आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 82/RPR/2017

CO. No. 02/RPR/2022

निर्धारण वर्ष / Assessment Year : 2008-09

The Income Tax Officer-1,
Raigarh (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Parmanand Gupta,
Alochan Agrawal, L/h. of Late
Shri Parmanand Gupta,
Prop. M/s. Balaji Handloom,
19/48, Palace Road, Raigarh (C.G.)

PAN : AFDPG4961L

.....प्रत्यर्थी / Respondent

Assessee by	:Shri R.B Doshi, AR
Revenue by	:Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख / Date of Hearing	: 26.07.2022
घोषणाकीतारीख / Date of Pronouncement	: 04.08.2022

आदेश/ ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the Revenue is directed against the order passed by the CIT(Appeals), Bilaspur, dated 30.11.2016, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 15.03.2016 for assessment year 2008-09. Also, the assessee is before us as a cross-objector. Before us the Revenue has assailed the impugned order on the following grounds of appeal:

> "1. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the addition of Rs.5,22,81,663/- made by the AO on account of unexplained cash deposits in the various bank accounts of the assessee ?
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> 2. Whether on the facts and circumstances of the case and on the points of the law Ld. CIT(A) was justified in concluding that addition of Rs. Rs.5.228 Crores was part of turnover of the assessee, as against the finding of the AO that the assessee has failed to provide names and address of the parties who had purchased yarn from him, thereby the assessee not being able to establish the genuineness and authenticity of the transactions of cash deposits in its various bank accounts?
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> 3. Whether on the facts and circumstances of the case and on the points of the law Ld. CIT(A) was justified in concluding that cash deposits in the bank accounts of the assessee represents the sale proceeds from various sundry debtors, as against the findings of the AO that the assessee has failed to establish the genuineness and authenticity of the cash deposits in the bank accounts of the assessee in spite of several opportunities?

4. Whether on the points of law and on facts and circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contradictory to the evidence on the record, as the Ld. CIT(A) has accepted the submission of the assessee that the alleged unexplained cash deposits in the bank accounts of the assessee are part of the assessee's turnover, which is factually incorrect, thereby rendering the decision, which is perverse?

5. Whether the Ld. CIT(A) has erred in law by holding the decision in favour of the assessee and against the revenue, though there is no nexus between the conclusion of the fact and primary fact upon which that conclusion is based?

6. Whether the Ld. CIT(A) has erred in law in drawing a conclusion which cannot be drawn by any reasonable person or authority, on the material and facts placed before it?

7. The order of the Ld. CIT(A) is erroneous both in law and on facts.

8. Any other ground that may be adduced at the time of hearing of appeal."

On the other hand the assessee as a cross-objector has raised the following objections :

"1. The assumption of jurisdiction by the AO u/s.147 is illegal inasmuch as reopening was resorted to without application of mind on the part of the A.O. Re-assessment proceedings are liable to be quashed. Initiation of re-assessment proceedings is illegal inasmuch as the failure on the part of the assessee, as required by the first proviso to sec.147, has not been brought out in the reasons recorded.

2. The cross objector reserves the right to add, amend or alter any of the ground/s of cross objection."

2. Succinctly stated, the assessee who is engaged in the business of trading of Kosa cloth & yarn and manufacturing of cloth for shirting and sarees under the name and style of M/s.

Balaji Handloom, had filed his return of income for the assessment year 2008-09 on 30.09.2018 declaring an income of Rs.4,96,950/-. The return of income filed by the assessee was initially processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. Original assessment was, thereafter, framed by the A.O vide his order passed u/s. 143(3), dated 18.06.2010 determining the income of the assessee at Rs.5,85,063/-.

3. Subsequently, on the basis of information received from the DDIT (Inv.)-III, Raipur regarding substantial amount of cash deposits in the bank accounts of the assessee that was followed by RTGS/transfers though clearing, the case of the assessee was reopened by the A.O u/s.147 of the Act. During the course of the re-assessment proceedings, it was observed by the A.O that there were cash deposits amounting to Rs. 5,22,81,663/- in the following bank accounts of the assessee:

(i) ICICI Bank Ltd.	Rs.2,63,10,772/-
(ii) ING Vysa Bank Ltd.	Rs. 47,88,660/-

(iii) Union Bank of India	Rs.1,14,55,181/-
(iv) State Bank of India	Rs. 97,27,050/-
Total	Rs.5,22,81,663/-

On being queried about the nature and sources of the aforesaid cash deposits, it was the claim of the assessee that the same were the cash sale proceeds which were deposited by the outstation based purchasers of yarn in his bank accounts. However, the assessee on being called upon to furnish the complete addresses of the parties who had deposited the impugned amount of cash sale proceeds expressed his inability to do so and came forth with only the locations of the parties concerned. Observing, that the assessee had failed to substantiate the nature and source of the cash deposits in his bank accounts on the basis of supporting documentary evidence, the A.O after rejecting his explanation held the entire amount of cash deposits of Rs. 5,22,81,663/- as unexplained cash credits u/s.68 of the Act. Accordingly, the A.O vide his order passed u/s.143(3) r.w.s.147, dated 15.03.2016 assessed the income of the assessee at Rs. 5,28,66,726/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Apropos, the assessment framed by the A.O u/s. 143(3) r.w.s. 147, dated 15.03.2016, the assessee assailed the same before the first appellate authority on two fold grounds, viz. (i). that the A.O had wrongly assumed jurisdiction and reopened his concluded assessment u/s.147 of the Act; and (ii) that even otherwise on merits the A.O had erred in re-characterizing the cash sale proceeds as unexplained cash credits u/s. 68 of the Act. In so far the challenge thrown by the assessee to the validity of the jurisdiction that was assumed by the A.O to reopen his case u/s.147 of the Act was concerned, the CIT(Appeals) not finding favour with the contentions advanced by the assessee dismissed the same. As regards the addition of the cash deposits of Rs. 5,22,81,663/- that was made by the A.O by treating the same as unexplained cash credits u/s.68 of the Act, it was observed by the CIT(Appeals) that the assessee who was an importer of yarn from China would receive the goods at Chennai from where his forwarding

