आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
' A' BENCH : CHENNAI

श्री जोगिन्दर सिंह, उपाध्यक्ष

एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI JOGINDER SINGH, VICE PRESIDENT &
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.Nos.2578,2579 & 2580/Chny/2017**
And
C.O. Nos.47,48 & 49/Chny/2018
निर्धारण वर्ष /Assessment years : 2010-11, 2013-14 & 2014-15

The Asst. Commissioner of Income Tax, Non-corporate Circle-1(1), (formerly Business Circle-I) Chennai.	**Vs.**	**M/s.Deloittee Haskins & Sells**, ASV Ramana Towers, 52,Venkatnarayana Road, T.Nagar,Chennai 600 017.
(अपीलार्थी/Appellant)		**[PAN AACFD 3771 D]** **(प्रत्यर्थी/Respondent / Cross Objector)**

अपीलार्थी की ओर से/ Appellant by	**:**	Mr.AR.V.Sreenivasan,JCIT,D.R
प्रत्यर्थी की ओर से /Respondent by	**:**	Mr.S.P.Chidambaram,Advocate
सुनवाई की तारीख/Date of Hearing	**:**	06-12-2018
घोषणा की तारीख /Date of Pronouncement	**:**	06-12-2018

आदेश / O R D E R

PER JOGINDER SINGH, VICE PRESIDENT:

These three appeals filed by the Revenue are against the common order of the Commissioner of Income-tax (Appeals)-2, Chennai dated 31.07.2017 for assessment years 2010-11,

2013-14, 2014-15 and correspondingly, the assessee filed Cross Objections challenging the reopening of assessments for assessment year 2010-11 & common ground with respect to the addition of payment to retired partners u/s.37(1) of the Income Tax Act,1961 (herein after in short 'the Act').

2. During hearing the ld.D.R Shri AR.V.Srinivasan (with respect to Ground No.2) defended the addition made by the ld. Assessing Officer whereas Shri S.P.Chidambaram ld.Counsel for the assessee defended the impugned order and consequent relief granted to the assessee on merits. The ld.Counsel for the assessee contended that the issue in hand is covered in favour of the assessee by the decisions of the Tribunal in the assessee's own cases vide order dated 08.02.2018 in ITA No.1517/Chny/2017 for assessment year 2012-13 & dated 25.11.2016 in ITA No.2077/Mds./2016 for assessment year 2011-12.

3. We have considered the rival submissions and perused the material available on record. Before adverting further, we are reproducing hereunder the aforesaid order of the Tribunal dated

08.02.2018 for assessment year 2012-13 for ready reference and analysis.

"1. This appeal by the Revenue and the Cross objection by the assessee arise out of the order of the Learned Commissioner of Income Tax(Appeals)-2, Chennai [in short the ld CIT(A)] in Appeal No.71/CIT(A)-2/2015-16 dated 28.03.2017 against the order passed by the ACIT, Non-Corporate Circle-1, Chennai [in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short "the Act") dated 31.03.2015 for the Assessment Year 2012-13.

2. The only issue to be decided in the appeal of the revenue is as to whether the ld CITA was justified in deleting the disallowance made in respect of payment of Rs 1,58,56,741/- made to retired partners in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a firm of chartered accountants and had filed its return of income for the Asst Year 2012-13 on 28.9.2012 declaring total income of Rs 10,70,28,740/-. Later the assessee filed a revised return of income on 31.3.2014 declaring total income of Rs 10,70,28,740/- i.e same as original return and claimed TDS credit of Rs 12,65,52,009/- as against the original TDS credit of Rs 10,16,17,748/- and claimed consequential refund thereon of Rs 9,34,80,130/- in the revised return. In the course of assessment proceedings, the ld AO sought to disallow the payment to retired partners in the sum of Rs 1,58,56,741/- among other disallowances. The assessee explained that during the Asst Year 2012-13, professional fees of RS 1,58,56,741/- were diverted by overriding title to the ex-partners or spouses of deceased partners (herein referred to as 'retired partners') as per partnership deed.

The above amount of Rs 1,58,56,741/- was reduced from the gross professional fees of Rs 140,42,63,926/- credited to the profit and loss account. The assessee vide reply letter dated 12.3.2015 explained the transaction elaborately and justified its claim of deduction u/s 37(1) of the Act. The ld AO however examined the details and explanations filed by the assessee and held that the payment is an application of icnome and accordingly brought the same to tax. The ld AO also rejected the alternate claim of the assessee holding that the payment made to the retired partners is not expenditure to carry on the business but it was a gratuitous payment. Before the ld CITA, the assessee submitted that though the very same issue was decided against the assessee by his predecessor ld CITA, the assessee had ultimately succeeded the said issue before this tribunal for the Asst Year 2011-12 in ITA No. 2077/Mds/2016 and ITA No. 2079/Mds/2016 dated 25.11.2016. The ld CITA respectfully following this tribunal decision in assessee's own case for the Asst Year 2011-12 supra, deleted the addition made by the ld AO. Aggrieved, the revenue is in appeal before us on the following grounds:-

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Ld. CIT(A) erred in deleting the disallowances made in respect of payment of Rs. 1,58,56,741/- made to retired partners claimed by the assessee on account of diversion of income by over-riding title.

2.1. The Ld. CIT(A) erred in deleting the disallowance without appreciating the fact that the provisions of Sec. 40(ba), clauses(i) & (ii) of 40(b) allow deduction of expenditure only if remuneration is payable to any partner of the firm and not a retired partner.

2.2. The Ld. CIT(A) failed to appreciate that the payments made to retired partners are not diversion of income on account of over-riding title but mere application of income on account of self imposed obligations.

2.3 The Ld. CIT(A) failed to appreciate that the doctrine of diversion of income by reason of overriding title applies only in cases where the income never reaches the assessee as his income. Whereas in the instant case the assessee had received the income and diverted it and therefore it was mere application of income.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the AO restored.

4. The ld DR argued that this tribunal while deleting the addition made for Asst Year 2011-12 had placed reliance on the co-ordinate bench decision of Mumbai Tribunal in the case of C.C.Chokshi & Co. vs JCIT in ITA Nos. 492 to 495/Mum/2003 for the Asst Years 1995-96 to 1997-98 , wherein on identical facts, it was held that the payment is by overriding title but not an application of income. The ld DR argued that this decision has been distinguished by yet another decision of Mumbai Tribunal in the case of S.B.Billimoria & Co. vs ACIT reported in (2010) 125 ITD 122 (Mum) dated 19.12.2008. Accordingly he pleaded that the latest decision of Mumbai Tribunal dated 19.12.2008 would hold the field as on date and prayed for restoration of the order of the ld AO in this regard.

5. In response to this, the ld AR submitted that the decision of Mumbai Tribunal in the case of C.C.Chokshi & Co in ITA Nos. 492 to 495/Mum/2003 dated 24.2.2006 had been approved by the Hon'ble Bombay High Court and placed the copy of the said order before us. Accordingly, he argued that the issue under consideration has been settled in favour of the assessee by the decisions of Hon'ble Bombay High Court in the following cases :-

a) CCIT vs C.C.Chokshi & Co. in ITA No. 209 of 2008 and 193 of 2008 dated 25.7.2008

b) ACIT Vs A.F.Ferguuson & Co. in ITA No. 87 of 2011 dated 21.7.2011

6. We have heard the rival submissions and perused the materials available on record. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that this tribunal had placed reliance on the decision of Mumbai Tribunal in the case of C.C.Chokshi & Co., which was later approved by the Hon'ble Bombay High Court vide order dated 25.7.2008. Further we find that the Hon'ble Bombay High Court in the case of A.F.Ferguson & Co supra had dismissed department's appeal by answering first substantial question of law with reference to allowability of payments made to retired partners on account of overriding title on the profits, in favour of the assessee. We find that the Mumbai Tribunal in the case of S.B.Billimoria & Co supra held that the principles laid down in C.C.Chokshi & Co., case was not applicable because of the reason that the covenants in the partnership agreement in S.B.Billimoria's case allowed the parterns to carry on the business subject to approval of majority of partners as per Para 20 of the said decision, whereas, in C.C.Chokshi & Co. case, it was not possible and there is no such enabling covenant which allows the remaining partners to carry on business without making payment to retired partners. These two clinching distinguishing features advances the case of the assessee. We find from the perusal of the partnership agreement of the assessee herein, the continuing partners cannot carry on business without making the payment to retired partners. Similarly there is no clause in the partnership agreement of the assessee which enables the continuing partners to carry on the business with majority partners consent. Hence it

could be safely concluded that the decision of S.B.Billimoria is factually distinguishable. We hold that the issue under dispute is now settled by the two decisions of Hon'ble Bombay High Court supra and respectfully following the same, we do not find any infirmity in the order of the ld CITA in this regard. Accordingly, the grounds raised by the revenue are dismissed."

