

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA Nos.1277 to 1281/Del./2021
(ASSESSMENT YEARS : 2013-14 to 2017-18)**

DCIT, CC – 19, vs. Shri Satya Prakash Gupta,
New Delhi. House No.H – 3/1, Model Town II,
New Delhi – 110 055.

(PAN : AAHPG0717H)

**ITA Nos.723 & 724/Del./2021
(ASSESSMENT YEARS : 2012-13 & 2013-14)**

Shri Satya Prakash Gupta, vs. DCIT, CC – 19,
House No.H – 3/1, Model Town II, New Delhi.
New Delhi – 110 055.

(PAN : AAHPG0717H)

**CO Nos.55 to 58/Del/2021
(in ITA Nos.1278 to 1281/Del./2021
(ASSESSMENT YEARS : 2014-15 to 2017-18)**

DCIT, CC – 19, vs. Shri Satya Prakash Gupta,
New Delhi. House No.H – 3/1, Model Town II,
New Delhi – 110 055.

(PAN : AAHPG0717H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gaurav Jain, Advocate
Shri Shyam Sundar, Advocate
REVENUE BY : Shri H.K. Chaudhary, CIT DR

Date of Hearing : 31.01.2022

Date of Order : 09.03.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeals have been filed by the assessee for the Assessment Years 2012-13 & 2013-14; and by the Revenue for the AYs 2013-14 to 2017-18; and cross objections have been filed by the assessee for the AYs 2014-15 to 2017-18, against the consolidated impugned order dated 22.04.2021 passed by the ld. CIT(A)-27, New Delhi for the quantum of assessments passed under section 153A/143(3) of the Income-tax Act, 1961 (for short 'the Act').

2. Since issues involved in all the years are common arising out of identical set of facts and similar findings given by the AO and ld. CIT (A) has passed consolidated order for all the years, therefore, same were heard together and are being disposed off by this consolidated order for the sake of convenience.

3. Before dealing with various additions made by the AO in different assessment years, the relevant facts for the purpose of adjudicating the issues as raised before and the background of the case as culled from the impugned order are narrated here under :-

4. Assessee is an individual who through his sole proprietary concern, ***Sterling Security System*** entered into a contract with Italy based non-resident entity called, Cartiere Milani Fabriano (hereinafter referred to as '**CMF**') which is part of Fedrigoni SPA International

Group (hereinafter referred to as **‘Fedrigoni’**). Fedrigoni, is an international group, specialized in production of bank note paper. The assessee had entered into an agreement with Fedrigoni on 25.09.2006 which was valid till 31.12.2007 for sharing of profits in lieu of services to CMF on supply of currency paper by CMF to Reserve Bank of India (RBI) including its subsidiaries. As per the agreement, the assessee was required to provide services for preparation and participation in the possible tenders and carrying out supplies in favour of the concerned buyers relating to bank note paper in South-Asia. As the consideration for aforesaid services which were in the nature of commission income, it was agreed between the parties that 41% of the net profit margin or 14% of the payment received by the Fedrigoni from the buyer, which here in this case is RBI, whichever is higher. The agreement was initially valid up to 31.12.2007 and thereafter it was extended up to 31.12.2012 vide amended deed dated 20.12.2007 with slight modifications in the terms and conditions of payment where consideration was fixed at 41% of the net margin. The assessee had received the amount of profit in the form of commission from CMF in foreign currency during the FYs 2006-07 to 2010-11. Since these profits were rendered from Special Economic Zone (SEZ), therefore, the same were claimed as exempt u/s 10AA of the Act. It is a matter of record that assessee had not received any amount of profits or any payment as per the agreement from CMF from FY 2011-12 onwards which is also evident from return of income for AYs 2012-13 to 2016-17, and also the observations made by the Assessing Officer in his assessment order.

5. Assessing Officer has noted the details of the turnover, net profit and exemption claimed for AYs 2008-09 to 2016-17 , for the sake of ready reference, is reproduced as under :-

A.Y.	Turnover (Rs.)	Net Profit (Rs.)	Exemption claimed (Rs.)	Returned Income (Rs.)
2008-09	23,97,27,764	23,19,14,203	23,42,20,336	11,852
2009-10	N/A	N/A	N/A	N/A
2010-11	12,91,51,125	8,04,71,209	8,04,71,209	-
2011-12	15,95,32,863	19,06,06,942	19,06,06,942	1,712
2012-13	1,83,63,941	(1,86,816)	NIL	(1,86,815)
2013-14	3,17,20,171	(71,91,682)	NIL	(72,07,437)
2014-15	4,82,23,439	(12,08,100)	NIL	(12,08,100)
2015-16	43,97,651	6,18,578	NIL	NIL
2016-17	1,92,76,329	52,05,057	NIL	NIL

6. A search and seizure action and survey operation u/s 132 and 133A of the Act was conducted on the premise of the assessee on 26.12.2016. It is a matter of fact that, at the time of search the assessee had already become a non-resident w.e.f. 01.04.2015 i.e. from AY 2015-16 and onwards. After 01.04.2015, the assessee was associated with certain entities outside India and those entities earned income outside India allegedly for assisting in supply of currency papers for other countries. It also a matter of record that no material either during the course of search or post search inquiry whatsoever was found indicating that any income had accrued or arisen in India with relation to any supply of bank note paper in India or any other Government agencies like RBI. Accordingly, assessee being a non-resident had no income in relation with any Indian operation which can be said to be liable to be taxed in India in the block of assessment covered u/s 153A in the present case.

7. Assessing Officer ha noted that, during the course of search proceedings, a copy of agreement between the assessee and CMF Dated 25.09.2006 was found which, in earlier assessment years was part of the assessment record also. AO had incorporated the entire agreement and also the modification agreement. He has deduced that as per the agreement which was valid uptill 31.12.2012, the assessee might have continued to earn net margin which has accrued to the assessee from supply of bank paper note through CMF. This he has taken from the sales made by CMF to RBI post 1.04.2011. Assessing Officer has made very important observation that during the course of search, it was found that Fedrigoni does not have any agent, representative or associate for providing them services like that of assessee. He also found that Fedrigoni was still supplying bank paper notes to RBI (and all other subsidiaries) and Fedrigoni continued to receive the payments from these entities. However, there was no iota of material found to indicate that any such payment was ever received by the assessee from Fedrigoni as commission nor it was reflected in the books of account of the assessee or was credited to any Indian bank account of the assessee. Assessing Officer has accepted this fact. However, later on, post search enquiry, certain information were received from FTTR division of CBDT and it was found that assessee had received payment from Fedrigoni outside India in foreign accounts of various entities alleged to have controlled by assessee. From this, AO tried to deduce that there was likelihood that payments received by the assessee in his foreign bank accounts were not disclosed to the Income-tax Department which might have been connection with supply of currency papers in India. But, there is not an iota of

evidence or information that any such payment received in the alleged entities belonging to the assessee or where he could be said to be involved for carrying out any services in India or that income had arisen or accrued in India for any business activities. Assessing Officer has tried to draw inference on his presumptions. Thereafter, based on this presumption and allegation that commission income was earned by the assessee on the ground that assessee might have rendered some services to Fedrigoni as it continued to supply the bank note paper to its buyer i.e. RBI, he proceeded to apply the average net profit rate of 9.72% earned by the assessee on the amount paid by the RBI to Fedrigoni in the immediately preceding three assessment years i.e. 2009-10 to 2011-12. Based on this figure, he has tried to interpolate and make an estimate of the income of the assessee from AYs 2012-13 to 2017-18 in the following manner :-

(A)	(B)	(C)
<i>Assessment Year</i>	<i>Amount paid by RBI to Fedrigoni (Rs. in crores)</i>	<i>Estimated Revenue of Sh. S.P. Gupta – 9.72% of (B) (Rs. in crores)</i>
2012-13	226.68	22.03
2013-14	53.33	5.18
2014-15	304.32	29.58
2015-16	517.48	50.23
2016-17	231.18	22.47
2017-18	289.71	28.16
<i>Total</i>		157.65

8. The aforesaid amount was further proportioned by the AO in the ratio of actual credit amount (Rs.141.82 crores) received in the foreign bank account of the associate companies and the assessee to arrive at actual addition in each of the year in the following manner :-

Assessment Year	Undisclosed income (C*141.62/157.65)
2012-13	19.79 Crs.
2013-14	4.65 Crs.
2014-15	26.57 Crs.
2015-16	45.12 Crs.
2016-17	20.19 Crs.
2017-18	25.30 Crs.
Total	141.62 Crs.

9. From the perusal of the assessment order, it is seen that final conclusion in the assessment order has two limbs:

- (i) There was accrual /arising of receipts to the appellant from M/s CMF as per agreement dated 2006, in the period 1.4,2011 to 31.3.2017 in India. The main reason for this conclusion by the AO was that M/s CMF had supplied paper to RBI during this period did not have any other agent in India and the agreement with the appellant for sharing of profit on such activities of M/s CMF had not been closed.
- (ii) The appellant had acquired the status of NRI w.e.f. 1,4.2015 and the accrued amounts of its share of profit wit M/s CMF for all these years have been received by the appellant in FY 2015-16 & 2016-17 in various dubious foreign entities controlled by it either directly from M/s Fedrigoni or touted through dubious tax heaven entities.

10. Another important fact which has been mentioned in the assessment order is that, assessee had filed a letter dated 04.01.2018 from Fedrigoni on its letter head along with certificate mentioned with the detailed reasons and confirming that no amount was payable to

Shri S.P. Gupta from 01.04.2011 as his transactions with RBI culminated into losses from 01.04.2011 onwards thereby leaving no shareable profits. However, AO has doubted the authenticity of said letter which has been dealt and negated the said hypothesis of the AO by the ld. CIT (A) in a detailed manner in HIS appellate order. There is no dispute and is matter of record that the income received by virtue of the agreement and the operations carried out was only from AYs 2006-07 to 2010-11 which has been accepted by the Department in these years. This fact has also been noted by the ld. CIT (A) in his order. There are various other observations by the AO with regard to certain entities outside India where allegedly assessee had interest or related to such entities who had entered into for rendering of services for supply of currency notes to different countries outside India through Fedrigoni and the same will be dealt, when we deal with the arguments put-forth by the ld. counsel for the assessee.

11. Certain informations or references received through Foreign Tax and Tax Research (FTFR) has been discussed by the ld. CIT (A) and also the report of the AO which has been discussed threadbare by the ld. CIT (A) on page 150 onwards of his order.

12. However for the sake of reference, the discussion of these entities in the assessment order based on certain inquiry, especially regarding St. James Technologies Limited, which has been heavily referred by Assessing Officer to draw his conclusions for drawing his presumptions that assessee might be getting income which has not been disclosed. The relevant portion as incorporated in the following manner:-

Pages 165 to 201 D

“12.1 M/s St James Technologies Limited (SJTL)

12.1.1 As per the Information received from the foreign authorities, the details as mentioned in the assessment order are as under:

- St. James Technologies Limited (SJTL) was Incorporated on 3rd May 2016 in Dubai*
- Mr. Tarun Maheshwari Is shown as the 100% owner of St. James Technologies Limited as per Its incorporation documents.*
- In the KYC form of the bank, both Sh. S.P. Gupta and Sh. Tarun Maheshwari are shown as partners.*
- In the bank account opening forms, Sh. S.P.Gupta is the sole authorised signatory of the account.*
- SJTL received in its foreign bank account between the period from September 2016 to March 2017, around 2,5 Million Euros from Wenrtgen General Trading LLC and around 4,8 Million Euros from Fedrigoni.*

12.1.2 As per the assessment order, the facts mentioned are:

12.1.2.1 During the search

- (i) The appellant In his statement u/s 132(4) had stated that, as the CEO of St. James Technologies, the appellant had developed a colour shifting security thread for M/s Fedrigoni S.p.A. and the payments to St. James Technologies were in the nature of royalty on 20% sales price. However, when asked further about where the assessee had filed the patent, the assessee stated that the application for patent had actually been filed by M/s Fedrigoni and that there was agreement to pay him a percentage of royalty on the invoice value of the product produced and sold all over the world.*
- (ii) Further evidence related to St. James Technologies Limited was found in appellant's emails, wherein a representative of M/s Fedrigoni had sent him details of sales for the 1st two quarters of 2016. This was confronted to the assessee, as under :*

Q67. I am again showing you 2 emails from Paolo Pettinetii of Fedrigoni both dated 11th July, 2016 where he has attached MS Excel files containing the details of sales pertaining to various customers (mostly in India and also in Switzerland and Russia). The 2 emails are for 1st quarter (January to March) and 2nd quarter (April to June) of 2016 respectively, In your answer to previous question on the same, you have said that these are related to the royalty payments to St. James Technologies Ltd, However, you have also confirmed that St James Technologies Ltd. was established on 2nd May, 2016. Please explain how royalty payments were made to St. James Technologies Ltd. for goods sold before its date of incorporation.

Ans. As per an understanding between Nextgen General Trading LLC and Fedrigoni S.p.A., the royalty fee to Nextgen or any other nominated company was to be paid on sale of thread to paper manufacturers. As per the above statement, the paper manufacturers were located in Russia, Switzerland, Italy (manufacturing paper for India). The entire quantity of thread shown was sold to paper mills in Russia, Switzerland and Italy, The Italian producer (Fedrigoni) used the thread in paper sold this paper to India. Therefore, the entire quantity of thread was produced in Italy and sold cut off India to the above countries. The technology of thread was developed by myself S. P, Gupta (together with Nextgen General/ Trading LLC) and Fedrigoni after a long research. As soon as there was a success in getting orders, a new company St, James Technologies Ltd. was registered in Dubai for the simplification of accounting of this business.

(iii) In the statement given to Investigation Wing the Appellant had admitted that the SJTL is sharing around 50% of the profits with Sh. S.P. Gupta as per a verbal agreement with the company. In statement of assessee recorded u/s 132(4) of the IT Act, 1961, on 29.12.2016 during search, the assessee has admitted that there is no agreement of him with SJTL for sharing of money of the patent, the relevant part of the statement is as under;

Q.76 Kindly refer to your answers to Q.46 and Q.71, where you have said that Shri Tarun Maheshwari is the owner of M/s St. James Technologies Limited and that you have not received any money

from M/s St, James Technologies Limited. Please state whether you have any agreement with M/s St, James Technologies Limited to get money for the patent that you had developed and for which M/s St, James Technologies Limited is getting, the money from M/s Fedrigoni S.p.A.

Ans. There is no agreement with M/S St James Technologies Limited. This will be mutually decided between me and Shri Tarun Maheshwari after the completion of year.

12.1.2.2 During the course of assessment proceedings,, the appellant had filed a letter of nomination dated 21.06.2019 addressed to St. James Technologies (SJTL), wherein it has been mentioned that under the license agreement dated 01,01.2016 with M/s Fedrigoni S.p.A and M/s St. James Technologies, M/s Nextgen Trading LLC (NGTL) have 50% shares of royalty and the rest 50% of royalty is invested in assessee.

12.1.2.3The appellant had filed affidavit dated 4,9.2019 of Sh Tarun Maheshwari duly notarised by Consulate General of Dubai, regarding his NRI status, his minority shareholding in M/s Next Gen Trading LLC (NGTL) since 2012, his 100% ownership of M/s SJTL and M/s SJTL being co-inventor of security features used in Bank note Industry & other security document printings. He had left the company on 31.1.2.2017.

12.1.2.4 On the basis of above facts, the AO observed that

- (i) It is inconceivable as to why M/s Fedrigoni would make royalty payments to an entity for technical knowledge of a product on which they themselves hold the patent. It is also inconceivable as to why M/s St. James Technologies Limited would share its profit with its employee (Sh. S.P. Gupta claimed to be an employee) without any written agreement.*
- (ii) From the statements of the appellant recorded during search, it Is clear that there was no mention of any letter of nomination filed by the assessee which dearly proves that this letter is not genuine and has been created back dated after the search proceedings with.*

And the AO finally concluded that, from the above facts, it is clear that St. James Is a front company, through which Sh. S.P. Gupta continued his business relationship as agent of M/s Fedrigoni's.

12.1.5 During the course of appellate proceedings, the appellant had explained that due to his specialized knowledge in chemicals S. other security related features in Currency Paper, it had suggested application of specialized chemicals to M/s Fedrigoni, which can create colour shifting on security thread as a new security feature in currency paper. They had signed agreement dated 17.4.2015, wherein the patent of this technology will be registered by them in their name and the royalty @20% will be received by the appellant on sale of such paper by M/s Fedrigoni. The amount of 20% royalty will be shared by the appellant @50% with his employer M/s Next Gen Trading LLC (NGTL). Thereafter, M/s NGTL. the appellant had signed a letter by virtue of which M/s NGTL nominated M/s SJTL to claim 50%. of Royalty due to It from M/s Fedrigoni. The following documents have been seized/ filed by the appellant in this regard;

- The licence agreement dated 01.01.203 6 between Satya Prakash Gupta, M/s Next Gen Trading LLC (NGTL) and M/s Fedrigoni for development of security thread (PE 613-615) filed.*
- Nomination letter dated 21,05.2016, signed by NextGen Trading LLC and Satya Prakash Gupta, by virtue of which NextGen Trading LLC nominated St James Technology Ltd to claim 50% of royalty due from Fedrigoni (PB 616) filed,*
- Letter dated 17.3 2.2018 from M/s Fedrigoni to St James Technologies Ltd, for payment of royalty after deduction of 10% of withholding tax. (PB 622-625}.*
- Copy of Email from Fedrigoni dated 27.3 2.2019 (PB 627}.*
- Seized copy of letter dated G. 12.2016 by Fedrigoni confirming agreement between M/s Fadrignonl and M/s SJTL.*
- Seized copies of invoices dated 25/7/2016 raised by M/s SJTL for services rendered to M/s Fedrigoni. These. Invoices refer to the agreement dated 01.01.2016*

12.1.6 It Is observed that

- (i) *The agreement dated 17.5.2015 submitted by the appellant. is on a plain paper*
- *Signed between appellant & Sh. Tarun Maheshwari as representative of M/s Next Gen Trading (NGT), as first party, and Mr EligioBalabio, Director M/s Fedrigoni S.P.A, Italy, as second party, for development of Colour Shifting Security Thread for the second party. The rear e signatures of even one witness on this agreement without specifying his name on the agreement.*
 - *As per clause 9, the agreement is on ad-hoc basis for 1 year and will be modified as per mutual terms 6. conditions.*
 - *The M/s NGT will provide capital andM/s Fedrigoni will provide its manufacturing facilities free of cost for development of this product to Sh S P Gupta.*
 - *The patent will be IPC of M/s Fedrigoni and first party will get 20% royalty on all sales using this technology.*
 - *Dispute will be referred to sole arbitrator in Italy and laws of Italy Will apply.*
- (ii) *The Licence Agreement dated 1.1.2010 is on simple paper*
- *Signed by ShS.P.Gupta & Sh. Tarun Maheshwari on behalf of M/s NGTL as first party and Mr. EligioBabilio, Director of M/s Fedrigonias second party.*
 - *The patent was vested as per clause 5 of the agreement dated 17.4.2015 in the name of M/s Fedrigoni and consideration of which M/s Fedrigoni will pay w, e, f 1.1.2016, royalty @20% of revenue for sales on which this patent had been used. The royalty will be shared in equal proportion with each other by first party members.*
- (iii) *Letter dated 21.5.2016 on a plain paper from M/s NGTL & Sh, SP Gupta to M/s SJTL with copy marked to M/s Fedrigoni for assignment of share of M/s NGTL (50% of royalty) to M/s SJTL as per clause 2 of the agreement dated 1.1.2016. The invoices will be raised by M/s SJTL and share of Mr. S.P.Gupta will be there In the receipts (31 50% of receipts under the principle of "Diversion by overriding title".*

It had been signed by Sh Tarun Maheshwari and the appellant.

