income tax, the initiation of the re-opening proceedings and the assessment order passed in consequence thereto, is not sustainable, having been passed merely on the report of the Investigation Wing of the Department, which suggested to the Assessing Officer to examine the details, and only thereafter, to determine if there could be any justification for initiation of the re-opening proceedings. This Ground No. 7 corresponds to Additional Ground Nos. 5 and 7 (reproduced in para no. 7 above) raised by the assessee company before the learned Commissioner of Income Tax (Appeals).

11. According to Ground No. 8, wrong and irrelevant reasons recorded for the formation of belief of escapement of income chargeable to income tax formed the basis of the re-opening, as also the approval from the learned Principal Commissioner of Income Tax was taken on the basis of wrong and irrelevant facts, and so, the re-opening has wrongly been upheld.

12. According to Ground No. 11, the reopening was wrongly upheld by the learned Commissioner of Income Tax (Appeals), without considering the material on record and relying on wrong allegations of accommodation entries and shell entities, and merely following the report of the Investigation Wing of the Department.

13. Ground Nos. 2, 3, 6 to 8 and 11 have been argued together by the parties, against the reopening of the completed assessment, under the umbrella of “borrowed satisfaction”, “wrong and irrelevant facts and reasons”, “violation of the principles of natural justice” and “assessment under sections 153 A/153C of the Income Tax Act”.

As such, these Grounds are being dealt with together.

OBSERVATIONS AND FINDINGS IN THE ASSESSMENT ORDER

14. In the assessment order, the Assessing Officer observed that the assessee company had filed its return

of income for the year under consideration, that is, assessment year 2012-13, at a total income of Rs. Nil, on 29.9.2012.

14.1 The Assessing Officer observed that the return was processed as such under section 143(1)(a) of the Income Tax Act, on 08.03.2014.

14.2 The Assessing Officer observed that thereafter, the assessment was completed under section 143(3) of the Income Tax Act, on 05.09.2014, at the returned income of Rs. Nil.

14.3 The Assessing Officer observed that subsequently, a search as well as survey operation under sections 132 and 133A of the Income Tax Act was conducted at various premises of persons related to the Punjab Sand Mining Auction group of cases, on 16.02.2018.

14.4 The Assessing Officer observed that the case of the assessee company belongs to the Punjab Sand Mining Auction group of cases.

14.5 The Assessing Officer observed that in this case, information had been received from the Investigation Wing of the Department, that in the State Bank of India (erstwhile Bank of Patiala) Bank Account No. 65012097085, SME Branch, Third Floor, SCO Nos. 43-48, Bank Square, Sector 17, Chandigarh, the assessee company has total credit entries of Rs. 25,83,50,000/-, including cash deposit of Rs. 71 lacs, during the financial year 2011-12 (assessment year 2012-13).

14.6 The Assessing Officer observed that on perusal of the bank statement, it was found that there are multiple credit entries in this bank account, despite the fact that the assessee company, M/s Evershine Recreation Pvt. Limited, was not undertaking any business activity during the year and it was only a shell entity having no profit earning apparatus of its own.

14.7 The Assessing Officer observed that moreover, there are multiple instances of cash deposits also in this bank account statement.

14.8 The Assessing Officer observed that the same has not been disclosed by the assessee company in its Income Tax Return.

14.9 The Assessing Officer observed that further, information was also received from the Income Tax Officer, Ward 1(5), Chandigarh, that M/s Evershine Recreation Private Limited had taken accommodation entries from the Himanshu Group of companies.

14.10 The Assessing Officer observed that thereupon, the provisions of Section 147 of the Income Tax Act were invoked by the Assessing Officer, after recording the reasons for the formation of belief of escapement of income chargeable to income tax, and notice under section 148 of the Income Tax Act was issued to the assessee company on 30.03.2019, on obtaining approval dated 29.03.2019 from the learned Principal Commissioner of Income Tax (Central), Gurgaon.

14.11 The Assessing Officer observed that in response to the said notice issued under section 148 of the Income

Tax Act, the assessee company filed its return of income on 18.04.2109, at a total income of Rs. Nil.

14.12 The Assessing Officer observed that the assessee company filed its objections dated 20.06.2019 and 02.08.2019 against the reassessment proceedings.

14.13 The Assessing Officer observed that these objections were settled / disposed of by the Assessing Officer vide letter dated 08/21.10.2019; that a search and seizure operation under section 132(1) of the Income Tax Act was carried out on the Himanshu Verma Group of cases, on 29.03.2012 by the Investigation Wing, Delhi.

14.14 The Assessing Officer observed that during the search, it was unearthed that Shri Himanshu Verma was engaged in activities of providing accommodation entries to various beneficiaries by forming numerous corporate and non-corporate entities, where the directors / partners / proprietors were his employees and close associates.

14.15 The Assessing Officer observed that one of the modus operandi of Shri Himanshu Verma was that he used to take cash from the beneficiaries, deposit the same in some of his entities' / individual bank account, routing the same and finally remitting it to the various companies of the beneficiary group in the form of share application money, share capital and unsecured loans. The Assessing Officer observed that vide notice dated 22.10.2019, the Assessing Officer required the assessee company to furnish the complete details of transactions undertaken by it with the Himanshu Group of companies during the year under consideration and copies of the Income Tax Return, Audit Report and bank account statement of the entities from whom the amount of Rs. 3,90,00,000/- had been received by it during the year, and also to produce the Directors of the Himanshu Group of companies for examination.

14.16 The Assessing Officer observed that in response, the assessee company had submitted that it

had not entered into any transaction with the Himanshu Group of companies during the year under consideration.

14.17 The Assessing Officer observed that this plea of the assessee company had been considered, but it had not been found to be correct on merits.

14.18 The Assessing Officer observed that the assessee company had received an amount of Rs. 3,90,00,000/- from the companies of the Himanshu Group during the year under consideration, in its Bank Account No. 65012097085, in the State Bank of India (erstwhile Bank of Patiala), SME Branch, Third Floor, SCO Nos. 43-48, Bank Square, Sector 17, Chandigarh, that is, an amount of Rs.1,47,00,000/- from M/s White Collar Management Services Private Limited, an amount of Rs. 1 crore from Bliss Buildcon Private Limited, an amount of Rs. 85 lacs from Omexpo Ent. Private Limited, an amount of Rs.30 lacs from Rising Portfolio India Private Limited, an amount of Rs. 20 lacs from Saffron Logistics Private Limited, and an amount of

Rs. 8 lacs from New Millennium Consultants Private Limited.

14.19 The Assessing Officer observed that statement of Shri Himanshu Verma, on oath, under section 132(4) of the Income Tax Act, had been recorded on 29.03.2012, in which, he had clearly accepted that he was managing and controlling a number of companies / firms / sole proprietary concerns, exclusively for the purposes of providing accommodation entries through cheques in lieu of cash, through more than seventy to eighty companies, firms and sole proprietary concerns, to different parties.

14.20 The Assessing Officer observed that from such statement, it was very clear that Shri Himanshu Verma was engaged in the business of providing accommodation entries to various parties.

14.21 The Assessing Officer observed that Shri Himanshu Verma had also provided the list of the said seventy to eighty companies which were controlled and

managed by him for providing the accommodation entries.

14.22 The Assessing Officer observed that the companies mentioned earlier were all those companies, through which, Shri Himanshu Verma had provided accommodation entries to the assessee company.

14.23 The Assessing Officer observed that Shri Himanshu Verma had also cited the names of the employees who were made Directors by him in his said companies.

14.24 The Assessing Officer observed that some of them were Shri Neeraj Kumar Singh (Director of White Collar Management), Shri Baljeet Singh Sandhu, (Director of Omexpo Enterprises and Shri Saurav Malhotra (Director of Saffron Logistics & Bliss Build Co. Private Limited).

14.25 The Assessing Officer observed that these persons were only his employees, which fact had been admitted by him in his statement.

14.26 The Assessing Officer observed that further, the assessee company had not provided any plausible explanation for the credit entries of Rs.3,90,00,000/- during the year under consideration, which showed that the amount credited in its Bank Account was not a genuine transaction.

14.27 The Assessing Officer observed that the assessee company had not carried out any business activity during the year, but had raised huge unsecured loans. The Assessing Officer observed that the assessee company had also failed to furnish confirmations from the parties, its Audit Report, Income Tax Return and Bank Account Statement from the parties from whom the amount had been received, and it had also failed to prove the credit worthiness of these parties.

14.28 The Assessing Officer observed that moreover, the assessee company had not produced the Directors of the Himanshu Group of companies for examination.

14.29 The Assessing Officer observed that therefore, the amount of Rs.3,90,00,000/- credited by the assessee company in its bank account during the year under consideration was being held to be the unexplained cash credits of the assessee company within the meaning of Section 68 of the Income Tax Act, and the same was being added to the income of the assessee.

14.30 The Assessing Officer observed that further, the assessee company had also received an amount of Rs.2,48,00,000/- in its bank account no.65012097085 from M/s TJR Properties Private Limited during the year under consideration.

14.31 The Assessing Officer observed that during the search and seizure operation under section 132(1) of the Income Tax Act, conducted on the Punjab Sand Mining Group of cases on 16.02.2018, it had been found that M/s TJR Properties Private Limited and M/s Evershine Resort Private Limited, on whom, search had been conducted at SCO Nos. 80-81, Fourth Floor, Sector 17-C, Chandigarh, on 16.02.2018, were shell companies that

existed only on paper and had no profit earning apparatus of their own as such, because these companies were not carrying on any kind of business activities whatsoever.

14.32 The Assessing Officer observed that during the search, statement of Shri Jagdish Rai Gupta was recorded on oath under section 132(4) of the Income Tax Act.

14.33 The Assessing Officer observed that Shri Jagdish Rai Gupta had clearly stated that M/s TJR Properties Private Limited was not involved in any kind of business activity.

14.34 The Assessing Officer observed that further, Shri Jagdish Rai Gupta had denied any knowledge of any business transactions from bank transactions carried out by M/s TJR Properties Private Limited.

14.35 The Assessing Officer observed that thus, M/s TJR Properties Private Limited was a shell company and the amount received by the assessee company from M/s TJR Properties Private Limited was not at all genuine

and its credit worthiness could not be proved under any circumstances.

14.36 The Assessing Officer observed that therefore, the amount of Rs. 2,48,00,000/- credited by the assessee company in its bank account during the year under consideration was being held to be the unexplained cash credits of the assessee company within the meaning of Section 68 of the Income Tax Act and the same was being added to the income of the assessee company.

14.37 In this manner, the Assessing Officer made total addition of Rs. 6,38,00,000/- to the income of the assessee company.

ASSESSEE'S CONTENTIONS BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)

15. In its appeal before the learned Commissioner of Income Tax (Appeals), the assessee company contended that the Assessing Officer had wrongly reopened the completed assessment of the assessee company under section 148 of the Income Tax Act and the Assessing

Officer had wrongly passed the assessment order in violation of the principles of natural justice.

15.1 The assessee contended that the Assessing Officer had wrongly relied on third party information without application of his own mind and without verifying the facts from the record before issuing the notice under section 148 of the Income Tax Act. The assessee contended that even otherwise, the initiation of proceedings under section 148 of the Income Tax Act and the consequent assessment under section 147 of the Income Tax Act was contrary to law in the absence of any incriminating material to form the reasons recorded for the formation of belief of escapement of income chargeable to income tax, based on the report of the Investigation Wing of the Department, which report only suggested to the Assessing Officer to examine the details and only after such examination, to determine whether there could be any justification for initiation of action under section 147 of the Income Tax Act.

15.2 The assessee contended that thus, the issuance of notice under section 148 of the Income Tax Act and the consequent assessment under section 147 of the Income Tax Act was beyond the authority of law, which did not provide jurisdiction to the Assessing Officer to make re-assessment under section 147 of the Income Tax Act. The assessee contended that the Assessing Officer had erred in making additions on account of wrongly alleged accommodation entries or credits received by the assessee company from wrongly alleged shell entities, merely following the Investigation Report of the Investigation Wing of the Department and treating the vague and general information contained in the report of the Investigation Wing of the Department as sacrosanct, ignoring the voluminous documentary evidence to the contrary, brought on record by the assessee company. The assessee contended that the Assessing Officer had acted illegally, merely on borrowed satisfaction.

15.3 The assessee submitted that notice issued after the expiry of four years from the end of the relevant

assessment year by the Assessing Officer, merely acting mechanically on the information supplied by the Investigation Wing of the Department about the alleged accommodation entries provided by a person to certain entities, without applying his own mind, has been held to be not justified, in the decisions in

“PCIT Vs G.Pharma India Limited”, 384 ITR 147 (Del),

“CIT Vs Meenakshi Overseas PRIVATE Limited”, 395 ITR 67 (Del),

“Panchanan Hati Vs CIT”, 115 ITR 336 (Cal),
and

“Calcutta Discount Company Limited Vs Income Tax Officer”, 41 ITR 191 (SC).

15.4 The assessee submitted that the Assessing Officer’s action of re-opening the completed assessment of the assessee company had been guided solely by the fact that there had been certain transactions between the assessee company and some persons.

15.5 The assessee submitted that the investigation conducted by the Investigation Wing of the Department

could not be the final conclusion on which reliance could be rested by the Assessing Officer.

15.6 The assessee submitted that there had to be some live link between the information relied on by the Assessing Officer and the alleged escapement of income that while forming a belief that income chargeable to tax has escaped assessment, the information so relied on and the escapement of the income have to have a direct nexus inter-se, in the absence of which, the re-assessment becomes liable to be declared null and void and quashed. The assessee contended that a perusal of the reasons for the formation of the belief of escapement of income chargeable to income tax, as recorded by the Assessing Officer in the assessee's case would show that an outright allegation has been leveled against the assessee company to be a beneficiary, whereas it is evident that there is no direct live link between the information received and the alleged escapement of income chargeable to tax.

15.7 The assessee contended that it was imperative on the assessing authority to have analyzed the information to take the case in the right direction, rather than proceeding to raise the issue on some vague suspicion. The assessee contended that in the absence of any such direct live link and necessary verification/examination by the Assessing Officer, it was evident that no application of mind had been exercised by the Assessing Officer at the time of initiating the proceedings under section 147 of the Income Tax Act.

15.8 The assessee urged that in this regard, reliance was being placed on the decisions in the cases of

“PCIT Vs Meenakshi Overseas Private Limited”,
395 ITR 67(Del),

“PCIT Vs RMG Polyvinyl (I) Limited”, 83
taxmann.com 348 (Del),

“CIT Vs Independent Media PRIVATE Limited”,
order dated 19.11.2015, passed by the Hon'ble
Delhi High Court, in ITA No. 108/2015,

“Sabh Infrastructure Limited Vs ACIT”, order
dated 25.09.2017, passed by the Hon'ble Delhi
High Court in Tax WP(C) 1357/2016,

“PCIT-6 Vs Nandan-I-Tech Limited (formerly known as M/s Garg Forgings & Castings Limited)”, decision of the Hon’ble Supreme Court in Special Leave Petition (Civil) Diary No. 19506/2018, and

“PCIT Vs M/s SNG Developers Limited”, decision of the Hon’ble Supreme Court in Special Leave Petition (Civil) Diary No. 42379/2017, dated 09.02.2018.

COMMISSIONER OF INCOME TAX (APPEALS)’S FINDINGS

16. In the impugned order, the learned Commissioner of Income Tax (Appeals) has observed, inter-alia, that the Assessing Officer, in this case, after considering the material in his possession, had recorded reasons, for the formation of belief of escapement of income chargeable to income tax, under section 147 of the Income Tax Act, on 26.03.2019, that income to the extent of Rs.25,83,50,000/- had escaped assessment. The learned Commissioner observed that thereafter, the Assessing Officer had received the approval of the learned Principal Commissioner of Income Tax, Gurgaon, under section 151 of the Income Tax Act, on 29.03.2019. The learned Commissioner observed that accordingly,

notice under section 148 of the Income Tax Act had been issued by the Assessing Officer to the assessee company. The learned Commissioner observed that the assessee company had filed its Income Tax Return, in response to the said notice issued by the Assessing Officer under section 148 of the Income Tax Act, on 18.04.2019.

16.1 The learned Commissioner observed that the assessee company had furnished its objections to the said notice, which had been disposed of by the Assessing Officer by passing a speaking order.

16.2 The learned Commissioner observed that the assessee had submitted that no prima-facie reasons recorded for the formation of belief of escapement of income chargeable to income tax existed.

16.3 The learned Commissioner observed that the assessee had submitted that the Assessing Officer's reasons recorded for the formation of belief of escapement of income chargeable to income tax were merely a mechanical reproduction of the information

received from the Investigation Wing of the Department, since the Assessing Officer had not conducted any independent enquiries in this regard.

16.4 The learned Commissioner observed that the assessee had submitted that thus, it was a case of borrowed satisfaction, without application of mind.

16.5 The learned Commissioner observed that the assessee had contended that the reasons recorded for the formation of belief of escapement of income chargeable to income tax were merely a change of opinion of the new Assessing Officer.

16.6 The learned Commissioner observed that the assessee had contended that this was so, since no adverse finding in respect of the credits received by the assessee company had been recorded by the Assessing Officer, whereas the original scrutiny assessment under section 143(3) of the Income Tax Act had been already completed on 15.09.2014.

16.7 The learned Commissioner observed that the assessee had contended that the action taken by the Assessing Officer under section 147 of the Income Tax Act was without jurisdiction, since there was no allegation that the escapement of income had occurred by reason of failure on the part of the assessee company to disclose fully and truly all material facts relevant for its assessment.

16.8 The learned Commissioner observed that the assessee had submitted that the assessee company had already furnished all the documentary evidences in respect of the six companies, from whom the advances had been received by it, before the Assessing Officer, during the original assessment proceedings and no adverse inference had been drawn there-against by the then Assessing Officer at that relevant point of time.

16.9 The learned Commissioner observed that the assessee had submitted that therefore, no re-opening of the completed assessment of the assessee company could be done beyond the period of four years.

16.10 The learned Commissioner observed that the assessee had contended that the learned Principal Commissioner of Income Tax had granted approval for re-opening of the completed assessment without application of mind.

16.11 The learned Commissioner observed that the assessee had contended that the initiation of action under section 147 of the Income Tax Act on the basis of information contained in the search material found during the search of a third party, was contrary to law in view of the non-obstante clause in Sections 153A/153C of the Income Tax Act, specifically prohibiting action under section 147 thereof.

16.12 The learned Commissioner of Income Tax (Appeals) observed that the case of the assessee had been selected for scrutiny through the Computer Aided Scrutiny Selection, the reason for such selection being "large increase in unsecured loans", during the initial assessment proceedings.

16.13 The learned Commissioner observed that the issue of increase in unsecured loans had been examined by the Assessing Officer and assessment had been made on 15.09.2014, by passing order under section 143(3) of the Income Tax Act.

16.14 The learned Commissioner observed that further, on receiving information from the Income Tax Officer, Ward-1(5), Chandigarh, vide letter No. 5566, dated 04.02.2019, that the assessee company had received credits from six paper companies of Shri Himanshu Verma, an accommodation entry provider, the Assessing Officer had recorded his reasons for the formation of belief that income chargeable to income tax had escaped assessment.

16.15 The learned Commissioner observed that a list of such paper companies had been mentioned.

16.16 The learned Commissioner observed that the said letter also enclosed an Appraisal Report in the case

of Shri Himanshu Verma and bank account statement of the assessee company for the year under consideration.

16.17 The learned Commissioner observed that as per the Appraisal Report, a search and seizure operation had been carried out on 29.03.2012 in the case of Shri Himanshu Verma, wherein, he had admitted in his statement, recorded on oath under section 132(4) of the Income Tax Act, that he had been providing accommodation entries to a number of conduits managed and controlled by him, against payment of commission at the rate ranging from 0.7% to 1.0%.

16.18 The learned Commissioner observed that in his statement, Shri Himanshu Verma had admitted that he had been running a network of seventy to eighty paper companies which, in fact, were not having any actual business and were being used only to give accommodation entries to parties.

16.19 The learned Commissioner observed that Shri Himanshu Verma had deposed in his statement that it

was for this purpose, that he had made some employees as dummy Directors in these companies, and they used to sign the cheques and other documents to provide the accommodation entries to the parties.

16.20 The learned Commissioner observed that in his statement, Shri Himanshu Verma had mentioned, in answer to Question No.15, that Neha Yadav, Daljeet Singh, Kayanat Khan, Mukesh Kumar, Saurav Malhotra, etc., were some of such employees, who were working as dummy Directors against payment of salary of amounts ranging from Rs.2000/- to Rs.5000/-.

16.21 The learned Commissioner observed that Shri Himanshu Verma had stated that these names were also appearing as Directors in the companies from whom the assessee company had taken advances during the year under consideration, for Rs.3,90,00,000/-.

16.22 The learned Commissioner observed that in answer to Question No. 15, Shri Himanshu Verma had given a list of eighty three paper companies being

managed and controlled by him, alongwith the list of bank accounts operated by him to run the activities of providing accommodation entries to parties.

16.23 The learned Commissioner observed that Shri Himanshu Verma had stated that the names of all the six companies from which the assessee company had taken advances, were included in the said list.

16.24 The learned Commissioner observed that the names of Dhanlaxmi Bank and Axis Bank were also mentioned in answer to Question No.15 by Shri Himanshu Verma, which Banks had been used by him to provide accommodation entries.

16.25 The learned Commissioner observed that through these bank accounts, the assessee had received the advances of Rs.3.90 crore from the said six paper companies.

16.26 The learned Commissioner observed that the Appraisal Report contained detailed findings and the details of the modus-operandi adopted by Shri Himanshu

Verma for the purpose of providing accommodation entries to various beneficiaries.

16.27 The learned Commissioner observed that the Assessing Officer had considered the said information alongwith the findings as contained in the Appraisal Report and had reconciled the said information with the particulars contained in the Income Tax Return.

16.28 The learned Commissioner observed that the assessee company had contended that it had submitted all the documentary evidences in respect of the said six companies, from whom the advances were received by it, before the Assessing Officer during the course of the original assessment proceedings.

16.29 The learned Commissioner observed that the assessee had contended that no adverse inference had been drawn against the said documentary evidences by the Assessing Officer in the original assessment order passed on 15.09.2014, under section 143(3) of the Income Tax Act. The learned Commissioner observed

that the assessee had urged that therefore, no re-opening of the completed assessment of the assessee company could have been done by the Assessing Officer beyond the period of four years from the end of the relevant assessment year, since all the material facts in respect of the credits received by the assessee company stood fully and truly disclosed by the assessee before the Assessing Officer during the original assessment proceedings.

16.30 The learned Commissioner observed that from the assessment record, it was found that the case of the assessee company had been selected for scrutiny through the Computer Aided Scrutiny Selection, for the reason "large increase in unsecured loans".

16.31 The learned Commissioner observed that the issue of increase in unsecured loans had been examined by the Assessing Officer and the assessment had been completed on 15.09.2014, by passing an order under section 143(3) of the Income Tax Act.

16.32 The learned Commissioner observed that in this regard, it had been observed from the Office Note appended to the said assessment order dated 15.09.2014, that therein, it was clearly stated that the case had been examined on account of large increase in unsecured loans.

16.33 The learned Commissioner observed that the said credits of Rs.3,90,00,000/- had not been reflected by the assessee company in its Balance Sheet as on 31.03.2012, under the head "Long Term Borrowings".

16.34 The learned Commissioner observed that rather, the same had been reflected under the head "Advance against land - Note-4", adjusted against fixed assets [Note-7(a) of the Balance Sheet].

16.35 The learned Commissioner observed that therefore, the said credits of Rs.3.90 crore had not been the subject-matter of examination during the original assessment proceedings.

16.36 The learned Commissioner observed that the Assessing Officer was even not having the jurisdiction to examine such credits shown as advances against land under the Computer Aided Scrutiny Selection parameters.

16.37 The learned Commissioner observed that on the strength of such facts, it could not be said that all the material facts in respect of the said credits received by the assessee company during the year under consideration had been fully and truly disclosed by the assessee before the Assessing Officer in the course of the original assessment proceedings.

16.38 The learned Commissioner observed that moreover, it was evident that no opinion had been formed by the Assessing Officer during the original assessment proceedings in respect of such credits.

16.39 The learned Commissioner observed that subsequently, the Assessing Officer had come in possession of tangible information through the letter of the Income Tax Officer Ward-1(5), Chandigarh, that the credits of Rs. 3,90,00,000/- were, in fact, in the nature of accommodation entries received by the assessee company from paper companies run by Shri Himanshu Verma.

16.40 The learned Commissioner observed that thus, in the said letter, alongwith the annexure of Appraisal Report in the case of Shri Himanshu Verma and the bank account statement of the assessee company for the year under consideration, there was prima-facie credible information in the possession of the Assessing Officer, that the assessee company had obtained accommodation entries amounting to Rs. 3,90,00,000/- from various entities of the Himanshu Verma Group, an accommodation entry provider.

16.41 The learned Commissioner observed that the said information contained the list of the six entities being operated by the said Himanshu Verma group, through whom, the assessee company had obtained the accommodation entries.

16.42 The learned Commissioner observed that the Assessing Officer was having prima-facie credible information in his possession that the assessee company had taken accommodation entries from Shri Himanshu Verma, for Rs. 3,90,00,000/-.

16.43 The learned Commissioner observed that the Assessing Officer had drawn such inference on the strength of specific information obtained consequent to the search and seizure action in the case of Shri Himanshu Verma.

16.44 The learned Commissioner observed that such information was based on the statements of Shri Himanshu Verma and other dummy Directors of the

paper companies run by him, and on the various documents seized during the course of the search.

16.45 The learned Commissioner observed that thus, there was prima-facie material in the possession of the Assessing Officer to draw the inference that income had escaped assessment within the meaning of Section 147 of the Income Tax Act.

16.46 The learned Commissioner observed that at the stage of formation of belief of escapement of income under section 147 of the Income Tax Act, it is necessary for the Assessing Officer to have with him, the existence of material leading to the recording of prima-facie reasons for the formation of belief of escapement of income chargeable to income tax, but their sufficiency cannot be examined at that stage.

16.47 The learned Commissioner observed that clearly, in the assessee's case, the Assessing Officer was having in his possession, tangible material to draw such an inference.

16.48 The learned Commissioner stated that reliance was being placed on

“Raymond Woollen Mills Versus Income Tax Officer”,
236 ITR 34 (SC),

“ACIT Versus Rajesh Jhaveri Stock Brokers Private
Limited”, 291 ITR 500 (SC), and

“Sterlite Industries (I) Limited Versus Assistant
Commissioner of Income Tax & Another”, 302 ITR
275 (Mad).

16.49 The learned Commissioner observed that at the time of re-opening, the Assessing Officer is not required to establish escapement of income, as held by the Hon'ble Supreme Court in its decision in the case of “Shri Krishana Private Limited Vs CIT”, 221 ITR 538 (SC).

16.50 The learned Commissioner observed that what is necessary to reopen an assessment is not the final verdict, but a prima-facie reason.

16.51 The learned Commissioner observed that clearly, in this case, the Assessing Officer was having

prima facie tangible material to believe that income chargeable to tax had escaped assessment.

16.52 The learned Commissioner observed that it was not a case where the Assessing Officer had acted mechanically merely on the basis of information received from the Investigation Wing of the Department, or from the Income Tax Officer, Ward-1(5) Chandigarh.

16.53 The learned Commissioner observed that the Assessing Officer's action of re-opening the completed assessment of the assessee company was based on specific information giving details of the accommodation entries received by the assessee company through the entry provider, with amount, identity involved and details of the modus operandi adopted.

16.54 The learned Commissioner observed that there was due application of mind by the Assessing Officer independently before recording the reasons for the formation of belief of escapement of income chargeable to income tax.

16.55 The learned Commissioner observed that subsequent to obtaining information from the Income Tax Officer, Ward-1(5), Chandigarh, the Assessing Officer had gone through the relevant material in the shape of the statement of Shri Himanshu Verma, recorded under section 132(4) of the Income Tax Act, the Appraisal Report and the particulars as contained in the Income Tax Return of the assessee company, in the light of the information obtained.

16.56 The learned Commissioner observed that thus, the Assessing Officer had based his belief of escapement of income upon such tangible information.

16.57 The learned Commissioner observed that the material available with the Assessing Officer at the time of initiating proceedings for reopening the completed assessment of the assessee company under section 147 of the Income Tax Act showed that there was a live link between the assessee company and the alleged accommodation entries taken by it through the entities

managed and controlled by Shri Himanshu Verma, with specific details of transactions and the belief formed.

16.58 The learned Commissioner observed that therefore, the Assessing Officer had a prima facie belief that income chargeable to tax had escaped assessment.

16.59 The learned Commissioner further observed that the assessee had contended that the reasons recorded for the formation of belief of escapement of income chargeable to income tax were merely a change of opinion of the new Assessing Officer, since no adverse finding in respect of the credits received by the assessee company had been recorded by the Assessing Officer in the original scrutiny assessment proceedings, whereas the original assessment order under section 143(3) of the Income Tax Act had already been finalized and passed on 15.09.2014; that however, this argument of the assessee company did not carry any merit; that the Assessing Officer acquires jurisdiction to reopen an assessment under section 147 of the Income Tax Act on the basis of tangible information in his possession, subsequent to

which, he has reasons for the formation of belief of escapement of income chargeable to income tax, which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income chargeable to tax has escaped assessment; that therefore, the case of the assessee company was squarely covered by the proviso to Section 147 of the Income Tax Act; that the Assessing Officer initiated re-assessment proceedings because fresh tangible material had come to his knowledge or possession, which material exposed the untruthfulness and lack of genuineness of the credits of Rs. 3,90,00,000/- received by the assessee company during the year under consideration, and introduced by it in the books of account, in the guise of advances against sale of land; that in such a situation, it could not be dubbed to be a case of change of opinion or as one of the drawing of a different inference by the Assessing Officer from the same facts as were earlier available, but that it

was a case of the Assessing Officer having acted on the fresh information which came into his possession.

16.60 The learned Commissioner of Income Tax (Appeals) stated that reliance was being placed on the judgement of the Hon'ble Delhi High Court in the case of "Chetan Sabharwal Vs ACIT", 110 taxmann.com 57 (Del), wherein, it had been held that where the original assessment order is silent on the aspect on which the re-opening of the completed assessment had been made, it cannot be said that the reason to believe escapement of income constituted a change of opinion; that moreover, the issue of genuineness of the credits of Rs. 3,90,00,000/- was never a subject-matter of examination before the Assessing Officer during the original assessment proceedings; that also, even if such details were furnished during the original assessment proceedings, the Assessing Officer was not having jurisdiction to examine the same, as the case had been picked up for scrutiny through the Computer Aided Scrutiny Selection for the reason of large increase in

unsecured loans; that thus, there was no question of change of opinion on this issue, since no opinion had been formed by the Assessing Officer in the first place during the original assessment proceedings. The learned Commissioner of Income Tax (Appeals) observed that reliance in this regard was being placed on the decision of the Hon'ble Supreme Court in the case of "Ess Ess Kay Engineering Co. Private Limited Vs CIT", 247 ITR 818 (SC).

16.61 The learned Commissioner of Income Tax (Appeals) further observed that the examination of the material available on record by the Assessing Officer, in the light of the findings of the search in the case of Shri Himanshu Verma, had revealed that the assessee company had received accommodation entries in the garb of advances on account of sale of commercial space. The learned Commissioner of Income Tax (Appeals) observed that thus, the decision of the Hon'ble Delhi High Court in the case of "Vedanta Limited Vs DCIT", 114 taxmann.com 510 (Del) was squarely applicable; that

therein, it had been held that where the Assessing Officer has initiated the re-assessment proceedings on the ground that the assessee had received accommodation entries from a sham concern, the validity of the re-assessment proceedings deserves to be upheld. The learned Commissioner of Income Tax (Appeals) observed that reliance in this regard was also being placed on the Hon'ble Delhi High Court's decision in the case of "Agriculture Investments Limited Vs ACIT", 333 ITR 146 (Del).

16.62 The learned Commissioner of Income Tax (Appeals) observed that thus, in the case of the assessee company, the Assessing Officer had initiated the re-assessment proceedings on the basis of tangible material which was in his possession, received by him subsequent to the passing of the original assessment order, which material was specific, relevant and reliable, and after recording the reasons recorded for the formation of belief of escapement of income chargeable to income tax for formation of his own belief that in the original

assessment proceedings, the assessee company had not disclosed truly and fully, all material facts necessary for its assessment and, therefore, income chargeable to tax had escaped assessment.

16.63 The learned Commissioner of Income Tax (Appeals) stated that reliance was being placed on the judgment rendered by the Hon'ble Supreme Court in the case of "Phool Chand Bajrang Lal and another Vs Income Tax Officer and another", 203 ITR 456 (SC), wherein, it was held that the jurisdiction of the Income Tax Officer to re-assess income arises if he has, in consequence of specific and relevant information, coming into his possession subsequent to the previously concluded assessment, reason to believe that income chargeable to tax had escaped assessment, and he may start re-assessment proceedings either because some fresh facts come to light, which were not previously disclosed, or some information with regard to facts previously disclosed, comes into his possession, which tends to expose the untruthfulness of those facts, relating to the

inference that the assessee had not disclosed the material facts truly and fully and, therefore, income chargeable to tax had escaped assessment; that from the facts of the case of the assessee company, it was evident that the Assessing Officer, subsequent to the completion of the original assessment proceedings, had come in possession of fresh material which prima-facie exposed the untruthfulness regarding the genuineness of the credits of Rs.3,90,00,000/- received by the assessee company during the year; that therefore, even if the issue of advance from the six paper companies had been examined by the Assessing Officer during the initial assessment proceedings, the later Assessing Officer had initiated re-assessment proceedings in accordance with the provisions of the Income Tax Act by forming his belief of escapement of income chargeable to tax, on the basis of tangible material which came to his possession subsequent to the completion of the original assessment proceedings, which led to the prima-facie inference that income chargeable to tax had escaped assessment; and that moreover, the provisions of clause (c) of Explanation

2 to Section 147 of the Income Tax Act are applicable to the facts of the case, as income chargeable to tax had been under-assessed.