3.1 We find that on identical issue /facts with respect to payment made to retired partners that too in the case of the assessee the Tribunal considered the factual matrix and considered the decision of the Tribunal on identical facts / issue for ay 2011-12, wherein the payment of expenditure allowable u/s.37(1) of the Act has been considered. The Tribunal also considered the partnership deed wherein identical reference has been made in various clauses with respect to determination and the payments to retiring partners or the spouse /nominees of the deceased partners and thereafter reached to the particular conclusion considering the another decision from the Mumbai Bench in the case of M/s.C.C.Chokshi & Co., Vs JCIT in ITA Nos. 492 to 495/Mum/2003. The Tribunal also reproduced the relevant portion of the order in the case of M/s.C.C.Chokshi & Co., and considered various decisions including from Hon'ble Bombay High Court. No contrary decision was brought to our notice on identical

facts. Thus, respectfully following the decisions of the Co-ordinate Bench including decisions cited therein. Thus, this ground of the Revenue is without any merits, consequently dismissed.

4. So far as Ground No.1 with respect to deleting the addition of ₹.5.97 lakhs towards advances received from clients is concerned, at the outset the ld.Counsel for the assessee claimed that this issue is also covered in favour of the assessee in its case for ay 2011-12 vide order dated 25.11.2016. The ld.DR though defended the addition made by the ld. Assessing Officer but did not controvert the factual matrix that this issue is also covered in favour of the assessee.

4.1 We have considered the rival submissions and perused the material available on record. In view of the above arguments, we are reproducing hereunder the aforesaid order of the Tribunal dated 25.11.2016:-

"These cross appeals by the Revenue and the assessee are directed against the order of the' Commissioner of Income-tax (Appeals)-2, Chennal, dated 4.3.2016 for assessment year 2011-12.

2. First we take up assessee's appeal I.T.A.No.2079/Mds/2016.

3. Ground No. 1 and 7 are general in nature requiring no specific adjudication.
4. Ground No.2.0 to 2.6 are related to the disallowance of pension paid to the retired partners.

5. During the assessment proceedings, the Assessing Officer found that a sum of 1,49,76,851/- was reduced from the gross receipts with a note that the payment was made towards the retired partners as pension on account of overriding title in the partnership deed. The Assessing Officer called for the details and examined the same and held that the payment is an application of income and brought to tax. The assessee during the assessment proceedings alternately claimed that the payment made to the retired partners as an expenditure allowable u/s 37(1) of the Act. The Assessing Officer rejected the alternate claim of the assessee also holding that the payment made to the retired partners is not expenditure to carry on the business but it was a gratuitous payment.

6. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A). The Id. The CIT(A) confirmed the addition made by the Assessing Officer both on diversion of income by overriding title as well as the revenue expenditure u/s 37(1) of the Act. Therefore, the assessee is in appeal before the Tribunal.

7. On behalf of the assessee, Senior Counsel, Shri Percy J. Pardiwala appeared and presented the case. In his argument, the Senior Counsel stated that the assessee is a firm of Chartered Accountants rendering auditing, tax advisory and compliance as well as financial advisory services to its clients. The partners of the firm play pivotal role in rendering professional services. As a professional firm, the method of accounting adopted by the firm is cash method of accounting. As a matter of practice, memo of fees is raised on the client on completion of engagement. The income in respect of professional fees gets booked only on receipt of professional fees from the client. Similarly, at any given point of time, there are several ongoing professional engagements for which professional time has been spent and efforts are made. Such work in progress is not reflected in the accounts because of the cash method of accounting. In view of the above, there is considerable amount of income either unbilled or billed but not received and work in progress to be received from the clients for which costs are incurred, time is devoted and efforts are made during the period when retiring partner was active in the firm. Such sums will be realized by the firm in the post retirement period. The assessee-firm continues its operations after the retirement of a partner with same name and apparatus. The ongoing firm has the base of clients and human and physical infrastructure built over a period of time inter alia with efforts made by the retiring partner.

8. The Id. Senior Counsel taken us to the partnership deed placed at paper book pages 20 to 61 and explained that as per clause 10(l), (m) and (n)[pages 47 to 51 of the paper book, the payments were made to the retiring partners. For ready reference, we reproduce hereunder the relevant clauses of the partnership deed.

Payment of profits for the year of retirement or death	I. In respect of the year of retirement or death of a Partner, the Net Profits or Losses of the Rim shall be worked out for the full financial year at the end retirement or of the financial year in which the retirement or death occurs. Such Net Profits or Losses of the current year shall be apportioned on a time basis from the commencement of the current year to the date of the Partner's retirement or death and the Partner or the legal heirs or nominees, as the case may be, shall be paid the share of such apportioned sum by the continuing or surviving Partners as adjusted by the tax liability of such Partner with respect to his share of profits of the Firm for the year of retirement or death, as the case may be. It is clarified that the Partner or regal representatives, as the case may be, shall be entitled to the proportionate monthly remuneration under clause 9.a to the extent not drawn by the Partner up to the date of retirement, or death as the-case may be.
Right to receive payments on retirement or death	m. In addition to the amounts, if any, payable, as provided in the preceding clauses 10.k and 10.1 above, • a retired/retiring Partner of the Firm who became a Partner in the Firm or Participating Firms on or before 31 March 2010 or the spouse or nominee of such deceased Partner; or • a retired! retiring Partner of the Legacy Firm in respect of which the liability thereof has been taken over by this Firm or the spouse or nominee of such deceased Partner; as the case may be, shall be entitled to receive further sums determined on the basis specified in clause 1 0.n in respect of the following: i) amounts bills, but not received, work completed, but not billed, and work partly completed and not billed as at the date of death or retirement, as the case may be, having regard to the fact that the Partnership follows the cash system of accounting. ii) In consideration of the Retiring Partner or the spouse or nominee of the deceased Partner, as the case may be, permitting the continuing partners the use of the Firm name of Deloitte Haskins & Sells., to carry on the profession, along with the clientele and the attendant rights of the Firm;

Determination and payment of amounts under clause 10.m	iii) the contribution made by the surviving Partner or the deceased Partner as the case may be, during his association with the Firm, in increasing the future income earning potential of the Firm, the benefits whereof are likely to be reflected in the receipts of the Firm for a reasonable number of years immediately following the retirement or death of the Partner; and/or iv. In consideration of the assuming of the liability of the Retired Partners of the Legacy Firms consequent to the acquisition of the clientele and employees together with the substantial business of the Legacy Firms. It is clarified that a person who becomes a Partner in the Firm or Participating Firms on or after 1 April 2010 shall not be entitled to any payments under this clause, as computed under clause 10.n. n. The further sum payable to Retiring Partners or the spouse or nominees of deceased Partners referred to clause 10.m above shall be determined in accordance with clause(i) to clause (vii) below as may be applicable. i. In case of Partners who have retired from the Legacy Firms on or prior to 31 March 2007 as listed in Annexure lii, the payments in respect of clause 10.m will be made, for the balance period out of the period of ten years from the date of retirement, to the Retired Partner. The payments will be made on a monthly basis. ii. In terms of clauses 10.n.vi of the Partnership Deed dated 1 April 2008, the amount of pension payable to Shri Anil Chandra Gupta is as per Annexure IV. iii. For the Partners other than those listed in clauses (i) and (ii) above, any Partner retiring after Qualifying Period' of 20 years with the Participating Firm, shall be entitled to receive payments, at the rate of 25 per cent of his average annual amount received in the previous year from all the Participating Firms for best three years out of the last five years prior to retirement(even if it is related to the period prior to 1 April 2007) in absolute terms, for a period of ten years from the date of retirement. If the Partner retires in between the end of two accounting years than the average annual Amount Received in the Previous Year