- (iv) Letter dated 17.12.2018 from M/s Fedrigoni on the letterhead of Fabriano signed by Mr Eligio Ballabio, Commercial director to M/s SJTL regarding confirmation of Royalties. It mentions that*
 - The details of payments of Royalty by bank transfer for 3 invoices dated 25.7.2016 for Euro 13264*3.23, dated 25.7.2016 for Euro 1305017.23 and dated 13.10.2016 of euro 2237036.*
 - There is annexure attached mentioning some invoices & the amount of royalty.*
 - It mentions that withholding tax @ 10% on Royalty paid had been deducted before making this payment.*
- (v) The copy of email dated 27.12.2018 exchanged between Eligio Ballabio and the appellant that mentions all the sequence of events leading to development of patent, rights of each party etc. and had been sent from the email containing domain name @fabriano.com, which belongs to M/s Fedrigoni.*
- (vi) Sh. Tarun Maheshwari in his affidavit, duly notarised in Dubai, had stated that he is 100% shareholder in M/s SJTL*
- (vii) The appellant had submitted part of the statement of the appellant u/s 132(4), apart from the part reproduced in the assessment order, which is reproduced as under:*

"Q.49 Please state how much remuneration is received by you from M/s NextGen General Trading LLC.

Ans. I receive AED 20,000 per month from M/s NextGen General Trading LLC. I receive business incentive from M/s NextGen General Trading LLC, M/s Si, James Technologies Limited and M/s Green Peas Business Solutions Limited, My travel expenses are also reimbursed by M/s Next Gen General Trading LLC.

Q.50 Please state where you receive this remuneration.

Ans. I receive my remuneration in my bank account in NBD Emirates Bank.

Q.51 Please state whether you have any other contracts, or agreements with M/s NextGen General Trading LLC. If so, please provide details of the same.

Ans. No

Q.52 Please elaborate the features of the security thread developed by you alongwith M/S St, James Technologies, for M/s Fedrigoni S.p. A.

Ans. I have developed d colour shifting security thread with very unique features containing specific colour shifting,, magnetic signals, fluorescent material, demetalization, and impossible to counterfeit. I am working for Nextgen and representing on behalf of Nextgen/their subsidiaries/owned by Nextgen (subsidiaries are Green Peas business solutions & St. James Technologies}. M/s Fedrigoni, Italy is my regular associate for providing the infrastructure, their laboratories, their technicians on revenue sharing basis after success.

Q.53 Please state whether this product has been patented? If yes, provide details where the product has been patented,

Ans. Application for the patent has been submitted by M/s Fedrigoni S.P.A in the International patent office.

Q.54 In your answer to the previous question, you have stated that M/s Fedrigoni S.P.A has filed an application for patent in the- international patents office for the colour shifting security threads, in your answer to Q.46. you have said that M/s St. James Technologies will receive Royalty for the same. Please clarify the contradictions between the two answers.

Ans. We had made an agreement to pay percentage of royalty on the invoice value of the product produced and sold all over the world.

Q.55 Please state whether you have any other association with M/s. Fedrigoni S.P.A.

Ans. I am only associated with M/s Fedrigoni S. p. A for two special vehicles M/s Green Peas Solution Ltd., UAE and St. James Technologies, UAE in addition to this, I am under active business understanding to manufacture security threat and e-passport in India.

Q.68 In your answer to Q.52, you have said that you have developed security thread alongwith St. James Technologies for Ms Fedrigoni S.P.A, Kindly tell its when exactly did you develop this security thread.

Ans. I developed this thread around May, 2015.

Q.69 Please state where you developed this security thread.

Ans. I developed this security thread in the laboratories of M/s Fedrigoni SpA in Milan

Q.70 Has M/s Fedrigoni SpA supplied this security thread Developed by you to any party till date?

Ans. M/s Fedrigoni S.p.A has supplied this thread to M/s Landquart, paper manufacturing company in March, 2006 M/s Arfo Wiggins, France in August 2016.

Q.71 How much money has M/s Fedrigoni S. p. A given to you or to entities related to you?

Ans. I have not received any money directly from M/s Fedrigoni S.p.A. However, M/s Fedrigoni S.p.A gives the money directly to St. Jamti Technologies, I have still not got any money from St. James. St. James has got 2.8 million Euros from M/S Fedrigoni S.p.A in October November, 2016 in their bank account in FGB. I will provide the bank account details and the bank statement in a week.

Q.72 Has M/s Fedrigoni S.p.A supplied the security thread to any party before May 2015?

Ans. As per my knowledge, M/s Fedrigoni S.p.A has not supplied the security thread to any party before May 2015.

Q.73 What is the nature of payments received by M/s St. James Technologies from M/a Fedrigoni S.p.A.?

Ans. It is received as Royalty.

Q.74 Do they deduct any TDS on this payment?

Ans. Yes, they deduct 10% TDS.

Q.75 Please state, whether you file your return in Italy.

Ans. No. I will file the return in Italy if applicable in future.

Q.76 Kindly refer to your answers to Q.46 and Q71 where you have said that Shri Tarun Maheshwori is the owner of M/s St. James Technologies Limited and that you have not received any money from M/s St. James Technologies Limited. Please state whether you have any agreement with M/s St. James Technologies Limited to got money for the patent that you had developed and for which M/s St, James Technologies Limited is getting the money from M/s Fedrigoni S.p.A.

Ans. There is no agreement with M/s St. James Technologies Limited. This Will be mutually decided between me and Shift Tarun Maheshwari after the completion of 1 year.

Q.77 In Q.46 you have said that Shri Tarun Maheshwari is the owner of M/s St. James Technologies Limited. Kindly explain what do you mean by this?

Ans. By owner I mean that all the shares are held by Shri Tarun Maheshwari. I am the only Director and Authorised Signatory of M/s St. James Technologies Limited.

Q.78 Has M/s NextGen General Trading LLC ever received any money from M/s Fedrigoni S.p.A?

Ans. No. M/s NextGen General Trading LLC has never received any money from/ M/s Fedrigoni S.p.A The profit to M/s NextGen General Trading LLC comes from M/s St. James Technologies Limited and M/s Green Peas Business Solutions Limited as per the discretion of Shri Tarun Maheshwari."

12.1.7 Observations made from the assessment order, the documents & statements of the appellant alongwith the comments on these observations are as under:

12.1.7.1 It is observed as under:

- (a) As per the interim agreement of 2015, the infrastructure for the development of security technology was to be provided free of cost by M/s Fedrigoni in turn patent was to be registered in its name and the financial support was to be provided by M/s NexGen Trading LLC (NGTL) fit technical competence was that of the appellant, for which M/s NGTL & appellant were to receive 10% each, of total Royalty @20% for 5 years from 1,1.2016 from M/s Fedrigoni. M/s NGTL had assigned its rights of receipt of royalty to M/s SJTL- Some of the documents are on the letter heads of M/s Fabriano and some are notarised in Dubai. Even the seized invoices refer to the agreement dated 1,1.2016 and claim of Royalty on quarterly basis by M/s SJTL from M/s Fedrigoni as per the terms of the agreement.*
- (b) As per these documents, all these activities had been taken up by the appellant abroad after becoming NRI w.e.f. 1.4.2015. The patent had been developed abroad and as reflected on these, documents, the use of patent by M/s Fedrigoni had not been for supplies to India, the payments had been received by M/s SJPL abroad in its bank accounts. Although the appellant is entitled for his share of Royalty from these receipts of M/s SJTL, but no payments had been received by him as per the statement recorded u/s 132(4).*
- (c) Further the AO had contended that M/s SJTL is a front company of the appellant as there were certain documents filed later by the*

appellant, which were not stated in the statement u/s 132(4). The appellant had submitted that there is difference in agreement S. nomination letter and in this context the appellant had denied any agreement. It is clarified that the royalty agreement is in between M/s Fedrigoni as first party and the appellant & M/s Nexgen, as second party. M/s SJTL has no agreement with M/s Fedrigoni, but had got assignment rights from M/s Next Gen. Although M/s SJTL had got assignment rights from M/s NEXT Gen only, it is raising the invoices and receiving the amounts from M/s Fedrigoni for the amounts pertaining to appellant also. As per the account opening form, various agreements submitted and notarised affidavit of Mr Maheshwari, the appellant does not have any ownership in M/s SJTL.

- (d) *The appellant had stated in the statement recorded u/s 132(4) and reproduced above that M/s STTL & M/s Green peas are subsidiaries of M/s NextGen Trading. The Sh. Traun Maheshwari in his notarised affidavit had stated that he had minority Interest and some Emarati family had majority interest in M/s Next Gen, however ownership structure of M/s Next Gen was never provided by the appellant and is even not available in the assessment order.*

12.1.7.2 Comments on these observations are as under:

(a) *It is observed that all these documents/agreements are on simple papers & not on stamp paper, which may not be legally enforceable. This documentation to show the things in a particular manner can always be created in connivance with the mutually interested parties at any point of time to protect the interest of interested parties.*

(b) *I concur with the AO that a normal person, without having worked/owned in any manufacturing facility, without any past history & experience, on the basis of theoretically acquired knowledge, cannot create a patent in normal circumstances in such a short time, which the huge companies involved in the R. & D of such security products could not create. It is also strange that such valuable Invention, which can yield income from all users in this line of business product, will be patented by the inventor in the name of another company for just 10% Royalty for a 5 years*

period only. Further the appellant will share 50% of Royalty with another entity for providing financial support. There Is nothing on record, what financial support was provided by M/s NextGen and what was utilisation of Infrastructure of M/s Fedrigoni in this regard, as the whole process of creation, testing, trial, registering the patent had just taken few months (between May 2015 to Dec 2015) as per the documents, before the commercial terms for supply of it were finalised in the agreement dated 1.1.2016,

(c) Further there is no ownership structure of M/s NextGenTading LLC (NGTL) available in the assessment order, thus the facts stated by Sh. Tarun Maheshwari in his affidavit that he is a minority shareholder cannot be ascertained. But It appears from the totality of facts above that Mr Tarun Maheshwari has full control on financial decisions of M/s NGTL, as it had unilaterally signed the tri-party agreement for providing financial support in lieu of 10% share In Royalty and later assigned it to its 100% ownership entity M/s SJTL, without receiving any amount of royalty In M/s NextGen. In normal circumstances, real majority shareholder will not allow the money receivable in lieu for providing financial assistance to be assigned to another entity without any consideration. There is nothing on record, what was the proposed financial support and actually given support by M/s NGTL. The reasons for such assignment are not emerging from the available data. M/s SJTL's financials are controlled by the appellant as he is the only authorised signatory of bank accounts of M/s SJTL, however the ownership structure of It shows Sh. Tarun Maheshwari as 100% shareholder. M/s SJTL is invoicing & receiving the whole royalty including that of the appellant M/s Fedrigoni, even without any assignment by the appellant. The appellant had not received any amount from M/s SJTL till the data of search as per his statement, It is pertinent to note that M/s SJTL had not received any payments of Royalty from M/s Fedrigoni after FY 2016-17 as per available records, whereas the agreement of receipt of Royalty was up to the year 2020. As per affidavit of 5h. Tarun Maheshwari, he had left M/s SJTL on 31.12.2017, so what Is the fate of money pertaining to M/s SJTL received/receivable till that date/after that.

12.1,6 In view of the above discussion, the suspicion of the AO that the structures of these companies have been created along

*with the paperwork to justify the transactions of receipt of money from M/s Fedrigoni in the entity M/s SJTL controlled by the appellant, does have some prima facie substance. It is observed that there are various unanswered questions in these transactions and the observation of the AO that M/s SJTL is front company of the appellant has some substance in it, and the nature of transactions created on paper in connivance with M/s Fedrigoni to protect mutual interest, of the appellant & M/s Fedrigoni, cannot be ruled out completely**

12.2 Green Peas Business Solutions Ltd

12.2.1 *As per the information received from the foreign authorities, the details as mentioned in the assessment order are as under:*

- *Green Peas Business Solutions Limited is another company incorporated on 10,3,2016 In Dubai.*
- *Tarun Maheshwari owns the company as per Incorporation documents*
- *KYC form of the bank mentions the name of appellant & Sh. Tarun Maheshwari as partners.*
- *Appellant was the only authorized signatory of bank account With First Gulf Bank (FGB).*
- *The appellant had stated that he is the Director of the company and on behalf of the company, he helped P-1/s Fedrigoni S. p.A to make special paper for the Central Bank of Indonesia and helped it to procure that order. For these services, M/s Fedrigoni S.P.A has paid M/s Green Peas Business Solutions Limited around 2 million Euros till date.*

The relevant part of the statement recorded u/s 132(4) of the IT Act, 1961, or 29.12.2015 during search, is as under:

"Q.79 What is the source of income of M/s Green Peas Business Limited and what is your relationship with it?"

Ans. I am the Director of M/s Green Peas Business Solutions Limited and Shri Tarun Maheshwari is the owner. It provides advisory services to M/s. Fedrigoni S.p.A. and has received around 2 million Euros from M/s. Fedrigoni S.p.A. till date.

12.2.2 The AO concluded that from the above facts, that it is clear that the appellant was owner of above company and was not merely a Partner.

12.2.3 During the course of appellate proceedings, the appellant had submitted that this company was not part of the SCN issued by the AO. The statement of the appellant u/s 132(4) on related seized documents Is reproduced under:

"Q.124I am showing few Pages 2 to 3 and 50 -54 and of Annexure A6. Kindly comment on the contents of these pages.

Ans. These pages are the invoices raised by M/s Green Peas Business Solutions Limited (Pages 2 -3) and M/s St. James Technologies Limited (Pages 50-54) against M/s Fedrigoni S.P.A. Part payment against these invoices has been received."

Thus, there were invoices raised by this company to M/s Fedrigoni for its services, seized during the search, which prima facie indicate that this company had done work for M/s Fedrigoni. The appellant had explained the nature of services rendered and amounts received in the statement of the appellant u/s 132(4). Further the appellant had fled copy of letter dated 6.12.2016 issued on the letterhead of M/s Fabriano and signed by Mr EligioBalablo, Director Commercial, Fedrigoni, which is claimed to have been seized. The contents of this letter are reproduced as under:

- "Sub:
- 1 Confirmation of execution of advisory agreement between Fedrigont Spa- Italy and Green Peas Business Solutions Ltd. UAE.
 2. Confirmation of execution of license agreement between Fedrigoni Spa - Italy and St. James Technologies Ltd - UAE.

Sir,

This is to confirm that we are a multinational company having offices in different part of the world and am in manufacturing of different products for different customers all over the world.

The above M/s. Green Peas Business Solution Ltd. and St. James Technologies LTD have executed the advisory and license agreement with us and the same are valid till date.

We hope you will find the above confirmation in order, This confirmation is issued at the request of Mr. Satya Prakash Gupta."

12.2.4 Further the appellant had filed confirmation letter dated 15.11.2018 from M/s Fedrigoni to M/s GPBSL. The appellant had contended that this letter was not submitted before the AO, as the transactions of this company were not part of SCN issued by the AO.

12.2.5 On the basis of above submissions & evidences, it is observed that

(a) The invoices raised by M/s GPBSL had been seized during the search on the appellant. There is letter dated 6.12.2016 alongwith the evidences of bills of stated services found & seized during the search. Further the appellant had filed copy of letter dated 15.11.2018 on the letterhead of M/s Fabiano and signed by Mr Eligio Balabio, Director Commercial, Fedrigoni, which confirms the facts stated by the appellant in his statement u/s 132(4).

(b) M/s GPSS's financials are controlled by the appellant as he is the only authorised signatory of bank accounts of M/s GBPL. As per available records, Mr. Tarun Maheshwari is 100% shareholder of it.

12.2.5.1 It is observed that here again the structure of the entity is same as M/s SJTL. On papers, the owner is Sh. Tarun Maheshwari, the authorized signatory to bank account is only the

appellant. The client is again M/s Fedrigoni, who Is making the payment to the M/s GBPL for certain services rendered by the appellant. Sh. Tarun Maheshwari had mentioned in his notarised affidavit that this company was closed on 30.12.2018. There is nothing on record about it and regarding the money lying in its accounts. There is no statement or evince that shows that the appellant is employed with M/s GBPL & is drawing any remuneration from it. The business interest of the appellant & its relation with M/s GBPL does not have any clarity, except the fact the appellant has all financial control, being the only bank account signatory. As per the available records, Mr Tarun Maheshwari did not had any business connection with M/s Fedrigoni, prior to the appellant being employed by him in M/s NextGen. There Is no other data submitted to prove the credentials of these transactions. Why appellant will use his personal skills for an entity which is not giving anything in return to him, unless he is controlling that entity. Further there is no enforceable agreement of services provided by the appellant and remuneration of the appellant decided in the agreement. There is nothing on record to prove that actually the services have been provided and the remuneration received in M/s GBPL is consummate with such services on pre-defined principles as per any agreement. In the absence of which all this appears to be done on ad-hoc basis as per the mutual convenience of M/s Fedrigoni and the appellant. The exact facts cannot be ascertained as appellant is NRT & the entities Involved are in jurisdiction outside India. In view of these facts & circumstances, the observation of the AO that M/s GPBS is front company of the appellant has some substance in it and the transactions reflected in these documents & statements remain unverifiable from many aspects and the version of transactions reflected in these documents casts many doubts.