16.64 The learned Commissioner of Income Tax (Appeals) further observed that the assessee company had been provided with a copy of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, which contained the entire basis and gist of the material relied on by the Assessing Officer for forming the belief of escapement of income; that the assessee company had filed its objections on 20.06.2019/02.08.2019; that from the record, it had been found that the said objections had been disposed of by the Assessing Officer vide letter dated 18.10.2019, by passing a detailed order; that thus, there was no merit in the assessee's submission that the Assessing Officer had not made available to it the relevant material forming the basis of the Assessing Officer's belief of escapement of income; that it had been further noted that the Assessing Officer had not merely relied on the

information received from the Income Tax Officer / the Investigation Wing, but he had independently considered the facts of the case in the light of Shri Himanshu Verma's statement recorded on oath under section 132(4) of the Income Tax Act, the contents of the Appraisal Report, the copy of the bank statement of the assessee company and the particulars of the Income Tax Return furnished by the assessee, before drawing his own independent belief; that thus, there was application of mind by the Assessing Officer before recording the reasons recorded for the formation of belief of escapement of income chargeable to income tax under section 147 of the Income Tax Act; that the Assessing Officer had made available all the relevant material to the assessee company through the copy of the reasons recorded for the formation of belief of escapement of income chargeable to income tax; and that the Assessing Officer had disposed of the objections raised by the assessee in a detailed manner, vide letter dated 18.10.2019, having comprehensively dealt with the objections so raised by the assessee company.

16.65 The learned Commissioner of Income Tax (Appeals) stated that reliance was being placed on the decisions rendered by the Hon'ble Supreme Court in

“Thakorbhai Maganbhai Patel Vs Income Tax Officer”, 245 taxman 333 (SC), and

“Home Finder Housing Limited Vs Income Tax Officer”, 256 taxman 59 (SC).

16.66 It was further observed by the learned Commissioner of Income Tax (Appeals), that the facts of the decisions relied on by the assessee company were different from the facts of the case of the assessee; that the Assessing Officer, on the basis of subsequent tangible information available before him, had recorded the facts while recording the reasons for the formation of belief of escapement of income chargeable to income tax; that the Assessing Officer had considered the information, had gone through the record and had thereafter recorded the reasons for the formation of belief of escapement of income chargeable to income tax, by forming his own independent belief; that such belief cannot be said to be a borrowed belief; and that further,

it had also been found that the Assessing Officer had perused the return of income already filed by the assessee company, before framing the reasons recorded for the formation of belief of escapement of income chargeable to income tax.

16.67 The learned Commissioner of Income Tax (Appeals) also observed that the assessee company had contended that the reassessment ought to have been framed only under section 153C of the Income Tax Act and not under section 147/148 of the Income Tax Act; that the Assessing Officer had made the assessment under section 147/148 of the Income Tax Act, based on the findings in the case of Shri Himanshu Verma, as a result of search in his case on 29.03.2012; that the provisions of Section 153C of the Income Tax Act state that where the Assessing Officer of the searched person is satisfied that any money, bullion, etc., books of account, or documents seized belong to a person other than the searched person, such money, bullion, etc., books of account, or documents seized would be handed

over to the Assessing Officer of such other person and the Assessing Officer of such other person would proceed against such other person by issuing notice in accordance with the provisions of Section 153A of the Income Tax Act; that however, in this case, the statement recorded under section 132(4) of the Income Tax Act and the documents found during the search under section 132 of the Income Tax Act, in the case of Shri Himanshu Verma, conducted on 29.03.2012, which had been used by the Assessing Officer as a corroborative evidence, did not belong to the assessee company at all; that the words "belong to" have to be construed in a narrower sense, as they are different from the words "relate to" or "pertain to"; and that the pre-amended provisions of Section 153C of the Income Tax Act are applicable to the facts of the present case.

16.68 The learned Commissioner of Income Tax (Appeals) observed that reliance was being placed on the decision in the case of "Shailesh S. Patel Vs Income Tax Officer, Ward-5, Palanpur", 97 taxmann.com 570 (Ahd);

and that therefore, there was no merit in the plea of the assessee that the assessment in this case should have been framed under section 153C and not under section 147/148 of the Income Tax Act.

ASSESSEE'S SUBMISSIONS BEFORE US

17. Before us, the learned Counsel for the assessee has submitted that during the year in question, the assessee had purchased land for a commercial complex at Chandi Mandir, Sector 1, District Panchkula and had also deposited Rs. 21.86 crore as Change of Land Use Fees with the Government of Haryana, and had obtained license from the Director, Town and Country Planning, Haryana for the commercial project.

17.1 The learned Counsel for the assessee has submitted that a total cost of Rs. 28.29 crore was incurred under the project up to 31.03.2012.

17.2 The learned Counsel for the assessee has submitted that a booking advance of Rs. 6.65 crore was received during the year, which includes the advance of

Rs. 3.90 crore received from the six companies, as advance against sale of commercial space under the project, which is the subject-matter of the assessee's appeal.

17.3 The learned Counsel for the assessee has submitted that the assessee had raised a term loan from the Bank to finance the cost of the project and that the outstanding balance as on 31.03.2012 was amounting to Rs. 10,12,31,507/-, which is evident from the Balance Sheet of the assessee company, a copy whereof has been filed in the assessee's Paper Book ('APB', for short) at pages 68-76.

17.4 The learned Counsel for the assessee has contended that the re-opening of the completed assessment under section 148 of the Income Tax Act was done by the Assessing Officer on the basis of information received from a third party, without any verification thereof, which amounts to nothing but borrowed satisfaction, without application of mind by the Assessing Officer.

17.5 The learned Counsel for the assessee has submitted that Para 11 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax shows that the Assessing Officer has relied on the letter dated 04.02.2019 of the Income Tax Officer, Ward 1(5), Chandigarh, which states that a search had been conducted on 29.03.2012 on the premises of Shri Himanshu Verma, who was engaged in providing accommodation entries.

17.6 The learned Counsel has submitted that in Para 11.1 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer observes that as per information, M/s Evershine Recreation had taken accommodation entries of Rs. 3,90,00,000/- from the Himanshu Group, as per details given.

17.7 The learned Counsel for the assessee company has contended that while so observing, the Assessing Officer did not make reference to any list of companies

alleged to be controlled and managed by Shri Himanshu Verma.

17.8 The learned Counsel for the assessee has submitted that in Para 10 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer has placed reliance on the statement of Shri Himanshu Verma.

17.9 The learned Counsel for the assessee has contended that in this statement, the names of the alleged six paper companies were not mentioned by Shri Himanshu Verma. The learned Counsel for the assessee has submitted that though this statement mentions that there were middlemen/clients, no name of any such middleman or his statement was relied on, much less provided to the assessee.

17.10 The learned Counsel for the assessee company has contended that neither the names of the Directors of the alleged six companies, nor their statements were considered by the Assessing Officer.

17.11 The learned Counsel for the assessee has submitted that though Shri Himanshu Verma had stated that he was controlling seventy to eighty companies, this averment was merely a general reply and no list of the said seventy to eighty companies was produced or even referred to, and it was also not brought on record as to whether the alleged six companies were out of such list.

17.12 The learned Counsel for the assessee has contended that the Assessing Officer did not refer to the assessment record and the original assessment proceedings, wherein the complete details and documents for the transactions, as furnished by the assessee company, had been thoroughly examined by the Assessing Officer, while completing the original assessment on 15.09.2014.

17.13 The learned Counsel for the assessee has contended that moreover, the amount received from these six companies was advanced against sales made by relinquishing the rights in the property.

17.14 The learned Counsel for the assessee has contended that in fact, the assessee company had never entered into any transaction with Shri Himanshu Verma, who was not a Director in any of the said alleged six companies.

17.15 The learned Counsel for the assessee has submitted that the statements of the Directors of the alleged six companies were neither relied on by the Assessing Officer, nor provided to the assessee.

17.16 The learned Counsel for the assessee stated that reliance was being placed on the decision of the Hon'ble Delhi High Court in the case of "PCIT Vs Meenakshi Overseas Private Limited", 395 ITR 677 (Del).

17.17 The learned Counsel for the assessee contended that the reasons recorded for the formation of belief of escapement of income chargeable to income tax, as recorded by the Assessing Officer, do not, in fact, contain any reasons recorded for the formation of belief of escapement of income chargeable to income tax, but the conclusions of the Assessing Officer, one after the other.

17.18 The learned Counsel for the assessee has averred that there is no independent application of mind by the Assessing Officer to any tangible material which forms the basis of the reasons recorded for the formation of belief of escapement of income chargeable to income tax. The learned Counsel for the assessee has averred that the conclusions of the Assessing Officer are, at best, merely a reproduction of the conclusions contained in the Investigation Report of the Investigation Wing of the Department.

17.19 The learned Counsel for the assessee submitted that therefore, the Assessing Officer's satisfaction is, in fact, nothing other than a mere borrowed satisfaction.

17.20 The learned Counsel for the assessee company contended that in the decision in the case of "RMJ Polyvinyl Limited", 396 ITR 5 (Del), it has been held by the Hon'ble Delhi High Court, that the information received from the Investigation Wing of the Department cannot be considered to be any tangible material per se, when there is no further enquiry having been undertaken

thereon by the Assessing Officer and there is no live link between the tangible material and the Assessing Officer's reasons recorded for the formation of reason belief of escapement of income chargeable to income tax.

17.21 The learned Counsel for the assessee submitted that reliance was also being placed on the decision of the Hon'ble Delhi High Court in the case of "PCIT-4 Versus G & G Pharma India Limited", 384 ITR 147 (Del).

17.22 The learned Counsel for the assessee submitted that reliance was also being placed on the decision of the Hon'ble Delhi High Court in the case of "Sabh Infrastructure Versus ACIT", 398 ITR 198 (Del).

17.23 The learned Counsel for the assessee contended that reliance was further being placed on the order of the Chandigarh Bench of the Tribunal in the case of "Smt. Anju Jindal Versus ACIT", order dated 17.03.2023 passed by the Chandigarh ITAT, in ITA No. 1341/CHD/2018.

17.24 The learned Counsel for the assessee contended that reliance was further being placed on the order of the

Chandigarh Bench of the Tribunal in the case of “Smt. Sudesh Rani Versus Income Tax Officer, Ward 2(3), Ludhiana”, order dated 12.01.2023, passed by the Chandigarh ITAT, in ITA No. 1338/CHD/2018.

17.25 On Ground No. 3, raised before us for violation of the principles of natural justice by the Assessing Officer, the learned Counsel for the assessee contented that during the course of the assessment proceedings, the assessee, vide letter dated 20.06.2019, a copy whereof has been filed at APB 31-50, to which our attention was being drawn, requested the Assessing Officer to provide to the assessee, the information / basis of the letter dated 04.02.2019, of the Income Tax Officer, Ward 1(5), Chandigarh, and also requested for being provided with a copy of the statement of Shri Himanshu Verma, and for also being provided an opportunity to cross examine Shri Himanshu Verma.

17.26 The learned Counsel for the assessee stated that while disposing of the assessee’s preliminary objections by virtue of letter / order dated 18.10.2019

(APB 53), the Assessing Officer stated that the information received from the Income Tax Officer, Ward 1(5), Chandigarh was not required to be provided to the assessee alongwith the copy of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, recorded under section 147 of the Income Tax Act.

17.27 The learned Counsel for the assessee submitted that this is in utter violation of the provisions of Section 142(3) of the Income Tax Act, as the documents relied on by the Assessing Officer were never provided to the assessee.

17.28 The learned Counsel for the assessee averred that as such, the statement and material received and relied on by the Assessing Officer cannot be relied on and the same has to be ignored; and that the assessment done by the Assessing Officer, making addition by placing reliance on such material without confronting it to the assessee company, is liable to be declared null and void ab initio and it requires to be cancelled as such.

17.29 The learned Counsel for the assessee sought to place reliance on the decision of the Hon'ble jurisdictional Punjab and Haryana High Court in the case of "Commissioner of Income Tax, Patiala II Versus Sham Lal", 127 ITR 816 (P&H), wherein, it has been held that the Tribunal was right in law in sustaining the annulment of the assessments and in not substituting the annulment order by an order setting aside the assessments. It was held therein, that the assessee is, in law, entitled to rebut the material placed before him if he so chooses and any material placed on the record without notice to the assessee with regard thereto cannot be relied upon by the Revenue, and that it would thus be seen that in view of the finding of the Tribunal that the material placed on the record in violation of the principles of natural justice could not be relied upon and that in fact, there was no material to come to the conclusion that the assessee was a partner in the firm, the only correct course open to the Tribunal was to annul the assessment order passed by the Income Tax Officer.

17.30 The learned Counsel for the assessee company has further sought to place reliance on

“Micro Marbles Private Limited Versus Office of the Income Tax Officer”, 2023 (1) TMI 282 (Raj);

“Sabh Infrastructure Versus ACIT”, 398 ITR 198 (Del);

“Tata Capital Financial”, 443 ITR 127 (Bom);

“ACIT Versus M/s Sur Buildcon Private Limited”, [2021] 90 ITR (Trib) 300 (ITAT [Del]); and

“Kishinchand Chellaram Versus Commissioner of Income Tax, Bombay City II”, 125 ITR 713 (SC),

wherein, it has been held that “It will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of Punjab National Bank Limited to the Income Tax Officer, no reliance could be placed on it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross-examine the manager of the bank could, in the circumstances, be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be

taken into account as evidence. But before the Income Tax authorities could rely on it, they were bound to produce it before the assessee, so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. We are clearly of the view that the letters dated 18th February, 1955, and 9th March, 1957, did not constitute any material evidence which the Tribunal could legitimately take into account for the purpose of arriving at the finding that the amount of Rs. 1,07,350/- was remitted by the assessee firm, and if these two letters are eliminated from consideration, it is obvious that there was no material evidence at all before the Tribunal which could support this finding.”

17.31 In support of Ground No. 8, the learned Counsel for the assessee company contended before us that the reopening of the completed assessment in the case of the assessee by the Assessing Officer is based on the assumption of wrong and irrelevant facts and it is,

therefore, liable to be annulled. The learned Counsel for the assessee referred to Para 2 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening on the Punjab Sand Mining Auction in the financial year 2017-18 and asserted that such reference to an event of the financial year 2017-18 is totally irrelevant for reopening of the assessment of the financial year 2011-12, relevant to the assessment year 2012-13 in the assessee's case.

17.32 The learned Counsel for the assessee stated that there is no connection whatsoever of the assessee company with the Sand Mining Auction and the H1 bidders, Sh Amit Bahadur, Sh Kulwinder Paul Singh, Sh. Ajitpal Singh, Sh. Gurinder Singh and Sh. Balraj Singh.

17.33 The learned Counsel for the assessee averred that in Para 3 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer has tried to convey that Shri Triloki Nath Singla is the common link between the H1 bidders, as the paper work for them is handled by him.

The learned Counsel asserted that this is a fact which is totally irrelevant to the reopening of the assessee's case.

17.34 The learned Counsel for the assessee submitted that as per Para 4 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the search action was mainly focused on the flow of funds used in the benami transaction involved in the e-auction, and the earnest money was paid by five persons, who have no connection whatsoever with the assessee company.

17.35 The learned Counsel for the assessee company stated that similarly, reference to the Income Tax Returns of these five persons has no relevance in the case of the assessee company. The learned Counsel for the assessee contended that moreover, no money has flowed from the assessee company to the Mining Business, even in the assessment year 2018-19.

17.36 The learned Counsel said that in Para 6 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the

Assessing Officer has stated that during the search and in the post search investigation, numerous bank accounts owned by Sh. Triloki Nath Singla and Sh. Sahil Singla were unearthed and it was seen that funds were used in e-auction of the sand mines.

17.37 The learned Counsel for the assessee stated that this is a wrong observation, as no such bank account was unearthed during the search, which bank account had not been disclosed.

17.38 The learned Counsel for the assessee stated that there is no mention of any bank account number, or the date on which the funds were utilized.

17.39 The learned Counsel for the assessee stated that the Sand Mining auction was undertaken in the financial year 2017-18, and this is not applicable to the assessee company, which has never invested any amount in sand mining.

17.40 The learned Counsel for the assessee stated that in Paras 7 and 8 of the reasons recorded for the

formation of belief of escapement of income chargeable to income tax, the Assessing Officer relied on Shri Triloki Nath Singla's reply dated 16.06.2018, wherein, he did not mention the name of the company, though, according to the Assessing Officer, he was a Director in this company.

17.41 The learned Counsel for the assessee stated that while doing so, the Assessing Officer ignored the fact that Shri Triloki Nath Singla was not a Director in this company for the period from 28.03.2017 to 23.10.2018.

17.42 As per the learned Counsel for the assessee company, the Assessing Officer referred, in Para 9 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded, that the assessee company is a shell company, as it was not doing any business during the year.

17.43 The learned Counsel for the assessee has contended that this is totally wrong, as during the year under consideration, the assessee company had

purchased land at Chandi Mandir and had obtained Letter of Intent from the Government of Haryana after deposit of Change of Land Use Fees of Rs. 17.44 crore.

17.44 The learned Counsel for the assessee stated that the assessee company's total investment in fixed assets as on 31.03.2022 was of Rs. 28.29 crore. Our attention was drawn to APB, Page 71 in this regard.

17.45 The learned Counsel for the assessee averred that in Para 10 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the total credits in the Bank are mentioned at Rs. 25,83,50,000/-.

17.46 The learned Counsel for the assessee has contended that this is wrong, as in fact, the total amounts of credit in the Bank were of Rs.27,83,50,000/- In this respect, he drew our attention to page 113 of the order passed by the learned Commissioner of Income Tax (Appeals). According to the learned Counsel for the assessee, reliance by the Assessing Officer, in Para 11 of the reasons recorded for the formation of belief of

escapement of income chargeable to income tax, on the information received from the Income Tax Officer, Ward 1(5), Chandigarh, about the search on Sh Himanshu Verma, mentioning seventy to eighty companies, without linking the six companies with the seventy to eighty companies and without linking with the statement of the directors of these six companies and referring to the assessments of these six companies, is totally unjustified.

17.47 The learned Counsel for the assessee has averred that in Para 12 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, it was wrongly stated by the Assessing Officer, that during the post-search enquiries, Bank Account No. 65012097085, SBI, Chandigarh was not disclosed by Shri Triloki Nath Singla, ignoring the fact that the complete copy of bank transactions was verified by the Assessing Officer under section 143(3) of the Income Tax Act during the original assessment. Reference has been made to APB, Pages 6 and 10.

17.48 As per the learned Counsel for the assessee, in Para 13 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer has stated that the assessee company is a shell company not undertaking any business.

17.49 The learned Counsel for the assessee states that this is contrary to the records submitted by the assessee before the Assessing Officer during the original assessment proceedings.

17.50 The learned Counsel for the assessee has referred to the copy at APB, Page 8, showing that the assessee has already purchased land and that Letter of Intent stands issued from the Government of Haryana.

17.51 The learned Counsel for the assessee has contended that the Assessing Officer, in Para 14 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, has stated that the assessee had not disclosed, fully and truly, all material facts necessary for, in its return of

income, ignoring the proviso to section 147 of the Income Tax Act, as per which, reopening of a completed assessment is permissible beyond four years of the end of the relevant assessment year, only if there is a failure on the part of the assessee to disclose material facts during the assessment proceedings.

17.52 The learned Counsel has submitted that moreover, the Assessing Officer has not stated as to what it is that has not been disclosed. The learned Counsel for the assessee has relied on the decision of the jurisdictional Hon'ble Punjab and Haryana High Court in the case of "CIT vs. Atlas Cycle Industries", 180 ITR 319 (P & H), wherein, it has been held that

"we are of the view that the Tribunal was right in cancelling the reassessment, as both the grounds on which the reassessment notice was issued, were not found to exist, and the moment such is the position, the Income Tax Officer does not get the jurisdiction to make a reassessment".

17.53 The learned Counsel for the assessee has also sought to place reliance on the decision of the Hon'ble Bombay High Court in the case of "Sagar Enterprises

Versus ACIT”, (2002) 257 ITR 335 (Guj) and in the decision in “Dhiraj Lal Girdharilal Versus Commissioner of Income Tax, Bombay”, 78 ITR 657 (Bom), wherein, it has been held that it is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding; and that such a finding is vitiated because of the use of inadmissible material and thereby, an issue of law arises.

17.54 The learned Counsel for the assessee has further sought to place reliance on the decision of the Hon’ble Allahabad High Court in the case of “S. R. Cold Storage Versus Union of India and Others”, 448 ITR 37 (All), wherein, it has been held that it is settled law that if a public functionary acts maliciously or oppressively and the exercise of power results in harassment and agony, then it is not an exercise of power, but its abuse; that no law provides protection against it; that harassment by public authorities is socially abhorring

and legally impermissible, which causes more serious injury to society; and that in modern society, no authority can arrogate to itself the power to act in a manner which is arbitrary. It was held that "In a recent judgment dated August 3, 2022 in 'NABCO Products Private Limited Versus Union of India', [2022] 447 ITR439 (All), Writ Tax No. 997 of 2022, this Court considered the prevailing state of affairs in assessment matters and in paragraphs 6 and 7 observed that the prevailing state of affairs clearly reflects that in the absence of any effective system of the accountability of the erring officers, the harassment of the assesses and breach of principles of natural justice by the officers is resulting in an uncontrolled situation. The practice of frequently violating the principles of natural justice, non-consideration of replies of assesses on one pretext or the other or rejecting it with one or two line orders without recording reasons for rejection, is gradually increasing, which needs to be taken care of immediately by the respondents at the highest level, otherwise the prevailing situation of arbitrary approach and breach of

principles of natural justice may not only adversely affect the assesses who pay revenue to the Government, but also may develop a perception amongst people / assesses that it is difficult to get justice from the authorities in statutory proceedings”.

17.55 The learned Counsel for the assessee company has also sought to place reliance on the decision of the Hon’ble Bombay High Court in the case of “Ankita A. Choksey Versus Income Tax Officer and Others”, 411 ITR 207 (Bom). Therein, it was held that it is a settled legal position that the Assessing Officer acquires jurisdiction to issue a reopening notice only when he has reason to believe that income chargeable to tax has escaped assessment. It was held that this basic condition precedent is applicable whether the return of income was processed under section 143 (1) of the Income Tax Act, 1961, by intimation, or assessed by scrutiny under section 143 (3) of the Act.

17.56 It was held that further, the reasons to believe that income chargeable to tax has escaped assessment must be correct on facts.

17.57 It was held that if the facts, as recorded in the reasons are not correct and the assessee points this out in its objections, the order on the objections must deal with it and prima facie, establish that the facts stated by the Assessing Officer in the reasons are correct.

17.58 It was held that without dealing with the assertion of the assessee that the correct facts are not as recorded in the reasons, it would be safe to draw an adverse inference against the Revenue.

17.59 It was held that even in cases where the return of income has been accepted in the assessment under section 143 (1) of the Income Tax Act, 1961, the assessment can be reopened under section 147 only when the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment.

17.60 It was held that the mere fact that the return has been processed under section 143 (1) does not give the Assessing Officer a carte blanche to issue a reopening notice under section 148.

17.61 It was held that the condition precedent of reason to believe that income chargeable to tax has escaped assessment on correct facts, must be satisfied by the Assessing Officer so as to issue the reopening notice.

17.62 The learned Counsel for the assessee has contended that in the present case, the Assessing Officer has proceeded on fundamentally wrong facts to come to the erroneous belief / conclusion that income chargeable to tax has escaped assessment.

17.63 The learned Counsel for the assessee further sought to place reliance on “Baba Kartar Singh Dukki Educational Trust Versus Income Tax Officer, Ward II(1), Ludhiana”, 2015 (5) TMI 1200 : (2016) 158 ITD 965, to the effect that whether a complete go-bye to the quasi-

judicial function has been provided under the Income Tax Act, 1961, and participation of assesseees in proceedings under Section 148A or 148 or 147 of the Income Tax Act, 1961 would remain an empty formality, inasmuch as the Assessing Officer would create liability on assesseees only on the basis of data fed in the data base / portal of the Department and would not like to adjudicate the matter in accordance with law, so as to take the risk of initiation of disciplinary proceedings against himself.

17.64 The learned Counsel for the assessee finally stated that Assessing Officer, while recording his reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening, not only relied on wrong facts, but also used irrelevant facts to create a hype and sensationalize the reasons recorded for the formation of belief of escapement of income chargeable to income tax to influence the learned Principal Commissioner of Income Tax for seeking approval.

DEPARTMENT'S STAND BEFORE US

18. On the other hand, the learned CIT (DR) has contended that the assessee has submitted that the facts mentioned in the reasons recorded for the formation of belief of escapement of income chargeable to income tax for re-opening are wrong and irrelevant.

18.1 The learned CIT (DR) has submitted that this is not correct.

18.2 The learned CIT (DR) has contended that nothing mentioned in the factual matrix of the reasons recorded for the formation of belief of escapement of income chargeable to income tax is either wrong or irrelevant. The learned CIT (DR) has contended that otherwise too, irrelevancy of facts will not make facts wrong, unless the re-opening is based on wrong material facts.

18.3 The learned CIT (DR) has submitted that Para nos. 1 to 7 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax

build a background to point out defaults committed by the relevant persons.

18.4 The learned CIT (DR) has contended that in Para 8 of the reasons recorded by the Assessing Officer for formation of belief of escapement of income chargeable to tax, the entire premise on which the re-opening is based, has been narrated.

18.5 The learned CIT (DR) has averred that the whole dispute is regarding disclosure of Bank Account No.65012097085.

18.6 The learned CIT (DR) has asserted that though the assessee admits that the account was concealed before the DDIT, it contends that such concealment was not a valid reason for re-opening.

18.7 The learned CIT (DR) has contended that the assessee company claims that this bank account was truly disclosed in the original assessment proceedings

18.8 The learned CIT (DR) has submitted that this claim is false and baseless.

18.9 The learned CIT (DR) has contended that as seen from the assessment record, in the original assessment proceedings, the assessee company had filed only a one-liner reply, in which details of bank accounts are given. The learned CIT (DR) has contended that this may be confirmed from Pages 6, 7 & 10 of the assessee's Paper Book.

18.10 The learned CIT (DR) has averred that a single line reply on one sheet, mentioning the Bank Account number, has been given.

18.11 The learned CIT (DR) has submitted that the account number mentioned during the assessment proceedings is different from the account number stated in the reasons recorded for the formation of belief of escapement of income chargeable to income tax.

18.12 The learned CIT (DR) has submitted that apart from a wrong bank account number, there is not even an iota of detail regarding the bank account of the assessee,

in the assessment proceedings under section 143(3) of the Income Tax Act.

18.13 The learned CIT (DR) has contended that no bank statement or any other bank account, whatsoever, was ever furnished.

18.14 The learned CIT (DR) has asserted that given these facts, the entire case of the assessee falls apart and the bank account remains concealed / undisclosed in the original assessment proceedings.

18.15 The learned CIT (DR) has asserted that it has been stated that Shri Triloki Nath Singla was then the Director of the company during the original assessment proceedings and he had represented the case before the Assessing Officer.

18.16 The learned CIT (DR) has stated that thus, concealment has rightly been pointed out by the Assessing Officer, in his reasons recorded for the formation of belief of escapement of income chargeable to income tax, and in that sense, the background contained

in Para nos. 1 to 7 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax becomes wholly relevant and valid.

18.17 The learned CIT (DR) has contended that this also explains the correctness of Paras 9 and 10 of the reasons recorded by the Assessing Officer for forming his belief of escapement of income chargeable to tax.

18.18 The learned CIT (DR) has submitted that the whole perspective shifts in favour of the Department in the face of the non-disclosure of true and material facts by the assessee in the original assessment proceedings and thus, by operation of law, the proviso to Section 147 of the Act becomes applicable.

18.19 The learned CIT (DR) has averred that in such a scenario, no case law can come to the rescue of the assessee.

18.20 The learned CIT (DR) has contended that the assessee has pointed out that there is a difference of Rs.2 crore between the credit entries as mentioned in the

reasons recorded for the formation of belief of escapement of income chargeable to income tax and as stated by the assessee.

18.21 The learned CIT (DR) has stated that however, this is only a case of oversight in totaling or calculation.

18.22 The learned CIT (DR) has contended that when the huge bank account statement runs into numerous pages, such mistakes of calculation are normal, but the fact remains that the said bank account was not disclosed.

18.23 The learned CIT (DR) has maintained that therefore, the Assessing Officer is within his rights to assume that all the credit entries are unaccounted, especially for forming the reasons recorded for the formation of belief of escapement of income chargeable to income tax, for which, only a prima facie satisfaction is required. The learned CIT (DR) has sought to place reliance on “Raymond Woollen Mills Versus Income Tax Officer & others”, 236 ITR 34 (SC), and “Vasudev

Fatandas Vaswani Versus Income Tax Officer”, 2018-TIOL-2305-HC-AHM-IT.

18.24 The learned CIT (DR) has further contended that Para nos. 11 and 12 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax talk of another information unearthed during the search held in the year 2012, where, Shri Himanshu Verma, entry operator, had stated on oath, that he was providing accommodation entries through some shell companies and the Assessing Officer noted that the assessee had received accommodation entries of Rs.3,90,00,000/- from these shell companies operated by the Himanshu Group.

18.25 The learned CIT (DR) contended that the Assessing Officer clearly stated that in such a scenario, the amount of Rs.3,90,00,000/- remained unexplained.

18.26 The learned CIT (DR) further submitted that in Para 13 of the reasons recorded, the Assessing Officer clearly mentioned that he was re-opening the case on the

basis of Bank Account No. 65012097085, which was not disclosed, and the receipt of funds in the bank account from bogus companies.

18.27 The learned CIT (DR) has averred that both these facts are entirely correct and clearly show that the Assessing Officer had applied his mind.

18.28 The learned CIT (DR) has contended that it is also evident that there was failure on the part of the assessee to disclose material and true facts in the proceedings under section 143(3) of the Income Tax Act and also tangible new material received by the Assessing Officer, and that thus, the proviso to Section 147 of the Income Tax Act is clearly applicable, as observed by the learned Commissioner of Income Tax (Appeals).

18.29 The learned CIT (DR) further contends that whether the Assessing Officer had tangible material or not is clearly evident from the fact that the Bank Account No. 65012097085 came to surface for the first time before the Assessing Officer only after completion of

the original assessment and that the post-search enquiries on the Himanshu Group revealed that the assessee had received bogus entries from companies operated by the Himanshu Group.

18.30 The learned CIT (DR) has submitted that though the search was conducted before the original assessment, the information came to the Assessing Officer only after the assessment was completed under section 143(3) of the Income Tax Act.

18.31 The learned CIT (DR) has submitted that such information received in case of search on a third party is tangible material, as held by various Courts. Reliance has been sought to be placed on:

- (i) “Yogendra Kumar Gupta Versus Income Tax Officer (Supreme Court)”, 51 taxmann.com 383 (SC)
- ii) “Paramount Communication (Private) Limited Versus PCIT (Supreme Court)”, [2017] 84 taxmann.com 300 (SC)
- iii) “Amit Polyprints (Private) Limited Versus DCIT (Gujrat High Court)”, [2018] 94 taxmann.com 393(Guj)

- iv) "Ankit Financial Services Limited Versus DCIT (Gujrat High Court)", [2017] 78 taxmann.com 58(Guj)
- v) "Aaspas Multimedia Limited Versus DCIT (Gujrat High Court)", [2017] 83 taxmann.com 82 (Guj)
- vi) "Meghavi Minerals (Private) Limited Versus Income Tax Officer (Gujrat High Court)", [2019] 110 taxmann.com 174(Guj)
- vii) "Ankit Agrochem (Private) Limited Versus JCIT (Rajasthan High Court)", [2018] 89 taxmann.com 45(Raj)
- viii) "Pushpak Bullion (Private) Limited Versus DCIT (Entry Receiver) (Gujrat High Court)", [2017] 85 taxmann.com 84 (Guj)
- ix) "Jayant Security & Finance Limited (Gujrat High Court)", [2018] 91 taxmann.com 181(Guj)
- x) "Avirat star Homes Venture (Private) Limited Versus Income Tax Officer (Bombay High Court)", [2019] 102 taxmann.com 60(Bom)
- xi) "Anderson Biomed (Private) Limited Versus ACIT (Gujrat High Court)", [2021] 129 taxmann.com 135(Guj)
- xii) "Experion Developers (Private) Limited Versus ACIT (Delhi High Court)", [2020] 115 taxmann.com 338 (Del)
- xiii) "R.K.Malhotra Income Tax Officer Versus Kasturbhai Lalbhai (Supreme Court)", [1977] 109 ITR 537 (SC)

18.32 The learned CIT (DR) has further contended that the assessee company claims that the issue stands

examined in the original assessment proceedings and that thus, any re-opening on the same issue would tantamount to a change of opinion.

18.33 The learned CIT (DR) has submitted that this claim of the assessee company is false.

18.34 The learned CIT (DR) has stated that firstly, the issue was never examined in the original assessment proceedings, so as to enable the Assessing Officer to form a view on the matter.

18.35 The learned CIT (DR) has averred that secondly, fresh information had come in possession of the Assessing Officer in the post-search enquiries conducted on the Himanshu Group and the Mining Group, which gave a totally different perspective to the issue, which had never been examined in the original proceedings.

18.36 The learned CIT (DR) has asserted that the learned Commissioner of Income Tax (Appeals) has held that the reason for selection of the case was “increase in large unsecured loans”.

18.37 The learned CIT (DR) has submitted that the Learned Commissioner of Income Tax (Appeals) has held that however, the credit entries from shell companies were mentioned in “advance against land Note-4” by the assessee, as per the Office Note.

18.38 The learned CIT (DR) has stated that the learned Commissioner of Income Tax (Appeals) has held that therefore, since it was not subject-matter of scrutiny, no opinion was formed by the Assessing Officer.

18.39 The learned CIT (DR) has sought to place reliance on “Sri Kant Phul Chand Bhakkad (HUF) Versus JCIT”, 137 taxmann.com 445 (Bom).

18.40 The learned CIT (DR) has further contended that in the reply filed by the assessee company in the original assessment proceedings, no confirmation was ever filed by the assessee in respect of these companies.

18.41 The learned CIT (DR) has submitted that only Resolutions, Agreements, Allotment Letters and Bank Statements of these six companies were submitted.

18.42 The learned CIT (DR) has stated that it is not disputed that the assessee company received these amounts.

18.43 The learned CIT (DR) stated that the information only proves a limited point of such transactions.

18.44 The learned CIT (DR) has contended that however, in the absence of any confirmation or Income Tax Return details or any enquiry, the credit worthiness of these companies was never examined by the Assessing Officer in the original proceedings.

18.45 The learned CIT (DR) has submitted that the fresh information revealed that these companies were shell companies and, therefore, they were not credit-worthy. The learned CIT (DR) averred that so, the

assessee's claim that the issue was examined is entirely false.

18.46 The learned CIT (DR) has contended that also, whereas the issue of loans was examined by the Assessing Officer by obtaining confirmations, no such enquiry/query was raised by the Assessing Officer in respect of these companies, which did not form part of "borrowings".

18.47 The learned CIT (DR) has contended that thus, the Assessing Officer also did not intend to examine anything on the lines of the credit worthiness of the persons which were not part of borrowings.