	shall be computed with reference to completed financial years before the date of retirement as a Partner. The absolute amount referred to above will be indexed as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 or will be increased every year at the simple rate of 5% per annum, whichever is higher. The payments will be made on a monthly basis. The payments under this clause will restricted to Rs.60 lakhs per annum and this limit will be indexed as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 and the base year for the indexation being 2007-08 or increased every year at the simple rate of 5% per annum, whichever is higher. Payments as per this clause shall be made in case any Partner retires on becoming permanently incapacitated from continuing as Partner or dies. In such case the Qualifying Period will not be considered. In case of death of a Partner or retirement of a Partner due to incapacity before completion of three years as a Partner, then the average annual amount received in the previous year would be worked out with reference to the Amount Received in the Previous Years in absolute terms for the period he served as a Partner. Provided that a Partner who retires on attainment of the normal Retirement age after completing at least five continuous years as a Partner but without completing the Qualifying Period of 20 years shall be entitled to the payments of Rs.6,00,000 per annum for a period of ten years from the date of the retirement. The absolute amount referred to above will be indexed as per the Cost Inflation Index specified in section 48 of the Income Tax Act, 1961 and the base year for the Indexation being 2007-08 or increased every year at the simple rate of 5% per annum, whichever is higher. iv. Notwithstanding anything contained above the amounts payable under clause 10.n iii to a Retiring Partner of the Spouse or nominee of a deceased Partner in any financial year (on or after 1 April 2007) shall not be less than Rs.6,00,000 per annum provided the said Partner has completed the Qualifying Period of 20 years. The minimum amount of Rs.6,00,000 shall be adjusted by Cost Inflation Index specified in section 48 of the Income Tax act, 1961, the base year for the indexation being 2007-08 or increased every year at the simple rate of 5% per annum whichever is

	higher. v. Notwithstanding anything contained in clause 10.n.iii and clause 10.n.iv, the amounts payable to a Retiring Partner or the Spouse or nominees of a deceased Partner under this clause shall cease at the end of the financial year in which the Partner concerned attains the age of 75 years, or would have attained the said age if alive. vi. The payments under this clause and in any other clause of this agreement are subject to deduction of tax at source, as may be applicable from time to time. vii. On the basis of iii to vi above, the payment of pension to Partners under clauses 10.m and 1 0.n will be made as per Annexure V. For the avoidance of any doubt, it is clarified that a person who becomes a Partner in the Firm or Participating Firms on or after 1 April 2010 shall not be entitled to any payments computed under this clause.

9. The Id. Senior Counsel further explained that in view of the clauses in the partnership deed, there is a prior charge in respect of payments due to retired partners as the gross fee received by the continuing partners. In view of the prior charge arising from the provisions of the partnership deed, the same is payable to the retired partners and therefore, it is not income of the assessee-firm. The nature of application is such that the same payable to the retired partners cannot be said to be part of the assessee's income. He argued that the sums paid to the retiring partners was related to the work carried on by the partners during their service but the bills not raised, work completed but bills not raised and work partly completed and not billed etc. The assessee-firm is carrying on the business in the name of Deloitte Haskins & Sells. In nutshell, it is a consideration to the retired partners to continue the same business in the same line with the new partners and to retain the retired partners to support competitiveness on their own and not to join a new firm which is a threat to the existing firm and to settle the pending bills relating to the income earned by them as a partner during their tenure in the partnership-firm. Further the Senior Counsel further submitted that the method and manner of payment is determined as per clause 10(m) of the partnership deed which is reproduced in the earlier paragraph.

10. Referring to the decision of 1TAT Mumbai Bench in the case of associated concern of the assessee-firm M/s C.C Chokshi & Co. vs JC1T in I.T.A.No.s 492 to 495/Mum/2003 for the A.Y 1995-96 to 1997- 98 the Id. Senior Counsel submitted that on identical facts, the ITAT Mumbai, Bench held that the payment is by overriding title but not an application of income. He further submitted that clauses 22 and 28 of partnership deed of M/s C.C.

Chokshi & Co. are identical to the clauses 10(m), 10(n) and 7(e) of assessee's partnership deed and a comparative chart was submitted by the Senior Counsel which reads as under:

Clause in the Partnership Deed of Chokshi & Co.	Clause in Partnership deed of the Appellant	Description	Details
Clause 22	Clause 10m	Right to receive payments on retirement or death.	The list of sums entitled to be received determined based Clause 10n of the deed.
	Clause 10 n	Determination and payment of amounts under clause l0m.	The period post which the retired partner shall be eligible for the payments made as per Clause l0m of the deed.
Clause 28	Clause 7(e)	Payments under clause 10n & 10.n.vi are prior charge on the receipts of the firm.	Payment made to retired partners is a prior charge on receipts of the firm

11. The 1TAT Mumbai in the case of M/s C.C. Chokshi & Co. (supra), while dealing with the issue of payments made to the retired partners on identical facts has held as under:-

> *"8. We have heard both the parties and considered their rival contentions. The Hon'ble Supreme Court in the case of CIT Vs Sitaldas Tirathdas (supra) has considered the aspect of diversion of income by overriding title and has laid down the tests for application of the rule of diversion of income by overriding title. It is laid down as under:*
>
> *'In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee.*

Where by the obligation income is diverted before it reaches , it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable"

This proposition still holds good even today. Let us now see whether the facts in the case satisfies the test laid down by the Hon'ble Supreme Court"

9. For proper appropriation. Clause 22 of the Partnership deed of the assessee-firm is reproduced hereunder:

22 it is agreed that in addition to the amounts, it any, payable as provided in the preceding clause, namely clause 21, a retiring
partner or the legal representative of a deceased partner as the
case may be, shall be entitled to receive the further sum speared in clause 23, in respect of the following:

(a) (I) amounts billed, but not received,
(ii) work completed, but not billed, and
(iii)work partly completed and not billed as at the date of death of retirement, as the case may be, having regard to the fact
that the partnership follows the cash system of accounting, and

(b) (i) in consideration of the retiring partner or the legal representative of the deceased partner, as the case maybe, permitting the continuing partners the use of the firm name of C. C. CHOKSHI & Co. to carry on the profession, along with the clientele and the attendant rights of the firm,

(ii) the contribution made by the surviving partner or the deceased partner as the case may be during his association with the Firm, in increasing the future income earning potential of the Firm, the benefits thereof are likely to be reflected in the receipt of the Firm for a reasonable number of years following the retirement or death of the partner, and

(iii) the restrictive covenants contained in clause 26 thereof from engaging in any gainful occupation or in the practice of the profession of accountancy in India after such retirement.

10. The first test to be applied is to see the nature of the obligation of the assessee. This obilgation is created by the Partnership Deed. The Hon 'ble Supreme Court in the case of Prince Khandelrao Gaikwad vs. CIT reported in 16 ITR 294 at page 373 held as under

"There is no distinction between a charge created by a decree of court and one created by agreement of parties, provided that by that charge the income from the property can be said to be diverted so as to bring the matter within section (9)(1)(iv) of the Act."

Thus, it cannot be said that as this. Partnership Deed is an agreement between the parties. It does not create any charge on the income of the assessee.

11. This Charge over the income of the assessee is created in favour of the retiring partner or legal representative of the deceased partner for the work executed by them before retirement or death, but the amounts were not collected during their tenure and also as a consideration for permitting the continuing partners to use name of the firm as well as to carry on the profession along with the clientele and attendant rights of the firm and for increasing the future income earning potential of the firm the benefits whereof are likely to be reflected in the receipt of the firm for a reasonable number of years immediately following the retirement/death of the partner and also for restricting themselves from engaging in any gain lvi occupation or in the practice of the profession of accountancy in India after such retirement which is in competition with that of the assessee. Thus, it is clear that the amounts to be paid under Clause 22 are in lieu o their services rendered already to the firm and for restraining themselves to carry on any competing profession. Thus, what is being paid is expenditure necessary for earning the income.
12. It is therefore clear that the assessee is obliged to pay the amount computed under clause 23 before distribution of the same under Clause 28 of the partnership-Deed and it cannot be said to be an application of the income by the assessee firm. As under this obligation the income is diverted before it reaches the assessee it is deductible. The assessee is in fact in the position of a collector of income on behalf of the persons to whom it is payable and is only paying the amount subsequently. The decisions relied upon by the learned DR are not applicable to the facts of the case."

12. The Senior Counsel also relied on the decision of 1TAT Mumbai in the case of M/s C.C. Chokshi & Co for the assessment years 200-01 to 2001-02 which held the issue in favour of the assessee following decision of the Co-ordinate Bench in I.T.A.Nos. 492 to 495/Mum/2003 and observed that the 1TAT has referred to several judgments in the above case including the judgment of Hon'ble Supreme Court in the case of CIT vs Sitaldas Tirathdas, 41 ITR 367 which was relied upon by the Assessing Officer in the assessment order as well as by the CIT(A) in his appellate order. The appeal filed by the Revenue against the above order of the Tribunal was dismissed by the Hon'ble Bombay High Court in ITA No.209 of 2008 dated 25.7.2008. The Bombay High Court followed its judgment in the case of CIT vs Mulla and Mulla and Craigie, Blunt and Caroe 1991 1TR 198. The Id. Senior Counsel relied on the following decisions also on identical facts:

1. CIT vs Punjab Tractors Co-op. Multipurpose Society Ltd, 95 Taxman 579
2. GFA Anlagenbau GmbH vs ITO, 57 lTD 81 (Hyd)
3. S. Priyadarsan vs JC1T, 73 TTJ 378 (Chennai)
4.AC1T 11(2) vs M/s A.F. Ferguson & Co. in I.T.A. No. 7792/M um/2004 dated 30.1.2008
5. CIT vs M/s A.F Ferguson and Co. in I.T.A.No.419 of 2012 dated 9.7.2014 Bombay High Court.
6. CIT vs Subramaniam Bros, 236 ITR 148 (Mad)

7. CiT vs Mulla & Mulla & Craigie Blunt & Caroe, [19911 54 Taxman 192.
8.. CIT vs RSM & I Co.. in I.T.A.No. 188 of 2014 dated
11.8.2016 [Bombay High Court]
9. CIT vs Nariman B. Bharucha & Sons, [1980] 4 Taxman 76 (Born)

13.. On the other hand, the Id. DR argued that the payment made to retired partners was made from the income of the firm and hence, cannot be regarded as diversion but must be regarded as application of income and relied on the orders of the lower authorities.