12.3 Sterling Global Partners Limited (SGPLJ

12.3.1 The information is collated as under

12.3.1.1 As per the assessment order:

- According to the ICIJ database, the appellant was the beneficial owner of M/s Sterling Global Partners Limited.

- This company had been set up using the services of a financial intermediary, M/s Anglo Max Trust Corporate Limited and M/s Mossack Fonseca.
- The owner, director and the secretary of the company is Mrs. Lisa Joanne Thompson. It is a typical off-shore entity set up in a tax haven by Mossack-Fonseca. it confirms the media report on the leaked MossFon emails which had mentioned the name of Ms. Lisa Thompson.
- As per the incorporation document of Sterling Global Partners Limited, the company was registered on 3.9.20J5 by RAK Offshore in Ras Al Khalmah, UAE.
- Information received from the Foreign Tax Authorities, revealed that the appellant is the beneficial owner of the company M/s Sterling Global Partners Ltd
- From the account statement of the account number 781B75E3 of this company, it is observed that In F.Y, 2015-16 on 08.03.2016 there is a credit of 1,05,0000 Euro from Fedrigoni S.p.A. which Is equivalent to Rs.7,92,43,500/- fat the conversion rate of 75.47 from Euro to INR).

12.3.1.2 Further as per the information received. In the bank account of the appellant In Emirates NBD, Bank Street Branch having account number 0315067643902 total Credits from Fedrgoni S.p.A. In the F.Y. 2015-16 is Rs. 11,97,909/- and In F.Y. 2016-17 it is Rs. 18,97,742/-.

12.3.1.3 From the perusal of Client Information profile of the account opening form, it is observed that the business relationship between the assesses and Fedrigoni S.p.A. was still intact and ongoing and the same is evident from the relevant portion of this account opening form received from foreign country which is shown below:

.....

12.3.1.4 The observation of the AO on the basis of these documents is reproduced as under:

"It is dear that although the assessee's commission income came as business receipts from a foreign Client, it is to be noted that this commission was derived from the profit earned by the foreign client by safe of currency paper to an

Indian entity, i.e. BRBNMPL (a subsidiary of Reserve Bank of India) therefore making in an income accruing or arising indirectly through or from a business connection in India. Therefore, although the assessee Sh. Satya Prakash Gupta is a non-resident as on date, the source of his undisclosed income is his business carried out in India on the behalf of M/s Fedrigoni with a business connection in India and therefore this income is taxable in India.

In view of the above discussions vide notice u/s 142(1) of the IT Act, 1961 along with questionnaire dated 27.12.2019, the assessee was show-caused as to why the total amount received from Fedrigoni S.p. A should not ha treated as income of the assesses for the year under consideration as undisclosed income."

12.3.2 The assessee submitted his reply on 27.12.2019 at 09:45 PM, submitted as under:

"...as regards your query with respect to the amount of 1. 05 million euro received by M/s Sterling Global Partner Ltd. (SGPL, in short) from M/s Fedrigoni SpA it is submitted that the said payment has no relation of any nature or kind whatsoever with the assessee. Pursuant to your query, the assessee requested Fedrigoni SpA to clarify their stand. Through e-mail dated 26/12/2019, Fedrigoni SpA has categorically confirmed that based on its company records, SGPL was directly dealing with its managing director, in the fields of restructuring the group activities and acquisition of a new unit in South America, where the assessee was never involved whatsoever. Copy of e-mail dated 25/12/2019 sent by assessee to Fedrigoni SpA and email dated 26/12/2019 of reply sent by Fedrigoni SpA to assessee is enclosed herewith

In this regard, as the identity of the person from whom the above mail has been alleged to be received as well as his relationship with Fedrigoni S.p.A is not established, therefore, there is no authenticity of this mail."

12.3.3 The appellant had claimed that he was not involved in the activities of this company. As per the confirmation email from M/s Fedrigoni, this company had helped M/s Fedrigoni to do some acquisitions in South America and submitted few newspaper reports from various sites, which shows that M/s Fedrigoni had acquired some company in Brazil. The other arguments and documents submitted are same as submitted during assessment proceedings.

12.3.4 It is observed that during the course of search, in the answer to Q No 122, the appellant had responded as under:

"Q122 I am showing you Page no. 37 of Annexure A4, which is the original incumbency certificate of M/s Sterling Global Partners Limited seized from your room in your residence at H-3/1, Model town, Delhi Kindly tell us about this document and why it is lying with you.

Ans. After receiving notice from the Income Tax Department, I had requested Sh. Tarun Maheshwari to get the ownership. document for M/s Sterling Global Partners Limited from the RAK authorities so that I could submit the same to the Department. "

12.3.5 The appellant had explained that the amounts of Rs.30,95,651/- received in bank account no 0315067643902 are the reimbursements of travelling expenses claimed & received from M/s Fedrigoni. Certain such claim invoices had been seized also.

12.3.6 The observations in this regard are as under:

- (a) The seized incumbency certificate had been issued by Govt of Ras AI Khalmah. As per the contents of this paper, Mrs. Lisa Thompson is 100% shareholder, director & secretary of this company. However as per the part 3 of Barclay account application form received from foreign authorities, the appellant had been shown as 100% beneficial owner. The facts stated by the AO are correct as far as information of dubious kind of promoter Ms Lisa, 100% beneficial ownership of the appellant, the payments received from M/s Fedrigoni

and even some gaps in the statement of the appellant u/s 132(4) on it are concerned.

- (b) This company had been set up abroad on 3.9.2015, after the appellant acquired the NRI status w.e.f. 1.4.2015.*
- (c) It is observed that these travelling expenses relate to the travel of the appellant even from Delhi to Delhi or Delhi as part of his Itinerary from the months of May 2015 onwards, just within 2 months of his becoming NRI on 1.4.2015. Some of the invoices mentioned the tender fees for security thread BRBNMPL. Thus, it is evident that the appellant was involved in the Indian business affairs of M/s Fedrigoni even after becoming NRI, otherwise why M/s Fedrigoni will reimburse his travelling expenses from Delhi to Delhi without any contract with him. Why the appellant will collect the tender document for M/s Fedrigoni and claim reimbursement of amount paid by him for this tender document from M/s Fedrigoni.*

12.3.7 On the basis of the above observations, it can be concluded as under:

12.3.7.1 It is clear from the available records that this company had dubious credentials and the appellant is beneficial owner of this entity. The appellant had tried to hide his beneficial status of this entity in the statement recorded u/s 132(4). Again the payment had been made by M/s Fedrigoni for some services provided by this entity. M/s Fedrigoni had issued clarification to the appellant even w.r.t transactions in an entity claimed to belonging to someone else, shows the interest of appellant in this company and the closeness of the appellant with M/s Fedrigoni. There is no evidence that there had been any contract/agreement for the services to be provided and the corresponding remuneration to be paid by M/s Fedrigoni to this entity. There is no clarity who had provided the stated services in this entity and what was the level of services expected and remuneration for these services etc. This entity has commonalty with above two entities in the sense that appellant as beneficiary had control over this entity, the so

called services had been provided to M/s Fedrigoni without any sanction of agreement defining the services & corresponding remuneration. Thus, the entity, the relationship of the appellant, services provided and corresponding consummate remuneration to this entity by M/s Fedrigoni are all doubtful. Further the purpose of travelling on behalf of M/s Fedrigoni and claim of reimbursement of travelling expenses of the appellant from May 2015 onwards without any agreement of activities clearly points towards a strong relation of the appellant with M/s Fedrigoni in all these years.

12.4 Anglo Manx Trust and Ballenta Inc.

12.4.1 As per the assessment order, there are facts & observations made by the AD which are as under:

12.4.1.1 During the course of search, it has been found that during the FY 2015-16, the appellant had received 7 million Euros (Rs.50.49 crores) from M/s Ballenta Incorporated, Samoa and 4 million Euros (Rs.28.85 crores) from M/s Anglo Manx Trust Company Limited, Isle of Man, in his personal accounts in Dubai (Euro 9Mn) and Singapore (Euro 2Mn). Both Anglo Manx and Ballenta are mentioned in the Panama Papers as dubious entities of Mossack Fonseca.

12.4.1.2 The appellant previously in his submission dated 18.04.2016 stated that he had no connection with Anglo Manx. During the search on 26.12.2016, he was again asked about his association with Anglo Manx to which he replied,

"Q.57 Please state whether you have any association with M/s Anglo Manx Trust?

Ans. M/s Next Gen General Trading LLC has organized a temporary funding around Eleven million Euros from M/s Anglo Manx Trust to me to setup a project for petroleum products in India.

Q.58 Please provide the copy of loan agreement and confirmation of loan as well as bank statement of reflecting the receipt of the same.

Ans. The copy of the same shall be provided as soon as possible.

Q.59 Please state when the loan was received and how the loan has been used?

Ans. The loan was received around January, 2016 and could not be used and therefore, it was returned around three month back in account of M/s Next Gen General Trading LLC"

On being asked about the contradiction with his earlier submission wherein he had said that he had no connection with Anglo Manx, the assessee said,

"I had no association with t-t/s Anglo Manx Trust at my personal level. However, I got this loan through the recommendation of M/s Next Gen General Trading LLC "
[...]

"Q.117 In reference to you answer to Q.57, kindly tell us in detail about the money that has been received in association with M/s Anglo Manx Trust.

Ans. On the recommendation of M/s NextGen General Trading LLC, M/s Anglo Manx Trust arranged for a loan for me of 11 million Euros from M/s Ballenta.

Q.118 I am showing you a. copy of your emails dated 11th to 20th July 2016 annexed as Annexure D (Pages 1 to 13), between representatives of M/s Anglo Manx Trust and M/s NextGen General Trading LLC Please comment on the same.

Ans. This is the correspondence between M/s NextGen General Trading LLC and M/s Anglo Manx Trust. They have kept me in copy as I am the CEO of M/s NextGen. They are discussing a business agreement between M/s Ballenta Incorporated and M/s NextGen General Trading LLC

Q.119 When was the agreement between M/s Ballenta Incorporated and M/s NextGen General Trading LLC originally signed?

Ans. There was an oral agreement between M/s Ballenta Incorporated and M/s NextGen General Trading LLC for transfer of money. However, the bank required a written agreement accordingly a written agreement was prepared later and supplied to the bank to clear the payment.

Q.120 Kindly tell us if you are a shareholder, Beneficial Owner or the Ultimate Beneficial Owner of M/s Ballenta Incorporated.

Ans. Neither am I a shareholder, nor a Beneficial Owner, nor the Ultimate Beneficial Owner of M/s Ballenta Incorporated. By not being a Beneficial Owner and Ultimate Beneficial Owner I mean that I am neither a shareholder of the company nor have created any nominal shareholder and nor have ever executed any understanding or agreement with any person at any time in this connection."

The copies of the loan agreements were submitted during post-search inquiries on 17th January 2017.

12.4.1.3 Through the bank statements received from UAE Tax Authorities, it was verified that during the period January to March 2016, the appellant had received an amount of 9 million Euros from Anglo Manx Trust Company Limited and Ballenta Incorporated in his bank account in Bank of Baroda, Dubai and the same was transferred to his accounts in India. Further 2 million Euros were transferred from his Citibank account in Singapore. A further amount of 0.4 million Euros was received from Nextgen General Trading LLC in the same period.

12.4.1.4 The Panama Papers Leak announcement was made on 3rd April 2016.

- *At this point of time, the funds of around 11 million Euros were in his bank accounts in India.*
- *A fresh bank account was opened in the appellant's name in First Global Bank, Abu Dhabi.*
- *On 26th April 2016, a survey action was carried out at the business premise of Sterling Security System.*
- *On 19th May 2016, he closed down his Bank of Baroda Dubai account from where bulk of the 11 million Euros had been transferred and then between 24th to 26th May 2016, he transferred 11 million Euros from his Indian bank accounts to the new account in First Global Bank, Abu Dhabi.*
- *The same amount of 11 million Euros was then transferred to the accounts of Nextgen General Trading LLC, Dubai in August 2016.*

12.4.1.5 During the search proceedings, the appellant had stated that Nextgen General Trading LLC had organized a temporary funding around 11 million Euros from M/s Anglo Manx Trust Limited to the appellant to setup a project for petroleum products in India. He further explained these transactions amounting to 11 million Euros in a later statement:

"Nextgen General Trading LLC, where I am the Global Business Development Manager, had come up with a business development plan for setting up a project for storage and distribution of petroleum products in India around October-November 2015. This project was planned to be a joint collaboration between me and Nextgen General Trading LLC. The owner Mr. Tarun Maheshwari together with some Arab co-owners of the firm organized at his exclusive responsibility a loan of 11 Million Euros from Anglo Manx Trust (4 Million Euros) and Ballenta Incorporated (7 Million Euros) around the same time i.e. October-November 2015. The funds of 11 Million Euros were transferred by Anglo Manx Trust and Ballenta Incorporated directly to my accounts in Bank of Baroda Dubai Branch, Citibank Singapore Branch, etc. However around 3-4 months later i.e. around February-March 2016 I found that the project was not commercially viable and therefore I returned the entire loan of 11 Million Euros to Next Gen General Trading LLC immediately. "

12.4.1.6 While there was no evidence that the assessee had any experience in the petroleum sector based on which his employer company Nextgen would have arranged for him a business loan of 11 million Euros from companies with doubtful creditworthiness that too Mossack-Fonseca linked off-shore entities, evidences regarding the same companies were found in his emails during post-search inquiries paint a different picture. In one email, the office secretary of Nextgen, Ms. Sruthi Anvas was seen to have emailed Anglo Manx Trust Company Limited in July 2016. Her email dated 12th July 2016 is reproduced as under:

"Dear Ms Claire,

I am sorry to bother you for a favor as the matter is urgent. This payment is stopped by the Bank may be because Ballenta is appearing in list leaked by Panama. Therefore the Bank urgently needs signed and stamped copies of the agreement as well as the Invoice. I am attaching herewith a copy of Invoice modified by and Invoice No: NXT/BAL/CI/BD/0516-480A. Kindly discuss with Mr. Chris and if convenient he should organize to sign and stamp the agreement as well as the attached Invoice and mail the scanned Copy of the same at the earliest convenient to him.

Your kind support in this matter shall be highly appreciated."

Further correspondence between Sruthi Anvas of Nextgen General Trading LLC and Claire Cain and Ewan Heap of Anglo Manx (Isle of Man) indicated that they were attempting to redraft the agreement between Ballenta Incorporated and Nextgen wherein Ballenta was paying Nextgen an amount of 1 million Euros for certain services in the period 1st April 2015 to 30th March 2016. It showed that not only were Anglo Manx and Ballenta related concerns, but that there was no agreement made before and it was being made now because the bank had blocked the receipt to Nextgen's account in lieu of more supporting documents after the name of Ballenta featured in the Panama Papers. It therefore emanates that the assessee through his entity Nextgen attempted to obtain a backdated agreement between Ballenta & Nextgen though there was no such agreement before and the arrangement of loan funds from Ballenta to his account was a sham. On being confronted with the copy of email correspondence, the assessee

claimed no knowledge stating that they took place under the directions of Tarun Maheshwari.

12.4.1.7 Further evidences related to Ballenta and Anglo Manx were found in email correspondences between the assessee's associates Kunal Bhide (based in London), Vineet Garg (his chartered accountant based in Delhi) and Vinay Mangla (a chartered accountant who heads the tax department of Google India) in September 2016.

- *First, on 6th September, a mail was sent from the account of Kunal Bhide to Vinay Mangla and Vineet Garg with a copy of a loan agreement between Anglo Manx Trust Company Limited (Assignor), Ballenta Incorporated (Assignee) and Satya Prakash Gupta (Borrower) dated 9th February 2016, supplemental to existing loan agreements amounting to 4 million Euros between Anglo Manx and the assessee. As per this agreement Anglo Manx was to transfer its rights and obligations to Ballenta. This was the original purported arrangement where there was no involvement of Nextgen General Trading LLC. On being confronted, the assessee replied,*

"I do not know why Kunal Bhide sent this email. Since I am an NRI and may be travelling, may be under some urgent need they may have exchanged this document for any consultation or opinion. I would have used the services of Kunal Bhide since I was travelling. It is also possible that I was in London and I may have requested Kunal Bhide to send the email. But I don't remember the details and as to why this email was sent."

- *Then, Vinay Mangla asked Vineet Garg on 7th September, "Can you send me copy of loan agreements for 11 Million Euros (1 + 1 + 1 + 1 + 7). Will finalise agreement based on the same".*

This was followed by a reply from Vineet Garg with a draft of an assignment agreement dated 29th July, 2016 between Ballenta Incorporated (Lender), Anglo Manx Trust Company Limited, Satya Prakash Gupta (Borrower) and Nextgen General Trading LLC (Assignee) as per which assessee assigned the rights and

obligations under the loan agreements to Nextgen and was to transfer the loan amount within 15 days of the agreement. This clearly indicated the loan assignment agreements were back-dated. On being confronted, the assessee replied:

"This is an unsigned never used format which may be prepared by my social contacts Vinay Mangla and Vineet Garg and is just an internal discussion which is totally without my knowledge."

- The next day, on 8th September, an email was sent by Vi nay Mangla to Vineet Garg with draft letters from Nextgen to Anglo Manx (dated 20th December 2015) and Ballenta (dated 1st February 2016) confirming that Sh. S.P. Gupta is its full time employee and loan may be granted to him on the basis of security from Nextgen. On being confronted, the assessee replied:*

"These attachments are internal communication between Mr. Vineet Garg and Mr. Vinay Mangla. These are unsigned and have never been used and have never been exposed either to me or to Nextgen General Trading LLC and is just between the above people for no reason whatsoever."