18.48 The learned CIT (DR) has submitted that this is in tune with the issue not being in the scrutiny and the subsequent Office Note.

18.49 Reliance has been placed by the learned CIT (DR) on

- i) "RDS Project Limited Versus ACIT (Delhi High Court)", [2020] 113 taxmann.com 534 (Del)

- ii) “Chetan Sabharwal Versus ACIT (Delhi High Court)”, [2019] 110 taxmann.com 57 (Del)
- iii) “Devi Electronics Private Limited Versus Income Tax Officer (Bombay High Court)”, [2017] 77 taxmann.com 259 (Bom)
- iv) “Yuvraj Versus Union of India (Bombay High Court)”, [2009] 315 ITR 84 (Bom)

18.50 The learned CIT (DR) has further submitted that as per the assessee's contention, Shri Triloki Nath Singla resigned as Director on 28.03.2017 and at the time of recording of his statement, he was not Director in the assessee company, and that he had rejoined as Director on 23.10.2018.

18.51 The learned CIT (DR) has contended that in this regard, it is to be seen as to whether Shri Triloki Nath Singla was Director on the date of search on the Himanshu Group, as well as during the original assessment proceedings.

18.52 The learned CIT (DR) has averred that during both these relevant times, Shri Triloki Nath Singla was Director in the assessee company.

18.53 The learned CIT (DR) has maintained that it stands amply proved that there was material concealment before the Assessing Officer during the original assessment proceedings.

18.54 The learned CIT (DR) submits that according to the assessee, the bank account was disclosed and all entries were from the same bank account, and as such, there was a full disclosure, and the re-assessment amounts to a change of opinion or non-application of mind by the later Assessing Officer.

18.55 The learned CIT (DR) contends that in this regard, it is stated that a wrong bank account number was filed during the assessment proceedings and no bank statement was ever filed.

18.56 The learned CIT (DR) has asserted that therefore, the Assessing Officer neither had the correct bank account number, nor the detailed account statement, to enable him to apply his mind.

18.57 The learned CIT (DR) has submitted that hence, there is no question of any change of opinion.

18.58 The learned CIT (DR) has contended that there is also no truth in the claim of full disclosure by the assessee.

18.59 The learned CIT (DR) contends that the assessee states that the statement of the bank account of the assessee company was on record.

18.60 The learned CIT (DR) has submitted that there is no evidence in the entire assessment record, or even in the assessee's Paper Book, that the bank account statement was ever filed.

18.61 The learned CIT (DR) has maintained that all the case laws sought to be relied on by the assessee are distinguishable, since the disclosure of primary facts in the present case was wrong and incomplete, fresh tangible material surfaced after the original assessment year, and the issue never got examined in the original assessment proceedings.

18.62 The learned CIT (DR) has also contended that according to the assessee, no such addition was made in the other years.

18.63 The learned CIT (DR) has stated that in this regard, none of the six companies is a subject-matter of investigation in the other years, as available from the assessment orders submitted.

18.64 The learned CIT (DR) has stated that so, the facts are entirely different and in none of the other years, funds received by the assessee from these companies were in question.

ASSESSEE'S REBUTTAL

19. By way of rebuttal to the submissions of the Department, on behalf of the assessee company, it has been contended by the learned Counsel for the assessee, that the original assessment order was passed under section 143(3) of the Income Tax Act, on 15.09.2014, after verification of the alleged advances.

19.1 The learned Counsel for the assessee has contended that in the balance sheet for the year ending on 31.03.2012, the relevant advances were dealt with.

19.2 The learned Counsel for the assessee has submitted that the Assessing Officer had issued enquiry letter on 10.09.2014 (APB15) about the alleged advances against sales from all the parties.

19.3 The learned Counsel for the assessee has contended that the assessee had replied to the Assessing Officer on 15.09.2013 about the advances received, alongwith documents.

19.4 The learned Counsel for the assessee has submitted that the Assessing Officer had examined the issue of advances against sale of property by specific notice.

19.5 The learned Counsel for the assessee has averred that the assertion of the Department that the case was selected for limited scrutiny, is totally wrong, as is also evident from the notice issued under section

143(2) of the Income Tax Act, wherein, there is no reference to limited scrutiny.

19.6 The learned Counsel for the assessee has stated that otherwise too, the concept of limited scrutiny was introduced only with effect from assessment year 2015-16 and so, it was not applicable for the year under consideration, i.e., for assessment year 2012-13.

19.7 The learned Counsel for the assessee has submitted that the details of the bank account were furnished by the assessee company before the Assessing Officer in the original assessment proceedings, on 19.08.2014.

19.8 The learned Counsel for the assessee has submitted that the Department has claimed that the bank account number submitted during the assessment proceedings was "65012097805", whereas the actual account number is "65012097085".

19.9 The learned Counsel for the assessee has maintained that this is nothing but an inadvertant jumbling of the last three figures only.

19.10 The learned Counsel for the assessee has contended that moreover, the bank account was correctly mentioned in the copy of account of Shri Harish Aggarwal, as "65012097085", even as per the assessment record.

19.11 The learned Counsel for the assessee has stated that further, the complete books of account and records were produced before the Assessing Officer during the assessment proceedings, and the same were duly examined by the Assessing Officer at that relevant time, as evident from the assessment order, and, thus, complete details were available.

19.12 In sum, it has been requested by the learned Counsel for the assessee, that in view of the fact that the Department has miserably failed to rebut, much less successfully, the assessee's averments made with regard to the assessee's Grounds of Appeal nos. 2, 3, 6 to 8 and 11, these Grounds of Appeal be accepted and the very initiation of the reassessment proceedings and the reassessment proceedings, culminating in the order

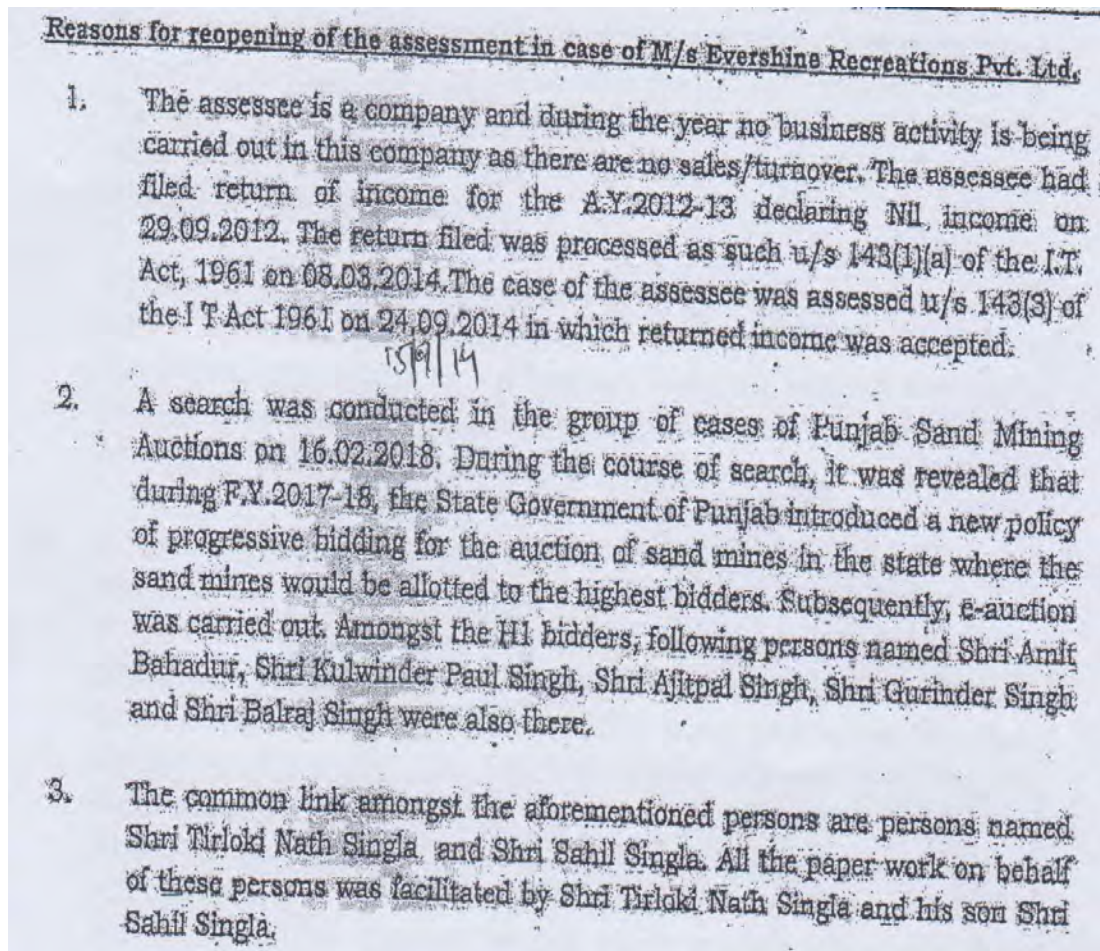
under appeal be declared null and void ab initio and cancelled as such.

OUR FINDINGS ON GROUND NOS. 2, 3, 6 TO 8 AND 11

20. We have heard the parties on these issues and have examined the material placed on record with regard thereto. The question is as to whether or not the completed assessment was reopened on the basis of the information received from a third party, without any verification by the Assessing Officer, without following the principles of natural justice, amounting to reopening of the case only on borrowed satisfaction, contrary to the provisions of law, in the absence of any incriminating material, based on wrong and irrelevant reasons recorded for the formation of belief of escapement of income chargeable to income tax and on wrong facts and wrongly obtained approval, as alleged by the assessee company, ignoring the voluminous documentary evidence brought on record by the assessee.

**ASSESSING OFFICER'S REASONS RECORDED FOR THE
FORMATION OF BELIEF OF ESCAPEMENT OF INCOME
CHARGEABLE TO INCOME TAX TO BELIEVE
ESCAPEMENT OF INCOME**

21. First off, it would be appropriate to hereunder reproduce the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded by the Assessing Officer for forming a belief of escapement of income chargeable to tax:



4. This search action was mainly focused on the flow of funds used in the benami transactions involved in the e-auctions of the sand mines. The department uncovered the entities which were used to route the funds which in turn were used in the acquisition of sand mines. The earnest money to participate in the e-auction on behalf of Shri Amit Bahadur, Shri Kulwinder Paul Singh, Shri Ajitpal Singh was paid by Shri Sahil Singla.
5. Perusal of the ITR profiles of these persons who were allotted sand mines clearly indicates that these persons don't have the means to shell out such huge amounts running into crores of rupees for bidding.
6. During the course of search action and post search investigations, numerous bank accounts owned by Shri Tirloki Nath Singla and his son Shri Sahil Singla were unearthed and some shell entities were also uncovered which are directly or indirectly involved in the routing of funds which were disbursed by Shri Tirloki Nath Singla and his son Shri Sahil Singla.
7. During the course of post search enquiries vide Summons u/s 131 1 (A) dated 05.04.2018, Shri Tirloki Nath Singla was specifically asked to furnish details of the companies in which he is director and also asked to furnish the details of bank accounts of those companies.
8. Shri Tirloki Nath Singla alongwith Shri Jagdish Raj Gupta are two directors of the company M/s Evershine Recreations Pvt. Ltd, but in the reply dated 16.06.2018 to the Summons u/s 131 the director of the company Sh. T.N. Singla concealed that he is the director of the company and further concealed the bank account of this company in State Bank of India (erstwhile Bank of Patiala) bank account No. 65012097085, SME Branch, 3rd floor, SCO NO. 43-48, Bank Square, Sector 17, Chandigarh which was unearthed owing to post search investigations in the case.

9. On perusal of this bank statement, it is found there are multiple credit entries in this bank account despite of fact that M/s. Evershine Recreations Pvt. Ltd was not undertaking any business during the year and was only a shell entity having no profit earning apparatus of its own. Moreover, there are multiple instances of cash deposits also in this bank account statement.

rk-27,83,50,000/-
10. In the above said bank account no. 65012097085, the company has total credits entries of Rs. 25,83,50,000/- including cash deposits of Rs. 71 lacs during F.Y. 2011-12 (A.Y. 2012-13). The company has deposited cash of Rs. 25,00,000/- on 16.12.2011, and Rs. 46,00,000/- on 05.03.2012. The said account was not disclosed by the assessee during post search enquiries. Further from the perusal of the ITR of the assessee it is clear that it was not undertaking any business during the year. In normal course of business such huge quantum of funds are not received by the companies which are not undertaking any business activity. Therefore, the credits amounting to Rs. 25,83,50,000/- received in this bank account are clearly from unaccounted sources.

11. Further the ITO, Ward 1(5), Chandigarh also passed information in this case vide letter No. 5566 dated 04.02.2019 that a search was conducted in the case of Himanshu Group of cases on 29.03.2012, who was engaged in the activities of providing accommodation entries. This fact has been accepted by Shri Himanshu Verma in his statement recorded on oath on 29.03.2012 that he was managing and controlling a number of companies/firms/sole proprietary concerns exclusively for the purpose of providing accommodation entries to different parties. The relevant portion of his statement is reproduced below:-

"Q.8 If no company or firm is doing business from this office or registered at this office, please state the nature of activities carried out by you from this office i.e. office at C-44, 1st Floor, Shardapuri, Ramesh Nagar, New Delhi.

Ans. I alongwith my partner Shri Hari Shankar Yadav are doing the business of providing accommodation entries to various beneficiary company/entities/persons through cheque in lieu of cash through more than 70 to 80 companies and firms totally managed and controlled by us. The accommodation entries are provided by us. The accommodation entries are provided by us through our different clients/middleman."

11.1 As per information, M/s Evershine Recreations Pvt. Ltd had taken accommodation entries of Rs. 3,90,00,000/- from Himanshu Group as per detail below:-

S.No	Name of the company relating to Himanshu Group	Amount	F.Y
1.	M/s White Coller Management Services(P)Ltd.	1,47,00,000/-	2011-12
2.	M/s Bliss Buldeon Pvt. Ltd	1,00,00,000/-	2011-12
3.	M/s OmexpoEnt.Pvt. Ltd.	85,00,000/-	2011-12
4.	M/s Rising Profollo India (P) Ltd.	30,00,000/-	2011-12
5.	M/s Saffron Logistics (P) Ltd.	20,00,000/-	2011-12
6.	M/s New Millenium Consultants(P) Ltd.	8,00,000/-	2011-12
	Total	3,90,00,000/-	

The above six parties are bogus/shell companies as found during the course of search in Himanshu Group of cases on 29.03.2012 and evident from statement of Shri Himanshu Verma. Therefore, the funds of Rs. 3,90,00,000/- received from these companies by the assessee during the year are its unexplained credits in the books of accounts of the assessee during the year.

12. It is also noticed that the funds of Rs. 3,90,00,000/- from the above shell companies have been received by the assessee in the same bank account which was not disclosed by the assessee during the course of post search enquiries i.e. A/c No. 65012097085, SBI, Chandigarh.

13. After independent analysis of the totality of the facts of the case i.e. the assessee i.e. M/S Evershine Recreations Pvt Limited being a shell company not undertaking any business activity and yet receiving huge amounts in its bank account, (an attempt by the director of the company to not disclose the bank account no. 65012097085 during the post search enquiries) and the receipt of funds in this bank account from bogus/shell companies and on the basis of information available on records as narrated above I have reason to

believe that Income of Rs. 25,83,50,000/- being the credits in bank account no. 65012097085 of the assessee has escaped assessments.

14. It is evident that the assessee had not disclosed fully and truly all material facts necessary for in its return of income or that the facts as noted above could not be discovered by the Assessing officer in assessment u/s 143(3) of the I.T. Act 1961, accordingly attracting the provisions of the Explanation 1 to section 147 of the Act.

15. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 is being obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act.

AR Assessments were concluded u/s 143(3) & act 143(1)

WRONG AND IRRELEVANT FACTS

22. Thus, as per Paras 2 to 5 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded by the Assessing Officer, inter-alia, a search was conducted in the group of cases of Punjab Sand Mining Auctions, on 16.02.2018. In the search, it was discovered that in financial year 2017-18, the Government of Punjab had introduced a new policy of progressive bidding for the auction of sand mines in the state of Punjab. Under this policy, sand mines would be allotted to the highest bidders. Subsequently, e-auction was carried out. Shri Amit Bahadur, Shri Kulwinder Paul Singh, Shri Ajit Pal Singh, Shri Gurinder Singh and Shri Balraj Singh were amongst the H-1 Bidders. Shri Triloki Nath Singla and Shri Sahil Singla were the common links amongst these persons, as all the paper work on behalf of these persons was facilitated by Shri Triloki Nath Singla and Shri Sahil Singla. The search was mainly focused on the flow of funds used in the benami transactions involved in the e-

auctions of the sand mines. The Department uncovered the entities which were used to route the funds which, in turn, were used in the acquisition of sand mines. The earnest money to participate in the e-auction on behalf of Shri Amit Bahadur, Shri Kulwinder Paul Singh and Shri Ajit Pal Singh, was paid by Shri Sahil Singla. As available from the Income Tax Return profiles of these persons, they did not have the means to provide the huge sums, amounting to crores of rupees, for bidding for the sand mines.

23. The contention of the learned Counsel for the assessee before us is that mining business was done by one of the Ex-Directors, only in the assessment year 2018-19, and not in the year under consideration, that is, assessment year 2012-13, and that too, only in his personal capacity, and that the assessee company has no connection at all with the mining business, and no financial transaction with such mining business was carried out by the assessee company even in the assessment year 2018-19. The Department has remained

unable to refute this factual assertion of the assessee. The assessee company has not been shown to have carried out any financial transaction with the mining business in the assessment year under consideration. In fact, there is even no specific allegation by the Department against the assessee company in this regard. No connection of the assessee company with the mining business stands established. There is only a general and vague averment of the Assessing Officer, which averment actually amounts to nothing other than a mere unsubstantiated conclusion of the Assessing Officer, and not his reason to believe escapement of income chargeable to tax, of Sh. Triloki Nath Singla and Shri Sahil Singla being the common links amongst the H-1 bidders of the mining business of the sand mines, since according to the Assessing Officer, the paper work on behalf of these persons / bidders was carried out by Shri Triloki Nath Singla and Shri Sahil Singla. It is seen that as opposed to this bald assertion of the Assessing Officer in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, there is

no evidence worth its name on record to prove any relevance, to the assessee's case, of Sh. Triloki Nath Singla and Sh. Sahil Singla allegedly being the common links amongst Shri Amit Bahadur, Shri Kulwinder Paul Singh, Shri Ajit Pal Singh, Shri Gurinder Singh and Shri Balraj Singh, that is, the H-1 bidders of the sand mines under the new policy floated by the Government of Punjab.

24. Then, the assessment year under consideration before us is assessment year 2012-13, whereas Para 2 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening relates the fact that the new mining policy was framed by the Government of Punjab in the financial year 2017-18, which was relevant to the assessment year 2018-19.

25. Further, during the proceedings before us, no evidence or material of any financial transaction of the assessee company with the mining business of the sand

mines is even claimed by the Department to be existing on the record of the case.

26. Then, just stating, without proving, in Para 4 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, that the Department uncovered the entities which were used to route the funds which in turn were used in the acquisition of sand mines, without pin-pointing such alleged entities does not, by itself, go to inculcate either Shri Triloki Nath Singla, or Shri Sahil Singla, or the assessee company in the matter.

27. Too, the alleged factum (Para 5 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, recorded by the Assessing Officer), that the income tax return profiles of the allottees of the sand mines clearly indicate that these persons do not have the means to shell out the huge amounts, running into crores of rupees, required for bidding for the sand mines, does not go to involve

either Shri Triloki Nath Singla, or the assessee company, in any manner.

28. The above apart, there is also not even an iota of evidence on record to prove that the earnest money to participate in the e-auction, on behalf of Shri Amit Bahadur, Shri Kulwinder Paul Singh and Shri Ajit Pal Singh, was paid by Shri Sahil Singla, as alleged by the Department.

29. These allegations of the Department, therefore, go entirely unsubstantiated and unproved, and they thus remain nothing else but merely bald assertions, not worthy of, or entitled to, any credence or sustainability under the law, whatsoever. The same are, accordingly, rejected.

30. As such, we are unable to find any justification in the action of the Assessing Officer in reopening the assessee's completed assessment for assessment year 2012-13, based on Paras 2 to 5 of the reasons recorded for the formation of belief of escapement of income

chargeable to income tax recorded for forming belief of escapement of income chargeable to tax. Hence, these reasons recorded for the formation of belief of escapement of income chargeable to income tax are found to be wrong and irrelevant for the reopening of the completed assessment of the assessee company.

31. Then, in Para 6 of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, recorded for reopening the assessment, it has been claimed by the Assessing Officer, that in the search and in the post search investigations, numerous bank accounts owned by Shri Triloki Nath Singla and Shri Sahil Singla were unearthed, and some shell entities were also uncovered, which were directly or indirectly involved in the routing of funds which were disbursed by Shri Triloki Nath Singla and Shri Sahil Singla.

32. In this regard, the contention of the learned Counsel for the assessee company is that no such bank account of either the assessee company, or Shri Triloki

Nath Singla, or Shri Sahil Singla has been shown to have been unearthed by the Department, as no mention, either of the bank account number of any such bank account, or even the date of utilization of funds has been mentioned, either in the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, or anywhere else in the record, even till date.

33. The learned Counsel for the assessee company has contended that such wrong fact has been purposely used to sensationalize the reasons recorded for the formation of belief of escapement of income chargeable to income tax, to unduly influence the sanctioning authority and that this is not justified.

34. The learned CIT (DR), on the other hand, has stated that in fact, Paras 1 to 7 of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax contain the background needed to point out and highlight the defaults detailed under Para 8 of the reasons recorded

for the formation of belief of escapement of income chargeable to income tax.

35. In this regard, the fact remains that however, no such allegedly unearthed bank account, as claimed in Para 6 of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, belonging either to the assessee company, or to Shri Triloki Nath Singla, or to Sh. Sahil Singla, has been produced before us by the Department. Even no attempt or endeavour has been made by the Department in the proceedings before this Bench, to point out from the record of the case, any mention of any such bank account of either the assessee company, or Sh. Triloki Nath Singla, or Sh. Sahil Singla, which account was statedly unearthed by the Department in the search proceedings, or in the post search investigations.

36. As such, the contention of the learned Counsel for the assessee, that wrong facts were used by the Assessing Officer under Para 6 of the reasons recorded

for the formation of belief of escapement of income chargeable to income tax, to justify the reopening of assessment, has also remained irrefuted and unrebutted.

37. So far as regards the observations of the Assessing Officer in Paras 7 and 8 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, recorded for reopening of the assessment, that Shri Triloki Nath Singla was asked vide summons dated 05.04.2018, issued under section 131(1)(A) of the Income Tax Act by the Additional Director of Income Tax (copy appended at APB-110) to submit the details of the companies in which he is Director and also asked to furnish the details of bank accounts of those companies, the contention of the learned Counsel for the assessee is that Sh. Triloki Nath Singla was not a Director of the assessee company for the period between 28.3.2017 and 23.10.2018 and a date-wise directorship chart in the assessee company is also filed and is lying at APB 112. This chart is being reproduced hereunder, for ready reference:

(112)

EVERSHINE RECREATIONS PRIVATE LIMITED

Details of Changes In Directors

Sr. No.	Date of Event	Name of Director	Purpose
1.	28/03/2017	Tirloki Nath Singla	Cessation
2.	17/08/2017	Manav Gupta	Appointment as an Additional Director
3.	29/09/2017	Manav Gupta	Change In Designation (Whole Time Director)
4.	15/12/2017	Satish Rai Gupta	Cessation
5.	15/12/2017	Manav Gupta	Change In Designation (Director)
6.	23/10/2018	Tirloki Nath Singla	Appointment as an Additional Director
7.	30/09/2019	Tirloki Nath Singla	Change in Designation (Director)

Details of Current Directors

Sr. No.	DIN	Name	Designation	Date of Appointment
1.	00115113	Jagdish Rai Gupta	Director	21/01/2012
2.	00182154	Tirloki Nath Singla	Director	23/10/2018
3.	03091842	Manav Gupta	Director	17/08/2017

38. As such, when the summons was issued on 5.4.2018 by the Additional Director of Income Tax and it was replied to on 16.6.2018 by Shri Triloki Nath Singla, the name of the assessee company was not mentioned therein, as well as the bank account of such company, in which he was not a Director on that date, was correctly not stated.

39. The learned CIT (DR), under Para 4 at Page 3 of his written submissions, has claimed that Shri Triloki Nath Singla was Director in the assessee company during

the original proceedings, and that as such, the Assessing Officer has rightly pointed out the concealment of the bank account, and that this also explains the correctness of Paras 9 and 10 of the reasons recorded by the Assessing Officer.

40. In this regard, it is seen that while stating so in his written submissions, the learned CIT (DR) has not controverted the fact stated by assessee company, that Shri Triloki Nath Singla was not a Director in the assessee company during the period between 28.3.2017 and 23.10.2018. Moreover, the reasons of reopening of the completed assessment, recorded for the formation of belief of escapement of income chargeable to income tax do not claim that since Shri Triloki Nath Singla was Director in the original assessment proceedings, it is for this, as such, that the case is sought to be reopened. This remaining the undisputed factual position on record, it is not now open, in law, for the learned CIT (DR) to improve upon, or modify the reasons for the formation of belief of escapement of income chargeable to

income tax, as already recorded by Assessing Officer. It is trite law, that the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to tax are to be read as they are, and that they cannot be supplement later on, nor can anything which is not contained therein, be read into such reasons recorded. In view of the above, the observations recorded by the Assessing Officer in Paras 7 and 8 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax are found to be wrong.

41. So far as regards the assertion of the Assessing Officer under Para 9 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, that the assessee company is a shell entity having no profit earning apparatus of its own and that there are multiple instances of credit entries and cash deposits in the bank account statement, the contention of the learned Counsel for the assessee company has been that this assertion of the Assessing Officer is

wrong, because the assessee company had already purchased a piece of land in Chandi Mandir for a commercial project and had paid Change of Land Use fees of Rs. 17.44 crore to the Government of Haryana, and that the assessee company had been allotted a Letter of Intent for such commercial project. In this respect, it is patent on the record that the assessee company had invested an amount of Rs. 28.29 crore in fixed assets, as per Note 7 of the Balance Sheet of the assessee company, as on 31.03.2012, that is, for the year under consideration, i.e., assessment year 2012-13, with regard to the fixed assets of the assessee company, a copy of which Note 7 to the Balance Sheet of the assessee company has been placed at APB, Page 71, scanned and reproduced as under, for ready reference.

NOTE 7

FIXED ASSETS

PARTICULARS	Rate	GROSS BLOCK			DEPRECIATION FOR THE YEAR	ADJUST- MENT	TOTAL	W.D.V AS ON 31.3.2012	W.D.V AS ON 31.3.2011
		AS ON 1.04.2011	ADDITIONS	SALES/ SUBSIDY					
Land At Chandimandir I	-	9434915	-	-	-	-	9,434,915	9,434,915	
Land At Chandimandir II	-	10929000	-	-	-	-	10,929,000	10,929,000	
Land At Chandimandir III	-	3070000	-	-	-	-	3,070,000	3,070,000	
Land At Chandimandir IV	-	11877000	-	-	-	-	11,877,000	11,877,000	
Land At Chandimandir V	-	2373500	-	-	-	-	2,373,500	2,373,500	
Land At Chandimandir VI	-	5024500	-	-	-	-	5,024,500	5,024,500	
Land At Chandimandir VII	-	2358125	-	-	-	-	2,358,125	2,358,125	
Land At Chandimandir VIII	-	3099100	-	-	-	-	3,099,100	3,099,100	
Land At Chandimandir IX	-	0	1,025,500	-	-	-	1,025,500	-	
Land At Chandimandir X	-	0	4,404,500	-	-	-	4,404,500	-	
Land At Chandimandir XI	-	0	2,852,500	-	-	-	2,852,500	-	
Land At Chandimandir XII	-	0	-	145,833	-	-	(145,833)	-	
Land Compensation	-	0	-	-	-	-	-	-	
Interest Capitalised	-	0	3,819,862.00	-	-	-	3,819,862	-	
Legal And Professional Expenses	-	0	9,500.00	-	-	-	9,500	-	
Processing Charges	-	0	1,903,575.00	-	-	-	1,903,575	-	
Professional Fees (RSP)	-	0	661,800.00	-	-	-	661,800	-	
CLU Conversion Charges	-	0	174,450,500.00	-	-	-	174,450,500	-	
Audit Expenses	-	0	2,000.00	-	-	-	2,000	-	
Pre-Operative Expenses	-	0	950,912.00	-	-	-	950,912	-	
Bank Charges	-	12796	7,602	-	-	-	7,602	-	
Rates Fee and Taxes	-	0	600.00	-	-	-	600	-	
Babu Ram (Land)	-	0	85,000.00	-	-	-	85,000	-	
Krishan Lal (Land)	-	0	85,000.00	-	-	-	85,000	-	
Laxhmi (Land)	-	0	85,000.00	-	-	-	85,000	-	
Ronki Ram (Land)	-	0	255,000.00	-	-	-	255,000	-	
RSP Design Consultant India Pvt Ltd	-	0	4,380.00	-	-	-	4,380	-	
CURRENT YEAR		48178936	8282500	158629	0	0	282951054	282951054	
								48178936	

(T.N. Singla)
Director



(Jagdish Gupta)
Director

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42. The investment of Rs. 28.29 crore, it is seen, was made out of bank loan of Rs. 10.12 crore, as per the Schedule of Term Loan of the Balance Sheet, annexed at ABP, Page 70. Therefore, these cash deposits as well as credit entries stand adequately explained from the record itself, as above, which has remained unrebutted by the Department before this Bench. This being so, there is no force in the observations made by the Assessing Officer in Para 9 of the reasons recorded as well.

43. Then, in further reference to the contents of Para 9 of the reasons recorded by the Assessing Officer, the learned Counsel for the assessee company has also contended that there is no definition of 'Shell Company', either under the Income Tax Act, or under the Companies Act. A detailed note on 'Shell Company' has been submitted before us by the learned for the assessee company and it forms part of the assessee's paper book, lying at APB, Pages 295-297.

44. As per this Note, the assessee company was incorporated on 15.11.2006, with the object to carry on

the business of real estate developers and to set up a commercial colony. The company was formed by respectable persons of means, for doing the business of real estate developers. To meet the object of the company, it wanted to develop a commercial colony at Chandi Mandir, in District Panchkula, Haryana. In furtherance thereof, the promoters of the company started purchase of land at Chandi Mandir. The promoters purchased lands worth Rs. 4,81,78,936/- (four crores, eighty one lacs, seventy eight thousand, nine hundred and thirty six rupees) upto 31.03.2001, and lands worth Rs. 87,92,500/- (eighty seven lacs, ninety two thousand and five hundred rupees) were purchased during the assessment year 2011-12. Further, during the year under consideration, that is, during the assessment year 2012-13, the assessee company took a bank loan of Rs. 10,00,00,000/- (ten crore rupees) from the State Bank of Patiala, and interest of Rs. 38,19,862 (thirty eight lacs, nineteen thousand, eight hundred and sixty two rupees) was paid to the State Bank of Patiala during the year by the company. An amount of Rs.

17,44,50,500/- (seventeen crores, forty four lacs, fifty thousand and five hundred rupees) was paid by the assessee company as land use charges to the Government of Haryana during the year under consideration. Further, an amount of Rs. 19,03,575/- (nineteen lacs, three thousand, five hundred and seventy five rupees) was paid to the Government of Haryana by the assessee company during the year under consideration, as processing fee for the grant of approval of a commercial colony at Chandi Mandir, District Panchkula, on twelve acres of land owned by the assessee company, located on the Shimla Highway. The assessee company also provided a bank guarantee of Rs. 9.00 crores (nine crore rupees) to the Director, Town and Country Planning, Haryana, from the State Bank of Patiala, for grant of Letter of Intent. On 05.11.2011, a Letter of Intent was granted to the assessee company by the Government of Haryana, allowing the setting up of the commercial colony by the assessee company. However, due to certain problems created by the National Highway Development Authority of India (NHAI), and a

slump in the market, the proposed commercial company project remained from being developed by the assessee company and correspondence in this regard is still going on with the National Highway Development Authority (NHAI).

45. It has further been stated in the Note, that thus, the assessee company was doing the regular business of real estate developers and it was not merely a paper company, or a shell company.

46. It has been stated that since its incorporation, the assessee company is regularly preparing its Profit and Loss Account as well as its Balance Sheet, and it has also been getting its accounts audited regularly.

47. It has been stated that the assessee company has not been used merely for passing entries like a shell company, without any other activity having been carried out.

48. It has been stated that further, during the financial year 2011-12 (relevant to the assessment year

2012-13, that is, the year under consideration), an amount of Rs. 38,19,862/- (thirty eight lacs, nineteen thousand, eight hundred and sixty two rupees), as above, was paid as bank interest to the State Bank of Patiala by the assessee company.

49. It has been stated in the Note, that moreover, no funds were ever transferred by the company to any unknown person, or to any unrelated person, other than the money paid for the genuine business transactions entered into by the assessee company.

50. It has further been stated that this company is a legal entity and it is operating like any other genuine company.

51. It has been stated that however, due to certain unavoidable circumstances, the proposed project of a commercial colony could not mature, though the licence for the commercial colony is still very much in existence.

52. It has further been stated in the Note, that even the Registrar of Companies and the MCA have identified

certain shell companies after 2013 and even the Directors of these shell companies have been disqualified.

53. It has been stated that however, the assessee company has been treated as a legal and genuine company.

54. It has been stated that the definition of a shell company has not been prescribed in India, either in the Companies Act, or in any other Act.

55. It has been stated that however, as per the various definitions of 'shell company', a shell company is a company which does not conduct any activity other than in a pass-through capacity.

56. It has been stated that however, the assessee company is regularly doing the business activity and it even made purchase of property and made sincere efforts to develop the proposed commercial colony, like other real estate developers.

57. It has been stated that moreover, for a company to be genuine, it is not necessary that there should be trading or manufacturing activity in the company.

58. It has been stated that real estate developers generally book the income or sales on the completion of the project, otherwise, for the rest of the years, the turnover is shown as Nil.

59. It has been stated that since the very incorporation of the assessee company, no transaction was ever done by it to rotate any undisclosed money or any black money, nor was any transaction done to either inflate the turnover, or to divert the bank loans during the year, and that only genuine business transactions of real estate were done.

60. It has been stated that however, loans or advances were received or given to relatives or friends or sister concern, as and when required, and that such transactions cannot, by any stretch of imagination,

render the genuine and legal assessee company to be either a paper company, or a shell company.