agents as per his standing instructions would directly send the goods to the purchasers i.e, the weavers who were spread across the country. It was observed by the CIT(Appeals) that though the assessee because of beggaries of the occupation of the weavers may not be in a position to furnish their complete details as was sought by the AO, however, for the said standalone reason could not have justifiably recharacterized his duly accounted sale transactions as unexplained cash credits u/s. 68 of the Act. Accordingly, the CIT(Appeals) holding a conviction that the cash deposits in the bank accounts represented the sale proceeds of the assessee which were accounted by him in his books of account, thus, vacated the addition of Rs.5,22,81,663/- made by the A.O under Sec. 68 of the Act.

5. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. Before us, the Ld. Authorized Representative (for short 'AR') for the assessee assailed the validity of the jurisdiction that

was assumed by the A.O for reopening the case of the assessee u/s.147 of the Act. Adverting to the cross-objection filed by the assessee, it was submitted by the ld. AR that the same involved a delay of 1722 days. Elaborating on the reasons leading to the delay in filing the cross-objection, it was submitted by the ld. AR that the same was for the reason that the assessee (since deceased) in the course of the proceedings before the CIT(Appeals) was detected for cancer and thus, could not attend to his business/finance/tax matters. It was submitted by the ld. AR that the assessee had thereafter expired on 30.11.2018. It was submitted by the ld. AR that as Shri. Alochan Agrawal, the assessee's only son was new in the business and was not handling the tax matters earlier, thus, he had no knowledge about the order of the first appellate authority and the appeal filed by the department before the Tribunal. Apart from that, it was averred by the ld. AR that as the counsel who was pursuing the assessee's litigation in the appellate forums was not the regular counsel of the assessee, therefore, Shri. Alochan Agrawal, legal heir of the assessee had no occasion to learn

about his statutory right of filing a cross-objection before the tribunal. It was submitted by the ld. AR that it was only when he was engaged to appear before the tribunal for putting up an appearance in the present appeal filed by the department that he realized that the assessee had failed to assail the illegal assumption of jurisdiction by the AO for reopening his case under Sec. 147 of the Act by filing a cross-objection before the tribunal. It was fairly submitted by the ld. AR that taking cognizance of the aforesaid bonafide lapse on the part of the assessee in not objecting to the validity of the reopening of his case before the tribunal, he had advised Shri. Alochan Agrawal, L/heir of the deceased assessee to file the same with an application requesting for condonation of delay theein involved. Considering the reasons that had led to the aforesaid delay of 1722 days in filing the present cross-objection, it was submitted by the ld. AR that in light of the peculiarity of the facts the same may in all fairness be condoned. In order to fortify the facts as were stated before us, the ld. AR took us through the application filed by Shri. Alochan agrawal, L/heir of the

assessee a/w an affidavit that was filed by him in support thererof, as well as the medical reports of the assessee (since deceased). In support of his contention that a liberal approach be adopted and the delay involved in filing the cross-objection be condoned the ld AR had relied on the order of the Tribunal in the case of Shri. Nakoda Ispat Limited, ITA No. 109/BLP/2011, wherein the tribunal after referring to the judgments of the Hon'ble Supreme Court in the case of National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC) and Collector Land Acquisition vs. Mst. Katiji & Others, 167 ITR 471 (SC) had condoned a delay of 1498 days. Also, support was drawn by the ld. AR from the order of the ITAT, Delhi in the case of ITO Vs. Vishnu Impex Pvt. Ltd. (2015) 45 CCH 590 (Del), wherein a delay of 1297 days in filing of cross-objections by the assessee was condoned by the tribunal for the reason that the assessee's counsel had failed to give him a proper advise. Alternatively, it was submitted by the ld. AR that as by filing the present cross-objection he had only assailed the validity of jurisdiction that was assumed by the AO for reopening his case under Sec. 147

of the Act, which was purely a legal issue that could be adjudicated on the basis of facts available on record, therefore, the assessee even otherwise without filing a cross-objection was well within his right to support the order appealed by the Revenue by urging a legal issue which prima-facie went to the root of the jurisdiction that was assumed by the A.O for initiating the reassessment proceedings. In support of his aforesaid contention the ld. AR had relied on the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz &Ors. Vs. CIT & Ors. (2021) 436 ITR 616 (Bom).

7. Per contra, the ld. Departmental Representative (for short "DR") objected to the seeking of condonation of delay in filing of the cross-objection by the assessee

8. After having given a thoughtful consideration to the aforesaid contentions of the Ld. AR, we find substance in the same. Admittedly, it is a matter of fact that the assessee (since deceased) was in the course of the proceedings before the CIT(Appeals) diagnosed as suffering from cancer. Assessee had

thereafter expired on 20.02.2018. Considering the illness with which the assessee was struggling with during the period 23.02.2016 [date of order of the CIT(Appeals)] to 20.02.2018 (supra), the same in our considered view in itself is self-explanatory of the reason as to why the cross-objection could not be filed during the said period by the assessee. In so far the subsequent period is concerned i.e, 21.02.2018 (supra) to 23.03.2022 (date of filing of cross-objection), the same as stated by the ld. AR before us and by the assessee in his application/affidavit, is for two fold reasons, viz. (i). that Shri. Alochan Agrawal (only son of the deceased assessee) being new to the business was neither conversant with the proceedings pending before the tribunal nor with the intricacies involved in the procedure before the appellate forums; and (ii). that as the counsel who was looking after the appellate matters of the deceased assessee was different from the assessee's regular counsel who was unaware of the intricacies involved in the appeals before the appellate forums, therefore, for the said reason the L/heir of the assessee, viz. Shri. Alochan Agrawal