The explanation provided by the assessee on the communication between Vineet Garg and Vinay Mangla appear to be contrary to their statements recorded during the search. Vinay Mangla was asked to explain the nature of the loan agreements and assignment agreements belonging to the assessee to which he replied,

" ... Sh SP Gupta had NRE account in India in which funds were invested from outside India. On being asked by us about source of funds into this NRE account for the purpose of submission to the income tax department, he informed to us (me and Sh Vineet Garg, his Authorised Representative in the matter) that he took loan from M/s Anglo Manx Trust Company Ltd and Ballenta Incorporated which he had put into NRE account for the purpose of exploring investment opportunity in India. Since the investment did not materialize,

the funds from NRE account was sent back. Subsequently, loan funds were returned to M/s NextGen. On being asked by us from Sh SP Gupta as to why loan funds was returned to M/s NextGen when loan was taken from Anglo Manx Trust Company Ltd and Bellenta Incorporated, Sh SP Gupta informed that loan was assigned by Anglo Manx Trust Company Ltd and Bellanta Incorporated to Mis NextGen.

"Loan agreements were provided by Sh SP Gupta to establish his claim that he took from these parties. No agreement was provided by Sh. S.P. Gupta with respect to assignment of loan from Anglo Manx Trust Company Ltd and Bellanta Incorporated to Mis NextGen. I cannot vouch for authenticity of these documents or parties involved. We relied on the information provided by Sh. S. P. Gupta."

Sh. Vinay Mangla was further asked to state whether any evidence was obtained by him to satisfy regarding the assessee's contention regarding the repayment of loan taken from Anglo Manx Trust Company Ltd and Ballenta Incorporated to Mis Nextgen to which he replied:

"On enquiring from Sh SP Gupta regarding repayment of loon to M/s. NextGen instead of Anglo Manx Trust Company Ltd and Ballenta Incorporated, Sh. S.P Gupta informed that loan was assigned by Anglo Manx Trust Company Ltd and Ballenta Incorporated to M/s NextGen. On being asked about copy of assignment letters, we were informed that it was a verbal agreement. It was discussed that to establish genuineness of the repayment to Mis NextGen instead of Anglo Manx Trust Company Ltd and Ballenta Incorporated, the assignment needs to be confirmed by all parties concerned at the effective date when the verbal agreement was made which was prior to the date of actual repayment to M/s NextGen in August 2016. Sh. S.P Gupta asked for draft copy of confirmation letter/ agreement to be confirmed by all parties which was provided to him as per his instructions. For the said draft Sh S.P Gupta provided to us signed copy of assignment agreement dated 9th Feb 2016 between Anglo Manx, Ballenta and Sh S.P. Gupta. The said assignment agreement dated 9th Feb 2016 is signed by all parties

concerned i.e. Anglo Max, Bellanta and Sh S.P. Gupta. On the same basis and format, Sh S.P Gupta asked to create assignment agreement with M/s NextGen. I cannot vouch for authenticity of information/ documents or parties involved. We relied on the information provided by Sh. S.P. Gupta."

It is clear from the above that the communication between Vinay Mangla and Vineet Garg was at the behest of the assessee and not any internal discussion without knowledge of the assessee as claimed by him. It is also clear from the above that the communication between Vinay Mangla and Vineet Garg was for the drafting and back-dating of loan assignment agreements to provide legitimacy to the transactions.

12.4.1.8 It is on record that funds amounting to 11 million Euros were received by the assessee from off-shore entities in Isle of Man and Samoa, (linked to Mossack-Fonseca) in his personal accounts in Dubai and Singapore, which were transferred to his personal bank accounts in India, and when this information about the off-shore entities came to the knowledge of the Income Tax Department, he transferred the amount back to his personal bank account in Abu Dhabi and finally it was transferred to Nextgen General Trading LLC, a firm controlled by him. Yet the explanation provided by the assessee is that these funds were loans arranged by his employer Nextgen General Trading LLC which he repaid back. it is seen that loan agreements and loan assignment agreements were back-dated by the assessee and his associates in order to legitimize the transfer of 11 million Euros from off-shore entities to his personal accounts in Dubai, Singapore and Delhi.

- In view of the above, vide note sheet entry dated 25.12.2019, the assessee was show caused as to why not an amount of Rs.83.01 Crores (11 million Euros) received from Mis Ballenta Incorporated, Samoa and from M/s Anglo Manx Trust Company Limited, Isle of Man (during the financial year 2015-16 should not be added back to your total income for A.Y.2016-17 by treating it as unexplained money u/s 68 of the IT Act, 1961.*

In response to this the assessee reply as under:

" the email dated 05.01.2016 exchanged between assessee and AngloManx refers to the signed copies of two loan agreements (one referring to UAE bank details and one referring to Singapore bank details). Also, various emails dated 05.01.2016, 06.01.2016, 07.01.2016, 10.02.2016, 16.02.2016 exchanged between assessee, AngloManx and Ballenta, the signed loan agreements for 11 Million Euros were sent through these e-mails...

.... It is thus apparent that the nature of amount of 11 Million Euros received by the assessee was only in the nature of loan since inception. During the course of Survey and Search proceedings also, it was stated by the assessee that the amount of 11 Million Euros received by the assessee was for setting up a petroleum project only. The statement gets substantiated from email of 06.01.2016, wherein assessee informed AngloManx that it received the amount for setting up of storage facilities for LPG as well as retail outlets for distribution ...

... It is thus apparent that there is never any change in the statement of assessee and the stand of the assessee gets substantiated from various above said emails exchanged between assessee and AngloManx. ... The above referred e-mails of January & February, 2016 and BRC make it evident that the nature of receipt of loan by assessee from AngloManx and Ballenta was disclosed much before Panama Leak and survey and search & seizure ... "

The above contention of the assessee is not acceptable. From the above discussion, it is clear that the assessee's own unaccounted money was routed back to his personal account in the form of loans. It is clear from the mail communication between Vinay Mangla and Vineet Garg that the communication between them was for the drafting and back-dating of loan assignment agreements to provide legitimacy after exposure of assessee's name in panama papers. Further, the assessee has failed to prove that the amount received by him from Anglo Manx Trust and Ballenta was actually a loan arranged by Nextgen General Trading LLC. The assessee alleged that the loan was for starting a new

petroleum project without showing that he took any step towards any such project.

From the above discussion, it is clear that the loan received by assessee from Anglo Manx Trust and Ballenta through Nextgen General Trading LLC is a sham and the original source of the money of 11 million Euros is the commission income received by the assessee from Fedrigoni which he did not declare to tax authorities and instead tried to route through off-shore entities in tax havens.

12.4.2 Following observations are made from the assessment order & the submissions of the appellant: -

(i) There is no doubt that these transactions of the appellant are from dubious entities created in Isle of Man (tax heaven) and even there are gaps in the statement of the appellant recorded on these transactions.

(ii) These transactions relate to the F.Y. 2015-16, when the appellant was NRI w.e.f. 1.4.2015.

(iii) The appellant had no prior experience in the purported sector of petro-chemicals, for which the loan had been claimed by the appellant.

(iv) The amounts have been received in the form of loans from these dubious entities. After the Panama leaks became public, a survey was conducted on the appellant and later in 2016, the appellant had immediately taken back the amount to his account in Dubai and returned it to M/s Nextgen Trading LLC, which had been claimed to be the employer of the appellant, without any document for assignment of this loan to it.

(iv) There is no evidence on record about the source of money credited in these dubious entities at Isle of Man, which have been used for making advances of Euro 11 Mn to the appellant.

12.4.2.1 It is clear that these are dubious entities formed in the Tax Heaven, whose names figured in panama leaks. The dates of incorporation of M/s Ballenta Inc. as informed by the appellant is

28.09.2006 and M/s Anglo Man Trust is 19.1.1989, as reflected in the printouts from online services, Isle of Man government site. As per the data from the website of ICIJ there is relation of M/s Ballenta with Mossfon subscribers limited and Anglo Maxn Trust as shareholder and intermediary respectively. The source of receipts/credit entries from where the loans had been given to appellant by these entities is not available on records. Further the loan agreements filed by the appellant are on plain paper, which can be created anytime for any date. There is no assignment document filed by the appellant for assigning the loan by these entities to M/s NGTL. There are no circumstances brought on record by the appellant, like earlier debt/transactions of these tax heaven entities with M/s NGTL, which had led to assignment of this amount by these dubious entities to M/s NGTL. It is observed from the documents & activities undertaken by Mr.Tarun Maheshwari that M/s NGTL is controlled by him, who is allegedly front person of the appellant. Due to the name of these tax heaven entities figuring in panama leaks, the appellant had routed this amount back to his account in Dubai and later allegedly to its front entity M/s NGTL. Thus, the appellant had control of this money, which had been routed his account from these dubious entities.

12.5 As per the assessment order, in the light of the discussion made in the assessment order on the above issues, the following points were collated by the AD before concluding the assessment:

12.5.1 The assessee was running his proprietorship concern M/s Sterling Exports and was into business related to security papers. Later, on 13.09.2006 the assessee formed a new concern namely M/s Sterling Security System in Noida SEZ. Soon after that the assessee got into an agreement with Cartiere Milani Fabriano (CMF) as an agent for its contract with BRBNMPL (a subsidiary of Reserve Bank of India) and Security Printing and Minting Corporation of India Limited (SPMCIL) for supply of currency paper. As per the agreement, the assessee was to receive a percentage of the net margin paid to CMF by the concerned buyer. Such percentage of the net margin would be equivalent to 41% or a guaranteed 14% of the payment received. The very next year the assessee on 20.12.2007 changed his contract with Fedrigoni and the share of the profit to the assessee was restricted to 41 % of the net margin.

12.5.2 It is important to note here that as per the terms of the new agreement between the assessee and Fedrigoni, the association of the assessee with Fedrigoni S.p.A. was valid till 31.12.2012. It is also pertinent to mention that in the very year in which the said agreement was to expire i.e. in F.Y. 2011-12, the assessee started showing losses or Nil income despite the fact that the contract of Fedrigoni with BRBNMPL (a subsidiary of Reserve Bank of India) and Security Printing and Minting Corporation of India Limited (SPMCIL) was intact and Fedrigoni was getting payments for its supplies to BRBNMPL and SPMCIL till F.Y. 2016-17, which is evident from the information received from BRBNMPL. The assessee claimed that Fedrigoni was making losses for its operation in India with the above two entities of Govt. of India. Later, the assessee in the beginning of the FY 2015-16 became Non-resident in India and joined NextGen LLC in UAE.

12.5.3 From this discussion, it appears that the change in terms of the agreement in 2007 was a thoughtful decision to avoid taxes in a way that as soon as the exemption window for 100% exemption u/s 10M closes, the assessee would stop showing any receipts from Fedrigoni saying that Fedrigoni is making losses from its supplies to BRBNMPL and SPMCIL. It is needed to underline here that had the original agreement continued into existence, the assessee would be getting 14% of the receipts of Fedrigoni from BRBNMPL and SPMCIL irrespective of any financial condition of Fedrigoni and in turn would have to pay taxes on his commission from Fedrigoni from A.Y. 2012-13 onwards.

12.5.4 Further, as discussed above, while on one hand assessee showed no income from Fedrigoni in India whereas on the other hand he has received payments in FY 2015-16 and 2016-17 in his account or in the accounts of some foreign entities in which he was associated as authorized signatory or Partner or Director. It is very important to underscore here that whatever business entity assessee is associated with, Fedrigoni is also engaged. The same is evident from the fact that Fedrigoni is associated with NextGen, SJTL, Green Peas Business solutions and Sterling Global Partners Ltd.

12.5.5 It is also seen from the Memorandum of Association of St. James Technologies Ltd. and Green Peas Business Solution that though the activities of the companies as mentioned as General Trading, Investments etc, however these entities are associated with Fedrigoni in a highly specialized field of Security thread, Currency papers etc.

"Has M/s NextGen General Trading LLC ever received any money from M/s Fedrigoni S.p.A?"

The assessee replied as following:

"No, M/s NextGen General Trading LLC has never received any money from M/s Fedrigoni S.p.A. The profit to M/s NextGen General Trading LLC comes from M/s St. James Technologies Limited and M/s Green Peas Business Solution Limited as per the direction of Sh. Tarun Maheshwari."

From the above statement it is revealed that the so called employer of the assessee is getting its receipts from Fedrigoni only, though not directly, through two entities M/s St. James Technologies Limited and Mis Green Peas Business Solution Limited.

In sum, Nextgen General Trading LLC, Mis Green Peas Business Solutions Ltd., M/s St. James Technologies Ltd., M/s Sterling Global Partners Ltd are fronts only to disguise the receipt of payment to the assessee from Fedrigoni S.p.A

12.5.7 In view of the above discussion it is clear that the change in residency status of the assessee coupled with his receipts of payments from Fedrigoni through his foreign entities outside India and showing losses or Nil income in India on the pretext that Fedrigoni is booking losses for its Indian operation is a colorable device to avoid payment of taxes in India. The receipt of the assessee from Fedrigoni S.p.A directly through him or through his front entities in territory outside India is actually the amount which was accrued in India with respect to his commission income for the operations of Fedrigoni S.p.A in India and therefore, needs to be taxed u/s 9 of the IT Act, 1961 in the hands of the assessee irrespective of his residency status.

12.5.8 Fedrigoni does not have any other agent, representative or associate providing them with the services like Sterling Security System. The contract between you and Fedrigoni had not been closed, so there was certainly some business being carried out between you and Fedrigoni from FY 2010-11 to FY 2016-17 corresponding to AY 2011-12 to AY 2017-18. It is then likely that the payments were received in foreign bank accounts which were not disclosed to the Income Tax Department.

12.5.9 An estimation for the undisclosed payments received from FY 2011-12 to FY 2014-15 may be made based on past details as shown below.

(A) FY	(B) Amount paid by RBI to Fedrigoni (Rs. in crores)	(C) Amount received by Sh. S.P. Gupta as per books of account (Rs. in crores)	(D) Percentage of Fedrigoni receipts accrued to Sh. S.P. Gupta (C*100/B)
2008-09	197.93	18.14	9.16
2009-10	109.59	13.21	12.05
2010-11	98.82	7.85	7.94
Average percentage of Fedrigoni receipts accrued to Sh. S.P. Gupta			9.72

12.5.10 Estimating an average of 9.72% of the revenue for the supply of currency paper, the revenue accrued to Sh. S.P.Gupta from A.Y. 2011-12 to 2017-18 is estimated as under:

(A) AY	(B) Amount paid by RBI to Fedrigoni (Rs. in crores)	(C) Estimated revenue of Sh. S.P. Gupta – 9.72% of (B) (Rs. in crores)
2012-13	226.68	22.03
2013-14	53.33	5.18
2014-15	304.32	29.58

2015-16	517.48	50.23
2016-17	231.18	22.47
2017-18	289.71	28.16
Total		157.65

12.5.11 On the basis of amount received by Fedrigoni S.p.A from BRBNMPL, the total undisclosed income of the assessee has been estimated to be Rs.157.65 Crores as mentioned in above table. However, on the examination of various issues, it has been found that the total undisclosed receipts of the assessee, which accrued to assessee between AY 2012-13 to AY 2017-18 but was received in foreign bank accounts in F.Y. 2015-16 and F.Y. 2016-17, is as under:

Sl.No.	Name of entity	Amount (in Indian Rs. Crs.)
1	St. James	35.50 Crs
2	Sterling Global	7.93 Crs
3	Personal A/c of assessee	0.31 Crs
4	Ballenta and Anglo Manx	83.01 Crs
5	Green Peas	14.87 Crs
	Total	141.72 Crs

12.5.12 The bifurcation of this undisclosed income in various years is as under:

AY	Undisclosed Income A/B*C
2012-13	19.79 Crs.
2013-14	4.65 Crs.
2014-15	26.57 Crs.
2015-16	45.12 Crs.
2016-17	20.19 Crs.
2017-18	25.30 Crs.

A refers to : Estimated undisclosed income of concerned year

B refers to : Estimated total undisclosed income for AY 2012-13 to AY 2017-18

C refers to : Actual undisclosed income for concerned year.

Similar submissions have been reiterated in the report dated 4.2.2021 submitted by the AO. Thus, the additions were made to total income of the appellant in respective years as per the above table.

On the basis Of aforesaid information received, Assessing Officer has drawn his presumptions to hold that assessee might have earned money.