61. It has been stated that no Director or shareholder of the assessee company is fictitious, that the Directors and shareholders of the assessee company are respectable persons of means and repute, and that therefore, there is no illegal purpose or motive of the Directors or shareholders to do business in the assessee company.

62. Considering the obtaining position as available on record in this regard, we find that it remains undisputed that vide Questionnaire (APB-59-62), dated 22.10.2019, the Assessing Officer, inter alia, put to the assessee company, specific questions with regard to the position as on 31.03.2012, concerning bank loan of Rs. 10,12,31,507/- (ten crore, twelve lac, thirty one thousand, five hundred and seven rupees) shown in the Balance Sheet of the company, investment of Rs. 21,64,51,054/- (twenty one crore, sixty four lac, fifty one thousand and fifty four rupees) in fixed assets, depicted

in the Balance Sheet of the assessee company, the amount of Rs. 25,83,50,000/- (twenty five crore, eighty three lac and fifty thousand rupees) credited in the assessee's bank account, and the amount of Rs. 71,00,000/- (seventy one lac rupees) deposited in the assessee's bank account during the year under consideration.

63 It also remains undisputed that by virtue of Reply (APB-63-65) dated 30.10.2019 (stamped on APB-63 as having been received in the Office of the Assistant Commissioner of Income Tax, Central Circle-2, Chandigarh, on 04.11.2019) and Reply (APB-66-67) dated 19.12.2019 (stamped on APB-66 as having been received in the Office of the Assistant Commissioner of Income Tax, Central Circle-2, Chandigarh, on 19.12.2019 itself), the assessee company furnished detailed replies to the questions raised in the aforesaid Questionnaire, including the above issues.

64. With regard to the bank loan of Rs. 10,00,00,000/-, it was stated (APB-63) that this bank

loan was received from the State Bank of Patiala, Sector 8-C, Chandigarh, on 21.01.2012 and interest of Rs. 12,31,507/- was due for the month of March, 2012 and, accordingly, loan of Rs. 10,12,31,507/- as on 31.03.2012 had been shown in the Balance Sheet as loan outstanding to Bank. A copy of loan sanction letter and bank account were attached.

65. Apropos the investment of Rs. 21,64,51,054/-, such investment under fixed assets was stated (APB-66) to be on account of net of charges paid to the Town and Country Planning Department, for issue of licence of commercial colony at Chandi Mandir, District Panchkula and cost of land.

66. Regarding the source of credit in the bank account of the assessee company, amounting to Rs. 25,83,50,000/-, this was stated (APB-66) to be, inter alia, on account of loan from the State Bank of Patiala, amounting to Rs. 10,00,00,000/- during the year, received in the assessee's bank account. It was stated that in addition, the credit entries were of unsecured

loan/advance received during the year, and that the sources, credibility and genuineness of these credits were being submitted alongwith the reply.

67. About the deposit of Rs. 71,00,000/- in the bank account during the year, it was submitted (APB-64-65), that the cash deposits of Rs. 25,00,000/- on 16.12.2011 and of Rs. 46,00,000/- on 05.03.2012 were made out of cash withdrawals from the bank account of the company on 02.05.2011, of Rs.12,00,000/-, on 09.05.2011, of Rs. 8,00,000/-, on 11.11.2011, of Rs. 30,00,000/-, on 12.11.2011, of Rs. 20,00,000/-, and on 21.02.2012, of Rs. 4,75,000/-, and that this bank account is already available on the record of the Department. It was stated that all such transactions were fully explained during the original assessment, and also disclosed in the audited financial statements / Balance Sheet of the company for this year, already submitted with the Department.

68. Therefore, considering the facts of the case, where the assessee company, which had been formed for

real estate development purposes, purchased land, obtained license from the Government of Haryana for the proposed commercial project, and invested Rs. 28.29 crore under the said project, it cannot be alleged to be a shell entity for the reasons recorded for the formation of belief of escapement of income chargeable to income tax as it has no income earning apparatus.

69. The learned CIT (DR), on the other hand, during the proceedings before us, has failed to produce the definition of a 'Shell Company' in India, or to point out as to which authority is the authority competent to declare a company as a shell company, on the basis of which, the assessee company has been declared as a shell company.

70. In view of the above, the observations of the Assessing Officer under Para 9 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax are held to be wrong.

71. Now, coming to the assertion of the Assessing Officer under Para 10 of the reasons recorded for the

formation of belief of escapement of income chargeable to income tax, that credit entries in the bank account of Rs. 25,83,50,000/-, including Rs. 25,00,000/- and Rs. 46,00,000/- in cash is claimed to be unaccounted because the said bank account was not disclosed and no business was undertaken during the year.

72. The contention of the learned Counsel for the assessee company, in this regard, was that the actual deposit was of Rs.27.83 crore. The learned CIT (DR) accepted the same and asserted that the same was due to oversight because of the large volume of the concerned data.

73. Here, we find that the observation of the Assessing Officer in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, that the bank account was not disclosed during the year, is contrary to the facts on record, as discussed above. It is patent on record that the assessment for the year under consideration was completed under scrutiny assessment, by virtue of

assessment order passed under section 143(3) of the Act, on 15.09.2014. A copy of the said scrutiny assessment order has been placed on the record at APB, Page 1-2. As also available from the said order, the source of the credits in the bank had already been examined in the original assessment proceedings by the Assessing Officer. However, later, ignoring the verification so conducted by the Assessing Officer during the original assessment, and without refuting the Replies (supra) furnished by the assessee company in response to the Questionnaire (supra) issued to the assessee by the Assessing Officer in the original assessment proceedings, as also in the face of the scrutiny assessment order dated 15.09.2014, while recording the reasons for the formation of belief of escapement of income chargeable to income tax without referring to such verification, the Assessing Officer formed a reason that the entire credit of Rs. 25.83 crore is unexplained. The Assessing Officer observed that in the normal course of business, such a huge quantum of funds is not received by the companies which are not undertaking any business activity. Such observation in

the reasons recorded has evidently been made by the Assessing Officer in stark oblivion of the fact, as discussed, that the source of the cash deposits was explained by the assessee to be out of withdrawals of cash from the same bank account, amounting to Rs. 74.75 lac, as detailed at page 136 of the impugned order, and as also accepted by the Assessing Officer in the original scrutiny assessment order dated 15.09.2014.

74. In view of the above, the reason recorded by the Assessing Officer in Para 10 of his reasons, that the entire deposit of Rs. 25.83 crore as unexplained, is held to be unsustainable and wrong, having been recorded without considering the fact that such verification has already been done under section 143(3) of the Act by the earlier Assessing Officer.

75. So far as regards the assertion of the Assessing Officer under Para 11 of the reasons recorded, that information was received from the Income Tax Officer, Ward 1(5), Chandigarh, vide letter No. 5566, dated 04.02.2019, that a search was conducted in the case of

the Himanshu Group on 29.03.2012, where Shri Himanshu Verma was engaged in the of providing accommodation entries, this fact was statedly accepted by Shri Himanshu Verma, and reliance was placed on Question No. 8 of some statement, wherein it was accepted by the alleged Shri Himanshu Verma, that he, alongwith his partner, was providing accommodation entries through some seventy to eighty companies controlled by him. On this basis, the Assessing Officer concluded that sums received by the assessee from six such companies, amounting Rs. 3.90 crore, are the assessee's unexplained credits during the year.

76. The contention of the learned Counsel for the assessee about the information received by the Assessing Officer from the Income Tax Officer, Ward 1(5), Chandigarh is that the Assessing Officer did not provide the copy of such information or statement of Shri Himanshu Verma, either alongwith the copy of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, or

during the assessment proceedings, despite specific request made by the assessee to the Assessing Officer in this regard.

77. He further stated that as per Question No. 8 reproduced in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the reliance on the seventy to eighty companies is general and casual in nature, without the existence on record of any list of names of such companies.

78. It has been contended that without the availability on record, of the said list of the alleged seventy to eighty companies, which were stated by Shri Himanshu Verma to be owned and run by him, and which companies were allegedly engaged in the business of providing accommodation entries, it cannot be presumed that the six companies which had advanced money to the assessee company for purchase of commercial space were out of the said seventy to eighty companies.

79. It has been submitted that further, without linking it with the statements of the Directors of these six companies and without referring to the assessments of these six companies, there is no justification in the allegation leveled by the Assessing Officer.

80. The learned Counsel for the assessee company has further asserted that the complete details of the transaction entered into by the assessee company with these companies were filed by the assessee before the Assessing Officer during the assessment completed for the year, under section 143(3) of the Act, vide the assessment order dated 15.09.2014 and these details were available on assessment records. However, these details were not at all referred to by the Assessing Officer.

81. Per contra, the learned CIT (DR), in his submissions, has claimed that these six shell companies are operated by Shri Himanshu Verma. However, the learned CIT (DR) has not been able to put forward any counter to the contention of the assessee as to

- (i) what is the total list of such companies;
- (ii) how these six companies were part of this list;
- (iii) how Sh. Himanshu Verma was competent to make statement on the transactions of these companies.

82. We find that there is no reference in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, to any examination conducted in respect of the six companies during the original assessment completed on 15.09.2014. Non reference of any such verification, in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, renders the assertions of the Assessing Officer, made in Para 11 of the reasons recorded, baseless and, therefore, unsustainable in law.

83. In so far as regards the assertion of the Assessing Officer under Para 12 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening of the completed assessment, that funds of Rs. 3.90 crore have been received by the assessee in the same bank account which

was not disclosed by the assessee during the post search enquiries, i.e., Account No. 65012097805 in SBI Chandigarh, the learned Counsel for the assessee stated that this observation of the Assessing Officer is totally wrong, because here it has been claimed by the Assessing Officer that the assessee had not disclosed the bank account in the post search enquiries, whereas the fact is that no enquiry letter was issued to the assessee company and the summons dated 05.04.2018, issued by the Additional director of Income Tax, Mohali, a copy whereof is at APB Page 110, was issued to Shri Triloki Nath Singla, and not to the assessee company.

84. The learned Counsel for the assessee further asserted that neither any notice was issued to the assessee company, nor was there any failure on the part of the assessee to disclose the bank account, and that moreover, as per the proviso to section 147 of the Act, where the original assessment is completed under section 147 of the Act, the failure is to be seen on the basis of all material facts furnished during the

assessment proceedings and not before the Additional Director of Income Tax in subsequent notice, for the extended period of six years, under the proviso to section 147 of the Act.

85. The assertion of the learned Counsel for the assessee company is found to be correct, as indeed, no notice/summons was issued to the assessee company which was not replied to by the assessee. Therefore, the averment of the Assessing Officer under Para 12 of the reasons recorded is wrong and irrelevant.

86. So far as regards the assertions of the Assessing Officer under Para 13 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening the completed assessment, the Assessing Officer has stated in this para, that the assessee is a shell company not undertaking any business, that there was an attempt by the Director of the company to not disclose the bank account no. 65012097085 during post search enquiries, and receipt of funds from bogus and shell companies.

87. In view of our discussion in the earlier paragraphs, which discussion is not being repeated here, the finding of the Assessing Officer under Para 13 of the reasons, is wrong.

88. The assertion of the Assessing Officer under Para 14 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax is that the assessee company had not disclosed fully and truly all material facts necessary for in its return of Income, or that the facts, as noted above, could not be discovered by the Assessing Officer, attracting the provisions of Explanation 1 to section 147 of the Act. However, no such failure to disclose any material fact by the assessee company in its return of Income is claimed either in the Assessment Order, or in the proceedings before us.

89. The learned Counsel for the assessee has contended that the Assessing Officer, by making the remarks contained in Para 14 of the reasons recorded, is, in fact, trying to seek the extended time of six years for

reopening the assessment under the proviso to section 147 of the Act, where the requirement of law is to see failure to disclose material facts in assessment proceedings.

90. We find that in the proceeding before us, the only failure claimed by the Department is by way of non-mentioning of the name of the assessee company in the reply filed by it before the Additional Director of Income Tax, which point we have already addressed. Therefore, the reopening of the assessment for the reason of the alleged failure of the assessee to disclose material facts in the return of Income is also held to be wrong.

ASSESSMENT SHOULD HAVE BEEN COMPLETED UNDER SECTION 153A/153C AND NOT UNDER SECTION 148 OF THE ACT

91. In this regard, the assertion on behalf of the assessee is that the entire decision of the Assessing Officer to reassess the income of the assessee company is based on material found / statement recorded during two independent searches conducted by the Income Tax Department. One of such actions is dated 16.02.2018 at

the premises of Shri Triloki Nath Singla and Shri Sahil Singla, where it is alleged that bank accounts of Shri Triloki Nath Singla and Shri Sahil Singla were unearthed and this has formed the basis of reopening, and the second is the statement recorded of Sh. Himanshu Verma under section 132(4) of the Act, on 29.03.2012, and other material found during the search.

92. The contention of the learned Counsel for the assessee before us is that Section 153C of the Act begins with a non-obstante clause and, therefore, it has an overriding effect on Sections 147 & 148 of the Income Tax Act. Section 153C of the Income Tax Act lays down that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Income Tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery, or other valuable article or thing seized or requisitioned, belongs to, or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in

section 153A, then, such books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of such other person in accordance with the provisions of section 153A of the Income Tax Act. The said section very clearly lays down that the provisions of section 153C of the Income Tax Act are to be applied in such cases notwithstanding anything contained in sections 139, 147, 148, 151 and 153 of the Income Tax Act. Applying the said provisions to the facts of the present case, wherein certain documents / information were found during the course of search, on the basis of which, additional income was to be assessed in the hands of the assessee company, then, for making the aforesaid addition, the recourse which was open to the Assessing Officer was to initiate proceedings under section 153C of the Income Tax Act. Where the provisions of the said section are to be applied, no proceedings can be initiated under sections 147, 148, 151 and 153 of the

Income Tax Act. The reassessment proceedings was initiated in this case on the basis of incriminating material found in the search of a third party, and so, the provisions of section 153C of the Income Tax Act were applicable, which provisions exclude the application of sections 147 and 148 of the Income Tax Act, and the notice issued under section 148 of the Income Tax Act and the proceedings under section 147 of the Income Tax Act are illegal and void ab initio.

93. Therefore, the issuance of notice under section 148 on the basis of the statement or the documents seized during the search under section 132 of the Income Tax Act on a third party is against the provisions of the Income Tax Act. Reliance in this regard has been placed on

the order of the Chandigarh Bench of the ITAT in the case of “Kaur Jain Spinning & Weaving Mills Limited Versus ACIT”, 128 taxman.com 147 (Chd), dated 16.04.2021,

the Delhi ITAT decision in the case of “Nawal Oils and Container Private Limited Versus Income Tax Officer”, ITA No. 852/DEL/2019, order dated 04.03.2020,

the Chandigarh ITAT decision in the case of “Sanjay Singhal (HUF) Versus Deputy Commissioner of Income Tax”, ITA Nos. 702 to 704/Chd/2018, dated 19.06.2020,

the Jaipur ITAT decision in the case of “Shri Kalyan Buildmart Private Limited Versus Assistant Commissioner of Income Tax”, ITA Nos. 152 and 153/JP/2018, dated 28.06.2018,

the Amritsar ITAT decision in the case of “Arun Kumar Kapoor, Amritsar Versus Department Of Income Tax”, ITA No. 147(ASR)/2010, and

the Delhi High Court decision in the case of “PCIT Versus Anand Kumar Jain (HUF)”, in ITA No. 23/2021, dated 12.02.2021.

94. The findings of the learned Commissioner of Income Tax (Appeals) on this issue are that the Assessing Officer has made assessment under section 147/148 of the Act, based on the findings in the case of Shri Himanshu Verma as a result of search under section 132 of the Act in his case on 29.03.2012, the statement

recorded under section 132(4) of the Act and other documents found during the search under section 132 of the Act in the case of Shri Himanshu Verma, used by the Assessing Officer as corroborative evidence which did not belong to the assessee company at all; that the pre-amended provisions of section 153C of the Act are applicable to the facts of the present case; that reliance was being placed on the ITAT Ahmedabad Bench in the case of "Shailesh S. Patel Versus Income Tax Officer", 97 taxmann.com 570; and that therefore, there was no merit in the argument of the learned Counsel for the assessee, that the assessment should have been framed under section 153C and not under sections 147/148 of the Income Tax Act.

95. Before us, the learned Counsel for the assessee has contended that the amendment in section 153C of the Income Tax Act, 1961, brought in by the Finance Act 2015 would be applicable retrospectively; that hence, if any material was found relating to the assessee during the course of search on a third party, then the correct

course of action would have been to proceed against the assessee under section 153C of the Income Tax Act. Reliance in this regard has been placed on

the Supreme Court judgment in the case of “Income Tax Officer Versus Vikram Sujit Kumar Bhatia”, 413 ITR 417 (SC), dated 06.03.2023, and

the Supreme Court judgment in the case of “Assistant Commissioner of Income Tax versus Shruti Bhamasha Shah”, 7 NYPCTR 519 (SC), dated 11.03.2023.

96. The learned CIT (DR), on the other hand, has submitted before us that the provisions of section 153C of the Act are not applicable to the assessee’s case; and that during the search conducted on the Himanshu Group in 2012, no document or books of account belonging to the assessee were found, except a CD containing the details of the companies to which entries were given by the Himanshu Group along with the details of the relevant bank accounts of the group companies.

97. We find that the case has been reopened by recording fifteen reasons recorded for the formation of belief of escapement of income chargeable to income tax, which we have dealt with in detail in the preceding paras, and have decided them to be based on wrong and irrelevant facts. Therefore, this issue does not require to be adjudicated upon separately, when the reopening itself has been held to be invalid for wrong and irrelevant facts relied on by the Assessing Officer for reopening the completed assessment.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

98. The next grievance of the assessee is that though the re-opening is stated to have been done on the basis of information received from the Income Tax Officer, Ward 1(5), Chandigarh, dated 04.02.2019 (APB-20), having jurisdiction over the assessee prior to centralization, about search conducted on 29.03.2012 on Shri Himanshu Verma, either the detail of such information, or the statement of Shri Himanshu Verma was not provided to the assessee, either alongwith the

reasons recorded for the formation of belief of escapement of income chargeable to income tax, or during the assessment proceedings, or even during the first appellate proceedings before the learned Commissioner of Income Tax (Appeals).

99. The learned Counsel for the assessee contends that after reply dated 19.12.2019 was filed by the assessee company, around ten days after the passing of the final re-assessment order, an incomplete extract of the approval accorded by the learned Principal Commissioner of Income Tax under section 151 of the Income Tax Act and a two page covering letter, received from the office of the Income Tax Officer, Ward 1(5), Chandigarh, was provided to the assessee company.

100. Here, it is seen that in the objections dated 20.06.2019 and 02.08.2019, filed by the assessee against the re-assessment proceedings, the assessee made a specific request to the Assessing Officer in this regard, for being supplied the information received by the Assessing Officer (APB-49). However, vide order dated

18.10.2019 (APB 50-54), the Assessing Officer rejected such request of the assessee and disposed of the assessee's objections, observing that the information received from the Income Tax Officer, Ward-1(5), Chandigarh, was not required to be provided to the assessee.

101. The learned CIT (DR), in his written submissions, under Para 16.1 thereof, has stated that “as regards, provisions of statement, it is to be seen, if the assessee had with him the statement of Shri Himanshu Verma or not.” Under Para 16.2, the learned CIT (DR) states that “On Page 86 of Learned CIT(A) order, as per assessee’s submissions, it is stated: There is not even a whisper about the name of the appellant company in the statement of Shri Himanshu Verma, received from the ADIT (Inv) Unit 6(3)”.

102. In Para 16.3 of the learned CIT (DR)’s submissions, it has been stated that: “The above admission of the assessee show that throughout the

reassessment proceedings, the statement in question was available with the assessee.”

103. The learned Counsel for the assessee, in his rebuttal under Para 13.2, submitted that in fact, Question No. 8 of the statement of Shri Himanshu Verma was relied on by the Assessing Officer under Para 11 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening, lying at APB, Page 21, which does not contain the name of the assessee company and that is why the assessee, in its reply, asserted so before the learned CIT (A). This, in any case, according to the learned Counsel, is not an admission on the part of the assessee, that the statement of Shri Himanshu Verma and the enquiries of the Assessing Officer are available with the assessee, moreso, when the Assessing Officer had specifically, in writing, refused to provide the assessee company with such material.

104. The Assessing Officer, it is seen, was, under the law as well as under the principles of natural justice,

legally mandatorily required to provide to the assessee, the copy of the statement of Shri Himanshu Verma and the information received from the Income Tax Officer, Ward 1(5), Chandigarh alongwith the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening of the completed assessment. The refusal of the Assessing Officer to provide and make available to the assessee, the information and evidences gathered at the back of the Assessee is fatal to the case of the Department and the use of such information and evidence against the assessee unilaterally is not permissible under the law. This is in blatant contravention of the provisions of section 142(3) of Income Tax Act, which mandates the Assessing Officer to provide to the assessee, the information gathered on the basis of any enquiry, and proposed to be used against the assessee in the assessment.

105. We are also, in this regard, guided by the decision of the Hon'ble jurisdictional Punjab and

Haryana High Court in the case of “Commissioner of Income Tax, Patiala II Versus Sham Lal”, 127 ITR 816 (P & H), wherein, it has been held that “The assessee is, in law, entitled to rebut the material placed before him if he so chooses and any material placed on the record without notice to the assessee cannot be relied upon by the revenue. It would thus be seen that the finding of the Tribunal that the material placed on the record in violation of the principles of natural justice could not be relied upon and that in fact there was no material to come to the conclusion that the assessee was a partner in the firm, the only correct course open to the Tribunal was to annul the assessment order passed by the Income Tax Officer.”

106. Reliance is also placed on the decision of the Hon’ble Supreme Court of India in the case of “Kishinchand Chellaram versus Commissioner of Income Tax, Bombay City II”, 125 ITR 713 (SC), wherein, it has been held that “The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was

the letter dated 18th February, 1955, said to have been addressed by the Manager of the Punjab National Bank Limited to the Income Tax Officer. Now, it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding. In the first place, this letter was not disclosed to the assessee by the Income Tax Officer and even though the AAC reproduced an extract from it in his order, he did not care to produce it before the assessee or give a copy of it to the assessee. The same position obtained also before the Tribunal and the High Court and it was only when a supplemental statement of the case was called for by this court by its order dated 16th August, 1979, that, according to the Income Tax Officer, this letter was traced by him and even then, it was not shown by him to the assessee, but it was forwarded to the Tribunal and it was for the first time at the hearing before the Tribunal in regard to the preparation of the supplemental statement of the case that this letter was shown to the assessee. It will, therefore, be seen that, even if we assume that this letter was in fact addressed

by the Manager of the Punjab National Bank Limited to the Income Tax Officer, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross-examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without-calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the I.T. authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. We are clearly of the view that the letters dated 18th February, 1955, and 9th March, 1957, did not constitute any material evidence which the Tribunal could legitimately take into account for the purpose of arriving at the finding that the amount of Rs.

1,07,350/- was remitted by the assessee from Madras, and if these two letters are eliminated from consideration, it is obvious that there was no material evidence at all before the Tribunal which could support this finding”.

107. The Hon’ble Rajasthan High Court in the case of “Micro Marbles Private Limited Versus Office of the Income Tax Officer”, 2023 (1) TMI 282 (Raj), has held that “In view of the above decisions and the guidelines laid down therein, the supply of documents referred to in the reasons recorded for the formation of belief of escapement of income chargeable to income tax becomes inevitable and in the event such documents are not supplied, it would be a flagrant violation of the principles of natural justice. Accordingly, the impugned notice dated 30.03.2021 and the order dated 18.08.2021 dismissing the objections of the petitioner are hereby quashed and all consequential proceedings including the assessment order dated 29.03.2022 are declared to be illegal, null and void with liberty to the respondents to

take up a fresh exercise for reassessment, if necessary, in accordance with law”.

108. The Hon’ble Delhi High Court, in the case of “Sabh Infrastructure Versus ACIT”, 398 ITR 198 (Del), has held that “Where the reasons recorded for the formation of belief of escapement of income chargeable to Income Tax make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons recorded for the formation of belief of escapement of income chargeable to income tax”.

109. The Hon’ble Bombay High Court, in the case of “Tata Capital Financial”, 443 ITR 127 (Bom), has held that “In the circumstances, the Revenue is directed to adhere to the following: (a) While communicating the reasons recorded for the formation of belief of escapement of income chargeable to income tax for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided

to the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date. The Assessing Officer shall not merely state the reasons recorded for the formation of belief of escapement of income chargeable to income tax in the letter addressed to the assessee. (b) If the reasons recorded for the formation of belief of escapement of income chargeable to income tax make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons recorded for the formation of belief of escapement of income chargeable to income tax. Such portion as it does not bear reference to the assessee concerned could be redacted”.

BORROWED SATISFACTION

110. The next grievance of assessee is that the assessment has been reopened on the basis of information dated 04.02.2019, received from the Income Tax Officer, Ward 1(5), Chandigarh, which contains the details of search conducted on Shri Himanshu Verma on

29.03.2012, and as per such information, six companies had provided accommodation entries of Rs. 3.90 crore to the assessee company, which six companies are controlled by Shri Himanshu Verma.

111. The learned Commissioner of Income Tax (Appeals) has observed that the Assessing Officer considered the information received alongwith the findings contained in the Appraisal Report and reconciled such information with the particulars as contained in the Income Tax Return of the assessee; that the information was received from the Income Tax Officer, Ward-1(5), Chandigarh, vide letter No. 5566 dated 04.02.2019, that the assessee had received credits from six paper companies of Shri Himanshu Verma, an accommodation entry provider; that thereupon, the Assessing Officer recorded reasons for the formation of belief of escapement of income from assessment. The grievance of the assessee is that the Assessing Officer did not apply his own mind while proceeding against the assessee company, in violation of the provisions of the

law and in violation of the principles of natural justice; that the Assessing Officer has formed his reasons recorded for the formation of belief of escapement of income chargeable to income tax merely on surmises and conjectures, where in fact, no prima-facie reason to believe existed.

112. Here, it is seen that neither in the Appraisal Report, nor in the statement of Shri Himanshu Verma, the name of the assessee company has been mentioned. In fact, in the Appraisal Report itself, there is a recital that *“This Appraisal Report is only advisory in nature and should be only used as a guideline”*.

113. It remains an undisputed fact that the Assessing Officer did not carry out any further investigation and he just went by the Appraisal Report as it is. Shri Himanshu Verma had stated that he was engaged in providing accommodation entries to various beneficiaries; that his modus-operandi was to provide accommodation entries either in the form of share application money, or as share capital, and/or as

unsecured loans in lieu of cash, through a number of corporate and non corporate paper entities formed by him. The cash received was first deposited in the accounts of the six paper companies, as cash received against bogus sales/reflected in the books of account. Thereafter, such cash was transferred to the paper companies and accommodation entries were provided through RTGS/cheques, as share application money or share capital or loans. Nothing was stated by Shri Himanshu Verma to the effect that the assessee company had received any such share application money or share capital or unsecured loan from the paper companies of the Himanshu Verma Group. There is also no allegation that any accommodation entry was taken by the assessee company, after giving cash either to Shri Himanshu Verma, or to his associates. The Assessing Officer remained oblivious of this position while initiating the re-assessment proceedings. In fact, the reasons recorded for the formation of belief of escapement of income chargeable to income tax themselves make no mention of any enquiry having been carried out by the

Assessing Officer before the recording of such reasons for the formation of belief of escapement of income chargeable to income tax. It is seen that as available from the bank statement of the assessee company for the year under consideration, the cash deposits were actually re-deposits of cash withdrawn earlier from the same bank account during the year under consideration. Remarkably, in the re-assessment proceedings, these cash deposits have been accepted by the Assessing Officer as genuine deposits. The bank statement was available on record at the time of the original assessment proceedings. However, the reasons recorded for the formation of belief of escapement of income chargeable to income tax do not evince that this statement was perused or considered by the Assessing Officer before recording the reasons recorded for the formation of belief of escapement of income chargeable to income tax.

114. Though the Assessing Officer placed reliance on the statement of Shri Himanshu Verma, while recording the reasons for the formation of belief of escapement of

income chargeable to income tax, it has been lost sight of that in such statement, he did not state the names of the alleged six companies. As per the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the statement further makes mention of there being middlemen/clients, though no name of any such middleman occurs, much less, reliance has been placed on the statement of any such middleman, nor has any such statement been provided to the assessee. Not even the statements of the Directors of the six companies were considered, rather, what to talk of statements, not even the names of such Directors were mentioned. The facts of the case are, in view of these observations, on parity with those in "PCIT Vs Meenakshi Overseas Private Limited" (supra), wherein, it was held that where the reasons recorded for the formation of belief of escapement of income chargeable to income tax to believe contain not the reasons recorded for the formation of belief of escapement of income chargeable to income tax, but the conclusions of the Assessing Officer and there is no independent application of mind by the

Assessing Officer to the material which forms the basis of the reasons recorded for the formation of belief of escapement of income chargeable to income tax, such conclusions of the Assessing Officer are, at best, a borrowed satisfaction.

CASE LAWS

115. In “RMG Polyvinyl” (supra), it has been held that the information received from the Investigation Wing of the Department cannot be said to be tangible material *per-se*, without further enquiry being undertaken by the Assessing Officer the tangible material and the formation of reasons recorded for the formation of belief of escapement of income chargeable to income tax to believe escapement of income. This decision is squarely applicable to the present case.

116. In “PCIT-4 Versus G&G Pharma India Limited” (supra), the Assessing Officer’s conclusion that he had also perused various materials and the report from the Investigation Wing and that on that basis, it was evident that the assessee company had introduced its own

unaccounted money in its bank account by way of the accommodation entries, was held to be a conclusion not helpful in understanding whether the Assessing Officer had applied his mind to the materials that he talked about, particularly since he did not describe what those materials were. It was held that without forming a prima-facie opinion, on the basis of such material, it was not possible for the Assessing Officer to have simply arrived at the conclusion which he did; and that thus, the basic requirement that the Assessing Officer must apply his mind to the materials in order to have reasons recorded for the formation of belief of escapement of income chargeable to income tax to believe that the income of the assessee had escaped assessment, was missing. "G&G Pharma" is directly applicable hereto. In the present case also, as discussed, the Assessing Officer merely stated his conclusion at the very outset in the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded, without first forming a prima-facie opinion on the basis of the material. Rather, he did not even refer to the

material available on record in the original assessment proceedings.

117. In “Sabh Infrastructure Versus ACIT” (supra), it was held that there needs to be reasons recorded for the formation of belief of escapement of income chargeable to income tax to believe and not merely reason to suspect that income has escaped assessment. It was held that the reasons recorded for the formation of belief of escapement of income chargeable to income tax failed to mention as to what facts or information were with-held by the assessee and mainly relying on the Investigation Report, which did not form part of the reasons recorded for the formation of belief of escapement of income chargeable to income tax and was not even annexed to the reasons recorded for the formation of belief of escapement of income chargeable to income tax so recorded, and merely the statement of Shri Naveen Kumar Singhania that the companies in question were paper companies, was insufficient to reopen the assessment, unless the Assessing Officer had any further

information after making further enquiries into the matter and the relevant findings. Likewise, in the case before us, as dwelt upon earlier, the Assessing Officer did not carry out any investigation what-so-ever with regard to the material available. He merely relied upon the investigation Report, i.e., the Appraisal Report and the statement of Shri Himanshu Verma, which too, were never confronted to the assessee, despite specific request. Therefore, the case at hand is directly in line with the facts and the ratio of “Sabh Infrastructure” (supra).

118. In “Anju Jindal Versus ACIT” (supra), the position remains much the same. The reasons recorded for the formation of belief of escapement of income chargeable to income tax therein were recorded simply by relying on the report and the conclusion drawn by the Investigation Wing, without any preliminary enquiry and investigation and establishing the necessary nexus between the material and the formation of the belief that income had escaped assessment. “Anju Jindal” (supra),

is, as such, in pari materia with the case before us and, therefore, “Anju Jindal” (supra) is applicable.

119. “Smt. Sudesh Rani Versus Income Tax Officer, Ward 2(3), Ludhiana” (supra) is applicable too. Therein, it was observed that what information was available with the Assessing Officer was neither stated, nor enclosed with the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded by him and thus, it was not discernible from the reasons recorded for the formation of belief of escapement of income chargeable to income tax; that the mere fact that the assessee had sold certain shares with certain value on the Stock Exchange itself could not be held to be tangible material; that the Assessing Officer had not just recorded any reason to believe, but a conclusive finding of the assessee being involved in trading of penny stock; and that it was not borne out from the reasons recorded for the formation of belief of escapement of income chargeable to income tax as to

how the Assessing Officer had reached this conclusive finding, or the basis thereof.

120. Apropos “Raymond Woollen Mills Versus Income Tax Officer and Others” (supra), therein, it was held, inter-alia, that the Court cannot strike down the re-opening of the case in the facts of that case; that it would be open to the assessee to prove that the assumption of facts made in the notice was erroneous; that the assessee might also prove that no new facts came to the knowledge of the Income Tax Officer after completion of the assessment proceedings. The matter was remanded to the Assessing Officer holding, further, that in determining whether commencement of re-assessment proceedings was valid, it has only to be seen whether there was prima-facie some material on the basis of which the department could reopen the case, and that the sufficiency or correctness of the material was not a thing to be considered at that stage.

121. We find that this decision, in the facts of the present case, works in favour of, rather than against the

assessee. It was in a writ petition, which was the subject matter in “Raymond Woollen Mills Limited” (supra), that it was held that the assessee had it open to them to prove the assumption of facts in the notice being erroneous and to prove that no new facts had come to the knowledge of the assessing authority after completion of the assessment proceedings. It was for this purpose, that the matter was remanded. In the present case, on the other hand, the proceedings are in the stream of appeal and not by way of a writ petition, which is an extraordinary remedy, not to be exercised in the normal course and which the Courts are loath to so exercise. Rather, herein, what we have seen above is that the assumption of jurisdiction to reopen the completed assessment was based on wrong facts, where the issue had been verified thread-bare in the original assessment proceedings. Therefore, “Raymond Woollen Mills” (supra), is not applicable to the case at hand.

122. In “Yogendra Kumar Gupta Versus Income Tax Officer” (supra), the company, on whom, the search had

been conducted by the CBI in some bribery case, admitted specifically that they had provided accommodation entries to the assessee. The original assessment proceedings having been completed after examination of receipt of amount from the company, the completed assessment was reopened.