14.. We have considered the rival submissions and the material placed before us. We have also carefully gone through the decisions of the Mumbai 1TAT in the case of associated concern of the assessee M/s C.C. Chokshi & Co. (supra) ad also the partnership deed and its relevant clauses. Clause 10(m) of the partnership deed deal with the' right to receive payments on retirement or death. As per clause 10(m), the retiring partners is entitled to receive the sums determined on the basis of clause 10(n) in respect of the amounts billed but not received etc. The payment is made to the retiring partner as consideration for permitting the continuing partners the use of the firm name to carry on the profession, along with the clientele ad the attendant rights of the firm. The contribution made by the surviving partner, during his association with the firm, in increasing the future income earned as discussed in clause 10 of the partnership deed. The determination of the payment is calculated as per clause 10(n) of the partnership deed. The clauses of the partnership deed are identical to that of the decision of the ITAT Mumbai Bench in the case of M/s C.C. Chokshi & Co. (supra).

15. The Id. DR's contention is that the payment to retired partners is an 'application of income'. When the partnership deed specifies that the payment made to the retiring partner is with regard to the work done by them during the tenure as a partner and towards the settlement of their income for the work done and to allow the partnership firm to continue its business, the payment cannot be held as an application of income or gratuitous payment. We therefore respectfully following the decision of Coordinate bench of 1TAT Mumbai in the case of the associate concern of the assessee, M/s C.C. Chokshi & Co. (supra), hold that the payment is a diversion by overriding title and cannot be included in the total income.

16. The assessee also raised the ground for allowance of expenditure u/s 37(1) of the Act. Since we held that the payment made to retiring partners is diversion of income by overriding title, the ground raised by the assessee became infructuous and hence dismissed.

17. The next ground is related to the TDS credit of1,98,27,735/- which has been suffered by the assessee in connection with the professional fees received from clients.

18. The CIT(A) in her appellate order, has directed the Assessing Officer to verify the claim of the assessee vis-à-vis Form 26AS and give for the correct amount of T.D.S. Giving correct amount of payment of taxes is the duty of the assessing officer. The assessee should not be made to suffer for getting the refund of taxes paid. We direct the assessing officer to allow the correct amount of TDS without any further delay. This ground is allowed for statistical purposes.
19. The next ground is related to levy of interest u/s 234D to the extent of 6,10,636.

20. The Assessing Officer is directed to examine the applicability of interest u/s 234D and levy correct amount of interest.

21. In the result, the appeal of the assessee is partly allowed.

22. Now, coming to Revenue's appeal I.T.A.No.2077/Mds/2016, the only issue is addition made by the Assessing Officer towards advance fee of 64,39,989/-.

23. During assessment proceedings, the Assessing Officer found that the assessee is following the cash system of accounting and received advances of 64,39,989/-. The assessee submitted to the A.O that the sum of 64,39,989/- represented the receipt of advances for the services not concluded. The bills are raised by the assessee on completion of the work and as per the method of accounting regularly followed. Not convinced with the explanation of the assessee the Assessing Officer made the addition of 64,39,989/- to the returned income.

24. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the CIT(A). The Ld.CIT(A) allowed the assessee's claim by placing reliance on the judgment of the Delhi High Court in the case of CiT vs Dinesh Kumar Goel, 197 taxman 375(Delhi).

25. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

26. The Id. DR argued that the assessee-firm is following the cash system of accounting and all the receipts represent income and not offering the income on receipt basis leads to difference of income recognition and contradictory stand to the principles of accounting. Further, the Id. DR also argued that the assessee was accounting the expenditure on cash basis, which resulted in mismatch frequently.

27. On the other hand, the Id. AR submitted that the assessee has disclosed advances of 64,39,989/- at the end of financial year 2010-11. The said advances represented advances received from clients on account of professional fees. The assessee is following cash system of accounting and

the bills are raised as and when the services are rendered. No professional charges are received in advance, therefore, the same cannot take the character of income unless the invoices are raised and services are rendered. In exceptional cases, the assessee-firm received advances from clients before rendering such services. Such advances are kept in advance account. The advance received from client is transferred to professional fee account on completion of service. The assessee further submitted that the advance is a very small amount as compared to the aggregate professional fees. Apart from the above, alternatively the Id. AR submitted that the advance received during the assessment year under consideration was only 2,79,161/- which may be added to the income of the assessee if the assessee's contentions are not accepted. Further Ld. A.R submitted that on identical facts in the case of A.F. Ferguson &Co in ITA No.7792/M/04 dated 30/01/2008 Mumbai 1TAT has dismissed the appeal of the revenue.

28. We heard the rival submissions and perused the material placed before us. The assessee-firm is a Chartered Accountants rendering professional services. As per Balance Sheet as on 31.3.2011 the advance outstanding was 64,39,989/-. The assessee contended that the amount of advances were received from clients for the services not yet rendered, therefore, the income is not accrued and accordingly, the advance cannot partake the character of income. Further, the assessee submitted that all advances cannot be held as income. In other words, the receipt resumes the character of income only when the services are rendered. The assessee is following the same method of accounting consistently for several years. The assessee placed reliance on the judgment of P& H High Court in the case of CIT vs Punjab Tractors Co-operative Multi-purpose Society Ltd, 234 ITR 10, decision of this Tribunal in S. Priyadarsan vs JCIT, 73 TTJ 738 and on identical issue in the case of associated concern of the assesseeviz. A.F. Ferguson & Co., in I.T.A.No.7792/Mum/2004 dated 30.1.2008, ITAT Mumbai. In the facts and circumstances of the case, we agree with the submission of the assessee that the advance cannot be treated as income in the hands of the assessee unless the services are rendered by the assessee. The Assessing Officer has not made out a case that advances received in question were towards the services rendered by the assessee. The Id. DR also could not bring any evidence to controvert the submissions made by the assessee. In view of the above facts and placing reliance on the decisions relied upon by the assessee cited (supra) we do not find any reason to interfere with the order of the CIT(A) and accordingly we uphold the same.

29. In the result, the Revenue's appeal is dismissed.

30. To summarize, the appeal of the assessee is partly allowed whereas that of the Revenue is dismissed.

Order pronounced in the open court on 25th November, 2016, at Chennai."

4.2 We find that in the aforesaid order in the case of the assessee itself for ay 2011-12, the Tribunal has deliberated upon identical issue and considering the decision from Hon'ble Delhi High Court in the case of Dinesh Kumar Goel 197 Taxmann 375 (Del) and arguments from both sides including the decision in the case of A.F.Ferguson & Co. (ITA No.779/M/04 dated 30.01.2008), another decision from Hon'ble P&H High Court in the case of CIT vs. Punjab Tractors Co-operative Multi-purpose Society Ltd. in 234 ITR 10, affirmed the stand of the ld.CIT(A). No contrary facts were brought to our notice by either side and more specifically by the Revenue, therefore, we find no infirmity in the conclusion drawn by the ld.CIT(A).

4.3 Our above conclusion will also cover the remaining appeals of the Revenue on identical issue.

5. Now we shall take up the Cross objections of the assessee for assessment year 2010-11 (C.O.No.47/Chny/2018), the assessee has challenged the reopening of assessment u/s.147 of the Act. The ld. Counsel for the assessee contended that there

was no fresh material /evidence with the ld.A.O and the reopening was made merely on change of opinion and it was merely due to the reason to meet out the audit objections. It was furht5er contended that necessary details/information was furnished by the assessee during the assessment proceedings. However, the ld.D.R strongly defended the re-opening by inviting our attention to the finding contained in the assessment order /impugned order.

5.1 We have considered the rival submissions and perused the material available on record. So far as, re-opening of assessment u/s 147/148 of the Act on the plea that the Ld. Assessing Officer ignored the fact that there was no reason to believe that income has escaped assessment as there was no tangible material with the Assessing Officer and independent application of mind. In this background, we shall analyze whether the Ld. Assessing Officer was right in re-opening the assessment u/s.147 of the Act. It is our bounded duty to examine

Sec.147 of the Act which is reproduced hereunder for ready reference and analysis.