13. Ld. CIT (A) in his order has analyzed the entire material and observations of the AO as well as the submissions made by the assessee threadbare and held that *firstly*, Fedrigoni has not made any payment to the assessee after 01.04.2011, in view of the letter filed by the assessee from CMF confirming that no such payment was made; *secondly*, there is no evidence after 31stDecember 2012 that the assessee had carried out any activity as a commission agent or any was any way associated with the supply of currency note by CMF to RBI; *thirdly*, there is no evidence on record that any amount has been received by the assessee in India or abroad during the AYs 2012-13 to 2015-16 from CMF on any account including the share of profit as per the agreement of year 2006; and *fourthly*, the AO has completely erred on facts in holding that the amount has accrued even for this period having been received by the assessee when he became an NRI in FYs 2015-16 & 2016-17 from various so-called dubious entities allegedly controlled by him after becoming NRI. Ld. CIT (A) also discussed the

contents of the letter dated 04.01.2018 as received from CMF, available at pages 161 & 162 of his order. On the basis of these facts, ld. CIT (A) has concluded as under:-

“11.2.4 In view these facts & circumstances of the case, it is held that

- (i) There is nothing on record to prove or even indicate that agreement of the appellant with M/s CMF signed in 2006 (modified in 2007 for only sharing of profits) was extended or renewed after 31.12.2012. There is neither any statement of any person u/s 132 (4) /133A/131 of the I T Act 1961 nor any material seized during the search indicating anything more than what this agreement has, in terms of change of any clause or extension of dates etc., to support the contention of the AO that the appellant continued to be the partner in profits with M/s CMF even beyond 31.12.2012. Further, the appellant had not filed any document to claim that the agreement was cancelled/terminated prior to 31.12.2012. The only argument of the appellant is that there were no sharable profits after 1.4.2011. In these facts & circumstances of the case, there is no dispute that the original agreement signed in the year 2006, between the appellant with M/s CMF was valid till 31.12.2012 only. Further there is no evidence on record or denial, either by M /s CMF or the appellant, that the appellant discontinued to give its services suddenly after 1.4.2011. It is also a fact that M/s CMF had supplied material to RBI subsidiaries even after 1.4.2011. Thus, the appellant had full legally enforceable right for his share of profits from M/s CMF, for its Indian operations during the period 1.4.2011 to 31.12.2012 as per the terms of this agreement.*
- (ii) It is pertinent to note that the income of the appellant is, share in profits of M/s CMF @ 41% from Its Indian supplies, made for currency paper to RBT subsidiaries, as mentioned in the agreement. The receipts of the appellant fluctuated, between 12.05% & 7.94 % of M/s CMF Indian receipts, in AYs 2009-10 to 2011-12 , as per the working given by the AO in the assessment order. Fluctuation may be due to many*

factors like tender price, product mix of paper, turnover of business etc. The share receipts of the appellant, as per working in the assessment order, were quite high till 31.3.2011 (Rs.18.14 cr. in AY 2009-10, Rs 13.21 in AY 2010-11 & Rs.7.85 Cr in AY 2011-12), but Suddenly went to zero after 1.4.2011. The claim that, as M/s CMF did not have profits after 31.3.2011 , is not a supported argument in view of following facts :

- (a) As per the table reproduced in assessment order, there was consistent increase in turnover of M/s CMF with M/s BRBNMPL from Rs.65.50 Cr in AY 2006-07 to Rs 289-71 Cr in AY 2016-17, with a peak of Rs.517.48 Cr in AY 2014-15 and a dip to Rs.53.3 Cr in AY 2012-13. A loss making proposition would not have encouraged M/s CMF to increase the turnover in India for so many years after 31.3.2011.*
- (b) The claim of loss after 31.3.2011 on Indian operations, by M/s CMF as well appellant is not backed by any financial statements or working papers. There is no financial working given by M/s CMF or the appellant, considering the Indian operations of M/s CMF as standalone profit centre. Without any such comparative financials, of profit making in the earlier years before 31.3.2011 and claimed loss making in the later years after 31.3.2011 , the pleadings made by M/s CMF or the appellant that there was no sharable profit to M/s CMF after 31.3.2011, are not verifiable, It is not a normal proposition that the appellant would have accepted the verbal version of M/s CMF without obtaining the financial working of such losses and verifying it.*
- (c) There appear to be no extraordinary reasons to incur losses by M/s CMF after 31.3.2011. M/s CMF had stated certain reasons in its letter dated 4.1,2018, which are not backed by any credible documentary evidence. As discussed in above para, the documentary evidences submitted by the appellant prima facie do not have any impact on profits of M/s CMF at least for AYs*

2011-12 to 2014-15. Without analysis of complete comparative financials of Indian operations for the years under consideration vis-à-vis earlier years, in the light of above analysis on claim of M/s CMF, the proposition of M/s CMF about Its losses from Indian operations cannot be accepted.”

14. Finally, the observation and the conclusion of the Id. CIT (A) from paras 15.1 to 15.5 are as under :-

“15.1 There is no evidence on record either in the form of seized material or statement to prove that the agreement of 2006 signed between M/s CMF & the appellant had been extended beyond 31.12.2012. Thus the appellant was entitled for his share of profit from M/s CMF for its Indian operations for the period 1.4.2011 to 31.3.2012. Beyond this period, M/s CMF is not under any obligation to share the profits with the appellant on account of this agreement. There is nothing on record to prove that this agreement had been extended beyond 31.12.2012 or any new agreement had replaced this agreement. As explained above, the agreement was valid up to 31.12.2012 only, when the appellant was legally entitled to the share of profit with M/s CMF. The AO had stretched it to the later period including the period when the appellant was NRI, without bringing any material on record. M/s Fedrigoni would have supplied material to RBI beyond the period of agreement i.e. beyond 31.12.2012, but the entitlement of share of the profit of the appellant from M/s Fedrigoni, is emerging from the agreement of 2006 only and the term of this agreement was up to 31.12.2012 only. In the absence of any extension of this agreement beyond this period, the appellant had no legal entitlement to claim share of any profit from M/s CMF beyond 31.12.2012. Further there is nothing brought on records by the AO to show that the appellant had given any services to M/s CMF, for its operations in India after 31.12.2012. Therefore, the estimation of income made by the AO, considering that income had accrued/arisen to the appellant after the period 1.1.2013, presuming the continuation of terms & conditions of this agreement is not based on any facts or evidences, but only on conjecture & surmises.

15.2 The AO had alleged that the money received by the appellant in various dubious foreign entities during FYs 2015-16 & 2016-17 is not on account of the activities shown in these entities, but is on account of the share of its profit from M/s CMF, on account of its Indian activities as per the agreement of 2006. It is observed that amounts received in the foreign entities controlled by the appellant are from M/s Fedrigoni and other dubious entities (Rs 43.64 Cr from M/s Fedrigoni, Rs 14.97 Cr from M/s Next Gen and Rs 83.01 Cr from M/s Ballenta & M/s Anglo Maxn Trust). The source & year of amounts in these dubious foreign entities, other than M/s Fedrigoni in, is not known, however these amount came in the foreign entities controlled by the appellant in FY 2015-16 & 2016-17. Even the amounts received from M/s Fedrigoni are actually for the so-called services and their consummation with services is not verifiable. The comments on the transactions in various foreign entities have been made in the respective para above (12.1. 7.1, 12.17.1, 12.1.6, 12.2.5.1, 12.3.6, 12.3.7.1, 12.4.2 & 12.4.2.1) while analysing the transactions in these entities, which raises doubts on veracity of such transactions. It is observed that the appellant had no substantial business receipts in India from 1.4.2011 to 31.3.2015 and suddenly within 2 years of acquiring the NRI status, was flushed with work of developing patent for M/s Fedrigoni, became beneficial owner of the company involved in restructuring the business of giant company like M/s Fedrigoni in South America, got the special paper made for central bank of Indonesia for M/s Fedrigoni, was entrusted with Rs 80er by dubious entities, without any legal guarantee, to develop LPG distribution network in India, without any prior experience in this line of business. Even this amount of Rs. 80 crores was dubiously transferred to M/s Nexgan without any documents in support of such assignment. In such a short span of less than 2 years of becoming NRI, the amounts of Rs 141.5cr had come in the control of the appellant. Suddenly the flows of money, including the regular flows supposed to flow on account of patent in future years also, stopped after the name of the appellant figured in Panama Leaks. Sudden discovery of talent of the appellant recognized by the international business community vanished after this event of panama leaks. Thus, the story of the appellant does not appear to be the same as reflected on papers. None of the papers/agreements have time stamp of any government authority and these can be easily made at any point of time to define a

story. It appears that M/s Fedrigoni had very strong relation with the appellant and is confirming the transactions with the appellant for some mutually benefit proposition. However, in the assessment order, the AD could not bring any evidence on record, which could link the money received in these foreign dubious entities controlled by the appellant, with the alleged activities of the appellant w.r.t agreement of 2006 with M/s CMF. The AO had presumed that the whole amount of Rs 141.62 Cr in the foreign bank accounts of these entities had been received from M/s Fedrigoni, whereas the evidences on record show only the amount of Rs 43.64 Cr had been received from M/s Fedrigoni in FY 2015-16 & 2016-17. There is no evidence on record that the remaining amounts routed through other dubious entities have also been sourced from M/s Fedrigoni. The AO had not been able to establish that the money received in these dubious foreign entities controlled by the appellant is on account of services rendered by the appellant as per terms of agreement of 2006 with M/s CMF or any of these receipts have any connection of income being accrued/arisen in India. There are definitely doubts about the money brought in control of the appellant in these foreign entities, just within 2 years of acquiring the NRI status, but the doubt had not been replaced by the evidence on the basis of information collected so far. Thus, the amounts received by the appellant in various dubious foreign entities controlled by it, as NRI cannot be taxed in India unless it is established that the these represent the income corresponding to these amounts had accrued/arisen in India . Alternatively, the receipts of money should pertain to the period of residency of the appellant in India i.e before 1.4.2015. Till date, the source of any receipts prior to 1.4.2015 had not been brought on record by the AD and as per available records, these receipts in foreign accounts pertain to period after 1.4.2015, which cannot be taxed in India without establishing that these receipts have accrual/arisen from any activities /connection in India.

15.3 The appellant had filed certain documents from M/s CMF, wherein the claim, that there were no sharable profits after 1.4.2011, had been made. The claim had been analysed above and lacks credibility as per the discussion in para 11.2.3, 11.2.4 & para 14.3 above. In the absence of any financials of M/s CMF for Indian operations, the claims made in the latter dated 4.1.2018 by MIs CMF are rejected. The only alternative left in such

circumstances, is to accept the estimation made by the AO on the basis of receipts of M/s CMF. As discussed in para 14 above, the income is being assessed on the accrual basis as per this estimation only and not on receipt basis of money received abroad in dubious entities, as finally adopted by the AD. Thus, the all the pre-conditions of accrual of share of profit receivable to the appellant for the period 1.4.2011 to 21.12.2012 i.e. valid agreement, evidence of supply of material by M/s CMF in India and no evidences of losses to M/s CMF during this period, are fulfilled. Further, there are possibilities, as discussed above, that these accrued amounts have been routed abroad by the appellant, as many transactions abroad have lot of loose ends. Without prejudice to it, even if receipts of this accrued amounts are not received, these need to be first offered for tax on accrual basis and legal claim of share of profit should have been made by the appellant with M/s CMF for such receipts and in case it emerges after exhausting all legal remedies that there is no possibility of recovering these amounts from M/s CMF, these unrealisable amounts can be claimed as bad debts in subsequent years as per law. For the period after 1.1.2013, the pre-condition of accrual of receipts arising from any valid agreement does not exist, therefore, the possibility of any receipts abroad on this account after this period does not exist.

15.4 In these facts & circumstances of the case, it is held that

- (a) There is accrual of income to the appellant as per the terms of the agreement of year 2006 with M/s CMF even after 1.4.2011.
- (b) The income of the appellant, as per the agreement of 2006 with M/s CMF, cannot be estimated beyond 31.12.2012. Thus, the income is estimated for the period 1.4.2011 to 31.12.2012 only.
- (c) In the absence of any data provided by the appellant, this income is estimated on accrual basis by applying the average ratio, of past years receipts of appellant to the total Indian receipts of M/s CMF, to the receipts of M/s CMF from 1.4.2011 to 31.12.2012, as per the col.3 of the table in SCN of enhancement reproduced in para 14 above.

15.5 Accordingly, the addition made by the AO:

- (a) For AY 2012-13 is enhanced from Rs 19.79 Cr to Rs 22.03 Cr*
- (b) For AY 2013-14, it is enhanced from Rs 4.65 Cr to Rs 5.18 Cr. However, in the absence of complete data, the income up to 31.12.2012 is estimated on pro-rata basis at Rs 3.885Cr. $(5.18 \times 3/4)$. Thus, in totality, the addition for this assessment year is restricted to Rs 3.885 Cr.*
- (c) For the AYs 2014-15 to 2017-18 is hereby deleted.*

I am satisfied that the appellant had concealed the particulars of his income for AY 2012-13 & 2013-14. Accordingly, penalty proceedings u/s 271(1)(c) are separately initiated on enhanced income for AYs 2012-13 & 2013-14 for concealment of income.”

15. In view of the aforesaid findings, both the assessee and Revenue are in appeal before us challenging the various additions confirmed and disallowances/enhancement by the ld. CIT (A).

16. Before us, ld. counsel for the assessee, Shri Gaurav Jain reiterating the entire facts and background of the case (as discussed herein above) submitted that all the additions in the present assessments have been made in pursuance of search & seizure action u/s 153A. On the date of search, the assessments for AYs 2012-13 to 2015-16 had already attained finality and stood concluded and therefore, same cannot be reckoned as abated assessments in view of second proviso to section 153A. For all these years, admittedly no incriminating document or any adverse information or material was found so as to indicate that assessee has earned any undisclosed income nor there is any reference to any seized material, albeit there was information post search which again has no relevance on the

computation of income made by the AO which was purely based on presumptions and estimate basis. In all the assessment years, AO has merely made additions on estimate of net profit of presumed accrued income and that to be without any material information that any such income had accrued or arisen in India by the assessee through any business connection in India for which alleged income has been assessed on estimate basis. Thereafter, Mr. Jain has given rebuttal for various observations made by the AO with regard to agreement with CMF and other entities which AO has discussed in his order. For the sake of ready reference, his submissions can be summarized as under:-

I. Agreement with CMF / Fedrigoni [Page No. 4-16 of the assessment order]

17.1 The first adverse inference has been drawn in the assessment order with respect to export of services by the assessee to Fedrigoni, in relation to supply of paper by Fedrigoni to RBI, on the basis of the Agreement dated 25.09.2006 read with modification thereof vide Agreement dated 10.12.2007.

17.2 At the first place, it would be pertinent to mention that the aforesaid agreements were not new or documents undisclosed to Revenue, leave alone incriminating or leading to discovery of any undisclosed income therefrom by the assessee.

17.3 The aforesaid agreement(s) were always on record of the Revenue, basis which export income was disclosed and offered to tax in the preceding year(s), which were even selected for scrutiny and assessment was completed under section 143(3) of the Act.

17.4 Reference, in this regard, can even be made to assessment order dated 31.03.2013 (passed much prior to date of search) passed under section 143(3) for assessment year 2010-11 wherein assessment was completed after examining the aforesaid agreement(s) dated 25.09.2006 read with modification agreement dated 20.12.2007. The aforesaid assessment order for AY 2010-11

is attached at Page 1175 to 1182 of Paper Book in Volume IV; the relevant extract thereof is reproduced herein for ready reference:

“As regards, the claim for deductions u/s 10AA of I.T. Act, the assessee filed information from time to time. The assessee is claiming that services being provided by him come under the category “Other business services” of Rule 76 of SEZ. The assessee has filed following documents and clarifications to prove that services under the agreement were rendered to M/s. Cartiere Milani Fabriano SPA, Italy.

1. Copy of agreement dated 25.09.2006 with M/s. Cartiere Milani Fabriano SPA, Italy,

2. Copy of letter dated 20.12.2007 regarding modification of agreement.

3. Copy of E-mail dated 14.02.2013 from Bhartiya Reserve Bank Note Mudran (P) Limited (BRBNML) confirming that Sh. S.P. Gupta, Sterling Security System, was authorised to present M/s. Fedrigoni SPA Italy. (hereinafter referred to as ‘Overseas Enterprises’) in tendering process.

4. Copy of Email dated 04.02.2013 from the overseas enterprise confirming that they have issued dated 04.01.2012 to the assessee in which services rendered by the assessee have been elaborated.”

17.5 The aforesaid order clearly establishes that, the aforesaid agreement(s) were not undisclosed to Revenue or were any new document found in the course of search, but were already on record of the Revenue. Further, the aforesaid agreements contained the terms and conditions relating to scope of services agreed between the assessee and Fedrigoni, including consideration therefor (detailed supra) and did not throw any light on actual income earned by the assessee on the basis of said agreement subsequently. Thus, the aforesaid agreement was not incriminating evidence in any manner, which was either undisclosed or resulted in detection of any undisclosed income earned by the assessee. Furthermore, it is submitted that the aforesaid agreement only had a limited validity upto 31.12.2012 and was, therefore, not relevant for alleged income to be earned

after that period and there was no evidence by way of any extension of the said agreement or any new agreement entered between Fedrigoni and assessee for the subsequent period, relevant to assessment years 2014-15 to 2017-18.

17.6 Thus, it is clearly established that the Revenue did not find any evidence/incriminating material suggesting earning of undisclosed commission income on the basis of aforesaid agreement in assessment year 2012-13 to 2017-18. The allegation that the assessee would have earned commission income from Fedrigoni, merely because Fedrigoni supplied currency paper to RBI in the subsequent period after expiry of the aforesaid agreement, was purely on the basis of assumption and surmises and conjectures, without any evidence/incriminating material, despite categorical denial of payment by Fedrigoni directly to the assessing officer [Refer: Confirmations at Pages 928-934 of Paper Book – Vol-III] and no evidence of any service by assessee from RBI. [Refer: Reply from RBI at Page 605-607 of Paper Book- Vol-I], which in our respectful submission is outside the scope of assessment under section 153A of the Act.

17.7 The CIT(A), therefore, in our respectful submission, erred in relying upon the aforesaid agreement and make the addition of income for the period 1-4-2011 to 31-3-2012 and 1-4-2012 to 31.1.2012 on the basis of accrual, which was purely based on assumption, dehors any incriminating material/evidence found in the course of search suggesting rendering of any service by the assessee and/or right to receive any income from Fedrigoni. The amount of accrued income was determined only on the basis of assumption of (i) service being rendered by the assessee to Fedrigoni in relation to supply of currency paper to RBI for the relevant period; (ii) percentage of commission income of alleged profits accruing to Fedrigoni; (iii) claim of recovery for that income by the assessee upon Fedrigoni, inspite of clear admission of no such claim on the part of the assessee as well as Fedrigoni. Thus, CIT(A) erred in enhancing/modifying the addition on the aforesaid basis and not deleting the entire addition on the ground that the same was outside the scope of assessment under section 153A of the Act.

II. St. James Technologies Limited (“SJTL”) [Refer Pages 16-20 of the assessment order]

17.8 During the course of search, the Revenue found that the assessee was an employee / associate in a foreign company, viz., St. James Technologies Limited (SJTL) incorporated in UAE, which had received some income in its bank account outside India, including from Fedrigoni. No evidence/document suggesting nexus of said receipt with alleged commission income was found, nor has even been referred to in the assessment order. On the basis of some preliminary documents, the assessing officer conducted enquiry from the assessee as also made foreign reference through FTTR Division of CBDT.

17.9 The receipt by SJTL were found for the period from September 2016 to March 2017 (relevant to assessment year 2017-18) i.e. when the assessee had become non-resident in India, w.e.f. 01.04.2015, which comprised of 3.5 million Euro from Nextgen General Trading LLC and 4.8 million Euro from Fedrigoni. On reference to FTTR, the Revenue collected the following information:

- SJTL was incorporated on 03.05.2016 (i.e. when the assessee had become non-resident in India);
- While Mr. Tarun Maheshwari is shown as the 100% owner of SJTL, as per KYC in Bank Account of the said company in UAE, the assessee and Mr. Tarun Maheshwari are shown as partners;
- The assessee is a sole authorised signatory in the bank account opening form;

17.10 In view of the above, apart from the assessee's name being found in incorporation documents as also in bank account, nothing incriminating was received or found, suggesting link of SJTL or receipts in its bank account with alleged commission income in relation to supply of currency paper to RBI in India.