123. The facts are palpably different from the case at hand in as much as in the present case, as discussed, the assessee was nowhere named by Shri Himanshu Verma, the alleged accommodation entry provider, nor did the assessee's name occur anywhere in the Appraisal Report. The Assessing Officer relied on merely vague information to record the stated reasons recorded for the formation of belief of escapement of income chargeable to income tax to believe escapement of income. The SLP against this decision in "Yogendra Kumar Gupta" stands dismissed.

124. The issue before the Hon'ble High Court in "Paramount Communication Private Limited" (supra), was that the reasons recorded for the formation of belief

of escapement of income chargeable to income tax recorded were not proper and the Commissioner of Income Tax (Appeals) and the ITAT had wrongly allowed the case of the assessee. The Hon'ble High Court set aside the case to the ITAT, holding that the Assessing Officer cannot be directed as to how the reasons recorded for the formation of belief of escapement of income chargeable to income tax are to be recorded. This is, obviously, not the question herein and so, "Paramount Communication" (supra), is distinguishable. Even the SLP there-against was dismissed.

125. "Pushpak Bullions Private Limited Versus DCIT" (supra), is also not attracted, as in the present case, as against in "Pushpak Bullions Private Limited" (supra), no specific question was raised to Shri Himanshu Verma with regard to the assessee company. Reference was made to seventy to eighty companies, without linking the six companies from whom the advance against sales was allegedly received, without giving the list of the seventy to eighty companies and also without stating that the six

companies were out of those seventy to eighty companies.

126. In “Jayant Security & Finance Limited Versus ACIT” (supra) after completion of assessment, it came to the notice of the Investigation Wing that advances of Rs.10.25 Cr had been received by the assessee from M/s East West Finvest India Limited during assessment year 2010-11. M/s East West Finvest India Limited worked as an entry provider and earned bogus funds to provide advances to various persons. The assessment had been completed on 08.03.2012. In the case at hand, the assessment was completed on 15.09.2014, whereas the information was available with the Department prior thereto, since the statement had been recorded on 29.03.2012. “Jayant Security & Finance Limited Vs ACIT” (supra) is, thus, also not applicable, on facts.

127. “R.K. Malhotra, Income Tax Officer Versus Kasturbhai Lal Bhai” (supra) is, again, of no help to the department. The issue involved therein was as to whether an Audit Objection can be considered as

information. The Supreme Court reversed the judgment of the Gujarat High Court. Later on, it was over-ruled by the Supreme Court in “Indian & Eastern Newspaper Society Versus CIT”, 119 ITR 996 (S.C). While doing so, the question as to whether the view expressed by an internal Audit Party of the Income Tax Department on a point of law is to be regarded as information for the purpose of initiating proceedings under section 147(b) of the Income Tax Act and as to whether the Income Tax Officer was legally justified in re-opening the assessments on the basis of the view expressed by the internal Audit Party and received by him subsequent to the original assessment, was answered in favour of the assessee. Therefore, “R.K. Malhotra” (supra) is also not attracted.

128. In “RBS Product Limited Versus ACIT” (supra), the assessee had received share capital from M/s Shail Investments Private Limited and M/s New Delhi Credits Private Limited. These two companies were also promoted by Shri Tarun Goyal from the same premises

and so, a serious doubt had arisen with regard to the genuineness of the transaction claimed by the assessee. Per contra, in the case of the assessee before us, the allegation is of receipt of accommodation entries from six companies, whereas as noticed, there is no link established that the said six companies were promoted by Shri Himanshu Verma, or that he was a Director in all or any of them.

129. In “Chetan Sabharwal Versus ACIT” (supra), the writ petition was held to have been filed at the “Reasons recorded for the formation of belief of escapement of income chargeable to income tax” stage, before assessment. Moreover, in that case, the original assessment orders for both the years under consideration, which were passed in scrutiny assessment proceedings, did not give any indication about the Assessing Officer having formed any opinion, on the basis of which, the re-opening had been ordered. The matter was remanded to the Assessing Officer keeping open all arguments, but for the point that the re-opening

constituted a change of opinion. The original assessment in that case was completed on 15.09.2010, and the enquiry by the Investigation Wing was carried out on 15.10.2015. On the other hand, in the present case, the original assessment order contains elaborate findings of the Assessing Officer, showing the unambiguous formation of opinion by the Assessing Officer in the original assessment proceedings. Then, as against the factum of conducting of enquiry by the Investigation Wing after the completion of assessment in that case, in the case at hand, the statement of Shri Himanshu Verma was recorded on 29.03.2012 and it was available to the Department at the time of passing of the original assessment order on 15.09.2014. Moreover, the proceedings in "Chetan Sabharwal" (supra), were writ proceedings, whereas no such request for exercise of extra ordinary jurisdiction is there in the present case.

130. Having thus considered the rival contentions in the light of the decisions cited by both the parties, we

find that the learned Commissioner of Income Tax (Appeals) has erred in upholding the Assessing Officer's reliance on a third party opinion without application of his own mind, without verifying the facts from the record before issuing the notice under section 148 of the Income Tax Act. We find that:

- The learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the initiation of the re-opening of the completed assessment on the basis of information contained in search material found during search of a third party. Since there was no incriminating material, the initiation, completion and consequential upholding of the re-assessment proceedings is not sustainable in law. The reasons recorded for the formation of belief of escapement of income chargeable to income tax are based solely on the Investigation Wing's report and the statement of Shri Himanshu Verma. The report of the Investigation Wing only suggested to the Assessing Officer to examine the details and to only thereafter determine whether there could be any justification for initiating the re-assessment proceedings. The statement of Shri

Himanshu Verma does not implicate the assessee in any manner. (Ground No.2,7 & 11)

- We find that the information received from Income Tax Officer, Ward 1(5) Chandigarh was denied by the Assising Officer from being confronted to the assessee and not providing the copy of statement of Shri Himanshu Verma to assessee is in violation of the principles of natural justice as well as the provisions of section 142(3) of the Income Tax Act. Therefore, such information and statement of Shri Himanshu Verma cannot be used against assessee for making addition. (Ground No.3)
- It is also patent that the learned Commissioner of Income Tax (Appeals) erroneously upheld the re-opening, which was based on wrong and irrelevant facts recorded under the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening by the Assessing Officer. We, therefore, cancel the assessment, as the grounds on which reassessment notice was issued are not found to exist or found to be irrelevant. (Ground No.8).

- We find that reopening of assessment under section 147 is based on wrong and irrelevant facts and the reopening is held to be bad. In view of above, we find that application of section 153A / 153(C) in place of section 147 of the Act need not be looked into when the facts are found to be wrong and non-existent.
- Further, we find that the Assessing Officer has not applied his mind to the nature of the transaction done by the Assessee company with Sh. Himanshu Verma and his group Companies, as he has not mentioned anything about the nature of the transaction made, in the reasons recorded by the Assessing Officer.
- We also find that the Assessing Officer has himself assessed this company as a genuine company in the assessment orders under section 143(3) read with section 147 of the Income Tax Act, 1961, for the assessment years 2011-12 to 2018-19 and the Assessing Officer has wrongly alleged, in the reasons recorded by him, without any incriminating material on record, that the Assessee company was a shell company.

131. Therefore, finding merit therein, Ground nos. 2, 3, 7, 8 and 11 are allowed and Ground No. 6 is rejected as infructuous.

GROUND NO.4

132. The grievance of the assessee by way of Ground No.4 is that the learned Commissioner of Income Tax (Appeals) has erred in upholding the re-opening of the completed assessment after four years of such completion of original assessment under section 143(3) of the Income Tax Act, without there being any allegation by the Assessing Officer that all material facts necessary for the assessment had not fully and truly been disclosed by the assessee during the assessment proceedings.

ASSESSEE'S CONTENTIONS BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)

133. The assessee submitted before the learned Commissioner of Income Tax (Appeals), that since the issue of advance against sales with six companies of Rs.

3.90 Crores was examined by the Assessing Officer during the original assessment proceeding and all primary facts/documents were filed before the Assessing Officer, it was not required to give any further assistance to the Assessing Officer to decide as to what inference should be drawn from the facts of the case.

133.1 The assessee submitted that doubt, if any, of alleged accommodation entries could have been raised by the Assessing Officer at the stage of the original assessment, on the basis of the primary documents/facts already in his possession.

133.2 The assessee stated that however, on the basis of the documents filed/facts disclosed, the Assessing Officer did not doubt the genuineness of the transactions of the assessee company during the scrutiny assessment proceedings.

133.3 The assessee stated that the other fact relied on by the Assessing Officer while re-opening the completed assessment was a completely wrong

assumption that the assessee company had tried to keep its bank accounts concealed from the Department, in addition to the extremely vague and scanty information from the Investigation Wing of the Department, which was not even provided to the assessee company at any stage during the re-assessment proceedings.

133.4 The assessee stated that otherwise also, by no stretch of imagination can it lead to the conclusion that there is non-disclosure of true and material facts by the assessee company.

133.5 The assessee stated that therefore, the completed assessment of the assessee company could not have been reopened under section 147 of the Income Tax Act.

133.6 It was stated that if the Assessing Officer was of the opinion that the primary documents/facts submitted during the original assessment proceedings were false or incorrect, this should have been set out in the reasons recorded for the formation of belief of

escapement of income chargeable to income tax, which has not been done.

133.7 The assessee stated that the reasons recorded for the formation of belief of escapement of income chargeable to income tax contain the very same names of companies as had been disclosed by the assessee company during the original scrutiny assessment proceedings, in the year 2014, and even the amounts received from the said companies were the same.

133.8 The assessee stated that all the companies from whom the alleged unexplained credits had been received by the assessee company were assessed to tax.

133.9 The assessee stated that the allegation that the companies were paper companies, without any further enquiry into the facts, was, by itself, a reason insufficient to reopen the completed scrutiny assessment.

133.10 The assessee stated that beside there being no such allegation of failure on the part of the assessee to make a full and true disclosure of the material facts during the original assessment proceedings, the Assessing Officer had also overlooked the fact that due enquiry into the alleged unexplained credits had been conducted by the Assessing Officer in the original assessment proceedings and that he had framed the original assessment under scrutiny after detailed enquiry into the identity, genuineness and credit worthiness of the respective entities.

133.11 The assessee stated that therefore, it was not open to the Assessing Officer to re-examine the same issue again, without there being any allegation, in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, of failure on the part of the assessee to make a full and true disclosure of material facts during the original assessment proceedings.

133.12 The assessee contended that the re-opening of the completed assessment was an abuse of power by the Assessing Officer, since the Assessing Officer, inspite of having been in possession of full and true particulars furnished by the assessee, makes no reference to them.

133.13 It was stated that a mere change of opinion based on just conjectures or surmises is not sufficient.

133.14 The assessee stated that there has to be reason to believe and not merely reason to suspect escapement of income, based on a mere change of opinion.

133.15 The assessee stated that the Assessing Officer had recorded his reasons for the formation of belief of escapement of income chargeable to income tax by wrongly alleging that the bank account had not been disclosed by the assessee company during the post search investigations, whereas the fact of the matter was that the assessee company had never been part of any

post search investigation of the Department and thus, there was no occasion where the assessee company could either convey or conceal its bank accounts during the alleged post search investigation.

133.16 The assessee stated that it was not a case where some bank account had been unearthed in post search investigation.

133.17 It was stated that rather, scrutiny assessment had already been completed under section 143(3) of the Income Tax Act, wherein, all the relevant details, including bank account number and bank account statements had already been submitted during the original assessment for assessment years 2011-12 and 2012-13 and it was not a hidden account, but one which had already been shown in the financials of the assessee company.

133.18 It was stated that therefore, the reasons recorded for the formation of belief of escapement of income chargeable to income tax, as recorded by the

Assessing Officer, were not emerging from the record available with him, but from the wrong, irrelevant and unsubstantiated information received from the DDIT (Investigation), Mohali.

133.19 It was stated that it was the Department's onus to show that the assessee company had stated incorrect and wrong material facts, resulting in the Assessing Officer proceeding on the basis of facts which were incorrect and wrong.

133.20 It was stated that the reasons recorded for the formation of belief of escapement of income chargeable to income tax and the documents on record are of paramount importance and they have to be examined to determine whether the assessee company had stated incorrect and wrong material facts during the original assessment proceedings.

133.21 It was stated that neither the Assessing Officer, while recording the reasons recorded for the formation of belief of escapement of income chargeable to income tax,

nor the learned Principal Commissioner of Income Tax, while giving his approval under section 151 of the Income Tax Act, had leveled any allegation against the assessee company regarding any failure on its part to disclose fully and truly all material facts necessary for its assessment, during the original assessment proceedings under section 143(3) of the Income Tax Act.

133.22 It was stated that when all the transactions and bank accounts, etc., were recorded in the books and the bank statement was already on record, the conclusion that the transactions were not truly disclosed was a factual mistake.

133.23 The assessee stated that the Assessing Officer did not bother to examine the information/documents already available on record.

133.24 The assessee stated that had the Assessing Officer perused the material already available on record, he could never have come to the conclusion that it was a

case fit for notice under section 148 of the Act being issued.

133.25 The assessee also stated that in the absence of compliance of the statutory requirements of the case for issuance of notice under sections 147 and 148 of the Act, particularly when it was being issued beyond the period of four years, the notice and the proceedings initiated stand vitiated for want of strict compliance of the requirements as stipulated under section 147 of the Income Tax Act.

COMMISSIONER OF INCOME TAX (APPEALS)'S FINDINGS

134. In this regard, the learned Commissioner of Income Tax (Appeals) has observed, inter alia, that from the assessment record, it was found that the case of the assessee had been selected for scrutiny through Computer Aided Scrutiny Selection, reason being "large increase in unsecured loans".

134.1 The learned Commissioner has observed that the issue of increase in unsecured loans was examined by the Assessing Officer and assessment was made on 15.09.2014 by passing an order under section 143(3) of the Income Tax Act.

134.2 The learned Commissioner stated that it had been observed from the perusal of the Office Note appended to the assessment order dated 15.09.2014, that therein, it had clearly been stated that the case had been examined on account of large increase in unsecured loans.

134.3 The learned Commissioner observed that the six credits of Rs.3.90 crores had not been reflected by the assessee in its balance sheet as on 31.03.2012 under the head "Long Term Borrowings", rather the same had been reflected under the head "Advance against land - Note-4", adjusted against fixed assets [Note-7(a) of the balance sheet].

134.4 The learned Commissioner observed that therefore, the said credits of Rs.3.90 crores were not subject-matter of examination during the original assessment proceedings.

134.5 The learned Commissioner observed that even the Assessing Officer was not having jurisdiction to examine such credits shown as advance against land under the Computer Aided Scrutiny Selection parameters.

134.6 The learned Commissioner observed that on the strength of such facts, it cannot be said that all the material facts in respect of the said credits received during the year were fully and truly disclosed by the assessee.

134.7 The learned Commissioner observed that the Assessing Officer acquires jurisdiction to reopen an assessment under section 147 of the Income Tax Act, on the basis of tangible information in his possession, subsequent to which, he has reasons for the formation of

belief of escapement of income chargeable to income tax, which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, part of his income chargeable to Income Tax has escaped assessment.

134.8 The learned Commissioner observed that therefore, the case of the assessee was squarely covered by the proviso to section 147 of the Income Tax Act, wherein, it is provided that “where an assessment under sub-section (3) of Section 143 or this Section has been completed 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”.

134.9 It was observed that the Assessing Officer had initiated the re-assessment proceedings after recording reasons for the formation of belief of escapement of income chargeable to income tax, for the formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and, therefore, income chargeable to tax had escaped assessment.

134.10 The learned Commissioner observed that reliance was being placed on the decision of the Hon'ble Supreme Court in the case of “Phool Chand Bajrang Lal & another Vs Income Tax Officer & another”, 203 ITR 456 (S.C.), wherein, it has been held that the jurisdiction of the Income Tax Officer to reassess income arises if he has, in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe that income chargeable to tax had escaped assessment and may start

re-assessment proceedings either because some fresh evidence comes to light which was not previously disclosed, or some information with regard to the facts previously disclosed comes into his possession, which tends to expose the untruthfulness in those facts relating to the inference that the assessee had not disclosed the material facts truly and fully and therefore, the income chargeable to tax had escaped assessment.

ASSESSEE'S SUBMISSIONS BEFORE US

135. Before us, it has been contended on behalf of the assessee that the original assessment was completed under section 143(3) of the Income Tax Act, on 15.09.2014 and the reopening of the assessment is done on 29.03.2019, i.e., in the sixth year from the end of the Assessment Year.

135.1 It has been argued that as per the proviso to section 147, no reopening is to be done beyond four years in case the original assessment was completed

under section 143(3) and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year.

135.2 It has been claimed that all material facts were duly disclosed by the assessee during the original assessment proceedings and there is no justification to avail the extended period of six years without any allegation that there is any failure and without even demonstrating that the proviso to section 147 is exercised for such failure.

135.3 It has been stated that the issue of advance against sale of commercial space from six companies aggregating Rs. 3.90 crore stood examined by Assessing Officer in completed assessment under section 143(3) of the Act.

135.4 It has been stated that the Assessing Officer issued a notice dated 10.09.2014, copy at APB, Page 15 and that the assessee had submitted the desired documents before the Assessing Officer as per reply

dated 15.09.2014, copy at APB, Pages 16-17, alongwith copy of Allotment Letter addressed to the investor, Agreement to Sell, Income Tax Return and copy of bank statement of the investor.

135.5 It has been stated that these complete primary facts relating to the transactions of advance against sale received from these six companies, were filed by the assessee before the Assessing Officer during the original assessment proceedings.

135.6 The learned Counsel for the assessee invited the attention of the Bench to the fact that the Assessing Officer has reopened the assessment on the allegation that the bank account was not disclosed by the assessee to the Additional Director of Income Tax in response to the summons issued to Shri Triloki Nath Singla (Para 8 of the reasons recorded for the formation of belief of escapement of income chargeable to income tax).

135.7 The learned Counsel for the assessee has contended that further, under Para 14 of the reasons

recorded for the formation of belief of escapement of income chargeable to income tax, it was alleged by the Assessing Officer that it is evident that the assessee had not disclosed fully and truly all material facts in its return of income, or that facts, as noted above, could not be discovered by the Assessing officer in the assessment proceedings under section 143(3) of the Act.

135.8 The learned Counsel for the assessee has contended that nowhere in the entire reasons recorded for the formation of belief of escapement of income chargeable to income tax, the disclosure of all material facts during assessment proceedings has been doubted, nor has the applicability of the proviso to section 147 of the Act been demonstrated and claimed by Assessing Officer in the reasons recorded for the formation of belief of escapement of income chargeable to tax.

135.9 The learned Counsel for the assessee has contended that in view of these facts, the extended period of six years is not available to the Assessing Officer without any failure on the part of the assessee to

disclose before the Assessing Officer, all material facts necessary for its assessment.

135.10 The learned Counsel for the assessee has sought to place reliance on the following case laws:

- i) *NDTV Versus DCIT (Supreme Court) 2020 424 ITR 607*
- ii) *Calcutta Discount Co. Versus Income Tax Officer 41 ITR 191*
- iii) *Kayathwal Estate Private Limited 442 ITR 498*
- v) *CIT Veresus ITW India Limited (P&H) 377 ITR 195*
- vi) *Duli Chand Singhanian (P&H) 269 ITR 192*
- vii) *ACIT Versus Arohul Foods Private Limited ITA 324/Lkw/2020 dated 11.08.2021*
- viii) *Parashuram Pottery Works Co. Limited Versus Income Tax Officer (1977) 106 ITR 1 (S.C.)*
- ix) *Income Tax Officer, I Ward, Distt. VI, Calcutta & ors. Versus Lakhmani Mewal Das 103 ITR 437 (SC)*
- x) *Apeejay Education Society Versus ACIT ITA Nos. 710 and 711(ASR)/2014 and ITA No.705(ASR)/2014 February 25, 2016*
- xi) *Priti Paras Savla Versus Income Tax Officer Ward (3)(2)(4) 440 ITR 472 (Guj)*

DEPARTMENT'S STAND BEFORE US

136. On the other hand, the Department contends that whole the dispute is regarding the bank account of

the company, "65012097085", not disclosed during the assessment proceedings.

136.1 The learned CIT (DR) had submitted that the account number mentioned in the assessment proceedings is different from the account number stated in the reasons recorded for the formation of belief of escapement of income chargeable to income tax.

136.2 It has been argued that apart from a wrong bank account number, not even an iota of detail is there on record regarding the bank account of the assessee in the assessment proceedings under section 143(3) of the Income Tax Act.

136.3 It has been claimed that the learned Commissioner of Income Tax (Appeals) has correctly observed that the six credits of Rs. 3.90 crores were not reflected by the assessee in its balance sheet as on 31.03.2012, as long term borrowings, but they were shown as advance against land adjusted against fixed assets.

136.4 The learned CIT (DR) has contended that this being so, obviously, the assessee's credits of Rs. 3.90 crore were never examined by the Assessing Officer during the original assessment proceedings.

136.5 The learned CIT (DR) has submitted that otherwise too, under the Computer Aided Scrutiny Selection, done for the limited purpose to examine share capital, the Assessing Officer was not having jurisdiction to examine such credits shown as advance against land.

136.6 The learned CIT (DR) has maintained that this being so, the learned Commissioner of Income Tax (Appeals) has correctly concluded that all material facts with respect to the said credits had not been fully and truly disclosed by the assessee company in the original assessment proceedings.

ASSESSEE'S REBUTTAL

137. In rebuttal, the learned Counsel for the assessee company submitted that the details of the bank account were furnished by the assessee before the

Assessing Officer during the original assessment proceedings, copy at APB, Page 10 and details of the bank account furnished by assessee along with reply dated 19.08.2014 and the following details were filed:

Bank Name	Address	IFSC Code	Type of Account	Account No.
State Bank of Patiala	Sector 8-C Chandigarh	STBP0000587	Current	00000065012097805

137.1 The learned Counsel for the assessee has submitted that the assessee had filed the correct bank name, address, IFSC Code and Account No.

137.2 It has been submitted that it is true that at this place, the last four numbers of the bank account number were jumbled and the correct bank account number was "65012097085".

137.3 It has been contended that the assessment record is to be looked into as a whole.

137.4 It has been urged that first of all, the bank account number "65012097085" was correctly mentioned

in the copy of account of Shri Harish Aggarwal, filed during the assessment proceedings before the Assessing Officer, a copy of which account has been attached at APB, Page 755.

137.5 It has been urged that this fact can be verified from the assessment records.

137.6 It has been averred that thus, the contention of the learned CIT (DR) is contrary to the facts on record.

137.7 The learned Counsel for the assessee has contended that the Bank Account and the Number is part of books of account, which were produced before the Assessing Officer during the original assessment proceedings.

137.8 The learned Counsel for the assessee has contended that moreover, in the assessment order dated 15-9-2014, there is a specific finding of the Assessing officer that books of account were produced, copies of account of deposits were produced and were verified, and no discrepancy was found.

137.9 The learned Counsel for the assessee has contended that this important finding of fact cannot be ignored, because verification of any loan can be done from the bank account, which is part of books of account.

137.10 The learned Counsel for the assessee has submitted that the assessee is maintaining only one bank account with the State Bank of Patiala and the balance therein as on 31.03.2012 was Rs. 13,85,196/-, as evident from the Schedule of Cash and Bank Balance, lying at page 73 of the APB, annexed with the Balance Sheet as on 31.03.2012, at APB, Pages 68-76 and the same tallies with the bank balance as per the bank statement filed at APB, Page 88, for Account No. 65012097085.

137.11 On the claim of the learned CIT (DR) that the issue of advance against sale of commercial space amounting to Rs. 3.90 crore was never examined during the original assessment proceedings completed on 15.09.2014 under section 143(3) of the Act, the

Assessing Officer issued a letter dated 10.09.2014, APB, Page 15, seeking further information (that is, details of documents / evidences related to the alleged companies in assessment under section 148 of the Act). The assessee filed reply dated 15.09.2014 (APB, Pages 16-17) along with a copy of Allotment letter to the Investor, placed at APB, Pages 122-131, Agreement to Sell, copy at APB, Pages 132-139, ITR, copy at APB, Page 140, and copy of Bank statement of Investor, at APB, Pages 153-154. Thus, the complete primary facts relating to the transaction of advance against sale received from these six companies were filed before the Assessing Officer during original assessment proceedings.

137.12 On the issue of the original assessment being under Computer Aided Scrutiny Selection for limited scrutiny, the learned Counsel for the assessee referred to APB, Page 752, that is, the copy of notice under section 143(2) of the Act, which does not mention that the case is selected in Limited Scrutiny and when the Assessing Officer has specifically called for details of

advances received vide letter dated 10.09.2014 and the assessee filed reply dated 15.09.2014 and the assessment order referred to books of account produced and examined, then there is no justification to allege that the issue was not examined by the Assessing Officer in the original assessment proceedings.

137.13 It has been contended that the Assessing Officer is duty bound to examine all the issues emerging in an assessment.

137.14 It has been submitted by the learned Counsel for the assessee, that further, the concept of Limited Scrutiny was first introduced in AY 2015-16 onwards. Reference has been made to Instruction No. 07/2014 dated 26.09.2014, filed at APB, Page 753.

137.15 On the issue of fresh information received post assessment, on 15.09.2014, this is stated to be totally wrong because the information is the statement of Shri Himanshu Verma, recorded on 29.03.2012 by the Income Tax Department. The learned CIT (DR) states that the same is received on 04.02.2019, from the Income Tax

Officer, Ward 1(5), Chandigarh. The learned Counsel for the assessee referred to the fact that the Income Tax Officer, Ward 1(5), Chandigarh was the jurisdictional Assessing Officer in this case upto January, 2019, when the case was transferred to the Central Circle. The learned Counsel for the assessee has placed his reliance on the judgments of the Hon'ble Gujarat High Court in the cases of "Kayathwala Estate Private Limited" (supra) and "Priti Paras Savla" (supra) and the Supreme Court judgment in the case of "Lakhmani Mewal Das" (supra), on the issue that where information was available with the Department prior to the date of completion of the original assessment, it can be said that the same information was received later on. In addition, the learned Counsel for the assessee submitted that both the issues raised by the learned CIT (DR), i.e., disclosure of wrong bank account number and Limited Scrutiny of original return, were never a part of the reasons for the formation of belief of escapement of income chargeable to income tax, recorded by the Assessing Officer, and that it is not open to supplement / improve the reasons

recorded for the formation of belief of escapement of income chargeable to income tax, as held by the Hon'ble Bombay High Court in the case of "Indivest Pte. Ltd versus AD DIT", 350 ITR 120 (Bom).

OUR FINDINGS ON GROUND No.4

138. On this issue, the Department has stressed that the issue is of advances against sale of commercial space to the extent of Rs. 3.90 crore received from six companies.

138.1 On this issue, it is seen that the balance in the assessee's bank statement (APB-88) was the same as that shown in the Balance Sheet as on 31.03.2012, i.e., of Rs.13,85,196/-, as shown in the Schedule of Cash and Bank Balance forming part of the Balance Sheet (APB-73), as scanned and reproduced hereunder:

PARTICULARS	AS ON	AS ON
	31.03.2012	31.03.2011
NOTE 8		
<u>Cash and cash equivalents.</u>		
Balances with banks	1,385,196	2,483,597
Cheque, drafts on hand	4,806	-
Cash in hand	2,207,170	2,406,350
	3,597,172	4,889,947

(73)

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(87)

STATEMENT OF ACCOUNT

Name : EVERSHERE RECREATIONS PVT LTD
 SCD 14 SECTOR 7-C
 MADHYA MARG
 CHANDIGARH
 Chandigarh
 Date : 18/04/2019 Time : 13:18:19
 Cleared Balance : 1,79,471.58Cr
 +MOD Bal : 0.00
 Limit : 0.00
 Int. Rate : 16.70 % p.a.
 Account Open Date : 23/11/2008
 Statement From : 01/02/2012 to 31/03/2012

STATE BANK OF INDIA
 SME BRANCH CHANDIGARH
 3RD FLOOR SCD 43-4B
 BANK SQUARE SECTOR-17 CHANDIGARH
 160017
 Branch Code : 11705
 Branch Phone : 4603351
 IFSC : SBIN0011705
 MICR : 160002054
 Account No.: 65012097085
 Product : CA-GEN-PUB:OTH-NONRURAL-INR
 Currency : INR

E-mail : info@sbilam.com
 Uncleared Amount : 0.00
 Monthly Average Balance : 0
 Drawing Power : 0.00
 Nominee Name :
 Account Status : OPEN
 Page No. : 2

Post Date	Value Date	Details	Chq.No	Debit	Credit	Balance
		BROUGHT FORWARD :				90310.78Cr
23/03/12	23/03/12	TRF TO 0099827509149 WCL TFR 60587 CHANDIGARH COM		1575.00		28735.78Cr
27/03/12	27/03/12	TRF TO 0058516505872 DEP TFR 60914 DAU FOR RTGS			17000000.00	17028735.78Cr
		RTGS NTLBH1208700023 9 AMIT KUMAR S O RAM STATE BANK OF INDIA TRF FR 0099828509140 RTGS NTLBH1208700023 9 AMIT KUMAR S O RAM				
28/03/12	28/03/12	STATE BANK OF INDIA RENT THRU CHQ 60587 CHANDIGARH COM RTGS STBPH1208930055 3 ASIAN CONCRETES AN STATE BANK OF INDIA	760739	10000058.00		7028679.78Cr
29/03/12	29/03/12	DEP TFR 60914 DAU FOR RTGS RTGS RTBLH1208900004 1 AMIT KUMAR S O RAM STATE BANK OF INDIA TRF FR 0099828509140			3000000.00	10028679.78Cr
		RTGS NTLBH1208900004 1 AMIT KUMAR S O RAM STATE BANK OF INDIA CAS CHQ XFER WD 60587 CHANDIGARH COM TRF TO 005502366844	760744	4000000.00		6028679.78Cr
29/03/12	29/03/12	RENT THRU CHQ 60587 CHANDIGARH COM RTGS STBPH1208930355 3 ASIAN CONCRETES AN STATE BANK OF INDIA RENT THRU CHQ	760745	218247.00		5810432.78Cr
29/03/12	29/03/12	STATE BANK OF INDIA RENT THRU CHQ 60587 CHANDIGARH COM	760746	1000058.00		4810378.78Cr
		CARRIED FORWARD :				48,10,378.78Cr

Statement Summary
 Dr. Count 17 Cr. Count 13 4,20,78,781.00 4,63,80,000.00
 In Case Your Account is Operated By A Letter Of Authority/Power Of Attorney Holder, Please Check The Transaction With Extra Care.

29/03/12	29/03/12	RTGS STBPH1208930373 4 TJR PROPERTIES PVT STATE BANK OF INDIA RENT THRU CHQ 60507 CHANDIGARH COM RTGS STBPH1208930380	760747	3000058.00		1810320.78Cr
29/03/12	29/03/12	STATE BANK OF INDIA RENT THRU CHQ MICR CA CHQ		128.00		1810195.78Cr



PAGE TOTAL = 20099,000

80

30/03/12	30/03/12	CLG CHQ DEBIT 60567 CHANDIGARH COM	760742	85000.00	1725195.78Cr
30/03/12	30/03/12	CLG CHQ DEBIT 60567 CHANDIGARH COM	760743	85000.00	1640195.78Cr
30/03/12	30/03/12	CLG CHQ DEBIT 60567 CHANDIGARH COM	760740	225000.00	1335195.78Cr
CLOSING BALANCE :					13,85,195.78Cr

Statement Summary

Dr. Count 22

Cr. Count 13

4,65,01,912.00 4,63,60,000.00

In Case Your Account Is Operated By A Letter Of Authority/Power Of Attorney Holder, Please Check The Transaction With Extra Care.

--- END OF STATEMENT ---



TOTAL (Ru.) = 2,82,00,000 + 2,85,09,000 + 2,27,00,000 + 2,10,90,000
 + 4,50,00,000 + 1,54,50,000 + 3,11,00,000 +
 1,00,00,000 + 1,00,00,000 + 2,70,00,000 + 67,00,000
 + 55,50,000 + 2,00,00,000
 = ₹ 27,12,50,000

CASH DEPOSIT = 25,00,000 + 30,00,000 + 15,00,000 + 1,00,000
 = ₹ 71,00,000

138.2 Thus, the assessee's assertion that it was maintaining only one bank account during the year, is found to be correct. We further find that in the assessment order dated 15.09.2014, passed by the Assessing Officer in scrutiny assessment proceedings under section 143(3) of the Income Tax Act, the Assessing Officer has made specific mention of the books

of account and other relevant records as called for by him and having been produced before him by the assessee company. In the Office Note contained in the assessment order, the Assessing Officer stated that the case had been selected for verification of large increase of unsecured loans. He confirmed that copies of account of the assessee in the books of account of the companies were produced. They were examined. The Assessing Officer found no discrepancy therein. Thus, the Assessing Officer has himself confirmed having examined the bank account. In the face of these specific observations of the Assessing Officer in the original assessment order, we do not find merit in the Department's contention that the recital in the assessment order that the books of account were produced and the copies of account were examined, was a mere casual mention. For ready reference, the Assessment Order dated 15.09.2014, including the Office Note contained therein, is also scanned and reproduced as under:

1

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT

Name of the assessee	M/s Evershine Recreation Pvt. Ltd. SCO 14, Sector 9-C, Chandigarh.
PAN	AABCE7500M
Ward/Circle	Ward-1(3), Chandigarh.
Status	Pvt. Ltd. Company
Assessment Year	2012-13.
Whether Resident/ Ordinarily Resident.	Resident
Method of Accounting	Mercantile
Previous Year	2011-12
Nature of business	---
Date of hearing	As per record
Date of order	15.09.2014
Section Under which the order is being passed	143(3) of the I.T.Act.

Assessment Order.

Return of income declaring nil income has been filed by the assessee electronically vide receipt No803358081290912 dated 29.09.2012. The same was processed under section 143(1) at the returned figure. Subsequently, the case was selected through CASS for scrutiny assessment. During the year under consideration, the company has not undertaken any commercial activity.

2. Notices under section 142(1) and 143(2), alongwith the detailed questionnaire were issued and served upon the assessee. In response to the notices, Sh. T.N. Singla, CA from M/S. Karhal Singla & Associates, Chartered Accountants, attended this office from time to

2

time and produced books of accounts and all other relevant information as called for by this office from time to time.

3. The company was incorporated on 15.11.2006. The company is engaged as Real Estate Business Developers. During the year company only purchased land and obtained letter of intent from the Government of Haryana.

4. The company got letter of intent to set up a commercial colony in Sector 1, Panchkula Extension, Panchkula. After discussion with the Authorized Representative and also keeping in view the information furnished, returned income at nil is accepted.

Assessed. Issue requisite documents

(Signature)
(Subash Taneja)
Income-tax Officer,
Ward 1(3), Chandigarh.