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

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

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

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

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

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—
(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

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

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

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

(i) income chargeable to tax has been under assessed ; or

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

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

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

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

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

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

5.2. If the aforesaid provision of the Act is analyzed, we find that after insertion of Explanation -3 to section 147of the Act by the Finance (No.2) Act of 2009 with effect from 01/04/1989 section 147 has an effect that Assessing officer has to assess or reassess income (such income) which has escaped assessment and which was basis of formation of belief and, if he does so, he can also assess or reassess any other income which has escaped assessment and which came to the notice during the course of proceedings. Identical ratio was laid down by Hon'ble

jurisdictional High Court in CIT vs Jet Airways India Pvt. Ltd. (2010) 195 taxman 117 (Mum.) and the full Bench decision from Hon'ble Kerala High Court in CIT vs Best Wood Industries and Saw Mills (2011) 11 taxman.com 278 (Kerala)(FB). A plain reading of explanation-3 to section 147 clearly depicts that the Assessing Officer has power to make addition, where he arrived to a conclusion that income has escaped assessment which came to his notice during the course of proceedings of reassessment u/s 148. Our view is fortified by the decision in Majinder Singh Kang vs CIT (2012) 25 taxman.com 124/344 ITR 358 (P & H) and Jay Bharat Maruti Ltd. Vs CIT (2010) Tax LR 476 (Del.) and V. Lakshmi Reddy vs ITO (2011) 196 taxman 78 (Mad.). The provision of the Act is very much clear as with effect from 01/04/1989, the Assessing Officer has wide powers to initiate proceedings of reopening. The Hon'ble Kerala High Court in CIT vs Abdul Khadar Ahmad (2006) 156 taxman 206 (Kerala) even went to the extent so long as the AO has independently applied his mind to all the relevant aspect and has arrived to a belief the reopening cannot be said to be invalid.

5.3. We are aware that "mere change of opinion" cannot form the basis of reopening when the necessary facts were fully and truly disclosed by the assessee in that situation, the ITO is not entitled to reopen the assessment merely on the basis of change of opinion. However, powers under amended provision are wide enough where there is a reasonable belief with the Assessing Officer, that income has escaped assessment, because the powers with effect from 01/04/1989 are contextually different and the cumulative conditions spelt out in clauses (a) and (b) of section 147, prior to its amendment are not present in the amended provision. The only condition for action is that the Assessing Officer "should have reason to believe" that income chargeable to tax has escaped assessment. Such belief can be reached in any manner and is not qualified by a pre-condition of faith and true disclosure of material facts by an assessee as contemplated in pre-amended section 147. Viewed in that angle, power to reopen assessment is much wider under the amended provision. Our view is fortified by the decision from Hon'ble Delhi High Court in Bawa Abhai Singh vs DCIT (2001) 117 taxman 12 and Rakesh Agarwal vs ACIT (1996) 87 taxman 306 (Del.). The

Hon'ble Apex Court in CIT vs Sun Engineering works Pvt. Ltd. 198 ITR 297 (SC) clearly held that proceedings u/s 147 are for the benefit for the Revenue, which are aimed at gathering the 'escaped income'. At the same time, We are aware that powers u/s 147 and 148 of the Act are not unbridled one as it is hedged with several safeguards conceived in the interest of eliminating room for abuse of this power by the AO. However, the material available on record, clearly indicates that income chargeable to tax had escaped assessment, therefore, the ld. Assessing Officer was within his jurisdiction to reopen the assessment. The Hon'ble Apex Court in Ess Ess Kay Engineering Co. Pvt. Ltd. (2001) 247 ITR 818 (SC) held that merely because the case of the assessee was correct in original assessment for the relevant assessment year, it does not preclude the ITO to reopen the assessment of an earlier year on the basis of finding of his fact that fresh material came to his knowledge.

5.4. Under section 147, as substituted with effect from 01/04/1989, the scope of reassessment has been widened. After such substitution, the only restriction, put in that section is that "reason to believe". That reason has to be a reason of a prudent

person which should be fair and not necessarily due to failure of the assessee to disclose fully and partially some material facts relevant for assessment (Dr. Amin's Pathology Laboratory vs JCIT (2001) 252 ITR 673, 682 (Bom.) Identical ratio was laid down by Hon'ble Delhi High court in United Electrical Company Pvt. Ltd. vs CIT (2002) 258 ITR 317, 322 (Del.) and Prafull Chunnilal Patel vs ACIT 236 ITR 832, 838 (Guj.). The essential requirement for initiating reassessment proceeding u/s 147 r.w.s 148 of the Act is that the ld. Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The Hon'ble Gujarat High Court in Prafull Chunnilal Patel vs ACIT (supra) even went to the extent that at the initiation stage formation of reasonable belief is needed and not a conclusive finding of facts. Identical ratio was laid down in Brijmohan Agrawal vs ACIT (2004) 268 ITR 400, 405 (All.) and Ratnachudaman S. Utnal vs ITO (2004) 269 ITR 272, 277 (Karnataka) applying Sowdagar Ahmed Khan vs ITO (1968) 70 ITR 79 (SC).

5.5 So far as, the meaning of expression, "reason to believe" is concerned, it refers to belief which prompts the

Assessing Officer to apply section 147 to a particular case. It depend upon the facts of each case. The belief must be of an honest and reasonable person based on reasonable grounds. The Assessing Officer is required to act, not on mere suspicion, but on direct or circumstantial evidence. Our view find support from the ratio laid down in following cases:-

i. Epica Laboratories Ltd. vs DCIT 251 ITR 420, 425-426 (Bom.),

ii. Vishnu Borewell vs ITO (2002) 257 ITR 512 (Orissa),

iii. Central India Electric Supply Company Ltd. vs ITO (2011) 333 ITR 237 (Del.),

iv. V.J. Services Company Middle East ltd. vs DCIT (2011) 339 ITR 169 (Uttrakhand),

v. CIT vs Abhyudaya Builders (P.) Ltd. (2012) 340 ITR 310 (All.),

vi. CIT vs Dr. Devendra Gupta (2011) 336 ITR 59 (Raj.),

vii. Emirates Shipping Line FZE vs Asst. DIT (2012) 349 ITR 493 (Del.).

viii. Reference may also made to following judicial decisions:-

ix. Safetag international India P. Ltd. (2011) 332 ITR 622 (Del.),

x. CIT vs Orient Craft Ltd. (2013) 354 ITR 536 (Del.)

xi. Acorus Unitech Wirelss Pvt. Ltd. vs ACIT (2014) 362 ITR 417 (Del.).

xii. Praful Chunilal Patel: Vasant Chunilal Patel vs Asst. CIT (1999) 832, 843-44, 844-45 (Guj.),

xiii. Venus Industrial Corporation vs Asst. CIT (1999) 236 ITR 742, 746 (Punj.),

xiv. Srichand Lalchand Talreja vs Asst. CIT (1998) 98 taxman 14, 19 (Bom.),

xv. Usha Beltron Ltd. vs JCIT (1999) 240 ITR 728, 736-37, 739 (Pat.)

xvi. Kapoor Brothers vs Union of India (2001) 247 ITR 324, 331, 332-33

xvii. Vippy Processors Pvt. Ltd. vs CIT (2001) 249 ITR 7, 8 (MP)

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

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

Identically in the case of Srichand Lalchand Talreja v. Asst CIT, (1998) 98 Taxman 14, 19 (Bom), where the information regarding acquisition of the asset was not available with the Assessing Officer during the relevant assessment year 1992-93 and such information was disclosed in the return for the assessment year 1995- 96, the Hon'ble jurisdictional High Court held that the Assessing Officer can form a bona fide belief that there was escapement of income in relation to assessment year 1992-93. Now we shall deal with certain case laws so that we can reach to a fair conclusion.

5.7. The Hon'ble Bombay High Court in Export Credit Guarantee Corporation of India Ltd. v. Addl. CIT, (2013) 350 ITR

651 (Bom), where there had been no application of mind to the relevant facts during the course of the assessment proceedings by the Assessing Officer, the reopening of the assessment was held to be valid. In another case in Girilal & Co. v. S.L. Meena, ITO, (2008) 300 ITR 432 (Bom), held that in order to invoke the extraordinary jurisdiction of the court the petitioner must also make out a case that no part of the relevant material had been kept out from the Assessing Officer). The information was in the annexures and consequently Explanation 2(c)(iv) of section 147 would apply. Thereassessment proceedings after four years were valid.

5.8. In the case of Deputy CIT v. Gopal Ramnarayan Kasat, (2010) 328 ITR 556 (Bom), it was not the case of the assessee that the notice issued was after the expiry of the time limit provided in section 153(2). The reassessment proceedings were held to be valid. In Indian Hume Pipe Co. Ltd. v. Asst. CIT, (2012) 348 ITR 439 (Bom), both in the computation of taxable long-term capital gains in the original return of income and in the computation that was submitted in response to the query of the

Assessing Officer there was a complete silence in regard to the dates on which the amounts were invested, as such there being a failure to disclose fully and truly material facts necessary for assessment. The reassessment proceedings were held to be valid. This view was also confirmed in following cases:-

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

5.9. In the case of Venus Industrial Corporation v. Asst. CIT, (1999) 236 ITR 742, 746 (P & H) [Where initiation was started within four years for re-examining the deduction under section 80HHC, was held to be wrongly allowed in the original assessment. Identically, in the case of Happy Forging Ltd. v. CIT, (2002) 253 ITR 413,416-17 (P & H), where excise duty paid in advance was shown as an asset in the balance sheet and was allowed as a deduction, reassessment notice on the ground that excise duty was shown as an asset in the balance sheet and was not routed through the profit and loss account. The reopening at this stage was held to be valid. In the case of Vipan Khanna v. CIT, (2002) 255 ITR 220, 230 (P & H), where from the facts it

was clear that the assessee had claimed depreciation in the return at the rate of 50 per cent and he had nowhere disputed the fact that the admissible rate of depreciation to him was 40 per cent., such fact alone was sufficient to initiate reassessment proceedings under section 147 and, therefore, such initiation was sustained. The Hon'ble Punjab & Haryana High Court in Mrs. Rama Sinha v. CIT, (2002) 256 ITR 481, 483, 486, where the reassessment notice has been issued on the basis of definite information from CBI regarding investments by the assessee which had not been disclosed during the original assessment proceedings, such initiation has been upheld.

5.10. In the case of Pal Jain v. ITO, (2004) 267 ITR 540, 544-45, 548, 549 (P & H), applying Phool Chand Bajrang Lal v. ITO, (1993) 203 ITR 456 (SC), although the transaction of sale of shares was disclosed and accepted in the original assessment, but the subsequent discovery by the DDI (Investigation) revealed that the transaction was not genuine, a reassessment notice after four years has been held to be valid because there was no true disclosure of the material facts. In this regard, the petitioner-assessee cannot draw any support from the statement for

challenging the validity of the notice for reassessment. It goes without saying that for the purpose of making the assessment, the Assessing Officer shall have to confront the petitioner with the entire material in his possession on the basis of which he proposes to make the additions. In Punjab Leasing Pvt. Ltd. v. Asst. CIT, (2004) 267 ITR 779, 781-82 (P & H), where depreciation was allowed to the assessee, who was engaged in the business of financing of vehicles and consumer durables on 'hire-purchase basis' as well as on 'lease/rent basis', a reassessment notice issued after four years has been held not to suffer from any illegality as the same was based on the bona fide action of the competent authority to determine whether or not the vehicles in respect of which the petitioner had been claiming depreciation, were actually owned by it.

5.11. In Jawand Sons v. CIT(A), (2010) 326 ITR 39 (P & H), in the initial assessment, the benefit of deduction of the duty drawback and DEPB under section 80-IB was wrongly granted to the assessee, for which it was not entitled. Therefore, reassessment proceedings to withdraw the deduction were held

to be valid. Likewise, in CIT v. Hindustan Tools & Forgings P. Ltd., (2008) 306 ITR 209 (P & H), where, the assessee in the regular assessment had been allowed deduction more than actually allowable under section 80HHC. Therefore, the action initiated by the AO for reassessment under section 147(b) could not be held to be invalid.

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

under section 147. In the case of CIT v. Hukam Singh, (2005) 276 ITR 347 (P & H), it was held that the respondents did not have the locus standi to question the orders of reassessment on the ground of lack of notice. Non-issuance of notice to some of the legal heirs of the late P was merely an irregularity and the same did not affect the validity of the reassessment orders. Likewise, in Tilak Raj Bedi v. Joint CIT, (2009) 319 ITR 385 (P & H), wherein, facts coming to light in a subsequent assessment year could validly form the basis for initiating reassessment proceedings, in view of Explanation 2 to section 147. The action of the income tax authorities in reopening the assessment of the assessee and restricting the deduction under section 80-IB was held to be valid.

5.13. In the case of Smt. Usha Rani v. CIT, (2008) 301 ITR 121 (P & H), there was nothing on record to show the relationship between the donor and the donee, capacity of the donor to make gifts and the occasion therefore. The assessee had failed to discharge the onus to prove the gifts. The reassessment proceedings were held to be valid. In the ase of Usha Beltron Ltd. v. Joint CIT, (1999) 240 ITR 728, 736-37, 739 (Pat), where the

investigation report indicated that the Officer had reason to believe that on account of failure on the part of the petitioner-assessee to disclose true and full facts, income had been grossly under assessed, reassessment proceedings were held validly initiated.

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

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

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

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

order passed under section 143(1), it had escaped assessment. On these facts the initiation of the proceedings under section 147 read with section 148 for assessment years 2005-06 and 2006-07 was legal and in accordance with law.

5.17. Likewise, in the case of Sunil Kumar lain: Suresh Chandra lain v. ITO, (2006) 284 ITR 626 (All), notwithstanding the fact that the amount had been assessed to tax in the hands of P, he had taken a stand that the amount did not belong to him and instead belonged to Suresh chandra. Thus, it was not clear as to in whose hands the amount in question had to be assessed. The ITO was justified in taking proceedings under section 147 for assessing the amounts in the hands of the petitioners according to the claim made by the petitioners. Likewise, Hon'ble Kerala High Court in CIT v. Dr. Sadique Ummer,(2010) 322 ITR 602 (Ker), where, the Assessing Officer collected further information to complete the reassessments which was also permissible under the Act. The finding of the first appellate authority as well as the Tribunal, that the Assessing Officer had no material to believe that the income had escaped assessment was wrong and contrary to facts. The assessee had not maintained any books of account.

Therefore, the reopening of assessments was held to be valid and within time. In the case of CIT v. Uttam Chand Nahar, (2007) 295 ITR 403 (Raj), the notice requiring the assessee to file the return within 30 days was in accordance with section 148 as it must be deemed to be in force with effect from 1-4-1989, and in force as on the date notice was issued. There was no violation of section 148 in respect of the specified period within which the return is to be submitted. The reassessment proceedings were held to be valid.

5.18. In the case of CIT v. C. V. layachandran, (2010) 322 ITR 520 (Ker), where, the assessee did not concede the income on capital gain either under the un-amended provision or under the amended provision, the recourse open to the Department was to bring to tax income escaping assessment under section 147 which was not time barred or otherwise invalid. Likewise, in Atul Traders v. ITO, (2006) 282 ITR 536 (All), the account books or record and other material were all common which were being considered by the CIT(A) in the proceedings relating to three appeals. The petitioner had notice and opportunity of being

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

5.19. In the case of CIT v. Kerala State Cashew Development Corporation Ltd., (2006) 286 ITR 553 (Ker), wherein, the assessee was following the mercantile system of accounting should not have claimed deduction of penal interest which had accrued not in the previous year relevant to the assessment year but in earlier years. This the assessee had not disclosed. The reassessment was held to be valid. Likewise, in Kusum Industries P. Ltd. v. CIT, (2008) 296 ITR 242 (All), as the award had become final it would be taken that the directors of the assessee had accepted the factum of earning of secret profit not reflected in the books of account, which was also binding on

the company. The non-appearance of one of the arbitrators and one of the directors in respect of the summon issued undersection 131 would not make the reassessment invalid. The Hon'ble Kerala High Court in CIT v. Indo Marine Agencies (Kerala) P. Ltd., (2005) 279 ITR 372 (Ker), held that the entry would amount to an order under section 144. The mere fact that it was not communicated to the assessee would not make such an assessment recorded in the order sheet illegal and that would not bar further proceedings under section 147. Thus, the assessment was held to be validly reopened under Explanation 2(c) to section 147. Likewise, in CIT v. N. Jayaprakash, (2006) 285 ITR 369 (Ker), where, the assessee could not, after having persuaded the assessing authority to withdraw the notice dated 1-10-1993, pointing out that it was not in conformity with law, be allowed to contend that the notice was valid due to the omission of the time-limit by the Finance (No.2) Act, 1996, with effect from 1-4-1989. In the absence of specific provision in the Finance (No. 2) Act, 1996, invalidating proceedings initiated by the Income-tax Officer, the action taken by him applying the then existing law could not be said to be invalid.

5.20. Likewise, in CIT v. S.R. Talwar, (2008) 305 ITR 286 (All), the factum of taking advances or loan from T and K, in which the assessee was one of the directors had not been disclosed nor a copy of the ledger account of the assessee maintained by the company filed. In view of the absence of these details, the Assessing Officer could not examine the taxability of advances or loan raised by the assessee. There was failure to disclose material facts necessary for assessment. The reassessment proceedings were held to be valid. In another case, the Hon'ble Allahabad High Court in Chandra Prakash Agrawal v. Asst. CIT, (2006) 287 ITR 172 (All), wherein, the Income-tax Department had sent a requisition on 27-3-2002, under section 132A requisitioning the books of account and other documents seized by the Central Excise Department. The record of the proceeding dated 18-4-2002, showed that the requisition was not fully executed as all the books of account and other documents had not been delivered to the requisitioning authority. The proceedings initiated under section 147 was held to be valid.

5.21. In Ramilaben Ratilal Shah v. CIT, (2006) 282 ITR 176 (Guj), held that the noting in the diary constituted sufficient information for the escapement of income by either non-declaration of correct sale consideration or furnishing of inaccurate particulars as regards sale consideration. Thus, the Tribunal was justified in holding that the assessee had failed to disclose fully and truly all material facts necessary for the assessment of the relevant assessment year. The reassessment proceedings had been validly initiated. Likewise, in CIT v. Abdul Khader Ahamed, (2006) 285 ITR 57 (Ker), it was clear from the reasons recorded by the Deputy CIT that he prima facie had reason to believe that the assessee had omitted to disclose fully and truly the material facts and that as a consequence income had escaped assessment. The reassessment was held to be valid. In the case of U.P. State Brassware Corporation Ltd. v. CIT, (2005) 277 ITR 40 (All), the principles laid down by the Calcutta High Court in CIT v. New Central Jute Mills Co. Ltd. : (1979) 118 ITR 1005 (Cal) did constitute information on a point of law which should be taken into consideration by the ITO in forming his belief that the income to that extent had escaped assessment to

tax and, the reassessment was held to be valid. In Sunder Carpet Industries v. ITO, (2010) 324 ITR 417 (All), held that the Departmental Valuer's Report constituted material for entertaining a belief of escaped income in the years under consideration. The reassessment proceeding was held to be valid.

5.22. In Aurobindo Sanitary Stores v. CIT, (2005) 276 ITR 549 (Ori), there being a substantial difference between the figures of liabilities towards sundry creditors in the party ledgers of the assessee-firm and the figures of liabilities towards sundry creditors in the balance-sheet of the assessee-firm for the previous year relevant to the assessment year 1989-90. These materials had a direct link and nexus for formation of a belief by the Assessing Officer that income of the assessee-firm had escaped assessment because of failure of the assessee to disclose fully and truly all material facts necessary for the assessment. In the case of CIT v. Best Wood Industries & Saw Mills, (2011) 331 ITR 63 (Ker), the assessee challenged the validity of the reassessment on the ground that the AO had exceeded his jurisdiction under section 147 and both the first appellate authority as well as the Tribunal accepted the contention of the

assessee holding that so far as the reassessments related to assessment of unexplained trade credits, they were invalid. On appeal, it has been held that the reassessments were to be valid. In Honda Siel Power Products Ltd. v. Deputy CIT, (2012) 340 ITR 53 (Del), there being omission and failure on the part of the assessee to disclose fully and truly material facts Thus reassessment proceedings were held to be valid.

5.23. In Atma Ram Properties Private Ltd. v. Deputy CIT, (2012) 343 ITR 141 (Del), as the books of account and other material were not produced and no letter was filed, the order passed by the Commissioner (Appeals) in the assessment year 2001-02 would constitute 'information' or material from any external source and, as such, the reassessment proceedings for the assessment year 2000-01 were held to be valid. Likewise, in the case of CIT v. Smt. R. Sunanda Bai, (2012) 344 ITR 271 (Ker), the reassessment in question were held to be valid on the fact that the assessee claimed and was given relief under section 80HHA for the three preceding year which disentitled her for deduction under section 80HH for the assessment years 1992-93 and 1993-94.

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

Reference may also be made to following cases.

i. Ajai Verma v. CIT [(2008) 304 ITR 30 (All)];
ii. Ashok Arora v. CIT [(2010) 321 ITR 171 (Del)];
iii. CIT v. Chandrasekhar BaLagopaL [(2010) 328 ITR 619 (Ker)];
iv. Jayaram Paper Mills Ltd. v. CIT [(2010) 321 ITR 56 (Mad)];
v. Kerala Financial Corporation v. Joint CIT [(2009) 308 ITR 434 (Ker)];
vi. Mavis Satcom Ltd. v. Deputy CIT [(2010) 325 ITR 428 (Mad)];
vii. CIT v. Madhya Bharat Energy Corporation Ltd. [(2011) 337 ITR 389 (Del)];
viii. Kone Elevator India P. Ltd. v. ITO [(2012) 340 ITR 454 (Mad)];
ix. Vijay Kumar Saboo v. Asst. CIT [(2012) 340 ITR 382 (Karn)];
x. Siemens Information Systems Ltd. v. Asst. CIT [(2012) 343 ITR 188 (Bom)];
xi. I.P. Patel & Co. v. Deputy CIT [(2012) 346 ITR 207 (Guj)];

xii. Dishman Pharmaceuticals & Chemicals Ltd. v. Deputy CIT [(2012) 346 ITR 228 (Guj)];

xiii. Video Electronics Ltd. v. Joint CIT [(2013) 353 ITR 73 (Del)];

xiv. A G Group Corporation v. Harsh Prakash [(2013) 353 ITR 158 (Guj)];

xv. Inductotherm (India) P. Ltd. v. M. GopaLan, Deputy CIT [(2013) 356 ITR 481 (Guj)]; CIT v. Dhanalekshmi Bank Ltd. [(2013) 357 ITR 448 (Ker)];

xvi. Sitara Diamond Pvt. Ltd. v. ITO [(2013) 358 ITR 424 (Bom)];

xvii. Rayala Corporation P. Ltd. v. Asst. CIT [(2014) 363 ITR 630 (Mad)].

5.25. So far as, the decision in the case of CIT vs Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) is concerned, the Hon'ble Apex Court, while coming to a particular conclusion, only in a situation, when not a single piece of paper or document was recovered, therefore, the Hon'ble Court held that since there was no tangible material found and the addition was merely on the basis of statement only then reopening of assessment u/s 147 of the Act was not permissible. Likewise, in the case of CIT vs S. Khader Khan Son (2012) 254 CTR 228 (SC), affirming the decision of Madras High Court in (2008) 300 ITR 157 (Mad.), the whole addition was made solely on the basis of statement u/s 133A and no other material was found, in that situation, it was held that the such statement has no evidentiary value.

5.26. In the case of Aradhna Estate Pvt. Ltd. vs DCIT (2018) 91 taxmann.com 119 (Gujarat), the Hon'ble High Court observed/held as under:-

> *"In reasons recorded by the Assessing Officer for reopening the assessment. He pointed out that the information was received from the*

investigation wing of the department at Calcutta regarding shell companies which had given accommodation entries for share premium to Surat based companies. A list of 114 Calcutta based companies was provided which had given accommodation entries to such Surat based companies. Statements of many entry operators and dummy Directors recorded during various search and seizure operation, survey operation and investigation were checked. The Assessing Officer thereupon proceeded to record that "On perusal of data so provided by the Deputy Director (Investigation), it is noticed that during the period under consideration, the assessee company has accepted share capital/share premium from the following entries/parties which have been proved to be shell companies based on the investigation conducted by the Deputy Director (Investigation). Underneath, he provided a list of 17 companies who had transacted with the assessee company during the year under consideration and were alloted equity shares by purported investment of sizeable share capital and share premium amounts. On verification of such materials, the Assessing Officer noted that the assessee had received share capital/share premium amount, since the investor companies were found to be shell companies indulging in providing accommodation entries, the Assessing Officer was of the opinion that the share capital/share premium claimed to have been received from the company by the assessee was not genuine. Amount is nothing but assessee's own money introduced in the garb of share capital/share premium from the shell companies and therefore, such amount is liable to be taxed under section 68. He therefore, recorded his satisfaction that the income had escaped assessment and that this was due to the assessee having failed to disclose truly and fully all facts. [Para 7] Section 147 provides inter alia that if the Assessing Officer has the reason to believe that any income chargeable to tax has escaped assessment, he may subject to the provisions of sections 148 to 153, assess or reassess such income. Proviso to section 147 of course requires that where the assessment under sub-section (3) of section 143 has been made for the relevant assessment year, no action shall be taken under this section after the expiry of the four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on part of the assessee to make return under section 139 or in response to a notice issued under sub-section (1) of section 142 or 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. In this context, it is well settled that the requirement of full and true disclosure on part of the assessee is not confined to filing of return alone but would continue all throughout during the assessment proceedings also. In this context, the materials on record would suggest that the Assessing Officer had received fresh information after the assessment was over prima facie suggesting that sizeable amount of income chargeable to tax in case of the assessee had escaped assessment and that such escapement was on account of failure on part of the assessee to disclose truly and fully all material facts. The Assessing Officer formed such a belief on the basis of such materials placed before him and upon perusal of such material. This is not a case where the Assessing Officer was reexamining the materials and the

documents already on record filed by the assessee along with the return or subsequently, brought on record during the assessment proceedings. It was a case where entirely new set of documents and materials was placed for his consideration compiled in the form of report received from the investigation wing. Such material was perused by the Assessing Officer and upon examination thereof, he formed a belief that the assessee company had received share application and share premium money from as many as 20 different investor companies who were found to be shell companies and indulging in giving accommodation entries. From this view point, since the Assessing Officer had sufficient material at his command to form such a belief. Such materials did not form part of the original assessment proceedings and was placed before the Assessing Officer only after the assessment was completed. Since on the basis of such materials, Assessing Officer, came to a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the Assessing Officer during the original assessment also would not preclude him from reopening the assessment. His scrutiny during the assessment will necessarily be on the basis of the disclosures made by the assessee. [Para 8] The contention that there was no failure on part of the assessee to disclose truly and fully facts cannot be accepted. The Assessing Officer, as noted, received fresh material after the assessment was over, prima facie, suggesting that the assessee company had received bogus share application/premium money from number of shell companies. [Para 10] Merely because the transactions in question were examined by the Assessing Officer during the original assessment would not make any difference. The scrutiny was on the basis of disclosures made and materials supplied by the assessee. Such material is found to be prima facie untrue and disclosures not truthful. Earlier scrutiny or examination on the basis of such disclosures or materials would not debar a fresh assessment. Each individual case of this nature is bound to have slight difference in facts. [Para 11] The next contention that the Assessing Officer did not demonstrate any material enabling him to form a belief that income chargeable to tax has escaped assessment is fallacious. The Assessing Officer recorded detailed reasons pointing out the material available which had a live link with formation of belief that the income chargeable to tax had escaped assessment. At this stage, as is often repeated, one would not go into sufficiency of such reasons. [Para 13] Section 68 as is well known, provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. That the share application money received by the assessee from above-noted companies was only by nature of accommodation entries and in reality, it was the funds of the assessee which was being re-routed. Undoubtedly. Section 68 would have applicability. Proviso added by the Finance Act, 2012 with effect from 1-4-2013, does not change this position. [Para 14] As per this proviso, where the assessee is a company and the sum so credited consists of share

application money, share capital, share premium or any such amount by whatever name called, explanation offered by the assessee company shall be deemed to be not satisfactory, unless the person in whose name such credit is recorded in the books of the company also offers an explanation about the nature and source of sum so credited and such explanation in the opinion of the Assessing Officer has been found to be satisfactory. Essentially, this proviso eases the burden of proof on the revenue while making addition under section 68 with respect to non genuine share application money of the companies. Even in absence of such proviso as was the case governing the periods with which we are concerned in the present case, if facts noted by the Assessing Officer and recorded in reasons are ultimately established, invocation of section 68 would be called for. [Para 15] The contention that the Assessing Officer had merely and mechanically acted on the report of the investigation wing also cannot be accepted. One has reproduced the reasons recorded by the Assessing Officer and noted the gist of his reasons for resorting to reopening of the assessment. The Assessing Officer had perused the materials placed for his consideration and thereupon, upon examination of such materials formed a belief that income chargeable to tax had escaped assessment. [Para16] In the result, petition is dismissed. [Para 17]"

5.27. The Hon'ble Gujarat High Court while validating the reopening of assessment under section 147/148 of the Act in a later order (aforesaid) dated 20/02/2018 on the issue of cash credit (share application money) duly considered the arguments of both sides and followed the following the decisions:

I. Jayant Security and Finance Ltd. v. Asstt. CIT [Special Civil Application No. 18921 of 2017, dated 12-2-2018] (para 12);

II. Raymond Woolen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC) (para 13);

III. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 291 ITR 500/161 Taxman 316 (SC) (para 13)

IV. Pr. CIT v. Gokul Ceramics [2016] 241 Taxman 1/71 taxmann.com 341 (Guj.) (para 16)

And distinguished the following decisions

i. Allied Strips Ltd. v. Asstt. CIT [2016] 384 ITR 424/69 taxmann.com 444 (Delhi) (para 11)

ii. Yogendrakumar Gupta v. ITO [2014] 366 ITR 186/46 taxmann.com 56 (Guj.) (para 11)

The Hon'ble High Court while upholding the validity of reopening also considered following decision, which were referred by both sides-

I. Allied Strips Ltd. v. Asstt. CIT [2016] 384 ITR 424/69 taxmann.com 444 (Delhi) (para 5),

II. Harikrishan Sunderlal Virmani v. Dy. CIT [2017] 394 ITR 146 (Guj.) (para 5),

III. Raymond Woolen Mills Ltd.v. ITO [1999] 236 ITR 34 (SC) (para 6),

IV. Yogendrakumar Gupta v. ITO [2014] 366 ITR 186/46 taxmann.com 56 (Guj.) (para 6),

V. Aaspas Multimedia Ltd. v. Dy. CIT [2017] 83 taxmann.com 82/249 Taxman 568 (Guj.) (para 6),

VI. Jayant Security & Finance Ltd. v. Asstt. CIT [Sp. Civil Application No. 18921 of 2017, dated 12-2-2018] (para 12),

VII. Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 291 ITR 500/161 Taxman 316 (SC) (para 13) and

VIII. Pr. CIT v. Gokul Ceramics [2016] 241 Taxman 1/71 taxmann.com 341 (Guj.) (para 16).

5.28. The sum and substance of the aforesaid decision was that since the Assessing Officer was having sufficient material at his command to form a reasonable belief that income chargeable to tax had escaped assessment would not preclude him from reopening of assessment. Thus, the assessment notice/

re-opening was held to be justified. In the appeal before us, initially the assessment for assessment year 2010-11 was completed u/s.143(3) of the Act vide order dated 13.3.2013, accepting the returned income of Rs.13.53 crores approximately. Thereafter the case was reopened with the issuance of notice u/s,.148 on 13.3.2015 as the ld. A.O found that the assessee incorrectly claimed the expenditure as a revenue expenditure towards the pension paid to retired partners. As per the partnership deed also, it was found that money received from the clients has been shown as advances from clients instead of offering the same as income. Thereafter, the assessee in response to the notice offered the total taxable income of Rs,13,56,49,603/- on 29.4.2015. The ld.AO communicated the reasons for reopening. The assessee filed its objections vide letter dated 18.2.2016. The ld.A.O disposed of the objections of the assessee by a speaking order on 10.03.2016. We note that the contention of the assessee that the reopening of the assessment was merely done on the basis of the change of opinion and based on audit objections has been duly discussed. Thus, considering the foregoing decisions and various case laws,

and the amended provisions with effect from 01.04.1989, we are of the considered opinion that the ld.First Appellate Authority is justified to confirm the reopening as valid. Thus, the Cross objections of the assessee for assessment year 2010-11 with respect to validity of reopening of assessment u/s.147 of the Act is held to be valid.

6. The next cross objection raised in the C.Os of the assessee is with respect to non appreciation of payment within the meaning of the Sec.37(1) of the Act is concerned, the contention of the ld. Counsel for the assessee is that broadly the C.Os are in support of the orders of the ld.CIT(A) since we have dismissed the appeals of the Revenue, therefore, the C.O.s of the assessee are dismissed as infructuous and as the same has remained for academic interest only.

Finally the appeals of the Revenue as well as the C.O.s of the assessee are dismissed

This order was pronounced in the open court, at the conclusion of the hearing, in the presence of learned counsel from both sides on 06th December, 2018.

Sd/-	Sd/-
(ए. मोहन अलंकामणी)	(**जोगिन्दर सिंह**)
(A.MOHAN ALANKAMONY)	**(JOGINDER SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	**उपाध्यक्ष /VICE PRESIDENT**

चेन्नई/Chennai
दिनांक/Dated: 06th December, 2018.
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	3. आयकर आयुक्त (अपील)/CIT(A)	5. विभागीय प्रतिनिधि/DR
2. प्रत्यर्थी/Respondent	4. आयकर आयुक्त/CIT	6. गार्ड फाईल/GF