17.11 In the assessment order, the assessing officer has made reference to certain emails (@Pg 18-19 of assessment order) relating to SJTL found in the course of search which were even put to the notice of assessee at the time of recording his statement during the course of search / post investigation proceedings, in which, too, no nexus of commission income earned by assessee in relation to supply of paper to RBI in India was found.

17.12 The explanation of the assessee, during the course of search/investigation proceedings as also assessment proceedings, with respect to income earned by SJTL was in relation to royalty income earned from invention of colour shifting thread, which had no nexus with supplies of currency paper by Fedrigoni to RBI. The documents in relation to the same are attached at Pgs 949 to 965 of PB- Vol-III.

It was clear in the aforesaid background, that the royalty income was earned by SJTL, a foreign company from Fedrigoni outside India, in lieu of royalty paid for use of patent in security thread supplied in European Countries, which was even confirmed by Fedrigoni vide confirmation dated 17.12.2018, attached at Page no. 962 to 965 of Volume III of Paper Book;.

17.13 Considering that the aforesaid royalty was in relation to royalty accrued outside India, the same was not taxable in India, leave alone in the hands of assessee, who was non-resident in that period, and nonetheless no incriminating material/document was found that the aforesaid receipts by SJTL were in relation to alleged commission income relating to India.

17.14 The allegation of linking receipts by SJTL with commission income in India was purely made on the basis of assumptions, surmises and conjectures, dehors any incriminating material found in the course of search, suggesting/proving the same. Thus, the CIT(A) has rightly deleted additions made on the basis of allegations made in the assessment order qua the transactions of said foreign company, outside India.

III. Green Peas Business Solution Limited [“Green Peas”] [@ Pg 20-23 of AO]

17.15 Similarly during the course of search, the Revenue found certain documents relating to foreign company, viz., Green Peas Business Solution Limited, incorporated in Dubai in 2016 (i.e. when the assessee was non-resident in India) and that said company had received 2 million Euros in June 2016 (i.e. after incorporation of company and in the period when assessee was non-resident, relevant to assessment year 2017-18.)

17.16 No incriminating material or document was found suggesting that the aforesaid amount was paid by Fedrigoni in

relation to alleged commission income earned by the assessee in India in relation to supply of currency paper to RBI.

17.17 During the course of search/investigation and assessment proceedings, the assessee submitted that the aforesaid income was in relation to independent advisory services rendered by Green Peas Business Solutions Ltd. to Fedrigoni relating to acquisition of foreign company in Brazil having no relation/nexus whatsoever with any transaction in India, specifically supply of currency paper to RBI, for which a confirmation dated 15.11.2018 from Fedrigoni directly to assessing officer, attached at Page no. 999 to 1001 of the Paper Book, Volume-III, was also filed during the course of assessment proceedings.

17.18 The Revenue made foreign reference through FTTR, from where also nothing incriminating relating to commission income was found except that the assessee was mentioned as partner in KYC documents, submitted with the bank account opening form of Green Peas.

17.19 In view of the above, it is submitted that there was no link of 2 million Euros received by Green Peas from Fedrigoni with alleged commission income, which was made by the assessing officer purely on assumption, surmises and conjectures, dehors any incriminating material / document found in the course of search. Thus, the CIT(A) has rightly deleted additions made on the basis of allegations made in the assessment order qua the transactions of said foreign company, outside India.

IV. Sterling Global Partners [@Pg 23-27 of AO]

17.20 As regards the aforesaid company, no incriminating material/documents/evidence was found from the premises of the assessee in the course of search. The sole basis for drawing adverse inference, discussed infra, with respect to the aforesaid company was uncorroborated information received on the basis of ICIJ database that the assessee was the beneficial owner of the aforesaid company, which was set up using the services of inter alia M/s. Mossack Fonseca.

17.21 On the basis of aforesaid information, a survey was conducted, pursuant to which the assessee solicited incorporation

document of Sterling Global Partners from UAE authorities, confirming no nexus with the assessee. [Refer Pages 1026-1030 of PB – Vol III]

17.22 The Revenue Authorities made foreign reference through FTTR Division, as per which the assessee was named beneficial owner in the bank account opening form. Further in the bank account of Sterling Global, an amount of 1 million Euros was found credited from Fedrigoni in financial year 2015-16 i.e. when the assessee had become non-resident, on the basis of which adverse inferences were drawn to link the aforesaid receipt with alleged commission income earned by the assessee in India.

17.23 The assessee had, in fact, requested Fedrigoni to clarify the reason for payment to Sterling Global, whereby Fedrigoni vide email dated 26.12.2019 attached at Page No.1032 of Volume-III of Paper Book confirmed that the assessee was never involved with respect to independent transaction between Fedrigoni and Sterling Global.

17.24 In the aforesaid facts, it is submitted that no incriminating material/evidence relating to nexus of receipts by Sterling Global with alleged commission income was found in the course of search or, otherwise. The only material with the department was uncorroborated and unauthenticated information by way of the name of Sterling Global in ICIJ Database along with the information received from FTTR Division whereby, the assessee was named as beneficial owner which remains uncorroborated to prove that the assessee was the real beneficiary of the aforesaid income.

17.25 Reference in this regard can be made to the recent decision of Bangalore bench of Tribunal in the case of ACIT v. Reindeer Software Solutions Pvt. Ltd.: ITA No. 1354/Bang/2017 wherein the addition made on the basis of information available in the newspaper report was deleted observing as under:

“9.....The amount has been reported in the news articles relied upon by the A.O. without carrying out adequate due diligence and without being ratified by the appellant or the investors.

10. In view of the aforesaid factual situation, we are of the view that the assessment in the instant case has been concluded based on a news article which does not in any case constitute adequate material on record. Accordingly, addition made by the A.O., has been rightly deleted by the CIT(A).....”

(emphasis supplied)

17.26 Be that as it may and without prejudice to the above, assuming without admitting the assessee to be beneficial owner of Sterling Global on the basis of aforesaid incomplete information/document, there is no otherwise material whatsoever in possession of Revenue, leave alone found in the course of search, suggesting receipt by Sterling Global on account of commission income earned by assessee in India for supply of currency paper to RBI.

17.27 Accordingly, the allegation of linking receipt of 1 million Euro by Sterling Global with commission income in India was purely based on assumption, surmises and conjectures, de hors incriminating material found in the course of search or even post search enquiries. Thus, the CIT(A) has rightly deleted additions made on the basis of allegations made in the assessment order qua the transactions of said foreign company, outside India.

V. Amounts credited in personal account of assessee (@Page 27 & 29 of AO)

17.28 During the course of investigation proceedings, on the basis of information received from FTTR Division, the assessing officer found that the assessee had received an amount of Rs.11,97,909/- and Rs.18,97,742/- in assessment years 2016-17 and 2017-18 from Fedrigoni in Emirates NBD bank account held by the assessee in UAE.

17.29 It was submitted by the assessee that the aforesaid receipt represented reimbursement of travelling expenses for various travel undertaken by the assessee in relation to aforementioned various business activities carried outside India, which had no nexus with tax liability in India. Even otherwise, since the aforesaid receipt were pure reimbursement, the same

was not income to be brought to tax. [Refer: CIT v. Tejaji Farasram Kharawalla Ltd.: 67 ITR 95 (SC); DIT v. A.P. Moller Maersk A S: 392 ITR 186 (SC); CIT vs. Fortis Healthcare Ltd: 181 Taxman 257 (Del)]

17.30 On perusal of the above, it would be appreciated that the Revenue did not find any material, leave alone incriminating material suggesting accrual of alleged commission income and nexus of aforesaid receipt with that income. The allegation of the aforesaid receipt to be in lieu of alleged undisclosed commission income was purely based on assumption, surmises and conjectures, de hors any material suggesting the same.

17.31 Considering that the aforesaid receipts related to the period when the assessee was non-resident in India, the onus was on the Revenue to prove with positive evidence on record that such receipts had nexus with India. Furthermore, the scope of section 153A is restricted to incriminating material found in the course of search.

17.32 In view of the above, even with respect to the captioned issue, no incriminating material was found in the course of search. Thus, the CIT(A) has rightly deleted additions made on the basis of allegations made in the assessment order qua the aforesaid receipts in foreign bank account, outside India.

VI. Anglo Manx Trust [Pg 29-43 of AO]

17.33 During the course of search, the Revenue found that the assessee had received loan of 7 million Euros from Ballenta Incorporated, Samoa and 4 million Euros from Anglo Manx Trust Company Ltd. Isle of Man, during the financial year 2015-16 relevant to assessment year 2016-17 in his personal account in Dubai and Singapore i.e. when the assessee was non-resident in India. Subsequently, the aforesaid amounts were transferred to assessee's bank account in India, which were duly disclosed and were within the domain of India Tax Authorities. Subsequently, during the period between 24 to 26 May, 2016, relevant to assessment year 2017-18, the said amounts were transferred from Indian Bank Account to the assessee's new bank account i.e. First Gulf Bank in Dubai. The same amount was then transferred to the account of Nextgen General Trading LLC, Dubai in August 2016.

17.34 Apart from the aforesaid transactions, which were through banking channels in foreign bank account of the assessee and Indian bank account, no further material/evidence was found in the course of search suggesting that the aforesaid credits were in the nature of income, leave alone income accruing or arising in India including alleged undisclosed commission income for supply of currency paper to RBI.

17.35 During the course of search/investigation and assessment proceedings, the assessee substantiated with documents that the aforesaid was loan received which refunded back. In the assessment order, the assessing officer has referred to certain emails at Pages 36 to 39 of the assessment order. It is submitted that the aforesaid emails do not prove accrual/earning of any income by the assessee in India or nexus of any amount with such income or alleged undisclosed commission income for supply of currency paper to RBI. The aforesaid emails only corroborate the stand of the assessee that the amount of 11 million Euros was in lieu of loan granted by Anglo Manx or Ballenta.

17.36 The assessing officer in the assessment order has only drawn adverse inferences on the basis of assumption and presumption, on partial reading of said emails/documents doubting veracity of the loan and alleged the same to have nexus with income accruing or arising from India, de hors any incriminating material found in the course of search suggesting accrual of income in India or income having any link with alleged undisclosed commission income. Thus, the CIT(A) has rightly deleted additions made on the basis of allegations made in the assessment order qua the aforesaid receipts out of India, between the foreign entities.

Conclusion

17.37 In view of the above, it is submitted that the entire impugned additions made by drawing nexus of receipts in the bank account of assessee or associated entities outside India with accrual of income in India/undisclosed commission income in relation to supply of currency paper to RBI was purely based on assumption, surmises and conjectures, de hors any incriminating material/evidence found in the course of search, drawing the aforesaid nexus.

17.38 Accordingly, the aforesaid additions were beyond the scope of assessment under section 153A as also 143(3) of the Act.

17.39 It is the respectful submission of the assessee, that the aforementioned receipts in foreign bank account of the assessee or in the bank account of associated companies were in the period relevant to assessment year 2016-17 to 2017-18, when the assessee was non-resident in India, in the following manner:

- St. James Technologies Ltd. - September 2016 to March 2017 (relevant to assessment year 2017-18) [Refer Pg 17 of AO]
- Green Peas Business Solutions Ltd. - June 2016 [@Pg 999 of AO]
- Sterling Global Partners Ltd. - March, 2016 [Refer Pg. 27 of AO]
- Re-imbursement of expenses - December 15 – March 17 [Refer Pg. 27 of AO]
- Anglo Manx Trust - FY 2015-16 [Refer Pg. 29 of AO]

17.40 It is to be appreciated that the assessee had receipts on account of commission income only up to assessment year 2011-12 and thereafter no income was earned nor any payment was received during assessment year(s) 2012-13, 2013-14, 2014-15 and 2015-16. No evidence of any receipt during the aforesaid period have even been found by the Revenue even after search conducted under section 132 of the Act. The long halt of a period of approximately 4 years establishes that the assessee was not rendering any services to Fedrigoni in relation to supply of currency paper to RBI. It would be highly unrealistic and improbable to assume that the assessee received accrued commission income for services rendered during the currency of the agreement up to 31.12.2012, in assessment year 2016-17 and

2017-18, after a long gap of 4 years. It was only when the assessee started exploring new business opportunities outside India and became non-resident, that income accrued and arose outside India and that, too, in foreign companies in the manner explained above. Thus, the overseas receipts had no nexus with India nor could be considered as accruing or arising in India to be brought to tax in India, more so when the assessee was non-resident in that period. Furthermore, out of total receipts of 22.3 million Euros by foreign entities (Rs. 3.5 + 4.8 {SJTL}, 2 {Green Peas}, 1 {Sterling Global} and 11 {Loan from Anglo Manx}), 14.5 million Euros (3.5 million in SJTL from Nextgen and 11 million loan from Anglo Manx), i.e. more than 50% were not receipts from Fedrigoni, to be related with commission income in relation to supplies by Fedrigoni to RBI.

17.41 The onus, it is submitted, was on the Revenue to bring evidence on record, both in case of assessment under section 153A as also 143(3), suggesting that foreign sourced income, had nexus with India or had accrued or arisen in India, which has remain undischarged in the present case. As pointed supra, the entire allegation of linking foreign receipts with alleged undisclosed income for supply of currency paper to RBI were purely based on assumption, surmises and conjectures, disregarding the explanation of the assessee and evidences brought by the assessee on record, de hors any evidence/incriminating material found in the course of search.”

17. He further submitted that the Id. CIT (A) has admitted that there is no evidence found during the course of search or otherwise relating to earning of income from supply of currency paper to RBI was found and thereafter in the cases where assessments had attained finality and are unabated assessments, no addition can be made de hors any incriminating material found during the course search. In support, he strongly relied upon the judgments of Hon’ble Delhi High Court in the case of **CIT vs. Kabul Chawla [2015] 380 ITR 573** and following decisions :-

- (i) *Pr. CIT, Central 2, New Delhi vs. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals 395 ITR 526 (Del.);*
- (ii) *CIT vs. Continental Warehousing Corporation 374 ITR 645 (Bom.);*
- (iii) *CIT vs. RRJ Securities 380 ITR 612 (Del.);*
- (iv) *PCIT vs. Kurele Paper Mills P. Ltd. ITA No.369 of 2015 (Delhi HC).*

18. Without prejudice, he submitted that the additions made on presumption and accrual basis is not sustainable on facts of the present case, because no payment admittedly has been received after 01.04.2011 for the reason that :-

- (i) the assessee has not raised any claim for recovery of any income/money upon Fedrigoni;
- (ii) the assessee did not receive any money from Fedrigoni, which has even been admitted by the CIT(A) in the relevant portion of the order reproduced supra; and
- (iii) the Fedrigoni had admitted of no liability to make payment of any money to the assessee, which was even confirmed by Fedrigoni in the following replies (including the reply sent to the assessing officer directly):

19. As regards the authenticity of the letter dated 04.11.2018 filed before the AO, he strongly relied upon the finding of the Id. CIT (A) who has rightly held that no income has accrued to the assessee after AY 2012-13 onwards.

20. Regarding enhancement made by the ld. CIT (A), ld. counsel for the assessee made two fold arguments : *firstly*, even though the agreement was uptill 31.12.2012, however post 01.04.2011 no income or commission whatsoever has been received by the assessee nor any material evidence or information found during the course of search that the assessee had received any income from CUF; and *secondly*, no incriminating material or document has been found to estimate such accrual of income for the AYs 2012-13 as done by the ld. CIT (A) and, therefore, on this ground, the entire addition/enhancement made by the ld. CIT (A) in AYs 2012-13 and 2013-14 is liable to be deleted.

21. Insofar as the assessments which had abated i.e. AY 2016-17 and in the year of search i.e. AY 2017-18, Mr. Jain submitted that it is an undisputed fact that assessee had become NRI w.e.f. 01.04.2015 and nowhere it is found that assessee carried out any business operation or had any business connection in India once he became NRI. In fact, all the documentary evidence and the information which have been received through FTTR, nowhere there is any information or material to allege that assessee had received any income from India operation for supply of currency paper by the CMF to RBI nor he was found to be active in any manner as agent or as an mediator. In support of his contention, he strongly relied upon the decision of **Hon'ble Delhi High Court in case of Suresh Nanda in ITA No.83, 100, 87/2013 judgment and order dated 25.02.2013** wherein the order of the Tribunal was confirmed. In that case, the assessee was an non-resident Indian in the year under question. When the assessee had earned commission income for supply of defence equipment to

various foreign entities, addition of Rs.10.51 crores was made u/s 68 despite he was held as non-resident. The Tribunal as well as Hon'ble High Court has held that onus was on the Revenue to prove that credit in the bank account was as a result of income accrued in India and being an NRI carrying out activities outside pertains to any activity carried out in India and, therefore, no addition could have been made. In this case, in fact, no such amount has been credited in any of Indian account or the account of the assessee even after 01.04.2015 for any operations relating to India. Thus, no addition could have been made simply on hypothetical surmises that assessee might have got certain revenue as a commission agent for supply of currency paper by CMF to RBI when CMF and RBI both have denied any middleman or broker or commission agent was involved, thus, in these assessment years, the ld. CIT (A) rightly deleted the additions and strongly relied upon the observations made by the ld. CIT (A).

22. Ld. CIT DR on behalf of the Revenue submitted that there was an agreement which means the assessee and CMF wherein assessee had shown income from AYs 2006-07 to 2010-11. The agreement was valid upto 31.12.2012 but foreign entity CMF continued to supply currency note to RBI, therefore, AO has rightly held that assessee had income arisen and accrued in India. Referring to various observations of the AO made in the assessment orders, he submitted that, here in this case from the information received from FTTR, it was found that there were certain entities incorporated abroad wherein assessee had strong linked and directly or indirectly connected with such entities who were acting as a mediator/agent for supply of currency notes by Fedrigoni

to various other countries. This shows that assessee continued to carry out its operations even after AY 2012-13 and even after he became NRI from AY 2015-16. Thus, there was credible information that assessee was carrying out its operations. Even though CMF had denied making any payment or involvement of assessee and the RBI denying any middleman to supply, that does not mean that assessee was not involved and now, the entire payment has been routed through different foreign entities abroad. All these facts show that there is strong indication that certain income of assessee is taxable in India which has not been disclosed. He has referred to certain statements recorded in page 18 of the AO which are duly incorporated herein above while reproducing the findings of the AO and ld. CIT (A).

23. As regards the contention of the ld. counsel for the assessee that no incriminating document was found during the course of search, ld. CIT DR submitted that agreement of dated 20.12.2007 which was found during the course of search is the supporting document and coupled with other certain emails which have been referred to by the AO, can be treated as incriminating material found during the course of search. He thereafter referred to material referred to by FTTR and submitted his detailed report and submissions. In his written submissions he has given information received through FTTR which was not even before the Assessing Officer, which is reproduced here under :-

“ The assessee has established a concern namely 'Sterling Security System' in Special Economic Zone and entered into a contract with Cartiere Milani Fabrics (CMF) a part of Fedrigoni Group, Italy. CMF has entered with agreement with Reserve Bank

of India to supply currency paper. The assessee was entitled to percentage of net margin equivalent to 41 % or a guaranteed 14% of payment received. The service agreement dated 25.03.2006 was seized during the search and seizure operation against the assessee on 26.12.2016.

The assessee has shown positive income till A.Y. 2011.-12 from Fedrigoni and claimed exemption u/ s 10AA of the I.T. Act. Subsequently, the assessee claimed that no service was rendered to Fedrigoni Group while supplying security paper to RBI with subsidiaries. However, Fedrigoni continued to supply currency paper to RBI through its subsidiaries (BRBNMPL). Fedrigoni does not have any other agent for supply of currency paper. However, the assessee has received money from Fedrigoni, Italy in various foreign entities and assessee's bank accounts subsequently.

The assessee claimed that it had not received any sum from Fedrigoni after 01.04.2011 for currency paper supply to RBI. In its support the assessee filed a letter from Fedrigoni SPA. The designation of signatory is not mentioned in the letter.

Various information's were received from foreign Tax Authority which shows that assessee has received money from Fedrigoni SPA Bank accounts of concerns directly controlled or beneficiary is the assessee. During search/ post search proceedings such accounts could be ascertained as under:-

a. St. Tames Technologies Ltd. (STTL)

This concern was incorporated on 03.05.2016 in Dubai. One Tarun Maheshwari is shown 100% owner of this company. However, KYC of the bank account of the company shows S.P. Gupta and Sh. Tarun Maheshwari are partners. As per KYC Sh. S.P. Gupta is the sole authorized signatory of the account. From September, 2016 to March, 2017 there is a credit of 3.5 Million Euro from Nextagen General Trading LLC and 4-8 Millions Euros from Fedrigoni (page 16 & 17 of AO).

The e-mails found during search which evidences the sale of Fedrigoni of security thread paper, for the period from January to

March, April to June, 2016 prior to its incorporation and royalty paid to assessee for the said period.

In reply during statement u/ s 132(4) the assessee explained that royalty is on account of security thread technology developed by him and Nextagen General Trading LLC and Fedrigoni (Pages 18&19 of the AO).

During statement u/s 132(4) , the assessee has accepted that 50% shares of royalty will be given to assessee.

b. Green Peas Business Solutions Ltd.

This company is incorporated in 2016 in Dubai. Fedrigoni SPA has paid around 2 Million Euro for advisory services given to Fedrigoni (Statement u/s 132(4) page 20 of A.O.) assessee is shown partner in bank record.

c. Sterling Global Partners Ltd.

This is the company incorporated in DAB. The assessee has denied any ownership in this company.

From the information received from Foreign Tax Authority, it revealed that the assessee is the beneficial owner (Page 23 & 24 of A.O.). Further, there is a credit of 1,05,0000 Euro from Fedrigoni SPA on 08.03.2016 in A/ c # 78187588.

Further, Foreign Tax Authority has confirmed assessee's bank account in Emirates NBD, Bank street Branch account #0315067643902 where there is a credit from Fedrigoni (page 27 of AO). During the search these amount was found credited in the bank account.

d. Anglo Manx Trust

During the search, it has been found that during F.Y. 2015-16, the assessee has received 7 Million Euros from M/ s Bellenta Incorporated Samoa and 4 Million Euros from Anglo Max Trust. Initially the assessee denied to have any connection, later on during the search statement u/ s 132(4), he accepted that Next

Gen General Trading LLC has organized temporary funding of 11 Million Euros from Anglo Manx Trust Company. The assessee shifted this fund to various bank accounts after Panama Papers Leak (page 31 and 32 of AO). The emails were found during search for redrafting of loan agreement after Panama Paper Leak (Page 37 of AO). The Assessing Officer has held this loan transaction as share transaction held to commission income from Fedrigoni (page 43 of AO).

The Assessing Officer has estimated income on the basis of three years average of F.Y. 2008-09,2009-10 and 2010-11 of commission percentage on Fedrigoni Receipt at 9.7% for various A.Y. 2012-13 to 2017-18 .

First Appellate Proceeding

The CIT (A) has varied the percentage rate and restricted the addition upto the date of validity of agreement till 31.12.2012.

Main Agreements of Ld. AR

There is no incriminating evidences found during the search, therefore, concluded assessment case not be disturbed u/s 153A.

Arguments Against Non Incriminating Materials found during search & subsequent investigations:

1. During the search proceedings service agreement between Fedrigoni SP A and the assessee was found and the services by the assessee to Fedrigoni SPA continued as per the final investigation report from Italy Authority (in paper book paper Volume 6) .

2. During the search there was evidence for credit of sum by Fedrogoni SP A in assessee's AI c no. 0315067643902 , for various A.Y. from 2016-17 to AY. 2017-18.

3. After the validity of service agreement, the assessee has received huge sum in the bank account operated in the name of St. James Technologies Ltd., Green Peas Business Solutions Ltd.,

Sterling Global Partners Ltd. And Share for loan transaction from Anglo Manx Trust and Ballanta Incorporated.

4. *During search, various e-mails was found which established payment of fund from Fedrigoni to the assessee either in our pretext or otherwise which are discussed in the AO.*

5. *As per requests provided by Italy authority, Sh. S.P. Gupta has acted through companies directly related to him without formality such as:*

- i. *Sterling Export and Sterling Security System*
- ii. *London Security Solution Ltd.*
- iii. *Green Peas Business Solution Ltd.*
- iv. *St. James Technology Ltd.*
- v. *Khidmaty Technolgoes FZE*

6. *Fedrigoni has supplied copy of agreement dated 01.01.2012 related to the possible supply of papers in respect in favour of Bank of India, stipulated between Fedrigoni SPA & London Security Solutions Ltd. which show that Sh. S.P. Gupta was involved in providing services to Fedrigoni SPA for supply of currency papers.*

7. *Letter dated 01.02.2012 of London Security Solution Ltd. relating to determination of percentage of commission with Fedrigoni shows continuance of Sh. S.P. Gupta's service to Fedrigoni.*

8. *The Italian company provided various debt vide dated 12.09.2012, 16.10.2012, 26.11.2012, 09.12.2012, 20.05.2013, 15.05.2013 issued by Sterling Security paper for reimbursement of expenses by Sh. S.P. Gupta, which proved the continuance of service by Sh. S.P. Gupta to Fedrigoni from 2012 to 2015.*

Final Findings of Italian Tax Authority on the Nature of Service Provided by the Assessee to Fedrigoni SPA

Investigations were carried out through FT&TR division of CBDT with Foreign Tax Authority which are contained in the paper book. Most important and revealing report is Italian Authority which gave its final report contained in volume 6 of paper book.

Page 534 of the paper book contains conclusion of role of assessee summarized by Italian Authority as under:-

a. Satya Parkash Gupta, in the year 2012, through the Indian company Sterling Security System, (with office in Delhi-India-110033, A-6, G.T. Karnal Road, Industrial Area), has supplied services to the benefit of FED RIGONI SPA.

b. the services provided by STERLING SECURITY SYSTEM, are confirmed by the information found in the databases employed by the Guardia di Finanza, totaling 1,057,922.00. No other relations are recorded in the subsequent tax years.

c. According to queries of the same database, in the same year 2012, Fedrigoni SPA received services also from London Security Solutions Ltd. (with office in Mayfair, London- UK W1S 1YH, 3rd 13-14 Hanover Street- VAT Reg. no. GB 940908809, ceased on 08.11.2016), for the amount of 1,929,357.00 euro, a company already mentioned in our previous letters.

d. Our counterparts of the Isle of Man informed us that London Security Solutions Ltd. is linked to Mr. Satya Parkash Gupta, as he has been identified as the beneficial owner of the shareholdings nominally held by the parent company GROSVENOR Nominees Limited with office in the Isle of Man.

e. Therefore, it is highly probable that Satya Parkash Gupta has used the UK company London Security Solutions Ltd. In order to:

- Circumvent the rules of the "integrity pact" introduced by the Indian Government in 2012 to prevent suppliers of security products to use agents, brokers and intermediaries in negotiations with Bharatiya Reserve Bank Note Mudran (P) Limited, (Reserve Bank of India).*
- Relocate to a foreign country, such as the UK, the income that was actually generated in India.*

f. The Isle of Man authorities also informed us that further consultancy services were provided through the companies ST.

James Technologies Ltd. and Green Peas Business Solutions Limited, were established by Satya Parkash Gupta on behalf of his employer Next General Trading LLC.

g. Regarding the united Arab Emirates company ST. James Technologies Limited, the Indian tax authorities reported that this company received, between September 2016 and March 2017, approximately 3.5 million euros from the Emirates company Next General Trading LLC and approximately 4.8 million euros from the Italian Company Fedrigoni SPA.

Italian Authority has given point wise reply in page 538A to 543A of Paper Book which is reproduced as under.-

Request Number-1

Fedrigoni SPA exhibited a letter made up of 6 pages undersigned by Mr. Vittorio SFLIGIOTTI in his capacity of Fedrigoni SPA proxy, with which it has described the relationships and the contractual dynamics occurred with GUPTA and his related companies. The company also specified that- pursuant to the Italian Legislation- documentation it gathered was principally related to the years from 2010 to 2020, that is the documentation the company itself was obliged to keep.

From information acquired during the control activities, it arose that Mr. Gupta acted through companies directly related to him or through companies with which he operated as consultant! contact person without having taken any formal role.

The above said companies are: Sterling Export and Sterling Security Systems (with registered office in India), London Security Solutions Ltd. (with registered office in UK), Sterling Global Partners Ltd. (with registered office in United Arab Emirates), Green Peas Business Solutions Ltd. (with registered office in United Arab Emirates), ST. James Technologies Ltd. (with registered office in United Arab Emirates), and Khidmaty Technologies FZE (with registered office in United Arab Emirates).

On 07.07.2020, Fedrigoni SPA provided the following answers to questions asked by above auditors to clarify by some aspects:

Question 1: Among documentation acquired, some contacts emerged with a company called Sterling Exports. In other words, what is the role played by the latter, and what is the difference from the role carried by the SSS?

Answer: To the best knowledge of the company, the existence of two contractual relationships seems to be due to the fact that Sterling Exports was a company operating in several business activities, of which Mr. Gupta already was contact person before he started his relationships with the company whereas 555 subsequently incorporated, was destined to operate in the business of "security elements".

Question 2: Do you know why after a initial relationship with India companies without prejudice to the presence of the same person Sh. Satya Parkash Gupta, the relationships moved on to British and United Arab Emirates companies.

Answer: The company doesn't know why Mr. Gupta moved on to operate through British and United Arab Emirates Companies.

Request Number 2:

The Italian company provided the following documentations:

1. Agency agreement of 19.06.2004 between Cartier Milani Fabriano SPA and Sterling Export along with a letter dated OS.12.2005 of Cartiere Miliani Fabriano SPA towards Sterling Export; both documents are undersigned by Alfonsi Claudio and Satya Parkash Gupta.

2. Letter dated 01.10.2004 on Sterling Exports letter head, along with attached an agency agreement of 15.09.2004 between Cartiere Miliani Fabriano SPA and Sterling Export, plus one annexure, undersigned by Claudio Alfonsi and Atul Gupta.

3. Agreement of Association in joint account- registered at the Aiello Sormani notary office- between Cartiere Miliani Fabriano and Sterling Security Systems, plus further 5 pages attached.

4. *Agreement of Association in joint account dated 16.04.2012 between Fedrigoni SPA and Sterling Security Systems, undersigned by Alfonsi Claudio and Satya Parkash Gupta, along with further 9 pages attached.*
5. *Agreement between Cartiere Miliani Fabriano SPA and Red Rose Imex Limited, in the process of changing its name to London Security Solutions Ltd, dated 06.06.2008 and undersigned by Cristopher Stephen Smith and Claudio Alfonsi, plus one page attached.*
6. *Agreement related to the possible supplies of papers in favour of the Bank of India, stipulated between Fedrigoni SPA and London Security Solutions Ltd, dated 01.01.2012 and undersigned by Cristopher Stephen Smith and Claudio Alfonsi.*
7. *Letter dated 01.02.2012 of London Security Solutions Ltd. towards Cartiere Miliani Fabriano SPA, undersigned by Cristopher Stephen Smith, relating to the agreed Remuneration percentage.*
8. *Reply dated 05.02.2012 of Fedrigoni SPA to the proceeding letter, undersigned by Claudio Alfonsi.*
9. *Letter dated 15.01.2010 sent by Cartiere Milliani Fabriano SPA towards Sterling Export relating to the commission percentage.*
10. *Letter dated 21.12.2011 sent by Fedrigoni SPA towards London Security Solutions Ltd. (to the attention of Mr. Cristopher Smith), undersigned by Claudio Alfonsi, concerning the Remuneration.*
11. *Reply dated 13.12.2011 of London Security Solutions with reference to receding exchange of letters, towards Fedrogoni SPA, undersigned by MR. Cristopher Smith.*
12. *Letter dated 15.04.2015 concerning the closing of the agency agreement between Fedrigoni SPA and London Security Solutions Ltd.*

13. *Advisory agreement between Fedrigoni SPA and Sterling Global Partners Ltd. entered into force (Execution Date) on 01.04.2015.*

14. *Advisory agreement between Fedrigoni SPA and Green Peas Business Solutions Ltd, without date, entered into force (Execution Date) on 01.07.2015.*

15. *License agreement between Fedrigoni SPA and St. James Technologies Ltd. - along with several annexes- without date, and with effect from 01.01.2016.*

16. *License agreement between Fedrigoni SP A and Khidmaty Technologies FZE, along with several annexes, dated 11.12.2018, and in force from 01.01.2019, undersigned by Marco Nespolo- CEO of Fedrigoni SPA - and Satya Parkash Gupta.*

17. *Letter of 31.01.2020 with which Fedrigoni SPA communicated the suspension of relationship with Khidmaty Technologies FZE.*

18. *Reply dated 21.02.2020 of Mr. Gupta to the preceding letter.*

Request Number 3

The Italian company provided the following documentation:

1. *Invoices issued by London Security Solutions Ltd. for the period from 01.01.2010 to 31.12.2013, along with relevant bank transfers and charts of connection between invoices and payments.*

2. *Invoices issued by London Security Solutions Ltd. in the year 2014, along with the relevant bank transfers.*

3. *Invoices issued by Sterling Global Partners in the year 2015, along with the relevant bank transfers and ledger. From the ledger it arose that the invoices 1/15 and 2/15 issued by Sterling Global Partners Ltd. for an amount of 1.050,000.00 Euros each, were written off by Fedrigoni SPA in the book keeping without the latter having ever received credit notes from the Emirate company. In this connection, Fedrigoni SPA stated that the debit notes issued*

by Green Peas Business Solutions Ltd.(please, see the subsequent item) replaced the above said invoices 1/5 and 2/15.

4. Invoices issued by Green Peas Business Solutions Ltd. in 2016, along with the relevant bank transfers, banking documentation and ledger (please, see also the preceding item).

5 Invoices issued by St. James Technologies Ltd. from 2016 to 2019, along with the relevant bank transfers (net of the 10% withholding tax provided for by the Italy/United Arab Emirates Convention for the avoidance of double taxation) and Tax Residence Certificate issued by the United Arab Emirates tax administration. The gathered invoices refer to costs pertaining to the years 2016 and 2017; in connection to the payment of the invoice SJ/2019/102 dated 25th July 2019 for an amount of 2,000,000,00 Euros . The company Fedrigoni SPA exhibited only a bank transfer for a down payment of 900,000,00 Euros Fedrigoni SPA stated that the said invoice still remains to be paid. Furthermore, from the charts gathered (please, see subsequent point request number 7). It arose that royalties have been calculated also for the years 2018 and 2019, and duly recorded by Fedrigoni SPA. Moreover, for the tax year 2018 the royalties are to be attributed to St. James Technologies Ltd. whereas for 2019 are to be attributed to Khidmaty Technologies FZE pursuant to the license agreement stipulated on 11.12.2018. The Italian company has also specified that in relation to the royalties recorded in 2018 and 2019, it has not received any invoices and has not paid any amount (for down to final payments) to the above said companies.

As regards the type of services rendered, please refer to what Mr. Vittorio SFLIGIOTI point out in the previous point 1.

Furthermore, the relationships between FEDRIGONI SPA and LONDON SECURITY SOLUTIONS LTD relating to the tax year 2014 were already subject to objection, in the framework of an audit carried out by Guardia di Finanza against the Italian company. In summary, the objection is based, inter alia:

- On the documentation certifying the services received(a series of e-mail communications between Satya Parkash Gupta and*

Fedrigoni SPA executives), deemed insufficient to prove the sizeable costs accounted for and deducted.

- *On the balance sheets of London Security Solutions Ltd. filed at the UK Companies House from which there is no income comparable to the amounts invoiced to Fedrigoni SPA. On the fact that Satya Prakash Gupta, resulting from the mails as the material author of the services and indicated by Fedrigoni SPA as London Security Solutions Ltd contact person, does not appear to have any role within the British company. In the framework of the same audit, Fedrigoni SPA, in order to support the services invoiced by Sterling Global Partners Ltd., exhibited a report drawn up by Satya Prakash Gupta in which there are business data of Fedrigoni SPA easily acquirable within the Italian company itself. Therefore, significant doubts emerged about the real type and adequacy of the services invoiced.*

As regards the services invoiced by Green Peas Business Solutions Ltd., a report was obtained, such report would consist in the continuation of the previous work carried out by Sterling Global companies, also in this case, there are strong doubts about the nature and adequacy of the services invoiced.

Request Number 4

The Italian company provided the "Statements of account" for the period 2010/2012 relating to the Agreement of Association in joint account between Cartiere Miliani Fabriano and Sterling Security Systems stipulated on 27.07.2006, along with the relevant payments and connection charts. Among the documents there are also the debit notes of 12.09.2012, 16.10.2012, 26.11.2012, 09.12.2012, 20.05.2013, 25.02.2013 and 15.04.2013 issued by Sterling Security Systems for reimbursement of expenses to Satya Prakash Gupta, they are paid together with the 'statements of account'.

Request Number 5

The Italian company exhibited the invoices (debit notes) issued by Sterling Security Systems from 2012 to 2015 relating to reimbursement of expenses for travels - according to the Italian company carried out Satya Parkash Gupta, furnished with the relevant banking documentation and charts of connection with the payments. The payments of 350,000,00 Euros (currency date: 17.01.2013), 356,000,00 Euros (currency date: 12.04.2013) and 351,676,14 (execution date: 23.05.2013) include, in addition to the payment of the debit notes, also the payment of the commissions accrued with the agreement of association in joint account, as shown in the attached accounting sheet. The company did not provided documentation in order to attest the indicated travels (airline tickets, food and accommodation expenses, etc)

Furthermore, Fedrigoni SPA exhibited several invoices (debit notes) issued from 2015 to 2018 by Satya Parkash Gupta relating to reimbursement of expenses, along with the relevant banking documentation and charts of connection with the payments. Also in this case, the company did not provided documentation in order to attest the indicated travels (airline tickets, food and accommodation expenses etc.)

Request Number 6

Please, see under the proceeding points 2, 3, 4 and 5.

Request Number 7

As regards the calculation of the payments towards Sterling Security System, please refer to the agreements of association in joint account stipulated between Cartiere Miliani Fabriano/Fedrigoni SPA and Sterling Security Systems and to the preceding point, Request Number 4 ("Statements of account" for the period 2010/2012)

As far as London Security Solutions Ltd. is concerned, the Italian company provided charts of calculation of the commissions accrued from 2010 to 2014 for supplies of paper and security tread. In particular, the commissions concerning supplies of the security thread have been attested by the invoices 49/14, 50/14, 51/14 and 741/14. From the examination of the documentation, it

was found that charts of calculation of the commissions related to invoices nn. 9/14, 10/14, 14/14, 17/14, 18/14, 19/14 were missing. In any event, from the excel chart gathered it was possible to detect that:

- Invoice 9/14 was issued in balance (6 %) of the commissions accrued on the amount of paper sales, equal to 5.091.187,30 Euros whose advances 7% had already been settled with invoices 2/13, 3/13 and 7/13.*
- Invoice 10/14 was issued in balance (6%)of the commissions accrued on the amount of paper sales, equal to 5.712.063,80 Euros, whose advances (7%) had already been settled with invoices 4/13 and 8/13.*
- Invoice 14/14 was issued in balance (6%) of the commissions accrued on the amount of paper sales, equal to 1.984.217,91 Euros , whose advances (7%) had already been settled with invoices 12/13 and 3/14.*
- Invoice 17/14 was issued in balance (6%) of the commissions accrued on the amount of paper sales, equal to 5.494.239,90 Euros, whose advances (7%) had already been settled with invoices 15/13 and 6/14.*
- Invoice 18/14 was issued in balance (6 %) of the commissions accrued on the amount of paper sales, equal to 4.115.894,00 Euros , whose advances (7%) had already been settled with invoices 16/13 and 7/14.*
- Invoice 19/14 was issued in balance (6 %) of the commissions accrued on the amount of paper sales, equal to 4,074,502,00 Euros , whose advances (7%) had already been settled with invoices 8/14.*

As for the purpose of the payments made to Sterling Global Partners Ltd. and Green Peas Business Solutions Ltd, please refer to the respective advisory agreements.

As for the payments made in favor of St. James Technologies Ltd, Fedrigoni SP A provided charts of calculation of royalties accrued from 2016 to 2019.

As already mentioned in the previous point 3, Request Number 3, also in the years 2018 and 2019 the royalties were duly accounted for by Fedrigoni SPA and were attributed: (i) for the tax year 2018 to St. James Technologies Ltd. , (ii) for the year 2019 to Khidmaty Technologies FZE on the basis of the license agreement stipulated on 11.12.2018. The Italian company has also specified that in relation to the royalties recorded in 2018 and 2019, it has been received any invoices and has not paid any amount (for down or final payments) to the above said companies.

Request umber 8

The Italian company applied the 10% withholding tax-provided for by the Italy / United Arab Emirates convention for the avoidance of double taxation to the payment made in favor of St. James Technologies Ltd. (please, see under point 3 (5)).

Request Number 9

Please, see the relevant banking documentation attached.

From the above final report, it is clear that the assessee has setup new concern but he continued to provide service to Fedrogini SPA from the period during 2010-2020 in connection with supply of currency paper to central Bank of India through various concerns without formal role in each concerns.

Therefore, after the report from Italian Authority, it is established that the assessee is providing services in India in connection with supply of currency paper to RBI, and its subsidiaries by Fedrigoni SF A which is taxable in India as service provided in India. It would be proper to estimate income on the basis of revenue of Fedrigoni as percentage which was earlier shown by the assessee where assessee's income was exempt u/s 10AA.

As service is provided in India the income is chargeable u/s 9 of IT Act. Hence, the action of AO to Tax the Income even after becoming assessing non-resident should be upheld.”

24. In response, ld. counsel for the assessee has filed a rejoinder submissions and the relevant text of which is reproduced as under:-

1. The Ld. DR has filed written synopsis dated 31.01.2022 and in his submissions and also placed reliance on the result of enquiries conducted through FT & TR Division, which was furnished to the assessee in six volumes.

2. At Pages 1 to 2, the Ld. DR has reiterated the facts of the case as per the assessment order, which have already been discussed and summarized by the assessee in the Synopsis-II.

3. It would be pertinent to note that the entire discussion in the assessment order was with respect to receipts by following foreign companies, which included receipts from Fedrigoni:

- (a) St. James Technologies Limited (“SJTL”);*
- (b) Green Peas Business Solutions Limited (“Green Peas”);*
- (c) Sterling Global Partners Ltd.;*
- (d) Loan received by assessee from Anglo Manx Trust/Ballenta Incorporated Samao*

4. It was submitted by the assessee that the aforesaid companies were incorporated after 01.04.2015, when the assessee had become non-resident and receipts by the aforesaid companies, including from Fedrigoni, were in respect of independent services rendered by the aforesaid companies, which had no nexus with supply of bank note paper by Fedrigoni to RBI. No incriminating material was found in the course of search to establish nexus of aforesaid receipt by foreign companies. Accordingly, it is submitted, that corporate veil of such companies could not have been lifted to tax receipt of said companies in the hands of the assessee /individual. The allegation made by the assessing officer in the assessment order that the receipts by foreign companies were in lieu of alleged services that may have been rendered by

assessee to Fedrigoni in relation to supply of bank note paper to RBI was purely based on assumptions and presumptions.

5. *Consequently, the foreign references made to verify the same was also in furtherance of such assumptions and presumptions, dehors any incriminating material found in the course of search supporting the aforesaid assumptions.*

6. *In the present report, the Ld. DR at Page 3, Paras 1 to 4 have reiterated the presumptions drawn in the assessment order to submit that incriminating material was found in the course of search, which in the submission of assessee is not correct and has been dealt point-wise at paras 16 to 17.38 at Pages 5 to 14 of Synopsis-II, which is not repeated for the sake of brevity and be read as integral part of this reply as a Rejoinder to the aforesaid allegation of Ld. DR.*

7. *It is the submission of the assessee that, when no incriminating material relating to allegation made by the AO were found in the course of search, the foreign references made were also outside the scope of investigation under section 153A of the Act, where the assessment has to be restricted to incriminating material found in the course of search; accordingly such foreign references were beyond jurisdiction and therefore the result thereof needs to be ignored insofar as assessment years that stood concluded as on the date of search.*

8. *In so far as two assessment years, viz. AY 2016-17 and 2017-18 are concerned, which were abated after search, it is the submission of the assessee, that the assessee was non-resident in India in those years and, therefore, in those years initial onus was on the Revenue to prove that the assessee had earned/accrued income in India by bringing with positive/tangible/concrete evidences on record, which has not been discharged in the present case by the AO, despite foreign references being made over a period of 6 years. Reliance in this regard is placed on the decision(s) of Delhi High Court in the case of Suresh Nanda: ITA No. 85,100,87/2013 (approved by Supreme Court) and the recent decision of Mumbai bench of Tribunal in the case of ITO v. Rajeev Suresh Ghai: 132 Taxmann.com 234, referred in Synopsis II at pages 16-19, which are not repeated for the sake of brevity.*

9. Be that as it may, even otherwise, the result of enquiries conducted through foreign references, which were commenced in 2016 and are still going on after lapse of 6 years, which have been reproduced by Ld. DR at Pages 3 to 10 of his submissions, relating to the foreign companies referred supra, and loan received from Anglo Manx Trust/Ballenta Incorporated Samoa, is concerned, there is no adverse response/evidence collected, proving any receipt of income by the assessee at any time (relating to assessment years under consideration), vindicating the allegations made in the assessment order made on the basis of assumptions/presumptions, nor the same have been pointed out by the Ld. DR in his submissions.

10. The Ld. DR has only pointed out the factum of receipts in the bank account of assessee in the year 2012 to 2013 (Refer para 8 at Page 4 of the Submissions of Ld. DR) and in 2015-16 (refer request no. 5 at Page 9 of the Submissions of DR) which were in connection with reimbursement of travel expenses for various travels undertaken by the assessee in relation to either scouting work from Fedrigoni or in relation to reimbursement for travels undertaken as representative of foreign companies. The receipts during the period, when the assessee was resident was duly accounted and disclosed in the return of Income filed for those years. As regards, the reimbursement of expenses for the period when assessee was non-resident, the same was not taxable in India since it did not had any connection with India. Further, same being pure reimbursement, was not in the nature of income to be exigible to tax. Reference in this regard, can be made to submissions at Para 17.28 and 17.29 of Synopsis-II, which is not repeated for the sake of brevity.

11. Thus, the result of foreign references referred by Ld. DR also did not lead to any conclusion that receipts by foreign companies were in relation to any service rendered by assessee to Fedrigoni in India. Thus, even the foreign references did not bring any material on record to support the original case made out by the AO on the basis of assumptions and presumptions.

12. Having failed in the aforesaid attempt, the Ld. DR has sought to set out a new case for the first time before the Tribunal, on the basis of the aforesaid references and certain ex-parte material (not made available to the assessee), alleging that services were rendered by

assessee through a newly named company, i.e. London Security Solutions Limited ("LSS") based out of U.K., [Refer Paras 5, 6, 7 at Pages 3 to 4 and Paras c,d,e at Pages 4 to 5 on written submission of Ld. DR].

13. In our respectful submission, the aforesaid completely new plea cannot be taken by the Revenue for the first time before the Tribunal, more so since complete facts for the same are also not on record like –

- (i) Ownership of LSS;*
- (ii) Role of assessee in LSS as owner or otherwise;*
- (iii) Nature of services provided by LSS to Fedrigoni and whether or not such services were related to supply of bank note paper to RBI and/or role of assessee therein;*
- (iv) Period of services rendered;*
- (v) amount received by LSS from Fedrigoni;*
- (vi) or any amount received by assessee at any time from LSS or in relation to transactions between LSS and Fedrigoni/RBI;*
- (vii) No circumstance available to lift corporate veil of LSS.*

14. Thus, even the new plea is based on assumptions and presumptions, for which complete facts are not on record, nor has been pointed out by Ld. DR.

15. In view of the above, references to aforesaid new company, viz. LSS are also based on pure assumptions, which are totally irrelevant and needs to be completely ignored.

16. Be that as it may, even otherwise, since the complete facts are not on record, the aforesaid additional plea is not permissible to be taken for the first time before the Tribunal."

DECISION

25. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as material referred to before us during the course of hearing. We have already discussed the facts and material herein above, however in a succinct manner the facts and issues relevant for adjudication of additions made in the present appeals are that the assessee had entered into an agreement

with a foreign entity, CMF on 25.03.2006 for rendering services for participation in the possible tenders for supplying currency notes to RBI and its subsidiaries. This agreement was valid up to 31.12.2007. Thereafter it was extended upto 31.12.2012. Till AY 2011-12, the assessee had shown its commission income received from Fedrigoni for carrying out operations in India, i.e. assisting CMF for supply of currency notes to RBI and its subsidiaries. The relevant figures of income shown by the assessee in various years starting from AYs 2008-09 to 2011-12 has already been incorporated above. From AY 2012-13, no income has been shown by the assessee for such activities. Admittedly, there was no agreement post 31.12.2012 and secondly, even after 01.04.2011 as discussed herein fore that there was no iota of evidence or any material information which could remotely prove that assessee received any money from CMF for any India operation. The entire premise of the AO is based on certain hypothetical presumption that even after the termination of the agreement or end of the agreement on 31.12.2012, assessee might have continued to render services for supply of currency notes which has not been shown in the return of income in India, albeit has diverted his income through certain alleged foreign entities abroad and now the income has been shown outside India. Even if such allegations are correct that assessee was having some kind of interest in these entities as discussed in the assessment order and appellate order, but there is not an iota of any evidence that these entities or the assessee had carried out any operation in India either for supply of currency notes or otherwise on or behalf of CMF or Fedrigoni. The Revenue has not brought anything on record that there was any

business connection with assessee in India for carrying out such activities or either RBI or the CMF has stated that any payment for supply of currency notes or rendering of any services was made to assessee post 01.04.2011 to AY 2017-18. The allegations made by the AO and the interpretation on which he has drawn his presumption after referring to certain foreign entities, has been duly explained by the ld. counsel as stated above which has not been rebutted before us nor has been found favour by the ld. CIT (A). Ld. CIT (A) has given a very categorical finding that no evidence has been found in the form of seized material or statement to prove that agreement of 2006 between CMF and assessee was extended beyond 31.12.2012 and beyond this period, CMF was under any obligation to share the profits with the assessee. Even in various information received through FTTR, not single information has been received that either Fedrigoni or CMF has given any money for their India operation for supply of currency notes to Assessee. This finding of ld. CIT (A) without any rebuttal or material information on record cannot be tinkered with. Accordingly, the finding of the ld. CIT (A) that after the assessee had become NRI, no income has arisen or accrued in India, i.e. after 01.04.2015 and, therefore, even in terms of section 9(1)(i) no income is taxable in the hands of the assessee is upheld.

26. In fact, the ld. CIT (A) has held that post 31.12.2012, the assumption made by the AO after the period 01.01.2013 is purely based on presumption that there might be continuation of terms and conditions of this agreement which was without any basis or evidences albeit on conjectures and surmises. The alleged money received by the assessee through various dubious entities during FYs 2015-16 &

2016-17 as alleged by the AO that assessee might have received money on account of share of profit from CMF in connection of its Indian activities is wholly erroneous and none of these informations or material found which he has been referred to by the ld. CIT DR or by the AO even remotely point out that through these dubious entities, assessee had carried out any activities in India and accordingly, independently also, we find that no income has been taxed in India from AYs 2013-14 to 2017-18.

27. Now, coming to the additions sustained or enhanced by the ld.CIT (A) in AY 2012-13, first of all, even though ld. CIT (A) had admitted that there is no incriminating material or document or any evidence either found during the course of search or even after the post search in the year that post 2012, any payment received by the assessee from CMF or any of its entities. Once it is an admitted fact then in the case of unabated assessment where the assessment has attained finality at the time of search, no addition can be made on presumption or estimate basis without any reference to any seized material. Therefore, entire addition/ enhancement made by the ld. CIT (A) has no legs to stand and the same is directed to be deleted in view of the judgment of **Hon'ble jurisdictional High Court in the cases of Kabul Chawla and Meeta Gutgutia** (supra).

28. In fact, this proposition that no addition can be made without any incriminating material would be applicable for AYs 2013-14, 2014-15 & 2015-16 also, therefore, on legal ground also, no addition can be made for these years.

28. Insofar as additions made in AYs 2016-17 and 2017-18 are concerned which are abated assessment and assessment of year of search, there is no evidence indicating that assessee had carried out any operation in India or has received any payment from any entity for business carried out in India. In so far as strong reliance made by the CIT DR to FTTR information as incorporated above, we find that, none of these informations even remotely suggest that assessee has earned or received any payment in any account for supply of currency paper notes from CMF or Fedrigoni entity for Indian supply. The observation and the information as supplied by the CIT DR has been rebutted by the ld. counsel for the assessee as incorporated above and from the perusal of the same, we find that there is nothing which can lead to any inference or the conclusion that the receipts from foreign companies were in relation to services rendered by the assessee to Fedrigoni in India. Thus, even the FTTR reference cannot be considered as material on record to support the case made out by the Assessing Officer, which goes to prove that his assessment of income was purely based on surmises and presumptions as noted above. Thus, not only the finding of the ld. CIT (A) is confirmed but the information supplied by the CIT DR has no correlation or effect so as to reverse the finding of the ld. CIT (A). Accordingly, the submissions of the ld. CIT DR are rejected and the order of the ld. CIT (A) is affirmed.

30. Thus, all the following additions made by the Assessing Officer in various assessment years which has been challenged by way of various grounds by both the parties are deleted:-

Assessment Year	Undisclosed income (C*141.62/157.65)
2012-13	19.79 Crs.
2013-14	4.65 Crs.
2014-15	26.57 Crs.
2015-16	45.12 Crs.
2016-17	20.19 Crs.
2017-18	25.30 Crs.
Total	141.62 Crs.

30. In the result, the appeals of the Revenue are dismissed as well as the appeals of the assessee are allowed.

30. Insofar as the grounds raised in the cross objections on the enhancement part, the same has already been allowed in favour of the assessee as same has been deleted. However, there are various other legal issues which have been raised in the cross objections, the same are not being discussed as no arguments have been made before us and same are dismissed as infructuous and are purely academic.

31. Assessee had also filed a petition for additional ground that in all the years, assessment years dated 31.12.2019 is bad in law, because the approval granted u/s 153D by the JCIT is without any application of mind and not in accordance with law. Since we have already deleted the additions on merits, therefore, we do not deem fit to deal with the legal ground raised by the ld. counsel for the assessee and same is held to be infructuous.

Order was pronounced in the open court on 9th day of March, 2022.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 09.03.2022 / TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.