Copy to Assessee.
I.T.O.

Office Note

The case was selected under CASS. A window print out of the reasons for selection under scrutiny assessment is also taken. The reasons for selection under scrutiny assessment were "large increase of unsecured loans". The assessee was specifically questioned about the unsecured loans raised during the year under consideration. In response to this query, it was submitted that the most of the major unsecured loans shown in the balance sheet are old one. However, confirmation from the all the loaners have been furnished. Copies of accounts of the assessee company in their books of accounts have also been procured and examined. Confirmation in the shape of Affidavit alongwith the acknowledgment of return of income for the relevant year of the loaners have also been obtained and examined. All these corroborating documents/evidence are examined and placed on the record. No discrepancy has been found.

(Signature)

138.3 We also find that the contention of the learned CIT (DR) that the issue of advance against sale of commercial space amounting Rs. 3.90 crore concerning the six companies, namely, White Collar Management, Bliss Buildcon, Omexpro Ent Private Ltd, Rishi Portfolio, Saffron Logistics and New Millennium Consultants, was never examined by the Assessing Officer during the original assessment proceedings, completed on 15.09.2014 under section 143(3) of the Act, is not correct. It is patent on record that the Assessing Officer issued a letter dated 10.09.2014 (APB, Page 15), seeking from the assessee company, details of documents / evidences in respect of the persons from whom such advances are received, and the assessee company filed reply dated 15.09.2014 (APB, Pages 16-17), alongwith enclosures. For ease of reference, the letter issued by the Assessing Officer and the reply filed by the assessee company are scanned and reproduced as follows:

15

No. ITO Ward1(3)/Chd/2014-15

Office of the
Income-tax Officer, Ward 1(3),
Chandigarh.
Dated 10.9.2014

To

The Principal Officer ,
M/S. Evershine Recreations Pvt. Ltd.
SCO 80-81, Sector 17-C,
Chandigarh.
PAN : AABCE7600M

Sir,

Sub: Assessment proceedings for the A.Y. 2012-13- furnishing of information
-regarding-

Please refer to the on going assessment proceedings in your case for the A.Y.
2012-13. Also Refer to the reply furnished by your Counsel dated 09.09.2014 .

In this regard you are further requested to furnish the following information:-

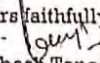
- (i) Furnish copy of letter of Intent authorizing to set up a commercial colony in Sector 1, Panchkula .
- (ii) Confirmation of loan account from M/S. Agni Projects Pvt. Ltd. alongwith a copy of return filed and also bank statement of the accounts maintained.
- (iii) Copies of resolution, allotment letter, agreement and bank statement of the following parties:-
 - (a) M/S. Bliss Build Pvt. Ltd.
 - (b) M/S. New Millenium Consultants Pvt. Ltd.
 - (c) M/S. Omexepo Enterprises Pvt. Ltd.
 - (d) M/S. P.P.Syntex Pvt. Ltd.
 - (e) M/S. Rising Portfolio In dia Pvt. Ltd.
 - (f) M/S. Saffron Logistics Pvt. Ltd. and
 - (g) M/S. White Collar Management Services Pvt Ltd.

Also furnish the details of development of proposed built up area .

- (iv) Also furnish the details of other loans alongwith confirmation from the conered persons supporting with documentary evidence.

The above information may please be furnished on the next date of hearing
16.09.2014.

This letter may be treated as Notice under Section 142(1) of the Income-tax
Act.1961.

Yours faithfully,

(Subash Taneja),
Income-tax Officer,
Ward 1(3), Chandigarh.



KANSAL SINGLA & ASSOCIATES
CHARTERED ACCOUNTANTS
(SINCE 1983)

SCO 80-81, 4th Floor
Sector 17-C, CHANDIGARH -160017
Ph. : 0172-5078401-02
Fax : 0172-5072903
Web site : www.cakansalsingla.com

(16)

15.09.2014

The Income Tax Officer,
Ward 1 (3),
CHANDIGARH.

**SUBJECT: ASSESSMENT OF EVERSHINE RECREATIONS PVT. LTD. FOR
A.Y. 2012-13.**

Dear Sir,

Kindly refer to your query regarding advances received and unsecured loans during the year, we enclose the following documents/ explanations for your kind consideration:-

1. The assessee company M/s Evershine Recreations Pvt. Ltd. got **letter of intent** to set up a commercial colony in Sector 1, Panchkula extension, Panchkula. The advances are received for the purchase of proposed built up area in the commercial colony to be set up by the assessee company. We enclose following documents:-

- (i) Letter of intent dated 05.11.2011. ✓
- (ii) Confirmation of Account by Agni Projects Private Limited alongwith acknowledgment of return and bank statement of said company.
- (iii) The copies of resolutions, allotment letters, agreement and bank statements of M/s Bliss Build Con. Pvt. Ltd., New Millenium Consultants Pvt. Ltd., Omexepo Enterprises Pvt. Ltd., P.P. Syntex Private Limited, Rising Portfolio India Pvt. Ltd., Saffron Logistics Pvt. Ltd. and White Collar Management Services Pvt. Ltd. are enclosed.

These advances are received for the purchase of proposed built up area and as the plans/ Maps of the assessee company are not approved by the Haryana Government due to some objections by the NHAI, the construction of the project was not started.

2. The detail of other loans is enclosed alongwith confirmation and other relevant documents from the following persons:

- (i) Mrs. Kiran Singla
- (ii) Mrs. Renu Goyal (Sh. Ajay Garg)
- (iii) Sh. Satish Gupta


(17)

- (iv) Sh. Satish Kumar Goyal
- (v) Sh. Jagdish Gupta
- (vi) M/s Super Medicare Pvt. Ltd.
- (vii) Mrs. Usha Gupta
- (viii) Sh. Amit Kumar
- (ix) M/s Apra Auto Pvt. Ltd.
- (x) M/s Green Field Enterprises
- (xi) Sh. Harish Aggarwal

We hope that the above stated information is in order and in case your goodself require any other information, then we will be pleased to submit the same at the earliest possible.

Thanking you,

Yours faithfully,


(T.N. SINGLA)
Counsel for the assessee

138.4 It was also a claim of the Department before us, that the case was for limited scrutiny and was meant to verify the unsecured loans only, and not the advances. This assertion is also found to be incorrect because of the Notice issued by the Assessing Officer to the assessee under section 143(2) of the Act. This Notice does not state that it is meant for limited scrutiny (APB, Page 752). It is scanned and reproduced hereunder. In

addition, the assessee has rightly contested that the concept of limited scrutiny was introduced for the first time only in the assessment year 2015-16, and that this concept was not applicable to the year under consideration, i.e., assessment year 2012-13. This assertion also does not stand controverted by Department.

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Notice under Section 143(2) of the Income - Tax Act, 1961

Office of the ITO-WARD 1(3), CHD-I

PAN No : AABCE7500M Dated : 14/08/2013

To
M/S EVERSHERE RECREATIONS PRIVATE LIMITED
SCO-14
SECTOR-7-C
MADHYA MARG
CHANDIGARH
CHANDIGARH
CHANDIGARH 160019


Sir/Madam,

There are certain points in connection with the return of income submitted by you on 29th September 2012 for the assessment year 2012-13 on which I would like some further information.

2. You are hereby required to attend my office on 27th August 2013 at 11:45 AM either in person or by a representative duly authorised in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

Yours faithfully
ASSESSING OFFICER
Name _____
Designation _____
Word-1(3) Chandigarh

Seal



138.5 The Department has stressed that the bank account number disclosed by the assessee alongwith reply dated 19.08.2014 (APB-10) is not correct, since the last four digits of the account number have been mentioned as "7805" in place of "7085", and that so, the bank account detail cannot be considered to have been filed. This, however, is, again, found to be not sustainable in view of the fact that in the copy of account of Shri Harish Aggarwal as standing in the books of the assessee company, as filed before the Assessing Officer in the assessment proceedings, the correct bank account has been mentioned, that is, "65012097085". It has not been denied that such account statement of Shri Harish Aggarwal, as existing in the books of the assessee company, was part of the assessment record at the time of the original assessment proceedings. Therein, the correct bank account number, as above, was mentioned. Remarkably, it is not the case of the Department that the bank statement was called for, for mentioning the incorrect account number and that such a request was refused / returned by the bank on account of wrong

bank account number. The said account statement of Shri Harish Aggarwal, as existing in the books of the assessee company is scanned and reproduced infra:

EVERSHINE RECREATIONS PVT LTD
 SCO 14, SECTOR-7C,
 CHANDIGARH

Harish Aggarwal
 Ledger Account

1-Apr-11 to 31-Mar-12

Date	Particulars	Vch Type	Vch No.	Debit	Credit
19-Apr-11	By S.B.O.P 65012097085	Receipt	11		2,00,00,000.00
18-Aug-11	To (as per details) BANK CHARGES A/C S.B.O.P 65012097085	Payment	11	2,00,00,000.00	
	56.00 Dr				
				2,00,00,000.00	2,00,00,000.00

138.6 Then, the Assessing Officer made specific mention of the fact, in the assessment order, that the books of account were produced alongwith the copies of account, and on verification, no discrepancy was found therein. It goes without saying that verification of any loan can be carried out from the bank account forming part of the books of account. Therefore, the observations

made by the Assessing Officer in the original assessment order, as above, cannot be brushed aside lightly, as wrongly sought to be done by the learned CIT (DR), as merely “a casual mentioning” in the assessment order, that books of account were produced and copies of account were examined. These observations lead us to the inexorable conclusion that in the original assessment proceedings, the Assessing Officer had indeed verified not only the books of account, but also the bank account in question. Here, the Department is seen to be merely clutching at straws.

138.7 So far as regards the Assessing Officer’s observation in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, that the assessee had not disclosed the bank account during the post-search investigation, it does not stand denied by the Department, that no summons were issued to the assessee company by the Investigation Wing, as claimed by the Assessing Officer in para 12 of the reasons recorded for the formation of belief of

escapement of income chargeable to income tax. The Additional Director of Income Tax, Ludhiana, vide summons dated 05.04.2018, issued under section 131 of the Act, asked Shri Triloki Nath Singla to produce details of the bank account of the company where Shri Triloki Nath Singla or his son Shri Sahil Singla is a Director. In fact, the Department has not denied that as on 05.04.2018, i.e., the date of the summons, neither Shri Triloki Nath Singla, nor Shri Sahil Singla were Directors in the assessee company.

138.8 In sum, keeping in consideration the above facts, we do not find there to exist any failure on the part of the assessee to disclose the bank account during the original assessment proceedings or the post-search investigation. In fact, in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer has nowhere alleged that the bank account of the assessee was not disclosed during the original assessment proceedings. It is trite law that the reasons recorded for the formation of belief

of escapement of income chargeable to income tax have to be taken as they are and they cannot be improved upon subsequently.

138.9 So far as regards the Assessing Officer's finding that the statement of Shri Himanshu Verma was recorded by the Income Tax Department on 29.03.2012, but it was received by the Assessing Officer on 04.02.2019, the same cannot be accepted because such information was available with the Income Tax Department on 15.09.2014, the date of the passing of the original Assessment Order under section 143(3) of the Act, after verification of advance against sale of property from six persons. Therefore, as rightly claimed on behalf of the assessee company, the extended period of six years under the proviso to section 147 of the Act is not available to the Department on this account also.

CASE-LAWS

139. The decision in "Amit Poly Prints (Private) Limited" (supra), is not applicable. Therein, the original assessment had not been completed in scrutiny

assessment proceedings. The proviso to Section 147 of the Act was not applicable and, as such, the extended period of six years was available.

139.1 The same is the position with regard to “Ankit Financial Services Limited” (supra).

139.2 In “M/s Aaspas Multi Media Limited” (supra), the assessment order passed under section 143(3) of the Act was dated 25.02.2014. The completed assessment was reopened on 01.09.2015, within four years of assessment. Therefore, the proviso to Section 147 did not apply. Moreover, in the present case, the reasons recorded for the formation of belief of escapement of income chargeable to income tax do not mention any failure on the part of the assessee to disclose any material fact during the assessment proceedings and, as such, the extended period of six years is not available.

139.3 In “Meghavi Minerals P Limited” (supra), the facts were entirely different. The return filed was

processed prior to the re-opening of the assessment. Then, opportunity was provided to the assessee, but no reply was filed and all statements and documents were provided to the assessee. Since the original assessment was not under scrutiny assessment proceedings, the proviso to Section 147 was not applicable.

139.4 In “Ankit Agrochem P Limited” (supra) also, the facts are similar to those of “Meghavi Minerals” (supra). The return filed was processed under section 143(1) of the Act and as such, the proviso to Section 147 was not applicable, due to which, the extended period of six years was not available.

139.5 In “Avirat Star Homes Venture Private Limited” (supra), again, the return filed was processed under section 143(1) of the Income Tax Act and so, the proviso to Section 147 was not applicable, nor was the extended period of six years available.

139.6 The same is the position with regard to “Anderson Biomed Private Limited Versus ACIT & others”

(supra). In that case, funds were received from a foreign entity and so, the matter was covered by the second proviso to Section 147, as per which, the first proviso shall not apply in case the amount has been received from a foreign company. These are nowhere the facts of the case at hand.

139.7 In “Shrikant Phulchand Bhakkad (HUF)” (supra), the case had been selected for scrutiny under Computer Aided Scrutiny Selection for a limited purpose, to examine whether the share capital was genuine and from disclosed sources. The proviso to Section 147 was not applicable, the notice under section 148 of the Act having been issued within four years of the assessment completed on 25.12.2018, i.e., on 31.03.2021. Besides, as discussed, the case of the assessee before us was not selected under Computer Aided Scrutiny Selection, under limited scrutiny.

139.8 “Devi Electronics Private Limited” (supra) is, again, not applicable since therein also, the return filed was processed under section 143(1).

139.9 In “Yuvraj Vs Union of India & another” (supra), the notice under section 148 was issued within four years from the end of the relevant assessment year. “Yuvraj” (supra) too, is, therefore, not applicable.

139.10 In “NDTV vs. DCIT” (supra), the Hon’ble Supreme Court has relied upon the Constitutional Bench judgment in the case of “Calcutta Discount Co. vs Income Tax Officer”, 41 ITR 191 (SC) and it has been held that the assessee is only required to disclose primary facts during assessment and while explaining Explanation 1 to section 147 of the Act, it has been held that “There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not

be open to the assessee to say, for example - 'I have produced the account books and the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account books and the documents.' His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, will amount to omission to disclose fully and truly all material facts necessary for his assessment.

"Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessee - to tell the assessing authority what inferences - whether of facts or law should be drawn.

Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences - whether of facts or law - he would draw from the primary facts”.

139.11 In the Gujarat High Court judgment in the case of “Kayathwal Estate Private Limited” (supra), wherein SLP is also dismissed by the Hon’ble Supreme Court on 14.02.2022, under similar facts, the Hon’ble High Court has held that “After careful examination of the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded and the order of disposing of the objection, we find that on 08.10.2014, the scrutiny assessment was concluded. The search action carried out on 01.10.2013 in the case of Mr. Pravin kumar Jain. In the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded, it is nowhere mention that on which date the information was received by the department. Thus, we are of the considered view that the

information as mentioned in the reasons recorded for the formation of belief of escapement of income chargeable to income tax, cannot be termed as tangible material, as at the time of scrutiny assessment, it was very much available with the department."

139.12 In the Hon'ble Punjab and Haryana High Court's judgment in the case of "CIT vs. ITW India Limited" (supra), it was held, dismissing the appeal of the Revenue, that the assessee had done his duties and it was for the Assessing Officer to draw the correct inference from the primary facts and not the responsibility of the assessee and there was no default on its part.

139.13 In the Hon'ble Punjab and Haryana High Court judgment in the case of "Duli Chand Singhanian" (supra), it was held that "The entire thrust of the findings recorded by the Assessing Officer in his order dated March 13, 2003, is to justify his satisfaction about the escapement of income. According to him, it was a clear case of escapement of income as defined in Explanation 2

to section 147 as the assessee had been allowed excessive relief under section 80-O of the Income Tax Act. However, it is not necessary for us to go into the merits of this finding as the second requirement of the proviso has not been satisfied obviously. The reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded by the Assessing Officer for initiation of proceedings under section 147 of the Income Tax Act have already been reproduced above. A bare perusal of the same shows that the satisfaction recorded therein is merely about the escapement of income. There is not even a whisper of an allegation that such escapement had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Absence of this finding, which is a "sine qua non" for assuming jurisdiction under section 147 of the Income Tax Act in a case falling under the proviso thereto, makes the Income Tax Action taken by the Assessing Officer wholly without jurisdiction."

139.14. The Hon'ble Supreme Court, in the case of "Parashuram Pottery Works Co. Limited Versus Income Tax Officer" (supra) has held that "the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that state issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. So far as income-tax assessment orders are concerned, they cannot be reopened on the scope of income escaping assessment under Section 147 of the Income Tax Act of 1961 after the expiry of four years from the end of the assessment year unless there be

omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. As already mentioned, this cannot be said in the present case. The appeal is consequently allowed; the judgment of the High Court is set aside and the impugned notices are quashed.”

139.15 In the Supreme Court judgment in the case of “Income Tax Officer, Ward-I, Distt. VI, Calcutta and Others Versus Lakhmani Mewal Das” (supra), it was held that “Whether the assessment can be reopened if some of the Income Tax Officers were found to be mere name-lenders - majority of the learned judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee-respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We may now deal with the first ground mentioned in the report of the Income-tax Officer to the Commissioner of Income-tax. This ground relates to Mohansingh

Kanayalal, against whose name there was an entry about the payment of Rs. 74, annas 3 as interest in the books of the assessee, having made a confession that he was doing only name-lending. There is nothing to show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to have been advanced by that person to the assessee-respondent. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case.”

139.16 In the Amritsar ITAT decision in the case of “Apeejay Education Society Versus Asstt. Commissioner of Income Tax” (supra) (authored by one of us, the Vice President), it was held that “This is so, since the express requirement of the proviso to section 147 of the Income Tax Act is the specific mention of the Assessing Officer in

the reasons recorded for the formation of belief of escapement of income chargeable to income tax, as to the failure on the part of the assessee. In the present case, there is not even a whisper of an allegation by the Assessing Officer in the reasons recorded for the formation of belief of escapement of income chargeable to income tax recorded that escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.”

139.17 In the Gujarat High Court decision in the case of “Priti Paras Savla Versus Income Tax Officer, Ward (3) (2) (4)” (supra), notice under section 148 was issued on 31.03.2018, on the basis of allegations of bogus LTCG of Penny Stock and SEBI order dated 30-11-2017. The Hon’ble High Court held that “after disclosure of primary facts with regard to purchase and sales of scrip of M/s. Aarya Global, the Assessing Officer could have made further inquiry with regard to the truthfulness of the transaction and reliability of the company. The Assessing

Officer, being an expert in the subject, could have inferred from the price of purchase and sales of the scrip that the transaction is bogus. It is pertinent to note that the Assessing Officer was investigating the transaction of penny stock Company, i.e., KGN Industries. The record indicates that the report of SEBI imposing penalty was pronounced on 30.11.2017. Therefore, it cannot be said that the revenue was unaware with regard to alleged bogus trading undertaken by M/s. Aarya Global and connected persons and their beneficiaries. Under such circumstances, the contention raised by the revenue is not acceptable.”

139.18 These decisions, as discussed, are squarely applicable to the facts of the present case.

139.19 In view of the above, we hold that there is no failure on the part of assessee company to disclose all material facts during the original assessment completed under section 143(3) of the Act. The issue of the alleged advances from customers amounting Rs. 3.90 crore was examined by the Assessing Officer in the original

assessment proceedings. The statement of Shri Himanshu Verma was available with the Income Tax Department on 29.03.2012, whereas the assessment was completed on 15.09.2014. In the reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening, the Assessing Officer has failed to demonstrate the failure on the part of assessee during the assessment proceedings, and also the satisfaction required under the proviso to section 147 was missing. As such, the benefit of the extended period of six years is not available to the Assessing Officer.

GROUND No. 5

140. Ground No.5 states that the learned Principal Commissioner of Income Tax had wrongly granted approval for issuance of notice u/s 148 of the Income Tax Act without application of mind and without verifying the facts from the record. This ground corresponds to additional Ground No. 3 taken before the

learned Commissioner of Income Tax (Appeals), which reads as under:

“That the learned. Pr. Commissioner of Income Tax has wrongly granted approval without application of his mind and without verifying the facts from the record before granting approval for issue of notice u/s 148 of the Income Tax Act, 1961.

ASSEESSEE'S CONTENTIONS BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)

141. Before the learned Commissioner of Income Tax (Appeals), the assessee submitted that the approval under section 151 of the Income Tax Act by the learned Principal Commissioner of Income Tax had been granted without application of mind.

142. The assessee contended that this tantamounts to improper sanction obtained and does not amount to judicial satisfaction after proper application of mind.

The assessee contended that the learned Principal Commissioner of Income Tax had cryptically recorded his approval, without any application of mind.

143. The assessee submitted that the learned Principal Commissioner of Income Tax had failed to even

question the nature of the information that was purportedly in the possession of the Assessing Officer, on the basis of which he had formed his reason to believe escapement of income chargeable to tax.

144. The assessee contended that reliance was being placed on the decision of the the Hon'ble Supreme Court in the case of "Chhugamal Rajpal Vs S.P.Chaliha" 79 ITR 603 (SC) and that of the Hon'ble Delhi High Court in the case of "United Electrical Co. (Private) Limited Vs CIT", 258 ITR 317 (Del).

145. The assessee contended that the learned Principal Commissioner of Income Tax had treated the provisions of Section 151 of the Income Tax Act lightly, having taken the duty imposed on him under the said provision, as of little importance.

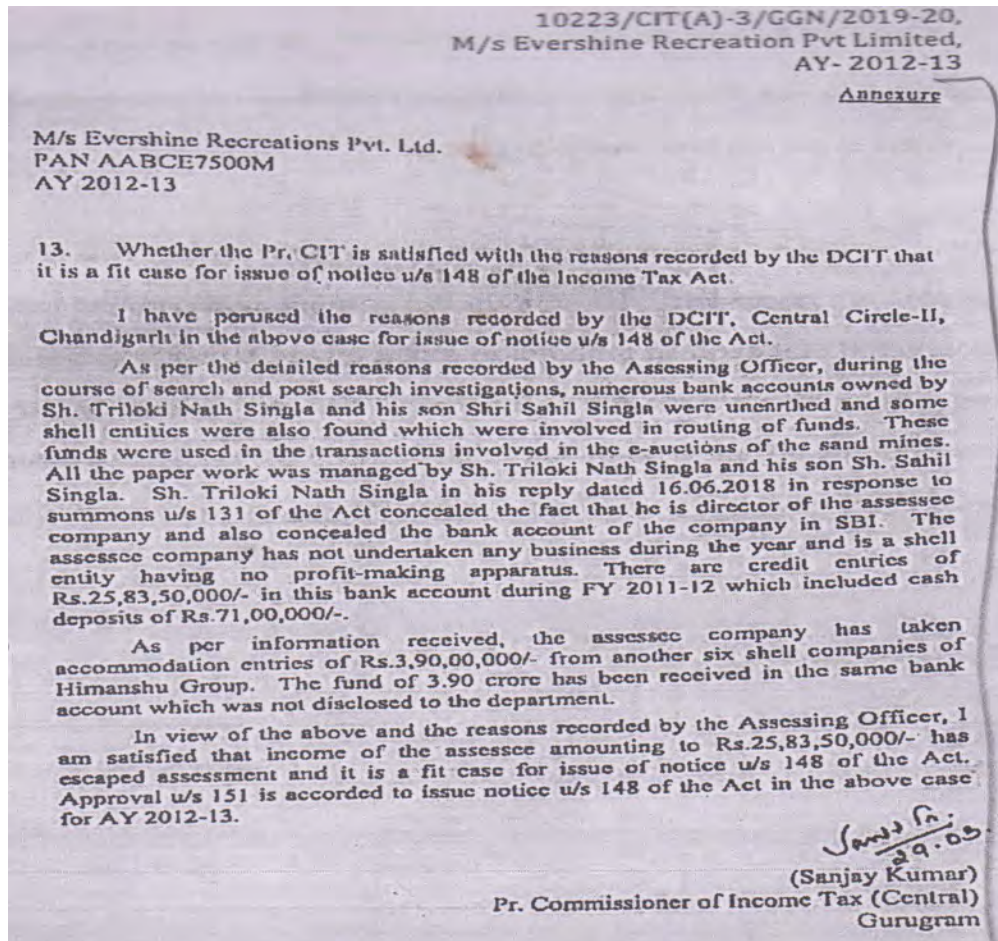
146. The assessee contended that the learned Principal Commissioner of Income Tax had substituted the form for the substance.

147. The assessee submitted that reliance was being placed on the decision of the Hon'ble Supreme Court in the case of "CIT Vs S. Goyanka Lime & Chemical Limited", 64 taxmann.com 313 (SC), wherein the SLP filed by the Department against the decision of the Hon'ble Madhya Pradesh High Court was dismissed.

COMMISSIONER OF INCOME TAX (APPEALS)'S FINDINGS

148. The learned Commissioner of Income Tax (Appeals) has held that a detailed proposal was sent by the Assessing Officer seeking approval to reopen the assessment under section 147 of the Income Tax Act to the Principal Commissioner of Income Tax.

148.1 The learned Commissioner of Income Tax observed that the proposal of the Assessing Officer and the material available on record were examined thoroughly by the Principal Commissioner of Income Tax and a detailed satisfaction note was recorded by him, which forms part of the Paper Book. The learned Commissioner of Income Tax (Appeals) has reproduced the said Satisfaction Note at page 246 of the order under appeal, as follows:



148.2 The learned Commissioner of Income Tax (Appeals) has observed that the approval to reopen the assessment under section 147 of the Income Tax Act was accorded by the Principal Commissioner of Income Tax after taking into consideration all the facts and material available on record, in detail.

148.3 The learned Commissioner of Income Tax observed that thus, it can be said that the Principal

Commissioner of Income Tax has applied his mind on the issues involved and has accorded his approval in accordance with the provisions of the Income Tax Act, that such approval cannot be said to be without application of mind. The Ground raised was rejected as devoid of merit.

ASSESSEE'S SUBMISSIONS BEFORE US

149. The learned Counsel for the assessee has contended that the learned Principal Commissioner of Income Tax has recorded a finding that as per the reasons recorded for the formation of belief of escapement of income chargeable to income tax, numerous bank accounts owned by Shri Triloki Nath Singla and Shri Sahil Singla were unearthed during the search and post-search investigation, and funds are used in e-auction of sand mines.

149.1 The learned Counsel for the assessee has submitted that this is a wrong observation, since no

bank account was unearthed during the search or post search Investigations.

149.2 The learned Counsel for the assessee has submitted that neither the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to Income Tax, nor the approval accorded by the learned Principal Commissioner of Income Tax mentions any bank account number, or as to on which date the funds were utilized.

149.3 The learned Counsel for the assessee has averred that moreover, the sand mining in question took place in the financial year 2017-18, relevant to the assessment year 2018-19, whereas the case is to be reopened for the assessment year 2012-13.

149.4 The learned Counsel for the assessee company has submitted that the assessee company did not invest any amount in the sand mining business, either in the assessment year 2012-13, or in the assessment year 2018-19.

149.5 The learned Counsel for the assessee company has contended that the mention of deposit of amount of Rs.25,83,50,000/- is wrong, as the total deposit was of Rs.27,83,50,000/-, which was explained during the assessment proceedings completed under scrutiny on 15.09.2014 and there is no reference to such verification or original assessment completed.

149.6 The learned Counsel for the assessee has averred that as per information received, the assessee had taken accommodation entries of Rs.3.90 crores from six shell companies of the Himanshu Group, and that the funds of Rs.3.90 Crores had been received in the same bank account which was not disclosed to the Department.

149.7 The learned Counsel for the assessee has averred that this is a wrong finding recorded by the learned Principal Commissioner of Income Tax, because the assessee is maintaining only one bank account with the State Bank of India and this account was duly

disclosed to the Assessing Officer during the original assessment proceedings.

149.8 The learned Counsel for the assessee has asserted that the learned Principal Commissioner of Income Tax has not seen the assessment record and the verification conducted by Assessing Officer during the assessment proceedings, because no reference to such verification has been made by the learned Principal Commissioner of Income Tax.

149.9 The learned Counsel for the assessee has urged that the learned Principal Commissioner of Income Tax has simply relied on the information passed on by the Investigation Wing of the Department through the Income Tax Officer, Ward 1(5), Chandigarh, who had jurisdiction over the case prior to its centralization.

149.10 The learned Counsel for the assessee has averred that the learned Principal Commissioner of Income Tax has failed to apply his mind and has erred in granting the approval without verifying the fact that the

entire reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax are wrong and contrary to the facts on record and are based on wrong facts submitted by the Assessing Officer before the learned Principal Commissioner of Income Tax.

DEPARTMENT'S STAND BEFORE US

150. On the other hand, the learned CIT (DR) has submitted that as evident from the approval itself, such approval has been accorded by the learned Principal Commissioner of Income Tax after due application of mind and with detailed reasoning.

150.1 The learned CIT (DR) has contended that though, as submitted earlier, every single fact stated in the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax is correct and relevant.

OUR FINDINGS ON GROUND NO. 5

151. On this issue, we find that in the approval granted for re-opening of the completed assessment, as reproduced herein above, the learned Principal Commissioner of Income Tax has observed that as per the detailed reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, during the course of search and post-search investigations, numerous accounts owned by Shri Triloki Nath Singla and his son, Shri Sahil Singla were unearthed and some shell entities were also found, which were involved in routing of the funds.

151.1 The learned Principal Commissioner of Income Tax has observed that these funds were used in the transactions involved in the e-auction of the sand mines.

151.2 However, as discussed herein above, the record nowhere shows any “numerous” bank accounts owned by

Shri Triloki Nath Singla or by Shri Sahil Singla to have been unearthed in the search and post-search investigation. It stands firmly established on record that there was only one bank account involved, which was with the State Bank of India and which had been duly disclosed before the Assessing Officer in the original assessment proceedings and the same had been duly taken into consideration by the Assessing Officer while passing the original assessment order dated 15.09.2014 under scrutiny proceedings. The Department has remained unable to counter this factual position, as submitted by the assessee and which position stands established on record. Thus, the assessee is correct in contending that the Assessing Officer had mentioned wrong facts before the learned Principal Commissioner of Income Tax while seeking his approval and that the learned Principal Commissioner of Income Tax, without application of mind and without verifying the facts from the assessment record, just issued the approval by merely reiterating those very facts in the approval itself.

151.3 Therefore, Ground No. 5 is found to be carrying merit and, accordingly, this Ground is accepted.

GROUND NO. 9

152. Ground No.9 challenges the Action of the learned Commissioner of Income Tax (Appeals) in upholding the re-assessment, whereas no cross-examination of the searched person, whose statement was relied on by the Assessing Officer to make additions, was allowed to the assessee, in violation of the principles of natural justice. This ground corresponds to original Ground No.3 and Additional Ground No.6 raised by the assessee before the learned Commissioner of Income Tax (Appeals), raking up the issue of violation of the principles of natural justice.

ASSESSEE'S CONTENTIONS BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)

153. Before the learned Commissioner of Income Tax (Appeals), the assessee contended that the information

relied upon by the Assessing Officer was not confronted to the assessee.

153.1 The assessee contended that the assessee has a right to be provided with the copies of the relevant documents relied upon, which formed the basis of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, which could not be denied.

153.2 It had been submitted by the assessee company, that whenever any report or material or information is used against the assessee, the same has to be confronted to the assessee for cross-examination.

153.3 The assessee asserted that in the absence of the material being so confronted, re-assessment of income is not justified under law.

153.4 The assessee contended that in the present case, there has been a failure to bring out any direct nexus between the extracts of the statements and the assessee.

153.5 The assessee contended that the Assessing Officer's action of relying on the statement of some third party, who is not even related to the assessee, is bad in law.

153.6 The assessee averred that it is the well settled position of law that no addition or disallowance can be made merely on the basis of statements of third parties.

153.7 The assessee averred that so, while placing reliance on such statements recorded, there was failure on the part of the Assessing Officer to discharge the onus of proving the assessee's intention to be malicious and in want of entries.

153.8 The assessee stressed that the said action of the Assessing Officer was in utter violation of the principles of natural justice.

153.9 The assessee further submitted that the inference drawn by the Assessing Officer was only on the basis of material collected at the back of the assessee,

for which, no opportunity of cross-examination was provided to the assessee.

153.10 The assessee urged that therefore, the said documents and information relied on by the Assessing Officer could not legally have been used against the assessee for the purpose of either drawing any adverse inference against the assessee, or for making any addition in the hands of the assessee.

153.11 Reliance was placed by the assessee on

“Andaman Timber Industries Versus CCE” rendered by the Hon'ble Supreme Court, on 02.09.2015, in Civil Appeal No. 4228 of 2006,

“CIT Versus SMC Share Broker Limited”, 288 ITR 345 (Del),

“Shri Sunil Parkash Versus ACIT-15(2), Mumbai”, 2017(3) TMI 434-ITAT Mumbai,

“Income Tax Officer Versus Smt. Neelam Chawla” 2007 (12 TMI 477-ITAT (Delhi)”, and

“Commissioner of Income Tax Versus Rajesh Kumar”, 306 ITR 27 (Delhi).

COMMISSIONER OF INCOME TAX (APPEALS)'S FINDINGS

154. The learned Commissioner of Income Tax (Appeals) has observed that as seen from the assessment record, the addition had been made by the Assessing Officer on the strength of enquiries conducted under section 133(6) of the Income Tax Act and by making independent analysis of the documents to arrive at the conclusion that the assessee had failed to prove the identity, credit worthiness and genuineness in respect of the credits of Rs.3.90 crores.

154.1 The learned Commissioner of Income Tax (Appeals) observed that the statements of Shri Himanshu Verma and other Directors of the applicant companies, alongwith other material found in the course of search, was used as corroborative material by the Assessing Officer, to strengthen his findings.

154.2 The learned Commissioner of Income Tax (Appeals) observed that as per the requirement of Section 68 of the Income Tax Act, the primary onus which lay on the assessee had not been discharged by the assessee, as

the documents furnished in support of the alleged advances received by the assessee had been found to be suffering from many defects and such persons, from whom the advances had been shown to have been received, had been found to be non-existent, as a result of enquiries conducted under section 133(6) of the Income Tax Act.

154.3 The learned Commissioner of Income Tax (Appeals) observed that the results of such enquiries had been confronted to the assessee by sharing with the assessee, during the appellate proceedings, a copy of the Remand Report.