remained unaware of his statutory right of assailing the validity of the jurisdiction that was assumed by the AO for reopening the case of his father under Sec. 147 of the Act. Although a substantial period of delay is involved in filing of the cross-objection by the assessee (through L/heir), but considering the aforesaid peculiar set of reasons which had led to the same and do not smack of any malafide conduct or a lackadaisical approach of Shri. Alochan Agrawal, L/heir of the assessee, we are of the considered view that the delay of 1722 days, though substantial, in all fairness merits to be condoned. We, thus, in terms of our aforesaid observations condone the delay of 1722 days involved in filing of the present cross-objection by the L/heir of the assesssee. Before parting, we may herein observe, that as the assessee even otherwise by way of the present cross-objection is assailing the validity of the jurisdiction that was assumed by the AO for reopening his case u/s 147 of the Act, which being purely a legal issue that would not require looking any further beyond the record, therefore, the same being an issue which goes to the roots of the jurisdiction that was

assumed by the A.O for initiating the reassessment proceedings could have been raised by him in support of the order appealed by the department. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz & Ors. (supra), wherein the Hon'ble Court had observed that an assessee even otherwise without filing a cross-objection was well within his right to support the order appealed by the department by urging a legal issue which prima-facie went to the roots of the jurisdiction that was assumed by the A.O for initiating the reassessment proceedings. Be that as it may, we herein admit the objection raised by the assessee respondent/cross-objector as regards the validity of the jurisdiction assumed by the AO for reopening the case under Sec. 147 of the Act.

9. As the assessee respondent/cross-objector has challenged before us the validity of the jurisdiction assumed by the AO for reopening his case under Sec. 147 of the Act, therefore, we shall first deal with the same. Before us, the Ld. AR has assailed the

validity of the re-assessment proceedings on multiple grounds which are deliberated upon as herein under:

(A). <u>Reopening the case without application of mind by the A.O:</u>

10. At the very outset, it was the claim of the Ld. AR that the case of the assessee had been reopened by the AO de-hors any application of mind to the material as was there before him at the relevant point of time. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the A.O had merely acted upon the information that was received by him from the DDIT (inv.)-III, Raipur as regards the cash deposits in the bank accounts of the assessee and had reopened his case without any independent application of mind to the material/information as was there before him. On a perusal of the records, it transpires that the case of the assessee had been reopened by the AO u/s.147 of the Act for the following reasons:

> "Reasons u/s.148(2) of the I.T Act, 1961 for issue of notice u/s.148 of I.T Act, 1961.

> On the basis of information received from the DDIT (Inv.)-III, Raipur there was huge cash deposits in the bank accounts of the assessee through transfers, NEFT & RTGS modes during the financial year 2007-08. On perusal of copy of bank statements it was found that there were frequent cash deposits throughout the year. As stated by the Investigation Wing, the cash deposits made by the assessee could not be verified. Therefore, there are sufficient reasons to believe that substantial amount has remained to be assessed/taxed.
>
> I have, therefore, reason to believe that considerable amount has escaped assessment within the meaning of the provision of section 147 of the I T Act, 1961."

On a bare perusal of the aforesaid "reason to believe", we find that as stated by the Ld. AR, and rightly so, the case of the assessee was reopened by the A.O by merely referring to the information that was received by him from the DDIT(Inv.)-III, Raipur regarding huge cash deposits that were frequently made in the bank accounts of the assessee throughout the year under consideration, and there is no independent application of mind on his part qua the aforesaid information so received by him. As can safely be gathered from a perusal of the aforesaid reasons to believe, the A.O had merely referred to the information that was received by him from DDIT(Inv.)-III, Raipur, and observed, that there were sufficient reasons to believe that a substantial

amount had escaped assessment within the meaning of section 147 of the Act.

11. As per mandate of law, the A.O on the basis of the material available before him is obligated to record a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. However, in transpires that in the case before us, through the A.O had referred to the material/information but there is a clear absence of formation of a bonafide belief on his part that the income of the assessee chargeable to tax had escaped assessment within the meaning of section 147 of the Act. We would not hesitate to observe that a perusal of the "reasons to believe" reveals nothing but the reopening of the case of assessee on the basis of information received by the A.O from the DDIT(Inv.)-III, Raipur. Nothing is discernible from a perusal of the reasons to believe which would reveal any application of mind by the AO qua the material/information before him, on the basis of which he had arrived at a bonafide belief that the income of the assessee chargeable to tax had

escaped assessment u/s.147 of the Act. We though are not oblivious of the settled position of law that an A.O at the stage of reopening of a concluded assessment u/s. 147 of the Act is not required to conclusively prove escapement of income of the assessee from chargeability to tax, but the statutory obligation so cast upon him i.e. formation of bona-fide belief on the basis of material available before him that the income of the assessee chargeable to tax had escaped assessment cannot be lost sight of. Our aforesaid view is fortified by the order of a co-ordinate Bench of the Tribunal i.e. ITAT, C Bench, Mumbai in the case of Chetan Rajnikant Shah Vs. Income Tax Officer-24(1)-4 in ITA No.1948/Mum/2018 dated 22.02.2021. In its aforesaid order the Tribunal had quashed the reopening of the assessment, for the reason that there was failure on the part of the assessee to arrive at an independent and a bonafide belief that the income of the assessee chargeable to tax had escaped assessment, observing as under:

> "8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As the assessee has assailed the

validity of the jurisdiction assumed by the A.O for reopening his case under Sec. 147 of the Act thus, we shall first deal with the same. On a perusal of the "reasons to believe" stated to have been recorded on 19th March, 2014 on the basis of which the case of the assessee was reopened u/s 147 of the Act, the same, as conveyed to the assessee by the A.O vide his letter dated 21st January, 2015 read as under:

> "Information was received vide letter No. DGIT(Inv.)/Information/P/2012-13 dated 07th March, 2014 in respect of beneficiaries of Accommodation Entries in the nature of Sales, Unsecured Loans and Share Application Money issued by the Group of Companies controlled and managed by Praveen Kumar Jain.
>
> The information contains specific details of the Transactions and the Name & Address and PAN of the beneficiaries along with the names of the Companies controlled and managed by Praveen Kumar Jain giving the Accommodation entries.
>
> As per the said information, it is seen the Assessee, Chetan Rajnikanth Shah, Prop. Chat Impex is a beneficiary of the said Accommodation Entries given by M/s Natasha Enterprises for Rs. 50 Lacs on 15.03.2007 and by M/s Mohit International for Rs. 50 Lacs on 15.03.2007.
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> Therefore, I have reasons to believe that income in respect of the said Accommodation Entries had escaped assessment for A.Y 2007-08, within the meaning of section 147 of the IT Act and as the same needs to be brought to tax the Assessment for A.Y 2007-08 needs to be reopened by issue of Notice u/s 148. Accordingly Notice u/s 148 issued.
>
> Yours faithfully
> Sd/-
> (Rita G. Tolani)
> Income-tax Officer-24(1)(4), Mumbai"

On a perusal of the aforesaid reasons to believe we find that though the A.O had referred to the material/information on the basis of which the case of the assessee was sought to be reopened under Sec. 147 of the Act i.e the information received from the DGIT(Inv.), Mumbai, but then there is nothing discernible therefrom on the basis of which it could be gathered that there was any independent formation of a bonafide belief by the A.O that the income of the assessee chargeable to tax had escaped assessment. All that can be gathered from the aforesaid "reasons to believe" is that the A.O by merely referring to the information received from the DGIT(Inv.), Mumbai, wherein it was conveyed that the assessee was a beneficiary of the accommodation entries given by two concerns, had observed, that he had a reason to believe that the income of the assessee in respect of such accommodation entries had escaped assessment. Although, the A.O had at the outset of his reasons observed that information was received from the DGIT(Inv.), Mumbai in respect of accommodation entries in the nature of sales, unsecured loans and share application money issued by the group companies controlled and managed by Shri Praveen Kumar Jain, however, he had not even done the bare minimum by pointing out the nature of the impugned accommodation entries that

were allegedly stated to have been received by the assessee as a beneficiary. On a careful perusal of the "reasons to believe", it can safely be gathered that the A.O had merely referred to the information that was received by him from the DGIT(Inv.), Mumbai and had dispensed with the statutory obligation that was cast upon him as regards formation of an independent and a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. As observed by us hereinabove, the A.O by not even referring to the nature of the accommodation entries i.e as to whether they were accommodation entries in the nature of sales or unsecured loans or share application money, which as per the impugned information shared by the DGIT(Inv.), Mumbai were stated to have been received by the assessee as a beneficiary from Shri. Praveen Kumar Jain thus, clearly reveals that he had failed to apply his mind to the material on record to arrive a bonafide reason to believe that the income of the assessee chargeable to tax had escaped assessment. In sum and substance, a perusal of the aforesaid "reasons to believe" though reveals a reference of the material/information received by the A.O from the DGIT(Inv.), Mumbai on the basis of which the case of the assessee was sought to be reopened, but at the same time it is witnessed by a non-application of mind and failure to arrive at an independent and bonafide belief on the part of the A.O that the income of the assessee chargeable to tax had escaped assessment. Although, we are not oblivious ofthe fact that an A.O at the stage of recording the reasons to believe is not required to conclusively establish that the income of the assessee chargeable to tax had escaped assessment, but then, in the case before us we find that the A.O has not even recorded a satisfaction that as per him a case has been made out for issuing a notice under Sec. 148 of the Act. In our considered view, when the basic requirement that A.O must apply his mind to the material on record in order to have reasons to believe that the income of the assessee chargeable to tax had escaped assessment is found amiss, the reopening of the assessment cannot be held to be justified. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (Delhi). In the aforesaid case, the Hon"ble High Court observed that the A.O had proceeded to send a notice u/s 147/148 of the Act solely on the basis of information received from the DIT(Inv.). It was noticed by the High Court that after writing about the nature of the impugned accommodation entry and without mentioning the nature of transaction which was effected for alleged accommodation entry as well as dispensing with the date of recording of the reasons, the A.O, without any further verification, examination or any other exercise had jumped to the conclusion that the assessee had received accommodation entries. The Hon'ble High Court in the backdrop of the facts involved in the case before them observed that as the crucial link between the information made available by the DIT (Investigation) to the A.O and the formation of belief was absent, the reassessment proceeding initiated against the assessee was rightly quashed by the Tribunal. The High Court while concluding as hereinabove observed that while the report of the Investigation Wing might constitute the material on the basis of which the A.O forms the reasons to believe, but the process of arriving at such satisfaction/belief cannot be a mere repetition of the report of the Investigation wing. As observed by the Hon'ble High Court, the reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that the income of the assessee chargeable to tax had escaped assessment. Also, a similar viewwas earlier taken by the Hon'ble High Court of Delhi in the case of PCIT Vs. G & G Pharma India Ltd. (2016) 384 ITR 147 (Del). In the case before the Hon'ble High Court, it was

observed that the A.O in his reasons to believe after setting out four entries which were stated to have been received by the assessee on a single date i.e 10th February, 2003 from four entities which were termed as accommodation entries, which information was received from the Directorate of Investigation, had therein stated : "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." In the backdrop of the aforesaid facts, it was observed by the Hon'ble High Court that it could not be gathered that as to whether the A.O had applied his mind to the material that he talks about since he did not describe what those material was. Observing, that without forming a prima facie opinion, on the basis of the aforesaid material, it was not possible for the A.O to have simply concluded that it was evident that the assessee company had introduced its own unaccounted money in its bank by way of accommodation entries. Accordingly, the High Court was of the view that as the basic requirement that the A.O must apply his mind to the material in order to have reasons to believe that the income of the assessee had escaped assessment was missing, the reopening of the assessment was not justified. Further, we find that the Hon'ble High Court of Delhi in the case of PCIT Vs. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (Del), relying on its aforesaid order in the case of Meenakshi Overseas Pvt. Ltd. (supra) had observed, that as the A.O in the case before them had merely acted upon the information received from the Investigation Wing without undertaking any further enquiry on his part thus, the link between the tangible material and the formation of the reasons to believe that the income of the assessee had escaped assessment was not discernible therefrom and accordingly the reopening of the assessment u/s 147 was to be held as bad in law. Further, in the case of CIT Vs. SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), it was inter alia observed by theHon'ble High Court that in the case before them the A.O had received information from the Dy. Director of IT (Inv.), Gurgaon that the assessee had raised a bogus claim of having earned long-term capital gains on account of sale/purchase of shares by obtaining entries. After deliberating on the facts, it was inter alia observed by the Hon'ble High Court that a mere reference to the information received from the Dy. Director of IT (Inv.) cannot constitute valid reasons for initiating reassessment proceedings in the absence of anything to show that the A.O had independently applied his mind to arrive at a belief that income has escaped assessment. Also in the case of CIT Vs. Kamdhenu Steel & Alloys Ltd. &Ors. (2014) 361 ITR 220 (Del), it was observed by the High Court that where the A.O had acted mechanically on the information supplied by the Directorate of IT(Inv.) about the alleged bogus/ accommodation entries provided by certain individuals/companies without applying his own mind, he was not justified in invoking jurisdiction under Sec. 147.

9. As observed by us at length hereinabove, the A.O in his „reasons to believe" in the case of the assessee before us had merely referred to the information that was received by him from the DGIT(Inv.), Mumbai that the assessee as a beneficiary had received accommodation entries from two concerns, and dispensing with even the bare minimum requirement of pointing out the nature of the impugned accommodation entries i.e as to whether they were accommodation entries in the nature of sales or unsecured loans or share application money, on the basis of vague and scanty information and without any further verification, examination or any other exercise had jumped to the conclusion that the income of the assessee in respect of the accommodation entries had escaped assessment for the year in

> question. Accordingly, in the backdrop of the aforesaid factual matrix it can safely be held that the A.O had blatantly failed to apply his mind to the material available on record for forming a belief that the income of the assessee had escaped assessment. We, thus, are of the considered view that as the A.O had acted mechanically on the information supplied by the Directorate ofIncome-tax(Inv.) that the assessee was a beneficiary of the alleged bogus/accommodation entries provided by the aforesaid entry provider, viz. Shri Praveen Kumar Jain, and had failed to apply his mind to the material available on his record, the reopening of the assessment by him u/s 147 of the Act could not be held to be justified.
>
> 10. On the basis of our aforesaid observations, we are of a strong conviction that as the A.O had failed to independently apply his mind to the "material" available on his record and mechanically acting on the information supplied by the Directorate of Income-tax (Inv.) had reopened the case of the asseessee u/s 147 of the Act, the same, thus, cannot be sustained and is liable to be vacated, Accordingly, in the absence of valid assumption of jurisdiction by the A.O u/s 147 of the Act, the consequential assessment framed by him u/s 143(3) r.w.s 147, dated 29.03.2015 cannot be sustained and is quashed."

12. As the A.O in the case before us had clearly failed to apply his mind to the material available before him, and had reopened the case of the assessee by merely referring to the information that was received by him from the DDIT (Inv.)-III, Raipur, therefore, we concur with the claim of the Ld. AR that the A.O had wrongly assumed jurisdiction for dislodging the concluded assessment of the assessee without discharging the statutory obligation that was cast upon him for validly reopening the case of the assessee u/s.147 of the Act.

(B) Reopening of the assessment in absence of any failure on the part of the assessee in fully and truly disclosing all <u>material facts necessary for assessment :</u>-

13. Admittedly, it is a matter of fact borne from record that the original assessment in the case of the assessee was framed by the A.O u/s. 143(3) of the Act, dated 18.06.2010. Notice u/s.148 of the Act was thereafter issued by the A.O on 23.03.2015. Accordingly, as the case of the assessee was reopened beyond a period of 4 years from the end of the relevant assessment year, therefore, as claimed by the Ld. AR, and rightly so, as per the "first proviso" to section 147 of the Act the case could have been validly reopened only where the income chargeable to tax had escaped assessment for the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. However, a perusal of the aforesaid "reasons to believe" reveals that the case of the assessee was reopened for the reason that there were substantial cash deposits in his bank account which could not be substantiated by the assessee. As the case of the assessee had not been reopened for the reason that certain income chargeable to tax had escaped assessment by reason of the

failure on the part of the assessee to disclose fully and truly all material facts that were necessary for his assessment, therefore, there is substance in the claim of the Ld. AR that as per the mandate of the "first proviso" to section 147 the concluded assessment of the assessee could not have been validly reopened beyond a period of four years from the end of the relevant assessment year. Our aforesaid view is supported by the judgments of the Hon'ble High Court of Delhi in the case of Pr. CIT Vs. M/s. Superior Films Pvt. Ltd., ITA No.153 of 2020 dated 19.07.2021 (Del) and in the case of CIT Vs. Viniyas Finance & Investment Pvt. Ltd., ITA No.271 of 2012, dated 11.02.2013 (Del). Also, a similar view had been taken by the Hon'ble High Court of Bombay in the case of Ananta Landmark Pvt Ltd vs Deputy Commissioner Of Income Tax, WP No.2814 of 2019 dated 14.09.2021 (Bom).

14. At this stage, we may herein observe that the Hon'ble High Court of Delhi in the case of Haryana Acrylic Manufacturing Company Vs. CIT (2009) 308 ITR 38 (Del. HC), had observed,

that in any case where the reasons did not even contain an allegation that the escapement of income had occasioned due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, then, the A.O would be barred from reopening the assessment already framed. Apart from that, we find that the Hon'ble Supreme Court in the case of New Delhi Television Ltd. vs Deputy Commissioner of Income Tax, (2020) 116 Taxmann.com 151 (SC) had, inter alia, held that though the assessee is obligated to disclose the "primary facts", but it is neither required to disclose the "secondary facts" nor required to give any assistance to the A.O by disclosure of the other facts and it is for the A.O to decide what inferences are to be drawn from the facts before him. It was categorically observed by the Hon'ble Apex Court that the extended period of limitation for initiating proceedings under the "first proviso" to Section 147 of the Act would only get triggered where the assessee had failed to disclose fully and truly all material facts necessary for its assessment.

15. As the assessee in the case before us had disclosed all material facts necessary for its assessment, therefore, we are of the considered view that the A.O as per the limitation provided in the "first proviso" to Sec. 147 was divested of his jurisdiction for reopening the concluded assessment of the assessee beyond a period of four years from the end of the relevant assessment year i.e, AY 2008-09. As in the case before us the original assessment had been framed by the A.O vide his order passed u/s.143(3), dated 18.06.2010 therefore, in absence of any allegation on the part of the department that the income of the assessee chargeable to tax had escaped assessment for reason of failure on his part to disclose fully and truly all material facts necessary for assessment, the A.O as per the mandate of the 'first proviso' to Sec. 147 of the Act could not have assumed jurisdiction for reopening the concluded assessment of the assessee beyond a period of four years from the end of the assessment year i.e, beyond 31.03.2013. We, thus, concur with the claim of the Ld. AR that as the A.O had acted in defiance of the "first proviso" to Sec. 147 of the Act and had wrongly

assumed jurisdiction and reopened the case of the assessee beyond a period of 4 years from the end of the relevant assessment year, therefore, the assessment order so passed by him on the said count too cannot be sustained and is liable to be struck down.

(C). Reassessment on the basis of "Change of opinion" :-

16. It is the claim of the Ld. AR that as the concluded assessment of the assessee had been reopened by the AO on the basis of a mere "change of opinion" i.e, on the basis of the same set of facts as were there before his predecessor while framing the original assessment u/s.143(3), dated 18.06.2010, therefore, the same as per settled position of law cannot be sustained and is liable to be struck down on the said count. In order to support his aforesaid claim the Ld. AR had relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC).

17. After having given a thoughtful consideration to the issue before us, we find substance in the aforesaid claim of the Ld.

AR. On a perusal of "reasons to believe" on the basis of which the case of the assessee had been reopened by the A.O u/s.147 of the Act, it transpires that the same is not based on any fresh tangible material coming to the notice of the A.O after the culmination of the original assessment proceedings vide his order passed u/s. 143(3), dated 18.06.2010, but on the basis of the same set of facts as were there before his predecessor while framing the original assessment. On a perusal of the "reasons to believe", it can safely be gathered that the case of the assessee was reopened by the AO on the basis of information received from the DDIT (Inv.)-II, Raipur that certain cash deposits in the bank accounts of the assessee could not be verified. In our considered view, not only the aforesaid details of cash deposits in the bank accounts of the assessee were very much there before the A.O in the course of the original assessment proceedings, but in fact the same had duly been considered and accepted by him as the duly accounted sale proceeds of the assessee. On the basis of our aforesaid deliberations, we are of a strong conviction, that as stated by the Ld. AR, and rightly so,

as the case of the assessee had been reopened with a purpose to re-visit the assessment on the basis of a mere change of opinion, which we are afraid is not permissible in the eyes of law, thus, the assessment framed by the AO is liable to be struck down for want of jurisdiction on his part on the said count. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC). Hon'ble Apex Court in its aforesaid order, had held, that the case of an assessee cannot be reopened on the basis of a mere "change of opinion", by observing as under:-

> 'On going through the changes, quoted above, made to s. 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the AO to make a back assessment, but in s. 147 of the Act (w.e.f. 1st April, 1989), they are given a go by and only one condition has remained, viz., that where the AO has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1st April, 1989, power to reopen is much wider. However, one needs to ITA No.1212/Mum/2019 A.Y. 2012-13 M/s Medley Pharmaceuticals Ltd. Vs. DCIT-10(2)(2) give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the

> concept of "change of opinion" as an in-built test to check abuse of power by the AO. Hence, after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to s. 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in s. 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the AO. We quote hereinbelow the relevant portion of Circular No. 549, dt. 31st Oct., 1989 [(1990) 82 CTR (St) 1], which reads as follows:
>
> "7.2 Amendment made by the Amending Act, 1989, to re-introduce the expression „reason to believe" in s. 147.--A number of representations were received against the omission of the words „reason to believe" from s. 147 and their substitution by the „opinion" of the AO. It was pointed out that the meaning of the expression, „reason to believe" had been explained in a number of Court rulings in the past and was well settled and its omission from s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s. 147 to reintroduce the expression „has reason to believe" in place of the words „for reasons to be recorded by him in writing, is of the opinion". Other provisions of the new s. 147, however, remain the same."

Further, the Hon'ble High Court of Bombay in the case of Asteroids Trading & Investment P. Ltd. Vs. DCIT (2009) 308 ITR 190 (Bom), had held, that an A.O is precluded from assuming jurisdiction to initiate reassessment proceedings on the basis of a "change of opinion", observing as under:

> "8. Perusal of the record shows that the petitioner had made full disclosure necessary for claiming deduction under s. 80M. The AO after applying his mind to the relevant records had made a specific order allowing the deduction. A perusal of the record shows that now respondent No. 1 proposes to reopen the assessment because according to him deduction under s. 80M was wrongly allowed, and, therefore, he was of the opinion

> that the income has ITA No.1212/Mum/2019 A.Y. 2012-13 M/s Medley Pharmaceuticals Ltd. Vs. DCIT-10(2)(2) escaped assessment. Though, in the notice respondent No. 1 has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of forming of opinion by respondent No. 1, nothing new has happened and there is no change of law, no new material has come on record, no information has been received. It is merely a fresh application of mind by the same officer to the same set of facts. Thus, it is a case of mere change of opinion, which, in our opinion, does not provide jurisdiction to respondent No. 1 to initiate proceedings under s. 148 of the Act. It can now be taken as a settled law, because of a series of judgments of various High Courts and the Supreme Court, which have been referred to in the judgment of the Full Bench of the Delhi High Court in the case of Kelvinator of India Ltd. (supra) referred to above, that under s. 147 assessment cannot be reopened on a mere change of opinion."

We further find that the Hon'ble High Court of Bombay in the case of Asian Paints Ltd. Vs. DCIT (2008) 308 ITR 195 (Bom) had observed, that as no new information /material was received by the A.O, therefore, the fresh application of mind by him to the same set of facts and material which were available on record at the time of framing of the assessment, but had inadvertently remained omitted to be considered would tantamount to review of order which is not permissible as per law, and had held as under:

> "10. It is further to be seen that the legislature has not conferred power on the AO to review its own order. Therefore, the power under s. 147 cannot be used to review the order. In the present case, though the AO has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of formation of opinion by the AO, nothing new has happened, therefore, no new material has come on record, no new information has been received; it is merely a fresh application of mind by the same AO to the same

> set of facts and the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion. The Full Bench of the Delhi High Court in its judgment in the case of Kelvinator (supra) referred to above, has taken a clear view that reopening of assessment under s. 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under s. 148".

Further, the Hon'ble High Court of Bombay in the case of ICICI Prudential Life Insurance Co. Ltd. Vs. ACIT (2010) 325 ITR 471 (Bom), after relying on the judgment of the Hon'ble Supreme Court in the case of Kelvinator of India (supra), had held as under:

> "23. Though the power to reopen an assessment within a period of four years of the expiry of the relevant assessment year is wide, it is still structured by the existence of a reason to believe that income chargeable to tax has escaped assessment. The Supreme Court, in a recent judgment in Kelvinator of India Ltd. (supra) while drawing upon the legislative history of s. 147 held that the expression „reason to believe" needs to be given a schematic interpretation in order to ensure against an arbitrary exercise of power by the AO. The judgment of the Supreme Court emphasises that the power to reopen an assessment is not akin to a power to review the order of assessment and a mere change of opinion would not justify a recourse to the power under s. 147. Unless the AO has tangible material to reopen an assessment, the power cannot be held to be validly exercised. The Supreme Court has held thus :
>
> "...Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words „reason to believe" failing which we are afraid s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of „mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of „change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review

> would take place. One must treat the concept of „change of opinion" as an inbuilt test to check abuse of power by the AO. Hence, after 1st April, 1989, AO has power to reopen, provided there is „tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a link with the formation of the belief."
>
> 24. In the present case, for all the assessment years in question, and a fortiorari for asst. yr. 2004-05, what the AO has purported to do is to reopen the assessment on the basis of a mere change of opinion. That the AO had no tangible material is evident from the circumstance that the reasons which have been disclosed contain a reference to the same basis, namely the existence of a nil surplus/deficit in Form 1 which was drawn to the attention of and was present to the mind of the AO during the assessment proceedings under s. 143(3). Consequently, it is evident that there is an absence of tangible material before the AO".

Also, the Hon' ble High Court of Bombay in the case of Aventis Pharma Ltd. Vs. Asst. CIT (2010) 323 ITR 570 (Bom), reiterating its aforesaid view that reassessment proceedings cannot be permitted on the basis of a "Change of opinion", had held as under:-

> "There is merit in the submission which has been urged on behalf of the assessee that there was no tangible material before the AO on the basis of which the assessment could have been reopened and what is sought to be done is to propose a reassessment on the basis of a mere change of opinion. This, in view of the settled position of law is impermissible. No tangible material is shown on the basis of which the assessment is sought to be ITA No.1212/Mum/2019 A.Y. 2012-13 M/s Medley Pharmaceuticals Ltd. Vs. DCIT-10(2)(2) reopened. In the absence of tangible material, what the AO has done while reopening the assessment is only to change the opinion which was formed earlier on the allowability of the deduction. The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power. There is no tangible material in the present case.

At this stage, we may herein observe, that as per the mandate of law even where a concluded assessment is sought to be reopened by the A.O within a period of 4 years from the end of the relevant assessment year, it is must that the A.O has fresh material or information with him that had led to the formation of belief on his part that the income of the assessee chargeable to tax has escaped assessment. Our aforesaid view is fortified by the judgments of the Hon'ble High Court of Bombay in the case of NYK Lime (India) Ltd. Vs. DCIT (No.2) [2012] 346 ITR 361 (Bom) and Purity Tech Textile Pvt. Ltd. Vs. ACIT &Anr. [2010] 325 ITR 459 (Bom).

18. We, thus, in the backdrop of our aforesaid multi-facet observations qua the invalid assumption of jurisdiction by the AO for reopening the concluded assessment of the assessee, quash the assessment framed by him vide his order passed u/ss. 143(3)/147 of the Act, dated 15.03.2016 for want of valid assumption of jurisdiction.

19. Although we have quashed the assessment framed by the A.O for want of valid assumption of jurisdiction on his part, however, for the sake of completeness, we shall now deal with the claim of the Revenue that the CIT(Appeals) had erred in law and the facts of the case in vacating the addition of Rs.5,22,81,663/- made by the A.O u/s.68 of the Act.

20. As observed by us hereinabove, the A.O had acted upon the information that was received from DDIT (Inv.)-II, Raipur and called upon the assessee to put forth an explanation as regards the nature and sources of cash deposits of Rs. 5,22,81,663/- in his bank accounts during the year under consideration. Although, it was the claim of the assessee that the cash deposits in question represented the sale proceeds of yarn, however, the same was rejected by the A.O for the reason that the assessee had failed to place on record the complete names of the purchasers a/w their addresses.

21. On appeal, the CIT(Appeals) was of the view that though it was an admitted fact that the assessee had imported silk yarn

from China and sold the same to the various weavers who were spread across the country, but on account of beggaries of their occupation could not furnish their complete contact details, however, for the said standalone reason the AO could not have justifiably recharacterized the aforesaid amount of duly accounted sale proceeds that were deposited by the outstation based purchasers in the bank accounts of the assessee, as an unexplained cash credit u/s.68 of the Act. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:

> "Decision- I have considered the rival submission of both the parties. The assessee imports the silk from China and received the import items at Chennai and as per standing instruction the forwarding agent at Chennai despatches the goods on the destinations. From the facilitation counter the weavers deposit the cash and received the delivery of the silk, so as to work upon the yarn. He has furnished the import evidence and payment of custom duty. He had furnished the cash book and sales account.
>
> He had furnished the invoices issued in the names of various persons as mentioned by the learned AR. I am not able to convince myself with the findings of the learned AO because he had made addition of Rs.5.228 crores which was part of turnover of the assessee. The inability of the assessee to furnish the names of the parties who had purchased the yarn from him can be understood but the basic fact should not have been forgotten by the AO that he should also have tried to confirm at least from sales account viz-a-viz the bank account of the assessee. After import of the silk yarn assessee has not consume the whole imported silk. He had sold to various weavers and they may not be in the position to furnish the details of contact because of beggaries of the occupation. In my considered view the deposits in the bank appearing as HEFT and RTGS and cash represent the sale proceeds from various sundry debtors and the same is

> reflected in the sales account. The addition made by the AO is hereby-s deleted. The ground of appeal is allowed. (Relief Rs. 522,81,663/-)"

After having given a thoughtful consideration to the aforesaid observation of the CIT(Appeals), we find no reason to take a different view. At this stage, we may herein observe that it is a matter of fact borne from record that the assessee had duly accounted for the aforesaid amount of Rs.5,22,81,663/- as his sale proceeds for the year under consideration. As observed by the CIT(Appeals), it is a matter of fact borne from record that the assessee had imported silk yarn from China, which, thereafter, had been sold to the various weavers etc. who were spread across the country. Although the A.O had dubbed the aforesaid amount of Rs.5,22,81,663/- as unexplained cash credits u/s.68 of the Act, however, we find that at the same time he had accepted the sales as were duly accounted by the assessee in his books of account. In sum and substance, though the A.O had on the one hand accepted that the amounts in question were the sale proceeds that stood credited in the books of account of the assessee and had brought the profit resulting

therefrom as disclosed by the assessee to tax in his hand, but at the same time had held the said amounts as unexplained cash credits within the meaning of section 68 of the Act. Apart from that, the re-characterization of the duly accounted sales of the assessee which were earlier accepted by the AO in the original assessment that was framed by him vide his order passed under Sec. 143(3), dated 18.06.2010, without rejecting his books of accounts under Sec. 145(3) of the Act is beyond comprehension. In sum and substance, the recharacterisation of the duly accounted cash sales of the assessee as unexplained cash credits u/s 68 by the AO without rejection of the books of account of the assessee u/s 145(3) of the Act is beyond comprehension. As stated by the ld. AR, and rightly so, the acceptance of the cash sales as disclosed by the assessee a/w simultaneous re-characterization of the same as unexplained cash credits u/s 68 had clearly subjected the assessee to a double tax jeopardy.

22. Apart from that, we find substance in the claim of the ld. AR that now when in the cases of the assessee for the subsequent years i.e AY 2009-10, AY 2010-11, AY 2013-14 and AY 2014-15, which too were reopened for the same reasons that were communicated to the AO by the DDIT (Inv.)-II, Raipur, no adverse inferences have been drawn, therefore, an inconsistent approach could not have justifiably been adopted for the year under consideration. On a perusal of the respective orders passed by the AO under Sec. 147 rws 143(3)/144B of the Act for the aforementioned succeeding years i.e, AY 2009-10, AY 2010-11, AY 2013-14 and AY 2014-15, we find that the AO had accepted the claim of the assessee that the cash deposits in his bank accounts were sourced out of the duly accounted cash sale proceeds. As the facts and the issue involved in the aforementioned succeeding years remains the same as are involved in the case of the assessee before us, therefore, we find no justification on the part of the department in adopting an inconsistent approach. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of

Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC). We, thus, in terms of our aforesaid observations finding no infirmity in the deletion of the addition of Rs.5,22,81,663/- made by the AO u/s 68 of the Act, uphold his well reasoned order. The **Grounds of appeal No(s). 1 to 6** are dismissed.

23. **Ground of appeal No.(s) 7 and 8** being general in nature are dismissed as not pressed.

24. In the combined result, appeal of the Revenue is dismissed while for the cross-objection filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 04th day of August, 2022.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANTMEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 04th August, 2022
SB

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur(C.G)
4. The Pr. CIT, Bilaspur (C.G)

5.विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.

6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	26.07.2022	Sr.PS/PS
2	Draft placed before author	26.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		