154.4 The learned Commissioner of Income Tax (Appeals) observed that moreover, the Assessing Officer had also asked the assessee to explain the credits by producing the Directors of the companies.

154.5 The learned Commissioner of Income Tax (Appeals) observed that the assessee had failed to comply

with the said requirement raised by the Assessing Officer.

154.6 The learned Commissioner of Income Tax (Appeals) observed that therefore, the assessee had failed to discharge the onus cast on it under section 68 of the Income Tax Act, to explain the credits.

154.7 The learned Commissioner of Income Tax (Appeals) observed that no further verifiable details had been furnished by the assessee during the proceedings to explain the source and nature of the sum credited, to discharge its onus.

154.8 The learned Commissioner of Income Tax (Appeals) observed that the entire material produced by the assessee during the assessment proceedings as well as the appellate proceedings had been considered, as available on record, before drawing logical inferences.

154.9 The learned Commissioner of Income Tax (Appeals) observed that the incriminating material found in the course of search proceedings under section 132 of

the Income Tax Act in the case of Shri Himanshu Verma, including his statement, had been used to corroborate the observations / findings to reach to the conclusion, by the Assessing Officer.

154.10 The learned Commissioner of Income Tax (Appeals) observed that therefore, it was not the Assessing Officer who had remained unable to discharge the onus cast on him, rather, it was the assessee who had failed to discharge the onus cast on it to explain the credits introduced during the year under consideration.

154.11 The learned Commissioner of Income Tax (Appeals) observed that the statement of Shri Himanshu Verma had not been used as a primary evidence against the assessee.

154.12 The learned Commissioner of Income Tax (Appeals) observed that therefore, the statements of Shri Himanshu Verma and others had not been primarily relied upon by the Assessing Officer to draw inference against the assessee.

154.13 The learned Commissioner of Income Tax (Appeals) observed that the statement had been used only as a corroborative evidence.

154.14 The learned Commissioner of Income tax (Appeals) observed that however, the statement of Shri Himanshu Verma, recorded under section 132(4) of the Income Tax Act on 29.03.2012, had been gone into.

154.15 The learned Commissioner of Income Tax (Appeals) observed that therein, he had admitted that he had been providing accommodation entries through a number of conduits managed and controlled by him against payment of commission at the rate of 0.75% to 1.5%.

154.16 The learned Commissioner of Income Tax (Appeals) observed that it was admitted by Shri Himanshu Verma in his statement recorded under oath that he had been running a network of seventy to eighty paper companies which, in fact, were not having any

actual business and that they were being used only to give accommodation entries.

154.17 The learned Commissioner of Income Tax (Appeals) observed that for this purpose, Shri Himanshu Verma had made some employees as dummy Directors in those companies.

154.18 The learned Commissioner of Income Tax (Assessee) observed that these employees used to sign the cheques and other documents to provide accommodation entries. The learned Commissioner of Income Tax (Appeals) observed that Shri Himanshu Verma, in his statement, had mentioned, in answer to Question No.15, that Neha Yadav, Dinesh Kumar, Mukesh Kumar, Saurabh Malhotra, Sri Ram Yadav, Kayanat Khan etc., were some of such employees who were working as dummy Directors against payment of salary of Rs.2000/- to Rs.5000/-.

154.19 The learned Commissioner of Income Tax (Appeals) observed that those names were also appearing

as Directors in the companies from whom the assessee had taken advances during the year, for Rs.3.90 Crores.

154.20 The learned Commissioner of Income Tax (Appeals) observed that in his statement, in answer to Question No.15, Shri Himanshu Verma had given a list of eighty three paper companies being managed and controlled by him, alongwith the list of bank accounts operated by him to run the activities of providing accommodation entries.

154.21 The learned Commissioner of Income Tax (Appeals) observed that the names of all the six companies from which the assessee had taken advances, were included in the said list.

154.22 The learned Commissioner of Income Tax (Appeals) observed that the names Dhanlaxmi Bank and Axis Bank were also mentioned in his statement, in answer to Question No.15, by Shri Himanshu Verma, which banks had been used by him to provide accommodation entries.

154.23 The learned Commissioner of Income (Appeals) observed that it was through these bank accounts, that the assessee had received the advances of Rs.3.90 Crores.

154.24 The learned Commissioner of Income Tax (Appeals) observed that the statement of Shri Himanshu Verma had been further corroborated by the statements, recorded under oath, under section 131 of the Income Tax Act, of the various dummy Directors of the six share applicant companies.

154.25 The learned Commissioner of Income Tax (Appeals) observed that Shri Mukesh Yadav, Director of the companies Cornelius Marketing and Softpro Technology, had admitted in his statement recorded on 30.04.2012 that he had been working as an employee with Shri Himanshu Verma against a monthly salary of Rs.6000/-, for signing various papers and operating certain bank accounts, without noting their actual contents.

154.26 The learned Commissioner of Income Tax (Appeals) observed that in his statement, Shri Mukesh Yadav had admitted that he was not aware of any business transaction about the companies in which he was Director.

154.27 The learned Commissioner of Income Tax (Appeals) observed that similar statements had been given under oath, under section 131 of the Income Tax Act, by Shri Daljeet Singh, Director of M/s Rising Portfolio India Private Limited, recorded on 02.05.2012, Shri Niraj Kumar, Director of M/s Rhythem Exim and M/s White Collar, recorded on 03.05.2012, Neha Yadav, on 30.04.2012, Shri Kayanat Khan, on 30.04.2012, Shri Saurav Malhotra, on 03.05.2012 and Shri Vinod Kumar Ojha, on 30.04.2012.

154.28 The learned Commissioner of Income Tax (Appeals) observed that the statement of Shri Himanshu Verma had been further corroborated by the various documents which had been found and seized from Shri

Himanshu Verma during the search operation, which documents had been confronted to him in his statement.

154.29 The learned Commissioner of Income Tax (Appeals) observed that Shri Himanshu Verma had explained the modus operandi in detail in his statement.

154.30 The learned Commissioner of Income Tax (Appeals) observed that the Investigation Wing of the Department had conducted detailed enquiries, had made analyses of the seized documents and had made a list of beneficiaries.

154.31 The learned Commissioner of Income Tax (Appeals) observed that the search report prepared contained details of the complete modus operandi, the commission charged against accommodation entries, the list of conduit companies, and the list of their bank accounts in the names of the conduits.

154.32 The learned Commissioner of Income Tax (Appeals) observed that the assessee was one of such beneficiaries through such conduits.

154.33 The learned Commissioner of Income Tax (Appeals) observed that therefore, the finding of the search proceedings and the subsequent investigation made in the case of Shri Himanshu Verma corroborated the companies made.

154.34 The learned Commissioner of Income Tax (Appeals) observed that the entire material had been considered and inference had been drawn by applying mind independently.

154.35 The learned Commissioner of Income Tax (Appeals) observed that it had been held by the Hon'ble Bombay High Court in the case of "GTC Industries Limited Versus ACIT", [1998] 65 ITD 380 (Bom), that where the statements of witnesses were only secondary and all subordinate material was used to buttress the main matter connected with the amount of additions, it had to be held that there was no denial of the principles of natural justice, if the witnesses were not allowed to be cross-examined by the assessee.

154.36 The learned Commissioner of Income Tax (Appeals) then reproduced the order of the Hon'ble Bombay High Court, at pages 229-230 of his order.

154.37 The learned Commissioner of Income Tax (Appeals) placed reliance on the decision of the Hon'ble Supreme Court in the case of "State Bank of India Versus S. K. Sharma", AIR 1996 SC 364.

154.38 Therein, it was held that the interest of justice clearly demands that the guilty should be punished and the technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice.

154.39 It was held that the principles of natural justice are but the means to achieve the ends of justice and that they cannot be perverted to achieve the opposite end.

154.40 The learned Commissioner of Income Tax (Appeals) further placed reliance on the decision of the Hon'ble Madras High Court in the case of "T. Devasahaya Nadar Versus CIT", 51 ITR 20 (Mad).

154.41 In that case, it was held that it cannot be laid down as a general proposition of law that the Income Tax Department cannot rely upon any evidence which has not been subjected to cross-examination.

154.42 It was held that the Income Tax Officer occupies the position of a quasi-judicial Tribunal and is not bound by the rules of the Evidence Act, but he must act in consonance with natural justice and such Rule is that he should not use any material against an assessee without giving the assessee an opportunity to meet it.

154.43 It was held that the Assessing Officer is not bound to divulge the source of his information.

154.44 It was held that there is no denial of natural justice if the Income Tax Officer refuses to produce an informant for cross-examination, though if a witness is examined in the presence of the assessee, the assessee must be allowed to cross-examine him.

154.45 It was held that the range of natural justice is wide and whether or not there has been violation of

natural justice would depend on the facts and circumstances of the case.

154.46 The learned Commissioner of Income Tax (Appeals) held that therefore, the Assessing Officer had not committed any irregularity by not allowing cross-examination of Shri Himanshu Verma to the assessee company.

154.47 The learned Commissioner of Income Tax (Appeals) held that the argument of the assessee on this account had been found to be without any merit and the same was being rejected.

154.48 The learned Commissioner of Income Tax (Appeals) held that it was also relevant that the assessee sought the cross-examination of Shri Himanshu Verma at the fag end of the assessment proceedings, on 19.12.2019.

ASSESSEE'S SUBMISSIONS BEFORE US

155. On behalf of the assessee, it has been contended that in the reasons recorded for the formation

of belief of escapement of income chargeable to income tax for re-opening and while completing the assessment, the Assessing Officer has relied on the statement of Shri Himanshu Verma, recorded during the search on 29.03.2012.

155.1 The learned Counsel for the assessee has contended that as per the settled law, a copy of such statement should have been provided to the assessee alongwith the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, for re-opening the completed assessment.

155.2 The learned Counsel for the assessee has contended that however, this had never been done.

155.3 The learned Counsel for the assessee has contended that the assessee had, vide letter dated 19.12.2019, requested the Assessing Officer to provide a copy of the statement and also to allow to the assessee,

cross-examination of Shri Himanshu Verma and had offered to pay the requisite cost for the same.

155.4 The learned Counsel for the assessee has contended that however, neither were the statements provided to the assessee, nor cross-examination of Shri Himanshu Verma was allowed.

155.5 Reliance has been placed by the learned Counsel for the assessee on

the decision of the Hon'ble Supreme Court in the case of "CIT-7, New Delhi Versus M/s Odeon Builders P Limited", 418 ITR 315 (SC)

and on

the decision of the Hon'ble Supreme Court in the case of "Andaman Timber Industries Versus Commissioner of Central Excise, Calcutta-II", 281 CTR 241 (SC).

DEPARTMENT'S STAND BEFORE US

156. The learned CIT DR has, on the other hand, submitted before us, that it has to be seen, in this

regard, if the assessee had with it the statement of Shri Himanshu Verma or not.

156.1 The learned CIT (DR) has contended that in its submissions before the learned Commissioner of Income Tax (Appeals), as recorded at page 86 of the order under appeal, the assessee stated before the learned Commissioner of Income Tax (Appeals), that there was not even a whisper about the name of the assessee company in the statement of Shri Himanshu Verma, received from the Additional Director of Income Tax (Investigation), Unit-6(3).

156.2 The learned CIT (DR) has contended that this admission of the assessee shows that throughout the re-assessment proceedings, the statement in question was available with the assessee.

156.3 The learned CIT (DR) has contended that further, the statement of Shri Himanshu Verma only states that the Himanshu Verma group was operating shell companies. The learned CIT (DR) has contended

that the Assessing Officer noted that the six companies were some of those shell companies which were operated by Shri Himanshu Verma.

156.4 The learned CIT (DR) has contended that the Assessing Officer had used this information to form his reason to believe escapement of income chargeable to tax, since these shell companies had transactions with the assessee company.

156.5 The learned CIT (DR) has contended that the conclusion of the Assessing Officer was logical, natural and automatic.

156.6 The learned CIT (DR) contended that it was being reiterated that the statement of Shri Himanshu Verma was used by the Assessing Officer only as information to form a reasonable belief of escapement of income chargeable to tax.

156.7 The learned CIT (DR) has contended that as held by the Hon'ble Supreme Court in the case of "Raymond Woollen Mills" (supra), at the re-opening

stage, only prima facie material is required, the sufficiency and correctness of the material not being a thing to be considered at that stage.

156.8 The learned CIT (DR) has contended that moreover, the learned Commissioner of Income Tax (Appeals) and the Assessing Officer have based their respective orders on the statement of Shri Himanshu Verma.

156.9 The learned CIT (DR) has contended that this is not the primary documents / evidence.

156.10 The learned CIT (DR) has contended that the assessment order as well as the order passed by the learned Commissioner of Income Tax (Appeals) are clearly based on enquiries conducted in respect of these shell companies.

156.11 The learned CIT (DR) has contended that speaking orders have been passed by proving that these companies had no means to advance such large sums to the assessee company.

156.12 The learned CIT (DR) has contended that therefore, these amounts ought to have been added to the income of the assessee, as has rightly been done.

156.13 The learned CIT (DR) has contended that had the statement of Shri Himanshu Verma been the sole basis of assessment, the assessee would have been well within its rights to be confronted with such statement.

156.14 The learned CIT (DR) has contended that however, since the statement of Shri Himanshu Verma was used by the Assessing Officer only as a piece of information to conduct detailed enquiries, the information was not required to be confronted to the assessee.

156.15 Reliance has been sought to be placed, by the learned CIT (DR), on

the decision of the Mumbai Bench of the Tribunal in the case of "GTC Industries Limited Versus ACIT", 65 ITD 380 (Mum), and

the decision of the Hon'ble Delhi High Court in the case of "CIT Versus Kuwer Fibres (Private) Limited", 77 taxmann.com 345 (Del).

156.16 The learned CIT (DR) has further claimed that the request for cross-examination of Shri Himanshu Verma was made by the assessee company only at the fag end of the year.

ASSESSEE'S REBUTTAL

157. The learned Counsel for the assessee, in his rebuttal, has contended that the learned CIT (DR) has remarked that the statement of Shri Himanshu Verma was used by the Assessing Officer only as information to conduct enquiries.

157.1 The learned Counsel for the assessee has contended that this is totally wrong.

157.2 The learned Counsel for the assessee has contended that in fact, no enquiry whatsoever was conducted by the Assessing Officer before the reopening of the completed assessment.

157.3 The learned Counsel for the assessee has contended that the case of the assessee was reopened on the basis of the statement of Shri Himanshu Verma only.

157.4 The learned Counsel for the assessee has contended that enquiry, if any conducted by the Assessing Officer was not referred to in the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, for the reopening of the completed assessment.

157.5 The learned Counsel for the assessee has contended that neither the statement of Shri Himanshu Verma, nor any enquiry results were confronted to the assessee.

157.6 On the assertion of the Department that the assessee had made request for being provided an opportunity to cross-examine Shri Himanshu Verma only at the fag end of the year, the learned Counsel for the assessee submitted that the assessee had, on 20.06.2019, filed objections against the reasons recorded

by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax.

157.7 The learned Counsel for the assessee drew our attention to the copy of the assessee's objection, placed at Pages 31-45 of the APB, where it was pointed out to the Assessing Officer that no information was provided to the assessee.

157.8 The learned Counsel for the assessee submitted that another letter dated 02.08.2019, copy at APB, Pages 46-50 was sent, wherein, at APB, Page 49, the Assessing Officer was requested for information.

157.9 The learned Counsel for the assessee has contended that these requests / objections were disposed by the Assessing Officer only on 18.10.2019, that is, after almost four months, vide order, a copy whereof has been placed at APB, Pages 51-54, wherein the Assessing Officer observed that the desired information of the enquiry and the statement of Shri Himanshu Verma cannot be provided, relevant portion at APB, Page 53, last lines.

157.10 The learned Counsel for the assessee has submitted that vide letter dated 19.12.2019, the assessee requested the Assessing Officer to provide a copy of the statement and cross-examination of Shri Himanshu Verma.

157.11 The learned Counsel for the assessee has contended that however, the same were not provided to the assessee.

157.12 The learned Counsel for the assessee has contended that from the above facts patent on record, it is evident that the demand for the documents and the statement was made by the assessee on 20.06.2019 and 02.08.2019, and finally, on 19.12.2019, but nothing was provided to the assessee by the Assessing Officer. The learned Counsel for the assessee has contended that as such, there is no justification or basis to allege that the request was made by the assessee only at the fag end of the year.

157.13 The learned Counsel for the assessee has emphasized that moreover, even the statement of Shri

Himanshu Verma was not provided to the assessee, which should have been done by the Assessing Officer without any request.

OUR FINDINGS ON GROUND NO. 9

158. In this regard, it is seen that in Para 11 of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, the Assessing Officer has observed, inter alia, that the Income Tax Officer, Ward 1(5), Chandigarh had passed on information that a search had been conducted in the case of the Himanshu group of cases, who was engaged in activities of providing accommodation entries. This fact had been admitted by Shri Himanshu Verma in his statement recorded on oath, stating that he was managing and controlling a number of companies/firms/sole proprietary concerns exclusively for the purpose of providing accommodation entries to different parties. The Assessing Officer, after reproducing Question No.8 and the answer thereto, as

asked of and replied to by Shri Himanshu Verma, in para 11.1 of the reasons, has named the six companies relating to the Himanshu Group, from whom, as per information, the assessee company had taken accommodation entries of Rs.3.90 Crores. The Assessing Officer goes on to state, that these six parties are bogus/shell companies, as found during the course of search on the Himanshu Verma Group of cases and as evident from the statement of Shri Himanshu Verma, and that therefore, the funds of Rs.3.90 crores, received by the assessee company from these companies during the year, were its unexplained credits credited in its books of account during the year.

158.1 From this, it is evident that it is only from the statement of Shri Himanshu Verma, that the Assessing Officer has concluded that the transactions of the assessee company with the six companies of the Himanshu Verma Group, as admitted by Shri Himanshu Verma himself, were transactions of accommodation entries.

158.2 From this fact itself, it is abundantly clear that it was indeed the statement of Shri Himanshu Verma, which was made the basis of the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income.

158.3 The Department is trying to merely skirt the issue by stating that the Assessing Officer used the information as contained in Himanshu Verma's statement, and not the statement proper, that the six companies were shell companies operated by Shri Himanshu Verma, to form his reason to believe escapement of income, since these shell companies had allegedly entered into transactions with the assessee company.

158.4 This, in our considered opinion, is nothing other than an act of approbation and reprobation, in as much as while stating that the statement itself was not utilized by the Assessing Officer to form the reasons recorded for the formation of belief of escapement of income chargeable to income tax, it is, in a round about

and manner, being accepted, while dubbing it to be not the statement, but the information contained therein, which was used by the Assessing Officer to form the reason of his belief. This is nothing other than circumlocution. The statement contains nothing but the information. So, the information is the statement itself.

158.5 It has further been contended by the Department that the statement of Shri Himanshu Verma was used only as information to form a reasonable belief of escapement of income. This, again, takes the case of the Department no further. If, admittedly, the statement was indeed utilized as information for formation of the belief of the Assessing Officer, the same, again, was liable to be confronted to the assessee, allowing the opportunity of cross-examination of Shri Himanshu Verma to the assessee company, in compliance of the settled principle of natural justice, i.e., audi alteram partem – hear the other party. In other words, nobody can be condemned unheard. This would apply here, since the assessee, by not being provided with the

opportunity of cross-examination, has been shut out at the threshold and the matter has been decided against it unilaterally.

158.6 Again, it is wrong to state that the Assessing Officer has not based his order on the statement of Shri Himanshu Verma. As discussed, it is the statement of Shri Himanshu Verma which solely forms the basis of, firstly, the reasons recorded by the Assessing Officer for the formation of belief of escapement of income chargeable to income tax, and then, on the basis of these very reasons recorded for the formation of belief of escapement of income chargeable to income tax, the order has been passed, without providing the assessee any opportunity to cross-examine Shri Himanshu Verma. This, despite the fact that the assessee had specifically asked the Assessing Officer for such cross-examination to be provided to it.

158.7 The learned Commissioner of Income Tax (Appeals) has tried to counter this by stating that the request for such cross-examination was made only at the

fag end of the year. While doing so, the learned Commissioner of Income Tax (Appeals) has failed to take into consideration that in a democratic set up like ours, the proceedings do not depend on the request of an assessee for cross-examination, where the statement of a party was recorded at the assessee's back and is being used to pass decision against the assessee. Rather, it is the right of the assessee to be allowed such cross-examination, especially when the assessee asks for such cross-examination.

CASE LAWS

159. In “M/s Apeejay Education Society, Jalandhar Versus ACIT”, vide order dated 12.08.2016 passed by the Amritsar Bench of the Tribunal, in ITA Nos. 712 to 714/ASR/2014, for assessment years 2008-09, 2010-11 and 2011-12, authored by one of us, the VP, the issue has been decided in favour of the assessee, following “Kishin Chand Chella Ram Versus CIT”, 125 ITR 713 (SC) and “Andaman Timber Industries Versus CCE” (supra).”

159.1 In “Kishin Chand Chella Ram Versus CIT” (supra), it has been held by the Hon'ble Supreme Court, inter alia, that it is true that the proceedings under the Income Tax Law are not governed by strict rules of evidence and, therefore, it might be said (regarding the facts of that case) that even without calling the Manager of the Bank in evidence to prove the letter dated 18.02.1955, it could be taken into account as evidence; that however, before the Income Tax Authorities could rely on it, they were bound to produce it before the assessee, so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the Manager of the Bank with reference to the statement made by him; and that there was neither any explanation regarding what happened when the Manager appeared in obedience to the summons referred to in the letter, nor what statement he had made.

159.2 In the present case too, the Income Tax Authorities were bound to allow the assessee to cross

examine Shri Himanshu Verma, which was illegally not done in gross and utter violation of the principles of natural justice.

159.3 In “Andaman Timber Industries” (supra), the Hon'ble Supreme Court held that not allowing the assessee to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the order impugned, was a serious flaw, which made the order a nullity, in as much as it amounted to violation of the principles of natural justice, because of which, the assessee was adversely affected.

159.4 It was held that the order of the learned Commissioner of Income Tax (Appeals) was based on the statements given by the two witnesses.

159.5 It was held that even when the assessee disputed the correctness of the statements and wanted to cross examine the witnesses, the Adjudicating Authority did not grant this opportunity to the assessee.

159.6 It was held that in the order passed by the Adjudicating Authority, he had specifically mentioned that no such opportunity was sought by the assessee.

159.7 It was held that however, no such opportunity was granted and the said plea was not even dealt with by the Adjudicating Authority.

159.8 It was held that so far as regards the Tribunal, the rejection of this plea was totally untenable.

159.9 It was held that the Tribunal had simply stated that cross-examination of the dealers could not have brought out any material which would not be in the possession of the appellants themselves to explain as to why their ex-factory prices remain static.

159.10 It was held that it was not for the Tribunal to have guess work as to for what purpose the appellant wanted to cross examine those dealers and what extraction the appellant wanted from them.

159.11 It was held that the appellant had contested the truthfulness of the submissions of these two witnesses

and wanted to discredit their testimony, for which purpose, it wanted to avail the opportunity of cross-examination.

159.12 It was held that that apart, the Adjudicating Authority simply relied on the price list as maintained at the Depot to determine the price for the purpose of levy of Excise Duty.

159.13 It was held that whether the goods were, in fact, sold to the said dealers/witnesses at the price which was mentioned in the Price List itself could be the subject matter of cross-examination.

159.14 It was held that therefore, it was not for the Adjudicating Authority to pre-suppose as to what could be the subject matter of the cross-examination and make the remarks, as mentioned.

159.15 In "M/s Odeon Bidders P Limited" (supra), a disallowance of Rs.19.40 crore was made, which was based solely on third party information, which was not subjected to any further scrutiny.

159.16 The Hon'ble Supreme Court upheld the findings of the learned Commissioner of Income Tax (Appeals), whereby the appeal of the assessee had been allowed, observing that the entire disallowance was based on third party information gathered by the Investigation Wing of the Department, which information had not been independently subjected to further investigation by the Assessing Officer, who had not provided the copy of such statement to the appellant, thus denying opportunity of cross-examination to the appellant, who had prima-facie discharged the initial burden of substantiating the purchases through various documentations, including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, and CAT Registration of the sellers and their Income Tax Returns.

160. In totality, the purchases made by the appellant from M/s Padmesh Realtors Private Limited was found to be acceptable and the consequent disallowance resulting

in addition to income made for Rs.19,39,60,866/- was directed to be deleted.

161. "GTC Industries Limited" (supra), is not applicable. Therein, the Assessing Officer had made independent investigation and had not relied blindly on the information. The statement recorded was indirect/secondary evidence. There was twin branding/double branding of the company.

162. These are not the facts of the case at hand. Herein, as noted, the assessment was passed solely and mainly on the basis of the statement of Shri Himanshu Verma without allowing cross-examination to the assessee, despite specific request by the assessee in this regard.

163. In "Kuwer Fibres (Private) Limited" (supra), the statement recorded was during the search on the assessee itself. Therefore, the statements were rightly held as supposed to be with the assessee. Here, on the other hand, the information received, i.e., the statement

of Shri Himanshu Verma was third party information. The statement was recorded in a search conducted on a third party. However, no opportunity of cross-examination was granted to the assessee. "Kuwere Fibres", therefore, is not applicable.

164. The Department has contended, reiterating the findings of the learned Commissioner of Income Tax (Appeals), that the request for cross-examination was made by the assessee only at the fag end of the year, and that however, cross-examination was not required.

165. It is seen that the assessee's request for cross-examination (APB 31-45) is of 20.06.2019, wherein it has been pointed out to the Assessing Officer that no information had been provided to the assessee. Another letter (APB 46-50) dated 02.08.2019 was sent and the Assessing Officer was requested for the information under the Income Tax Officer, Ward 1(5) letter. These objections were disposed of by the Assessing Officer on 18.10.2019 (APB 51-54), i.e., after a period of almost four months and the assessee was denied cross-

examination, stating that the desired information of enquiry and statement of Shri Himanshu Verma could not be provided.

166. The assessee, further, vide letter dated 19.12.2019, again requested the Assessing Officer to provide to it the statement and cross-examination of Shri Himanshu Verma, but the same was not provided.

167. Thus, evidently, it is wrong to state that the assessee had made its request only at the fag end of the year.

168. In view of the above, we hold that the learned Commissioner of Income Tax (Appeals) has erred in upholding the Assessing Officer's order, despite the fact that neither the information received from the office of Income Tax Officer, Ward 1(5), Chandigarh was provided to the assessee, nor the statement of Shri Himanshu Verma was provided, nor cross-examination of Shri Himanshu Verma was ever allowed to the assessee, inspite of the fact that the assessee had all through been

requesting for such cross-examination / statement / information.

169. Accordingly, Ground No. 9 is accepted.

170. Thus, Ground Nos. 2 to 9 (except Ground No.6) and 11, which are on legal issues, are accepted.

171. Ground No. 10 is on the merits of the addition of Rs.3.90 crores. No argument with regard thereto was addressed.

172. In view of Ground Nos. 2 to 9 (except Ground No.6) and 11 having been adjudicating in favour of the assessee, nothing further survives for adjudication.

173. Accordingly, the appeal of the assessee in ITA 718/CHD/2022 is partly allowed, as above.

ITA 16/CHD/2023 - DEPARTMENT'S APPEAL

174. This is cross-appeal filed by the Department, to the above appeal of the assessee. The Department has taken following Grounds of appeal:-

i) Whether ld. CIT(A) has erred in deleting the addition of Rs. 2,48,00,000/- made u/s 68 of the Income Tax Act, 1961 by holding that credit received in the account of M/s TJR Properties Pvt. Ltd. was found explained, ignoring the fact that the M/s TJR Properties Pvt. Ltd. is a shell company?

ii) Whether ld. CIT(A) erred in deleting the addition of Rs. 2,48,00,000/- by not appreciating the facts that genuineness and creditworthiness of M/s TJR Properties Pvt. Ltd. has not been established during assessment as well as appellate proceedings?

OBSERVATIONS AND FINDINGS OF THE A.O.

175. The sole issue raised by the Department is that the learned Commissioner of Income Tax (Appeals) has erred in deleting the addition of Rs.2.48 crore received by the assessee company from M/s TJR Properties Private Limited. The Assessing Officer's findings stand reproduced in the earlier part of this order.

176. As reiterated, the Assessing Officer held that M/s TJR Properties Private Limited, and M/s Evershine Resorts Private Limited, on whom, search had been conducted at SCO 80-81, 4th Floor, Sector 17-C, Chandigarh, on 16.02.2018, were shell companies which

existed only on paper and had no profit earning apparatus, since they had not been carrying any kind of business activities.

177. The Assessing Officer observed that during the search, statement of Shri Jagdish Rai Gupta had been recorded on oath.

178. The Assessing Officer observed that therein, it had been stated that M/s TJR Properties Private Limited was not involved in any kind of business activity.

179. The Assessing Officer observed Shri Jagdish Rai Gupta had stated that he, the Deponent, did not have any knowledge of any business transactions carried out by M/s TJR Properties Private Limited.

180. The Assessing Officer held that thus, M/s TJR Properties Private Limited was a shell company and the amount received by the assessee company from M/s TJR Properties Private Limited was not genuine and its credit worthiness could not be proved under any circumstances.

181. The Assessing Officer held that therefore, the amount of Rs.2.48 crore, credited by the assessee in its bank account during the year under consideration, was being held to be the unexplained cash credits of the assessee company, within the meaning of Section 68 of the Income Tax Act and the same was being added to the income of the assessee company.

ASSESSEE'S CONTENTIONS BEFORE THE CIT(A)

182. In this regard, the assessee took original Ground No. 6 before the learned Commissioner of Income Tax (Appeals), as follows :

“That the learned Assessing Officer has wrongly made addition of Rs. 2,48,00,000/- under section 68 of the Income Tax Act”.

183. The assessee submitted before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had wrongly made addition of Rs.2.48 crore.

184. The assessee submitted before the learned Commissioner of Income Tax (Appeals) that this amount

of Rs.2.48 crores was received by the assessee company from its sister concern, M/s TJR Properties Private Limited through banking channel during the year under consideration.

185. The assessee contended before the learned Commissioner of Income Tax (Appeals) that while making this addition, the Assessing Officer had wrongly held that it was a shell company which existed only on paper and had no profit earning apparatus as such, because this company was not carrying on any kind of business activity, whatsoever.

186. The assessee submitted before the learned Commissioner of Income Tax (Appeals) that being carried away by presumptions, conjectures and surmises, the Assessing Officer had mentioned a company called M/s Evershine Resorts Private Limited and had declared it to be a shell company that existed only on paper and had no proper earning apparatus as such, because this company was not carrying on any kind of business activity whatsoever. The assessee averred before the

learned Commissioner of Income Tax (Appeals) that however, the assessee company had not received even a single penny from this company during the year under consideration.

187. The assessee averred before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had made frivolous additions in a mechanical and stereo typed manner.

188. The assessee averred before the learned Commissioner of Income Tax (Appeals) that this was highlighted by the fact that the Assessing Officer had recorded his irrelevant and unlinked observation about the company from whom no money had been received by the assessee company during the year under consideration.

189. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had alleged that during the course of search, the

statement of Shri Jagdish Rai Gupta was recorded on oath under section 132(4) of the Income Tax Act.

190. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had alleged that Shri Jagdish Rai Gupta had clearly stated that M/s TJR Properties Private Limited was not involved in any kind of business activity.

191. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had wrongly alleged that further, Shri Jagdish Rai Gupta had denied any knowledge of any business transactions or having transactions carried out by M/s TJR Properties Private Limited in his statement.

192. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had wrongly alleged that thus, M/s TJR Properties Private Limited was a shell company and the amount received from M/s TJR Properties Private Limited

was not at all genuine and its credit worthiness could not be proved under any circumstances.

193. The assessee contended before the learned Commissioner of Income Tax (Appeals) that during 2017-18, Shri Jagdish Rai Gupta was under a lot of emotional stress because of family turmoil due to frequent hospitalization of his late mother and late brother, which got further aggravated after the demise of his late mother in September, 2017, followed immediately by the demise of his late brother in December, 2017, who could not be saved even after multiple heart surgeries.

194. The assessee contended before the learned Commissioner of Income Tax (Appeals) that Shri Jagdish Rai Gupta was under a lot of emotional stress coupled with work pressure as he had to handle his vast joint family business alone, henceforth.

195. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, he could not get actively involved in the affairs of his other

companies, i.e., M/s TJR Properties Private Limited and M/s Evershine Resorts Private Limited during this extremely rough patch of his life.

196. The assessee contended before the learned Commissioner of Income Tax (Appeals) that therefore, Shri Jagdish Rai Gupta requested the other Directors to manage the bank and other operations of the assessee company for the time being, just to lessen his workload and stress.

197. The assessee contended before the learned Commissioner of Income Tax (Appeals) that Shri Jagdish Rai Gupta had denied knowledge of any bank transactions carried out by the company only “in the recent past/at this stage” due to this extreme stress.

198. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer, while reproducing the statement of Shri Jagdish Rai Gupta in the final re-assessment order, had purposely not reproduced these words (i.e., “in the

recent past/at this stage”), so as to substantiate his false averments, and had wrongly declared M/s TJR Properties Private Limited to be a shell entity.

199. The assessee stated before the learned Commissioner of Income Tax (Appeals) that Shri Jagdish Rai Gupta had deposed in his statement that “here I would like to state that M/s TJR Properties Private Limited was created in January, 2008 and this company had purchased one showroom in Sector 5, Panchkula, but we had sold the showroom later on. I do not remember the exact date of sale of this showroom. As per my knowledge, there was no business activity carried out in this company after the sale of the showroom”.

200. The assessee contended before the learned Commissioner of Income Tax (Appeals) that from this, it was evident that Shri Jagdish Rai Gupta had complete knowledge about the proposed business/commercial activity, i.e., purchase of showroom and its sale, i.e., commercial plot in Sector 5, Panchkula, which could not be constructed due to slump in the market.

201. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, this does not mean that there was no business activity of any kind in the company.

202. The assessee contended before the learned Commissioner of Income Tax (Appeals) that even purchase of commercial plot in Sector 5, Panchkula, to construct a showroom and sell it for profit is a legitimate and genuine business activity.

203. The assessee further stated before the learned Commissioner of Income Tax (Appeals) that Shri Jagdish Rai Gupta had deposed in his statement that "As the aforesaid company was incorporated by me with the family of Shri Triloki Nath Singla, who is also a Chartered Accountant, it is obvious that the books of account of the assessee would be available with him and he would be able to explain regarding the debit/credit entries appearing in the aforesaid bank account of the assessee".

204. The assessee contended before the learned Commissioner of Income Tax (Appeals) that during the search, the Deputy Director of Income Tax (Investigation) expected Shri Jagdish Rai Gupta to explain each and every bank entry.

205. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this could not be answered spontaneously, because during the search, he did not have access to the books of account of the assessee company.

206. The assessee contended before the learned Commissioner of Income Tax (Appeals) that also, it was not a memory test going on, especially since these questions were being asked under immense stress and duress and it is not possible for anyone to remember these details by heart in such circumstances.

207. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, Shri Jagdish Rai Gupta had categorically intimated to the

search team that the books of account were with Shri Triloki Nath Singla.

208. The assessee contended before the learned Commissioner of Income Tax (Appeals) that these books were found and seized from the office premises of the firm of Shri Triloki Nath Singla.

209. The assessee contended before the learned Commissioner of Income Tax (Appeals) that inspite of the fact that Shri Triloki Nath Singla was also covered in this search operation, no question was put to him regarding the bank entries of the assessee company.

210. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this clearly indicated a malafide intent on the part of the Investigation Wing of the Department.

211. The assessee stated before the learned Commissioner of Income Tax (Appeals) that no inference could be drawn against the assessee company on the basis of the statement of Shri Jagdish Rai Gupta.

212. The assessee contended before the learned Commissioner of Income Tax (Appeals) that neither any Appraisal Report, nor any copy of statement of Shri Jagdish Rai Gupta, nor any information, nor any communication received from the Deputy Director of Income Tax (Investigation) Mohali, was given to the assessee company during the entire re-assessment proceedings.

213. The assessee contended before the learned Commissioner of Income Tax (Appeals) that however, after reply dated 19.12.2019 was filed by the assessee company, around ten days after the passing of the final re-assessment order, an incomplete extract of the approval accorded by the learned Principal Commissioner of Income Tax under section 151 of the Income Tax Act and a two page covering letter, received from the office of the Income Tax Officer, Ward 1(5), Chandigarh, was provided to the assessee company.

214. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the assessee

company was not part of any post-search investigation in the case of search on the Punjab Sand Mining Group.

215. The assessee contended before the learned Commissioner of Income Tax (Appeals) that by no stretch of imagination could this very vague and scanty information be used to classify the genuine transactions of the assessee company as unexplained credits.

216. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the inference drawn by the Assessing Officer had been so drawn based on material collected at the back of the assessee, for which, no opportunity to rebut the same, and no opportunity of cross-examination, was given to the assessee company.

217. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this was in gross violation of the principles of natural justice and, hence, bad in law.

218. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had chosen to rely merely on the statement of Shri Jagdish Rai Gupta without any further investigation in this regard and that too, without providing a copy of this statement/information received from the Investigation Wing of the Department, to the assessee company.

219. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, the assessee company was never put to notice regarding this issue decided against it, so as to allow the assessee company to rebut the allegation leveled against it.

220. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the assessee was not given any opportunity to cross-examine the witness, i.e., Shri Jagdish Rai Gupta, though his statement had been made the basis of the impugned addition of Rs.2.48 crore by the Assessing Officer.

221. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this was a serious flaw which made the assessment order a nullity in as much as it amounted to violation of the principles of natural justice, because of which, the assessee company had been adversely affected.

222. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, it was not permissible to admit the oral hear-say evidence of Shri Jagdish Rai Gupta unless an opportunity of cross-examination was granted to the assessee company.

223. The assessee contended before the learned Commissioner of Income Tax (Appeals) that as to which way lies the truth in Shri Jagdish Rai Gupta's deposition could have been revealed only if he had been subjected to cross-examination by the assessee company.

224. The assessee contended before the learned Commissioner of Income Tax (Appeals) that as a matter of fact, the right to cross examine a witness always is an

indispensable right and the opportunity of such cross-examination is one of the cornerstones of natural justice.

225. The assessee contended before the learned Commissioner of Income Tax (Appeals) that here, Shri Jagdish Rai Gupta was the witness of the Department and, therefore, the department could not cut short the process of taking oral evidence by merely having the examination-in-chief.

226. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it is the necessary requirement of the process of taking evidence that the examination-in-chief is allowed to be countered by a cross-examination, if necessary.

227. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it is not just a question of formation or a question of giving an adverse party its privilege, but a necessity of the process of testing the truth of the oral evidence of a witness.

228. The assessee contended before the learned Commissioner of Income Tax (Appeals) that without the truth being tested, no oral evidence can be admissible as evidence and it could not form the basis of any inference against the assessee company.

229. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it is trite law that cross-examination is a sine qua-non of the due process of taking evidence and no adverse inference can be drawn against a party, unless the party is put to notice of the case made out against it.

230. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the assessee company needs must have been supplied with the contents of all such evidences, both oral as well as documentary, so that it could prepare itself to meet the case against it. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the law necessarily also postulates that the assessee

company should have been allowed to cross-examine the witness hostile to it.

231. The assessee contended before the learned Commissioner of Income Tax (Appeals) that all opportunities must be given to the assessee company in order to lead any evidence that the assessee company might feel necessary to rebut the case against it.

232. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, no reliance could be placed on the statement of Shri Jagdish Rai Gupta.

233. It was stated by the assessee, that further, in addition, as regards the contention of the Assessing Officer that Shri Jagdish Raj Gupta had denied any knowledge of any business transactions or bank transactions carried out by M/s TJR Properties Private Limited, the Assessing Officer had staged the said somersault after receiving an illegal and unauthorized diktat from the Deputy Director of Income Tax

(Investigation), Mohali, in the case of M/s TJR Properties Private Limited, and then he had changed his track and had started finding faults in the statement of Shri Jagdish Rai Gupta, recorded under duress and stress, during the search operation, by picking stray threads from here and there and purposely assigning wrong meanings to a few words and also by hiding certain vital parts of these recorded statements, to weave and fortify his false and concocted story.

234. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it is established law that a statement has to be read in totality and it cannot be bisected or dissected.

235. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the admission must go whole hog, as it were on the point at issue and the admission has to be taken as a whole.

236. The assessee contended before the learned Commissioner of Income Tax (Appeals) that conjectures

and surmises and suspicion cannot substitute legal proof and the value of an admission depends not only on the circumstances under which it was made, but also on by whom it was made.

237. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the manner of recording the statement is very important and dissection of the statement is not allowed.

238. The assessee contended before the learned Commissioner of Income Tax (Appeals) that if an admission is capable of two interpretations, the interpretation unfavourable to the person making it should not be applied to his admission.

239. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the legal requirement is that an admission must be clear and precise and not vague or ambiguous.

240. The assessee contended before the learned Commissioner of Income Tax (Appeals) that a statement

recorded under the Income Tax Act cannot be used as an admission, because the person against whom a statement is sought to be used is entitled to explain the statement which is to be used as the deponent's admission.

241. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the statement under section 132(4) of the Income Tax Act alone is not sufficient.

242. The assessee contended before the learned Commissioner of Income Tax (Appeals) that if no opportunity of hearing is given to explain a statement under section 132(4) of the Income Tax Act, this amounts to deviation from the procedure established by law.

243. The assessee contended before the learned Commissioner of Income Tax (Appeals) that since the Assessing Officer of the assessee company was also the Assessing Officer of M/s TJR Properties Private Limited,

for the same assessment years, i.e., assessment year 2012-13 and re-assessment of both the companies for assessment year 2012-13 had been done in December, 2019 by the same Assessing Officer, the identity of M/s TJR Properties Private Limited could not be doubted under any circumstance by the Assessing Officer.

244. The assessee contended before the learned Commissioner of Income Tax (Appeals) that still, to establish the genuineness and credit worthiness of the transaction with M/s TJR Properties Private Limited, the assessee had submitted before the Assessing Officer during the re-assessment proceedings, the confirmation from M/s TJR Properties Private Limited, the copy of account of the assessee company in the books of account of M/s TJR Properties Private Limited, the acknowledgements of returns of income of M/s TJR Properties Private Limited and the copies of bank statements and balance sheet of M/s TJR Properties Private Limited.

245. The assessee contended before the learned Commissioner of Income Tax (Appeals) that no corner had been left un-dealt with by the assessee company, in respect of proving the identity, credit worthiness and genuineness of M/s TJR Properties Private Limited, during these re-assessment proceedings.

246. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer, on his part, simply chose to ignore these submissions without any further enquiry/acknowledgement in this regard.

247. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had also not declared any of these evidences, documents and details, etc., submitted by the assessee company, to be false or fake.

248. The assessee contended before the learned Commissioner of Income Tax (Appeals) that even no

adverse inference had been drawn by the Assessing Officer from these documents/evidences.

249. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the assessee company had discharged its initial onus of proving the identity, genuineness and credit worthiness with regard to the transactions in question.

250. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thereafter, the onus of proof stood shifted to the Assessing Officer, who did nothing to discharge this onus, but merely sat back with folded hands till the assessee company had exhausted all the evidence or material in its possession.

251. The assessee contended before the learned Commissioner of Income Tax (Appeals) that only then did the Assessing Officer come forward to illegally ignore the voluminous evidence and material produced by the assessee company, just on bald presumptions, suspicions, conjectures and surmises, without carrying

out any verification or enquiry into the evidentiary material so placed by the assessee before him.

252. It was submitted by the assessee before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had wrongly held that M/s TJR Properties Private Limited was a shell company and that the amount received by the assessee company from M/s TJR Properties Private Limited was not at all genuine and that its credit worthiness could not be proved in any circumstances.

253. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this was clearly evident from the fact that the Assessing Officer of the assessee company was also the Assessing Officer of M/s TJR Properties Private Limited for the same assessment year, i.e., assessment year 2012-13 and the re-assessment of both the companies for assessment year 2012-13 had been done in December, 2019 by the same Assessing Officer.

254. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, the identity of M/s TJR Properties Private Limited could not have been doubted by the Assessing Officer, under any circumstances.

255. The assessee contended before the learned Commissioner of Income Tax (Appeals) that for assessment year 2012-13, the Assessing Officer had himself assessed the business receipts of M/s TJR Properties Private Limited, put at about Rs. 5 crores, in assessment completed under section 153A read with Section 143(3) of the Income Tax Act, which the said company had received from sale of showroom site owned by M/s TJR Properties Private Limited.

256. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the amount in question, i.e. Rs.2.48 crore, had been given to the assessee company through banking channel by M/s TJR Properties Private Limited, out of the aforesaid sale proceeds of its showroom site.

257. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, the genuineness and credit worthiness of M/s TJR Properties Private Limited could not be doubted under any circumstances by the Assessing Officer, especially when he had himself reassessed, under section 153A read with Section 143(3) of the Income Tax Act, the income of M/s TJR Properties Private Limited for the assessment year 2012-13, out of which, an amount of Rs.2,49,61,007/- had been assessed as taxable income from business, as profit on sale of the said showroom site during the assessment year 2012-13, and that too, during the same period, i.e., in December, 2019.

258. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had already accepted the loan taken by the assessee company from M/s TJR Properties Private Limited as genuine, after verifying all the documents and evidences of the said company, submitted by the assessee company during the original assessment

proceedings, completed under section 143(3) of the Income Tax Act.

259. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had later made the addition of the said amount under section 68 of the Income Tax Act, without the existence of any incriminating material whatsoever on record, based entirely on mere surmises and conjectures.

260. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this meant that the Assessing Officer had made the addition in question, i.e., the addition of Rs.2.48 crores, merely on a change of opinion and without application of his own mind.

261. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, the assessee had produced complete documentation and confirmation of the lender company to prove the nature,

genuineness and sources of the loans received by the assessee company during the year.

262. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the source of the source could not be asked for regarding any loan or advance taken before 31.03.2013, as the relevant proviso to the Section had been brought in on the Statute book only with effect from 01.04.2013.

263. The assessee company further submitted before the learned Commissioner of Income Tax (Appeals) that until 27.12.2019, the Assessing Officer had remained completely satisfied with regard to the fact that M/s TJR Properties Private Limited was not a shell company.

264. The assessee contended before the learned Commissioner of Income Tax (Appeals) that till such date, the Assessing Officer had been satisfied that all transactions were through banking channels only.

265. The assessee contended before the learned Commissioner of Income Tax (Appeals) that till such

date, the Assessing Officer had had no doubt whatsoever that these transactions were absolutely genuine transactions.

266. The assessee contended before the learned Commissioner of Income Tax (Appeals) that till the said date, i.e., till 27.12.2019, the Assessing Officer had no doubt that these transactions stood duly accounted for in the books of account of the company.

267. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had himself proposed no addition in the case of M/s TJR Properties Private Limited, in the Deviation Note sent by him to the Deputy Director of Income Tax (Investigation), Mohali, on 16.12.2019.

268. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this fact stands established beyond any shadow of doubt, by the fact that the said Deviation Note was prepared by the Assessing Officer on 24.12.2019 and was sent to the

Deputy Director of Income Tax (Investigation), Mohali, on 26.12.2019, at 6.00 PM, vide letter No. 1733, in the case of M/s TJR Properties Private Limited.

269. The assessee contended before the learned Commissioner of Income Tax (Appeals) that in this Deviation Note, the Assessing Officer had categorically admitted that there was no document or reasoning supplied to him by the Investigation Wing of the Department, due to which, the credit entries in the bank accounts of the assessee company could be treated as unexplained.

270. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, the Assessing Officer had also admitted that after going through the replies of the assessee company, he had become satisfied that the amounts had been credited in the bank account of the assessee company from known sources, which had been duly accounted for by the assessee company in its books of account, and shown in

its Audit Report and Income Tax Return, filed in due course, on a regular basis.

271. The assessee contended before the learned Commissioner of Income Tax (Appeals) that then, on 27.12.2019, the Assessing Officer had received an unwarranted, illegal and unauthorized diktat from the Deputy Director of Income Tax (Investigation), Mohali, that is, letter no. 1763 sent to him by the Deputy Director of Income Tax (Investigation), Mohali on 27.12.2019, wherein he, that is, the Assessing Officer, was illegally directed to make additions of all the credits in the bank accounts of M/s TJR Properties Private Limited, in its respective case, without any basis and without any adverse material on record against M/s TJR Properties Private Limited.

272. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer found himself in a predicament upon receiving the said illegal diktat of the Deputy Director of Income Tax (Investigation), Mohali, on 27.12.2019, id est, within

less than twenty four hours of his having sent his Deviation Note to the Deputy Director of Income Tax (Investigation), Mohali, on 26.12.2019.

273. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer had no choice, but to forcibly proceed against M/s TJR Properties Private Limited on the said third party diktat and on borrowed satisfaction, in an utterly arbitrary and blatant violation of the provisions of the Income Tax Act.

274. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it was thus, that the Assessing Officer had staged a somersault and had made the additions by assigning flimsy reasons therefor, as if, it was the Deputy Director of Income Tax (Investigation), Mohali, and not he, that is, the Assessing Officer, who was the actual assessing authority.

275. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, the

Deputy Director of Income Tax (Investigation), Mohali, had also categorically herself conceded that she had remained unable to carry out any further investigation in the case of the assessee company to ascertain the true facts, due to paucity of time.

276. The assessee contended before the learned Commissioner of Income Tax (Appeals) that inspite of this categoric admission made by the Deputy Director of Income Tax (Investigation), she, with a malafide intention, with a biased, pre-determined and pre-doctored mind-set, had sent the unauthorized, unwarranted and illegal diktat to the Assessing Officer, on 27.12.2019.

277. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the Assessing Officer, without application of his own mind, in the haste of adherence to these illegal instructions of a third party, by throwing all laws of the land to the wind, in the case of M/s TJR Properties Private Limited, declared the entirely genuine company as a shell company and made

addition of all the credits received in the bank account of M/s TJR Properties Private Limited.

278. The assessee contended before the learned Commissioner of Income Tax (Appeals) that thus, what to talk about anyone else, the Assessing Officer who himself had assessed the income of the assessee company under the head of "income from business or profession" during the assessment year 2012-13 simultaneously with M/s TJR Properties Private Limited, was satisfied with the genuineness and credit worthiness of M/s TJR Properties Private Limited.

279. The assessee contended before the learned Commissioner of Income Tax (Appeals) that all these inferences drawn by the Assessing Officer were wrong and were nothing other than a result of the vitiated and biased mind-set of the Assessing Officer.

280. The assessee contended before the learned Commissioner of Income Tax (Appeals) that these inferences were merely self-certifying in nature and

tailor-made by the Assessing Officer and the Deputy Director of Income Tax (Investigation), Mohali, so as to strengthen their false and concocted story regarding the assessee company being wrongly classified as a shell company.

281. The assessee contended before the learned Commissioner of Income Tax (Appeals) that further, these statements of Shri Jagdish Rai Gupta were available with the Assessing Officer before 24.12.2019, i.e., the date of his Deviation Note, and none of these statements was ever confronted to the assessee company, nor was any explanation with regard thereto ever sought from either the assessee company, or any of its Directors, either before, or after 24.12.2019, because until the receipt of the illegal and unwarranted diktat of the Deputy Director of Income Tax (Investigation), Mohali, issued vide her letter dated 27.12.2019 to the Assessing Officer, the Assessing Officer was completely satisfied with regard to the fact that the assessee company was not a shell company and all its credits or

banking transactions were genuine and duly accounted for by the assessee company in its books of account, and no addition at all was proposed by the Assessing Officer.

282. The assessee contended before the learned Commissioner of Income Tax (Appeals) that no addition as such was proposed by the Assessing Officer after his perusal of the statements of the Directors, recorded during the search and post-search investigations, his perusal of the replies filed by the company, including its books of account, his perusal of a detailed note filed on the comparison of the assessee company with the so-called shell company, and his perusal of the submission of cogent and reliable documentary evidences.

283. The assessee contended before the learned Commissioner of Income Tax (Appeals) that when once the Assessing Officer had himself made addition of all the credits received in the bank accounts of M/s TJR Properties Private Limited during the year under consideration, which also included the amount in question, i.e., the amount of Rs.2,48,00,000/-, by

treating all the credits received in the bank accounts of M/s TJR Properties Private Limited during the relevant year as income of M/s TJR Properties Private Limited, then, under no provision of the Income Tax Act could he have again declared the same amount of Rs.2,48,00,000/- as unexplained cash credits of the assessee company, which was paid to the assessee company by M/s TJR Properties Private Limited out of the sale proceeds of Rs.5 crore received on the sale of its showroom site and other credits received during the year under consideration.

284. The assessee contended before the learned Commissioner of Income Tax (Appeals) that this had resulted into double taxation, which was not permitted under the Income Tax Act, 1961.

285. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it was being requested that to substantiate the said claim of the assessee company, the records of M/s TJR Properties Private Limited, including the letters/Deviation Note

dated 24.12.2019, bearing number 1733, of the Assessing Officer, that is, the Assistant Commissioner of Income Tax, Central Circle-2, Chandigarh, and that dated 27.12.2019, bearing no. 1763, of the Deputy Director of Income Tax (Investigation), Mohali, be summoned and examined while considering the said submission of the assessee company under section 250 of the Income Tax Act.

286. The assessee contended before the learned Commissioner of Income Tax (Appeals) that it was, however, necessary that every fact for and against the assessee company must have been considered with due care and the Assessing Officer must have given his finding in a manner which would clearly indicate as to what the questions were which arose for determination, as the evidence was pro and contrary with regard to each one of them and what the findings reached were, on the evidence placed on record before the Assessing Officer.

287. The assessee contended before the learned Commissioner of Income Tax (Appeals) that the

conclusions reached by the Assessing Officer should not have been coloured by any irrelevant consideration or matters of prejudice, and if there were any circumstances which were required to be explained by the assessee company, the assessee company should have been given an opportunity to do so.

288. The assessee contended before the learned Commissioner of Income Tax (Appeals) that on no occasion should the Assessing Officer base his findings on suspicions, conjectures or surmises, nor should the Assessing Officer do so on no evidence at all, or on improper rejection of material and relevant evidence, or partly on evidence and partly on suspicions, conjectures or surmises, and if the Assessing Officer does anything of this sort, his findings should be declared as liable to be set aside.

289. The assessee contended before the learned Commissioner of Income Tax (Appeals) that therefore, the entirely genuine company (lender) had been illegally declared as a shell company, merely on the basis of

surmises and conjectures, just to declare the genuine credits received by the assessee company during the year under consideration, from M/s TJR Properties Private Limited, as addition of unexplained credits, without application of his own mind by the Assessing Officer and only on the diktat of a third party, that is, the Deputy Director of Income Tax (Investigation), Mohali, which requires to be deleted.

COMMISSIONER OF INCOME TAX (APPEALS)'S FINDINGS

290. While deleting the addition of Rs.2.48 crore made by the Assessing Officer, the learned Commissioner of Income Tax (Appeals) observed that the ground of appeal had been taken by the assessee company against the addition of Rs.2.48 crore made by the Assessing Officer on account of unexplained credit under section 68 of the Income Tax Act.

290.1 The learned Commissioner of Income Tax (Appeals) observed that a search and seizure operation under section 132(1) of the Income Tax Act had been

carried out at the premises of the assessee, on 16.02.2018.

290.2 The learned Commissioner of Income Tax (Appeals) observed that during the course of the assessment proceedings, it was observed by the Assessing Officer, that the assessee company had received an amount of Rs.2.48 crore from M/s TJR Properties Private Limited.

290.3 The learned Commissioner of Income Tax (Appeals) observed that the Assessing Officer drew inference from the statement of Shri Jagdish Rai Gupta, one of the Directors of M/s TJR Properties Private Limited, recorded during the course of search, that the assessee company and M/s TJR Properties Private Limited, were shell companies, which existed only on paper and they did not have any profit earning apparatus of their own, since they were not carrying on any kind of business activity.

290.4 The learned Commissioner of Income Tax (Appeals) observed that thus, it was held by the Assessing Officer that the genuineness and credit worthiness could not be proved in respect of the transactions of Rs.2.48 crore, since M/s TJR Properties Private Limited was a shell company, and the addition of Rs.2.48 crore was made on account of unexplained credits under section 68 of the Income Tax Act.

290.5 The learned Commissioner of Income Tax (Appeals) observed that it was held by A.O. that as per the assessment order, which was being reproduced, the assessee had received the amount of Rs.2.48 crore in its bank account no.65012097085, from M/s TJR Properties Private Limited during the year under consideration.

290.6 The learned Commissioner of Income Tax (Appeals) observed that during the course of the search and seizure operation under section 132(1) of the Income Tax Act conducted on the Punjab Sand Mining Group of cases on 16.02.2018, it had been found that M/s TJR Properties Private Limited and M/s Evershine Resorts

Private Limited, whereupon search was conducted at SCO nos. 80-81, Fourth Floor, Sector 17-C, Chandigarh, on 16.02.2018, were, in fact, shell companies that existed only on paper and had no profit earning apparatus of their own as such, because these companies were not carrying on any kind of business activity, what-so-ever.

290.7 The learned Commissioner of Income Tax (Appeals) observed that during the course of the search, the statement of Shri Jagdish Rai Gupta, Director of M/s TJR Properties Private Limited, was recorded on oath under section 132(4) of the Income Tax Act.

290.8 The learned Commissioner of Income Tax (Appeals) observed that Shri Jagdish Rai Gupta had clearly stated in his statement under oath, that M/s TJR Properties Private Limited was not involved in any kind of business activity.

290.9 The learned Commissioner of Income Tax (Appeals) observed that further, Shri Jagdish Rai Gupta

had denied any knowledge of any business transactions or bank transactions carried out by M/s TJR Properties Private Limited, in his statement.

290.10 The learned Commissioner of Income Tax (Appeals) observed that M/s TJR Properties Private Limited was a shell company and the amount received by the assessee company from M/s TJR Properties Private Limited was not at all genuine and its credit worthiness could not be proved in any circumstances.

290.11 The learned Commissioner of Income Tax (Appeals) observed that therefore, after consideration of the facts and circumstances of the case, the amount of Rs.2.48 crore credited in its bank account by the assessee company during the year under consideration was being held to be the unexplained cash credits of the assessee company, within the meaning of Section 68 of the Income Tax Act and the same was being added to the income of the assessee company accordingly and that penalty proceedings under section 271(1)(c) of the

Income Tax Act were being initiated for concealment of income by the assessee company, on this issue.

290.12 The learned Commissioner of Income Tax (Appeals) observed that the assessee company had submitted during the appellate proceedings that the amount of Rs. 2.48 crore was received through banking channel from M/s TJR Properties Private Limited, the sister concern of the assessee company.

290.13 The learned Commissioner of Income Tax (Appeals) observed it had been submitted by the assessee that the assessee company had discharged its primary onus of proving the identity, genuineness and credit worthiness in respect of the amount of Rs.2.48 crore by furnishing the confirmation, the copy of account, the copy of Income Tax Return, the bank account statement and the balance sheet before the Assessing Officer, during the assessment proceedings.

290.14 The learned Commissioner of Income Tax (Appeals) observed that it had been submitted by the

assessee company that however, the Assessing Officer did not take the same into account/consideration and did not conduct any further enquiry.

290.15 The learned Commissioner of Income Tax (Appeals) observed that it was contended during the appellate proceedings by the assessee company, that the same Assessing Officer had assessed M/s TJR Properties Private Limited for the year under consideration and all the credits received in its bank accounts were treated as income and addition was made.

290.16 The learned Commissioner of Income Tax (Appeals) observed that it was submitted by the assessee company that therefore, the addition of Rs.2.48 crore made by the Assessing Officer tantamounted to a double addition.

290.17 The learned Commissioner of Income Tax (Appeals) observed that it was also submitted by the assessee that the Assessing Officer was satisfied with the bank credits and a Deviation Note had been sent to the

Deputy Director of Income Tax (Investigation), Mohali, in respect of such credits.

290.18 The learned Commissioner of Income Tax (Appeals) stated that after looking into the facts and circumstances of the case, it had been observed that the assessee company had received an amount of Rs.2.48 crore from M/s TJR Properties Private Limited.

290.19 The learned Commissioner of Income Tax (Appeals) observed that the credits received by M/s TJR Properties Private Limited during the year under consideration had been separately examined, in the light of the findings recorded by the Assessing Officer during the assessment, as well as during the remand proceedings, while adjudicating upon for the year under consideration.

290.20 The learned Commissioner of Income Tax (Appeals) observed that while adjudicating the appeal in the case of M/s TJR Properties Private Limited for the year under consideration, the credits received in the

bank accounts by M/s TJR Properties Private Limited during the year under consideration had been found to have been explained, vide order dated 30.09.2022, passed in Appeal No. 157/2019-20.

290.21 The learned Commissioner of Income Tax (Appeals) observed that therefore, there was no logic in treating the amount of Rs.2.48 crore as unexplained, since the same had been transferred out of the explained credits of M/s TJR Properties Private Limited.

290.22 The learned Commissioner of Income Tax (Appeals) observed that in view of the fact that the source of the amount of Rs.2.48 crore had been duly explained, the addition of Rs.2.48 crore was being deleted, and that, accordingly, the ground of appeal was being allowed.

DEPARTMENT'S SUBMISSIONS BEFORE US

291. The Department contends that the learned Commissioner of Income Tax (Appeals) has erred in deleting the addition of Rs.2.48 crore received by the

assessee company from M/s TJR Properties Private Limited.

291.1 The learned CIT (DR) has submitted before us that during the course of the search and seizure operation under section 132(1) of the Income Tax Act, conducted on the Punjab Sand Mining Group of cases, on 16.02.2018, it had been found that M/s TJR Properties Private Limited and M/s Evershine Resorts Private Limited, on whom search was conducted at SCO nos. 80-81, Fourth Floor, Sector 17-C, Chandigarh, on 16.02.2018, were shell companies which existed only on paper, having no profit apparatus of their own, since they were not carrying on any kind of business activity whatsoever, as rightly noted by the Assessing Officer in the assessment order.

291.2 The learned CIT (DR) has submitted before us that in his statement recorded on oath under section 132(4) of the Income Tax Act, during the course of the search and seizure operation, Shri Jagdish Rai Gupta, one of the Directors of M/s TJR Properties Private

Limited, had clearly stated that M/s TJR Properties Private Limited was not involved in any action of business activity.

291.3 The learned CIT (DR) has submitted before us that Shri Jagdish Rai Gupta, in his statement so recorded under oath, had also denied any knowledge of any business transactions or bank transactions carried out by M/s TJR Properties Private Limited.

291.4 The learned CIT (DR) has submitted before us that therefore obviously, M/s TJR Properties Private Limited was evidently a shell company and there was no way that the genuineness and credit worthiness could have been examined with regard to the transactions of receipt of Rs.2.48 crore by the assessee company from M/s TJR Properties Private Limited.

291.5 The learned CIT (DR) has submitted before us that hence, the Assessing Officer had rightly made addition of this amount of Rs.2.48 crore and that the

learned Commissioner of Income Tax (Appeals) went wrong in deleting the same.

THE ASSESSEE'S STAND BEFORE US

292. The learned Counsel for the assessee has contended before us that during the year under consideration, that is, in the assessment year 2012-13, the assessee company had received an amount of Rs.2.48 crore from M/s TJR Properties Private Limited i.e., a group company.

292.1 The learned Counsel for the assessee has contended that the Assessing Officer, under the observation and finding that M/s TJR Properties Private Limited was a shell company having no income earning apparatus of its own, had made the addition of the amount of Rs.2.48 crore, under section 68 of the Income Tax Act, in respect of the credits received by the assessee company from M/s TJR Properties Private Limited.

292.2 The learned Counsel for the assessee has contended that while rightly deleting the addition wrongly made, the learned Commissioner of Income Tax (Appeals) has observed that the credits received in the bank account from M/s TJR Properties Private Limited clearly stands explained and that there is no logic in treating the amount of Rs.2.48 crore as unexplained, since the same has been transferred out of the explained credits of M/s TJR Properties Private Limited.

292.3 The learned Counsel for the assessee has contended that the learned Commissioner of Income Tax (Appeals), while deleting the addition erroneously made by the Assessing Officer, has rightly observed that M/s TJR Properties Private Limited is also assessed with the same Assessing Officer as that of the assessee company.

292.4 The learned Counsel for the assessee has contended that the learned Commissioner of Income Tax (Appeals), while deleting the addition erroneously made by the Assessing Officer, has correctly observed that the

assessment for the year under consideration was completed in the hands of the company by the Assessing Officer, making additions on account of credit entries in the bank.

292.5 The learned Counsel for the assessee has contended that the learned Commissioner of Income Tax (Appeals), while deleting the addition erroneously made by the Assessing Officer, has rightly held that when the debit/credit entries have already been considered in the hands of M/s TJR Properties Private Limited, there is no justification for making any addition in the hands of the assessee company also.

292.6 The learned Counsel for the assessee has contended that the learned Commissioner of Income Tax (Appeals), while deleting the addition erroneously made by the Assessing Officer, has rightly observed that knowing that M/s TJR Properties Private Limited were to fail to justify the sources of the advances made, the additions would be confirmed in their hands.

292.7 The learned Counsel for the assessee has contended that the learned Commissioner of Income Tax (Appeals), while deleting the addition erroneously made by the Assessing Officer, the learned Commissioner of Income Tax (Appeals) has correctly held that as such, there was no justification of any addition being made in the hands of the assessee company.

292.8 The learned Counsel for the assessee has contended that in sum, the learned Commissioner of Income Tax (Appeals) had correctly deleted the addition wrongly made by the Assessing Officer.

292.9 The learned Counsel for the assessee has sought to place reliance on the decision of the Hon'ble Delhi High Court in the case of "Pr. Commissioner of Income Tax (Central-I) Versus M/s Adamine Construction Private Limited", 2018 (2) TMI 1815 (Del), wherein, under similar facts and circumstances, it was held that the Assessing Officer had gone only by the report received and had not made the necessary further enquiries, like any enquiry into the bank accounts, or

the other particulars available with him, but he rather based his entire findings on the report.

293. The Hon'ble High Court held that this could not be considered as primary material. It was held that the assessee company had discharged the onus initially cast upon it by providing the basic details, which were not suitably enquired into by the Assessing Officer. The SLP against the said decision is stated to have been dismissed on 28.09.2018, by the Supreme Court.

294. The learned Counsel for the Assessee has thus submitted before us that in these facts and circumstances, the Appeal filed by the Department, having no merit whatsoever, be ordered to be dismissed and the order passed by the learned Commissioner of Income Tax (Appeals) be sustained.

OUR FINDINGS

295. We have heard the parties and have perused the material on record. While dealing with Ground Nos. 2, 3, 7, 8 and 11 of the Assessee's appeal, we have held

(para 130 at pages 185 to 187) of this order, that the learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the initiation of the re-opening of the completed assessment on the basis of information contained in the search material found during the search of a third party, since there was no incriminating material; that so, the initiation, completion and consequential upholding of the re-assessment proceedings is not sustainable in law; that the reasons recorded for the formation of belief of escapement of income chargeable to income tax by the Assessing Officer are based solely on the Investigation Wing's report and the statement of Shri Himanshu Verma; that the report of the Investigation Wing only suggested to the Assessing Officer to examine the details and to only thereafter determine whether there could be any justification for initiating the re-assessment proceedings; that the statement of Shri Himanshu Verma does not implicate the assessee in any manner (Ground No.2, 7 & 11); that the information received from Income Tax Officer, Ward 1(5) Chandigarh was denied to be confronted to the

assessee, and not providing the copy of the statement of Shri Himanshu Verma to the assessee is in violation of the principles of natural justice, as well as the provisions of section 142(3) of the Income Tax Act; that therefore, such information and statement of Shri Himanshu Verma cannot be used against the assessee for making addition (Ground No.3); that it is also patent that the learned Commissioner of Income Tax (Appeals) erroneously upheld the re-opening, which was based on wrong and irrelevant facts recorded under reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening by Assessing Officer; that we were, therefore cancelling the assessment, as the grounds on which the re-assessment notice was issued were not found to exist or were found to be irrelevant (Ground No.8); and that the reopening of the assessment under section 147 of the Act is based on wrong and irrelevant facts and the reopening is held to be bad. In this manner, we have cancelled the reopening of the original assessment under section 147 of the Income Tax Act.

296. That being so, the findings of the learned Commissioner of Income Tax (Appeals) in upholding the initiation of reopening of the completed assessment has been held to be bad in law. Therefore, the issue raised by the Department in its appeal no longer survives for adjudication, and accordingly, the Grounds raised by the Department in its appeal are rejected as infructuous.

297. In view of the above, the appeal of the Department in ITA No. 16/Chd/2023 is dismissed.

298. In the result, the appeal filed by assessee, i.e., the appeal in ITA 718/Chd/2022 is partly allowed, whereas the Department's appeal in ITA 16/Chd/2023 is dismissed.

Order pronounced on 15.09.2023.

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Sd/-
(A.D. JAIN)
Vice President

Dated : 15.09.2023

“आर.के.”/Poonam

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/CIT (DR), ITAT,
CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar