IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER&

SHRI RAHUL CHOUDHARY, JUDICIAL MEMBER

ITA No. 6126/Mum/2019

(A.Y. 2008-09)

ITA No. 6127/Mum/2019

(A.Y. 2009-10)

The Deputy Commissioner of Income Tax, CC – 7(3), Room No. 655, Aaykar Bhavan, M. K. Road, Mumbai – 400020.	Vs.	Bhawna Computers Pvt Ltd, 1301,13th Level, Lotus Trade Centre, New Link Road, Near D. N. Nagar Metro Station, Andheri (West), Mumbai
	PAN No: AACCB3405F	
Appellant	…	Respondent

ITA No. 6401/Mum/2019

(A.Y. 2009-10)

ITA No. 6402/Mum/2019

(A.Y. 2008-09)

Bhawna Computers Pvt Ltd, 1301,13th Level, Lotus Trade Centre, New Link Road, Near D. N. Nagar Metro Station, Andheri (West), Mumbai	Vs.	The Deputy Commissioner of Income Tax, CC – 7(3), Room No. 655, Aaykar Bhavan, M. K. Road, Mumbai – 400 020.
PAN No: AACCB3405F		
Appellant	…	Respondent

Appellant by :	CA Rushabh Mehta
Respondent by :	Samuel Pitta, Sr. AR

Date of Hearing:	16.06.2023
Date of Pronouncement:	14.09.2023

1. This is the Bunch of 4 cross appeals for A.Y. 2008-09 and 2009-10. Appeals are preferred against Appellate orders passed by the ld. CIT (A)-49, Mumbai [The ld CIT (A)] on 30.07.2019 for both Assessment Years. By these appellate order appeals filed by the assessee against assessment order passed by the Deputy Commissioner of Income tax CC-7/3 , Mumbai [The Ld. AO] on 29/3/2016 and on 30-12-2016 for AY 2008-09 and 2009-10 respectively were partly allowed. Both the parties are aggrieved and therefore these cross appeals for both the years.

A.Y. 2008-09

2. The grounds of appeal raised by the Ld. Ld. AO in ITA no. 6126/Mum/2019 are as under:-

1. *"On facts and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of Rs. 7,49,50,000/- made by the AO on account of unexplained cash credit u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the assessee received share application money from those entities, who were providing accommodation entries.*
2. *"On the fact and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of Rs. 7,49,50,000/- made by the AO on account of unexplained cash credit u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the Hon'ble Supreme Court in the case Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) has held genuineness could validity be tested on the*

ground or principle of preponderance of human possibilities which form a valid ground or parameter for determining the genuineness."

3. Assessee in ITA no. 6402/Mum/2019 on the following grounds:-

1. *On facts and circumstances of the case, the assessment order passed u/s. 143(3) r.w.s. 147 of the Act is void ab initio; invalid, bad in law and grossly in violation of principles of natural justice.*
2. *(a) The ld. CIT(A) erred in facts and law in confirming the addition of Rs. 7,59,00,000/- u/s. 68 of the Act in respect of share application received from certain companies as unexplained cash credit on her own surmises and conjectures.*
   (b) The ld. CIT(A) erred in facts and law in not appreciating that assessee has fully discharged its onus casted u/s. 68 of the Act and nothing adverse was brought on record by the ld. Assessing Officer in making said additions
   (c) The ld. CIT (A) also failed to appreciate that the statements of third parties relied upon ought to have been confronted to the assessee and backed by corroborative evidences before making the additions.
3. *Each of the above Grounds of Appeals an independent and without prejudice to one another.*
4. *Your appellant craves leave to add, amend, alter or drop all or any of the above grounds of appeal.*

4. Brief facts of the case are that :-

i. Assessee is a company engaged in the business of `builders and developers. It got itself converted in to a Limited Liability partnership in the name of Bhavna Computers LLP under the Limited Liability Partnership Act 2012 with effect from 22/03/2016.

ii. For AY 2008-09, Assessee filed its return of income on 22/09/2008 showing income of Rs. 18858/-. ROI was processed u/s 143 (1) of The Act. Thus, no scrutiny assessment took place for this year.

iii. Subsequently Assessment of the assessee was reopened by issuing the notice u/s 148 rws 147 of the Act for the reason that assessee has obtained share application money of Rs 150850000/- from companies based out of Kolkata. Those companies were operated by the alleged accommodation entry providers one Mr. Pradeep Poddar and Mr. Anand Sharma as per their own statement. Thus, notice u/s 148 of the Act was issued on 25/03/2015. Notice u/s 142 (1) of The Act was also issued on 4/3/2016.

iv. Prior to making assessment for AY 2008-09, LD AO also issued a notice u/s 147 of the Act in the name of Bhawna Computers LLP [Formerly known as Bhawna Computers Pvt Ltd]. Facts show that Bhawna Computers Pvt Limited converted in to Limited Liability partnership on 22/03/2016. Thus, Bhawna Computers Pvt. Ltd did not exist after 22/3/2016.

v. As Assessee failed to prove nature and source of cash credit of Rs 15,08,50,000/-, addition u/s 68 of the Act was made. .Assessment order was passed u/s 143 (3) rws 147 of the Act on 29/03/2016 in the name of Bhavna Computers Pvt Limited. Total income was computed at Rs. 15,08,68,860/-.

vi. Assessee aggrieved by the assessment order challenged it before the LD CIT (A).

vii. After considering the detailed submissions and documents placed on record and various case laws relied upon by the assessee, the ld. CIT(A) partly allowed the appeal by deleting the addition to the tune of Rs. 7,49,50,000/- and confirming the addition to the extent of Rs. 7,59,00,000/- u/s. 68 of the Act.

viii. Aggrieved by the decision of the ld. CIT (A), both the parties are in appeal before us.

5. At the very outset, the ld. AR of the appellant argued that

i. The assessment order passed u/s. 143(3) r.w.s. 147 of the Act suffers from infirmity, is void ab initio, and therefore needs to be quashed. Accordingly, the ground no. 1 on the validity of the reassessment order may be decided first as it goes to the root of the matter.

ii. The ld. AR argued that the notice u/s. 142(1) was served on the appellant without issuing the notice u/s. 148 of the Act.

iii. The appellant was not even provided with the reasons recorded for reopening.

iv. The appellant had requested for the notice u/s. 148 and reasons for reopening vide letter dated 04.03.2016 and again vide letter dated 16.03.2016 which are placed on record in the Paper Book filed before us. However, ignoring the request of the appellant, the ld. AO passed the assessment order without serving any reasons recorded for reopening the case. He referred to paper book page no 1 & 2 where in letter dated 4/3/2016 is placed submitted to LD AO stating non receipt of notice as well as reasons for reopening. Assessee came to know about proceedings because of notice u/s 142 (1) of the Act issued.

v. Assessee submitted on 16/3/2016 also about non-receipt of notice and reasons. [Page No 3 of paper book.]

vi. Therefore, for non-service of notice u/s 148 of the Act, reassessment order passed by the LD AO is not sustainable.

6. Assessment records were called for and accordingly, the ld. Departmental Representative furnished the same to the Bench. Later, factual report was also called from the Ld. AO. The ld. DR furnished the said report of the Ld. AO dated 10.11.2022. According to that report , ld AO stated that :-

> "*2.1 For A.Y. 2008-09*
>
> *The original case records for A.Y.2008-09 has already been submitted to the Sr. AR ITAT 'B' Mumbai Bench and the same facts are also mentioned in para no. 3 of the above-referred letter dated 19.10.2022. Further, on perusal of the Ld. CIT(A) order it is seen that vide Para no. 6.1 Ld. CIT(A) held that "...the assessee had filed submission on 04.03.2016 for treating the return of income filed u/s.139(1) of the Act as return filed in compliance to notice received u/s148." It is clear from the Ld. CIT (A) appeals order that the assessee has received the notice u/s.148 for the A.Y. 2008-09 and submitted its reply accordingly. Hence, contention of the assessee regarding Notice u/s.148 was not received is not tenable.*
>
> *It is pertinent to mention there that in assessment order for A.Y. 2008-09 the AO vide Para no.4 held that "the reason for re-opening were provided to the assessee". Further, the facts mentioned in Para no. 6.2 of Ld. CIT (A) order itself indicate that the assessee had also received reason for reopening and not able to locate the same. The relevant Para no. 6.2 of Ld. CIT (A) order is provided as under:-*
>
> *6.2. During the course of appellate proceedings the Learned Counsel for the appellant company made the following submissions:*
>
> *1. "Presently, we are not able to locate the following documents as follows:-*
>
> *a. Copy of reasons recorded for re-opening the case*
>
> *b. Copy of the submission filed objecting the reasons recorded for re-opening the case*

c. Copy of the Order Disposing the Objections

Accordingly, we need some time to make our submission in consideration of above challenging the validity of re-opening of the case."

Vide Para no. 6.6, Ld. CIT (A) has also held that "the assessee company had duly participated in the reassessment proceedings through its authorised representative before the AO. Hence, the said contention raised by the Id. AR of the appellant is hereby rejected."

Further, on perusal of the assessment order for A.Y. 2008-09, it is also observed that vide Para no. 4 the AO has mentioned that "the case was re-opened by issuing notice u/s.148 dtd:25.03.2015 by taking prior approval from Addl.CIT Rg. 9, Kolkata."

In view of that letters dtd.27.05.2022 & 14.10.2022 has been sent to the ITO (Wd)-9(2), Kolkata with request to provide the reason recorded for the reopening for relevant assessment year, since the same is not available with this office. The same will be submitted as soon as the records are received from the ITO (Ward) 9(1), Kolkata.

7. In rebuttal to the same, the Rejoinder was filed by the ld. AR vide letter dated 13.01.2023. The relevant extract of this rejoinder is reproduced as under:-

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4. *The fact of not providing the copy of reasons to reopening was even raised before the Hon'ble CIT (A) in submission dated 11.07.2019. (Copy submitted vide Pg no 19 to 44 of Paper Book filed on 07.10.2021)*
5. *Even during the course of the hearing on 17.10.2022 before the Hon'ble Bench, we challenged the reopening because of non-providing of the reasons of reopening to the appellant. The assessment records brought by the Ld. Departmental Representative in respect of A.Y 2008-09 were looked through by the Hon'ble Judicial Member who had categorically pointed out that the said assessment records reveal that during the fag end of reassessment proceedings, the concerned assessing officer of the appellant had requested the predecessor assessing officer at*

Kolkata (who had issued the notice u/s. 148) regarding the objections taken by the assessee of not receiving any notice u/s. 148 and that no reasons of reopening had been supplied to it. Accordingly, the Ld. Departmental Representative had sought time to obtain a factual report from the Ld. Assessing Officer in this regard. The same is evident from the Order sheet noting dated 17.10.2022 available on the ITAT Website.

6. *Subsequently, duringthe hearing scheduled on 29.11.2022, the Ld. Departmental Representative provided a copy of report from Ld. Assessing Officer dated 10.11.2022 stating that the assessment records for A.Y 2008-09 were already submitted to the Sr. AR ITAT "B" Mumbai Bench. Additionally, the Ld. Assessing officer also stated that letters dated 27.05.2022 and 14.10.2022 have been sent to ITO (WD)-9(2), Kolkata with a request to provide the reasons recorded for reopening for relevant assessment year since the same is not available with his office. Further, the Ld. Assessing officer also stated that in assessment order for A.Y 2008-09 in para no.4 it is mentioned that "the reason for re-opening were provided to the assessee". Further, the facts mentioned in para no 6.2 of the Ld. CIT (A) order itself indicates that the assessee had also received reasons for reopening but were not able to locate the same."*
7. *From the said report of the Assessing Officer and also from the assessment records, the ld. DR has not provided any proof of service / supply of reasons for reopening to the assessee till date. Further, during the course of the hearing on 29.11.2022, the Ld. AR of the appellant had also clarified that there was an apparent error in the ld. CIT(A)'s order dated 30.07.2019 as the ld. CIT(A) had reproduced Para 1 of the appellant's submission made before her from the written submissions made by the appellant in respect of another year i.e. A.Y 2009-10 (and not A.Y. 2008-09) wherein the appellant had stated that it could not locate certain documents viz., the copy of reasons of reopening and the order disposing the objections. No such contention was raised by the appellant in respect of A.Y 2008-09 as can be seen from the copy of written submission before CIT(A) for A.Y. 2008-09 placed at page no. 22 of the Paper Book. A separate*

rectification application u/s. 154 has also been filed by the appellant in this regard with the ld. CIT (A) apart from the clerical errors in mentioning the grounds also in the same order of CIT (A) for A.Y. 2008-09. (Copy of the rectification application is enclosed).

8. *Even from the said report of the ld. Assessing Officer dated 10.11.2022 provided by the ld. DR during the last hearing on 29.11.2022, it can be seen that despite raising the fundamental objection since the reassessment proceedings towards which even the then ld. Assessing Officer had sought the relevant documents from his predecessor at Kolkata, further, said objection was also raised in first appellate proceedings and even, again on various hearings before the Hon'ble ITAT more specifically on 17.10.2022 and 29.11.2022, there is no material or proof to show that the notice was issued u/s. 148 and served to the appellant for A.Y. 2008-09 and that even any reasons for reopening were supplied to the appellant. In addition, the ld. Assessing Officer has referred to reminders made on 27.05.2022 and 14.10.2022 to ITO, Ward 9(2), Kolkata to which no response is received till date. "*

8. Accordingly, the ld. AR submitted that neither proof of service of notice u/s 148 is available , nor the reasons of reopening were provided to the assessee , therefore,

i. In absence of proof of services of notice u/s 148 of the Act, the order of reassessment passed by the Ld. AO is a nullity and invalid.

ii. in absence of availability of the reasons, the assessee is completely deprived of the reasons recorded and is in no position to make any objections against the same as to whether the same were also tenable or not in the eyes of law.

iii. In this regard, reliance was placed on the decision of the Hon'ble Jurisdictional Bombay High Court in the case of CIT vs. IDBI Ltd. [2016] 76 taxmann.com 227 (Bom).

9. Ld. AR further argued that ld AO passed assessment order on a nonexistent company despite information in his possession about its non existence, submitted that :-

i. Assessment order passed u/s. 143(3) r.w.s. 147 of the Act in the name of M/s. Bhawna Computers Pvt. Ltd. instead of Bhawna Computers LLP is also invalid and should be quashed as bad in law.

ii. Ld. AO was aware about the conversion of company into LLP w.e.f. 22.03.2016. To support this argument, he drew our attention to page no. 865 of the Common Paper Book to show that the Ld. AO had issued the notice u/s. 148 of the Act for A.Y. 2009-10 in the name of Bhawna Computers LLP on 28.03.2016 i.e. one day before the passing the impugned assessment order in the name of company. This proves that Ld. Ld. AO was not aware about the conversion of company into LLP but also knew what is to be done and had even acted accordingly for the subsequent year i.e. A.Y. 2009-10 before passing the impugned assessment order for A.Y. 2008-09.

iii. Referred to the provisions of The Limited Liability Partnership Act, 2008 and more specifically, section 58 regarding the Registration and Effect of Conversion, wherein in clause 4(c) it is stated that on and from the date of registration specified in the certificate of registration issued, the firm or the company, as the case may be, shall be deemed to have dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

iv. That since the certificate of registration of LLP is issued on 22.03.2016, from such date, the company is no more in existence and therefore, the assessment order passed

on 29.03.2016 in the name of a non-existent company is invalid and bad in law.

v. In this regard, reliance is placed on the decisions of :-

a) PCIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)

b) CIT v. Spice Enfotainment Ltd. [CA no. 285 of 2014] (SC) and Spice Entertainment Ltd. v. CIT [2011-TIOL-971-HC-Del-IT]

c) Churu Trading Co. Pvt. Ltd. v. ACIT [ITA no. 5709/Mum/2018] (Mum. ITAT)

10. On this argument, bench raised a specific query that Honourable Delhi high court in case of Skylight Hospitality [2018] 90 taxmann.com 413 (Delhi)/[2018] 254 Taxman 109 (Del) has decided identical issue , the ld AR submitted that :-

i. that the decision in the case of Sky Light Hospitality LLP [2023] 149 taxmann.com 123 (SC) is distinguishable in comparison to the present case as the said decision was rendered on the peculiar set of facts where the conversion of private limited company into LLP was noticed and mentioned in the tax evasion report, the reasons to believe recorded by Ld. AO, approval obtained from PCIT and the order u/s. 127 of the Act. Therefore, there was substantial and affirmative material and evidence on record to show that issue of notice in the name of Pvt. Ltd. Company was a mistake. It was therefore held that wrong name given in the notice is a clerical error, which could be corrected u/s. 292B of the Act. Moreover, the issue in the case of Sky Light Hospitality was that about a 'NOTICE' u/s. 148 being challenged and not the 'ORDER' in the wrong name. In fact, in the very decision of Sky Light Hospitality of Hon'ble Delhi High Court, a distinction about the same

has been sought be made between the notice being issued and order being passed in wrong name and the Honourable High Court has accepted the decision of CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288 and CIT v. Intel Technology India Ltd. [2016] 380 ITR 272 following the ratio of Spice Infotainment Ltd. (supra) but for there being orders being passed and the case before them was about the notice being issued on a peculiar set of facts.

11. Ld AR in the end submitted on validity of the reassessment order, stating that since the reopening is based upon some information because of search conducted on the premises of a third party, the Ld. AO has erred in invoking the provisions of section 147 /148 of the Act. The ld AO should have invoked section 153C of the Act. Hence, even on this reasoning, the reassessment order should be quashed.

12. The ld. DR

i. relied on the remand report of the Ld. AO to argue that on perusal of CIT (A)'s order at para no. 6.1, it may be noted that the assessee had filed submission on 04.03.2016 to treat the original return of income filed u/s. 139(1) of the Act as return filed in compliance to notice received u/s. 148. Hence, it is clear that the assessee has received notice u/s. 148 of the Act for the relevant A.Y. 2008-09.

ii. On the averment of the assessee that reasons recorded have not been supplied, the ld. DR drew our attention to para no. 6.2 of the CIT(A)'s order wherein the submission of the assessee has been reproduced which states that presently, it is not able to locate the reasons recorded and further at para no. 6.6, the ld. CIT(A) has

also rightly rejected this argument on the premise that the assessee company had duly participated in the reassessment proceedings through its authorized representative before the Ld. AO . Hence, this contention of the assessee shall also be rejected.

iii. As regards the order being issued in the name of a company instead of being converted into LLP at the time of passing the assessment order, that it is just a human error and need not be construed strictly.

iv. On the argument that provisions of section 153C ought to have been invoked, instead of u/s 147 and 148 of the Act that provisions of section 153C could not be applied as the conditions therein were not met and all the conditions required for the purpose of forming the belief of income escapement were present and based on that information, Ld. AO has rightly reopened the assessment by invoking the provisions of section 147 /148 of the Act.

v. Therefore, a valid and sustainable order has been passed by the ld. AO.

13. We have carefully considered rival contentions and perused the orders of the lower authorities and the material placed before us. The ld AR has raised a challenge to the order of assessment on the legal ground that order of reassessment is invalid as no proof of service of notice is available, reason for reopening of assessment not provided for, reassessment is made on non existent entity and wrong invocation of provisions i.e. 148 instead of 147 of the Act.

14. The arguments advanced by the ld. AR of the assessee to quash the reassessment order being invalid and bad in law are made for 3 reasons which are dealt with as under :-

i. First amongst those is that Jurisdiction u/s. 147 is wrongly acquired instead of section 153C, we find that rights of the LD AO to assessee the assessee either u/s 153C or U/s 148 of the Act are subject to specific conditions provided in respective sections. Section 153C and 147 of the Act operate in different field and on different footings. Reasons recorded clearly shows that information was received from the search conducted on third party that income of the assessee has escaped assessment. There is no reference of any incriminating material pertain to or belonging to assessee. We find that some tangible information was made available to the LD AO, which has come in to possession of the LD AO in the form of information from DDIT during the course of search on third parties. No material pertaining to or belonging to the Assessee was found in that search. Mere some information was received. Therefore, there is no jurisdiction available to LD AO to assessee the income of the assessee u/s 153C of the Act. Thus, we do not agree with the contention of the assessee that the LD AO should have invoked jurisdiction u/s 153 C of the Act because none of the ingredient mentioned in section 153 C of the Act are fulfilled in this case. Thus, ld AO has information in his possession, in the form of tangible material, therefore correct provision required to be invoked is of reopening of assessment i.e. U/s 147 of the Act, which ld AO has done. Thus there is no infirmity to that extent in assumption of jurisdiction assumed by ld AO in reopening of the assessment u/s 147 of the Act.

ii. As regards the argument that notice u/s. 148 was not served to the assessee and that reasons recorded had not been supplied to the assessee, the assessment

records were called for. On perusal of the assessment records, in the course of hearing on 17.10.2022, bench pointed out that the assessment records show that at the fag end of reassessment proceedings, the concerned Ld. AO had requested the predecessor Ld. AO at Kolkata (who issued the notice u/s. 148) regarding the objections taken by the assessee of not receiving any notice u/s. 148 and that no reasons of reopening had been supplied to it. Since, we could not find any proof of service of reasons recorded being supplied to the assessee, ld. DR was asked to respond. Accordingly, the ld. DR submitted the remand report issued by the Ld. AO dated 10.11.2022 wherein he stated that request has been made to the ITO Ward 9(2), Kolkata to provide the reasons recorded for reopening in this case since the same is not available with his office and that the same shall be submitted as soon as the records are received. The ld. DR explained that the case was reopened by the ITO Ward 9(2), Kolkata and case records were later transferred to DCIT, Central Circle -7(3), Mumbai. The ld. AR filed his rejoinder vide letter dated 13.01.2023. Firstly, we find that despite several opportunities given and after perusal of assessment records, no proof is available with respect to supply of the reasons recorded for escapement of income for our verification. Merely because in the assessment order at Para 4 ,it is stated that the reasons for reopening were provided to the assessee, the same cannot be accepted at the face of it more so when there were repeated submissions made by the assessee during the reassessment proceedings vide letter dated 04.03.2016 and 16.03.2016 objecting that it has not received the reasons recorded coupled with the

fact that the assessment records itself speak about the same being sought from the concerned Ld. AO at Kolkata which has even not been received till date. Further, even in the Statement of Facts filed [form no 35 Memorandum of Appeal before CIT (A)] before the ld. CIT (A), the assessee had stated that no notice u/s. 148 was received and without prejudice to the same, it had requested to treat the original return as return in response to notice u/s. 148 of the Act and had even requested to provide the reasons recorded for reopening. However, before the ld. CIT (A), the Ld. AO had not responded or rebutted this fact at all. Even before us, the Ld. AO has failed to demonstrate that the reasons were actually supplied to the assessee. Even the ld. AR has explained that in para 6.2, the ld. CIT (A) had reproduced the submission of A.Y. 2009-10 and not for A.Y. 2008-09 for which rectification had also been filed on 08.12.2022 and have also drawn our attention to the actual submission dated 11.07.2019 filed before CIT (A) for A.Y. 2008-09 placed at page no. 19 to 44 of PB. Hence, no recourse can be taken of para 6.2 of the CIT (A) order. Further, the assessee has all along sought reasons in the course of assessment proceedings vide letter dated 04.03.2016 and 16.03.2016 and even before the ld. CIT(A) in submission dated 11.07.2019. Therefore, in absence of this statutory requirement under the law of providing reasons recorded, the reassessment order passed is bad in law and invalid. In this regard, support is also drawn from the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. IDBI Ltd (Bom.) (ITA no. 494 of 2014) and CIT v. Videsh Sanchar Nigam Ltd. [2012] 21 Taxmann 53 (Bom.). We

are also not convinced with the argument of the ld. DR that since the assessee has participated in the reassessment proceedings, no prejudice is caused. In fact, by not providing the reasons recorded, the assessee has been deprived of fundamental right to know and object on the basis of which jurisdiction has been acquired or assumed by the Ld. AO and is completely in dark about the reasons of reopening against which he could not even file any objections. For these reasons, we quash the reassessment order passed by the Ld. AO for A.Y. 2008-09 as bad in law.

iii. On the issue of service of notice u/s 148 of the Act, remand report of the LD AO is categorically saying that AO does not have any proof of service of notice u/s 148 of the Act. Therefore, it cannot be assumed that there is a service of notice u/s 148 of the Act. As the revenue is not in a position to submit the records we do not wish to state that assessee has not been served with the notice. It is also a fact that assessee has participated in the assessment proceedings. Thus, we do not adjudicate the issue with respect to absence of proof of notice u/s 148 of the Act to the assessee.

iv. The third ground on which assessee has challenged the order is invalid is that Assessment Order is passed in the name of non-existing company. In this regard, we find that the fact of conversion of erstwhile assessee company into LLP as on 22.03.2015 was well informed to the Ld. AO as evident from the fact that on 28.03.2015, the same Ld. AO issued a notice u/s. 148 of the Act for A.Y. 2009-10 in the name of assessee LLP as a successor of the erstwhile company. However, despite being informed and acted upon the said information for the

subsequent year, the Ld. AO passed the assessment order in the name of erstwhile company and not in the name of assessee LLP. Although the argument of ld. DR that the same is a mere typographical error on part of the Ld. AO, we are afraid to buy this argument as once the Ld. AO was aware about the non-existence of a particular assessee and had even acted upon it in the subsequent year accordingly, such an error cannot be cured in eyes of law. It is a settled proposition of law that orders passed in the name of non-existent entity is nullity and void ab initio as held by various courts viz.PCIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC), CIT v. Spice Enfotainment Ltd. [CA no. 285 of 2014] (SC) and Spice Entertainment Ltd. v. CIT [2011-TIOL-971-HC-Del-IT]. Even the Hon'ble Supreme Court in the case of Skylight LLP have affirmed the observation of the Hon'ble Delhi High Court that the assessment order if passed in the name of non-existing entity then the same shall be invalid but for the case before them was about the issue of notice under a peculiar set of facts that the notice was upheld even in a wrong name. We therefore hold that once the assessment order is passed in the name of a non-existing entity, it is a fundamental error on part of the revenue, which cannot be cured or rectified. Accordingly, we hold that the impugned reassessment order is a nullity and bad in law on this count also.

15. In view of the above discussion, since ground no. 1 of the appeal of the assessee in ITA no. 6402/Mum/2019 is allowed in favour of the assessee, we do not adjudicate grounds of

appeal. Grounds raised by the revenue in ITA no. 6126/Mum/2019 being on merits of the case are also not adjudicated as the impugned reassessment order is held as invalid and quashed.

16. In the result, the appeal of the assessee is allowed and the appeal of the LD AO is dismissed.

A.Y. 2009-10

17. We shall now take up the appeals for A.Y. 2009-10. The grounds of appeal raised by the ld AO in ITA no. 6127/Mum/2019 are as under:-

1. *"On facts and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of Rs. 4,87,06,000/- made by the Ld. AO on account of unexplained cash credit u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the assessee received share application money from those entities, who were providing accommodation entries.*
2. *"On the fact and circumstances of the case, the Learned CIT(A) has erred in deleting the addition of Rs. 4,87,06,000/- made by the Ld. AO on account of unexplained cash credit u/s. 68 of the I.T. Act, 1961 without appreciating the fact that the Hon'ble Supreme Court in the case Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) has held genuineness could validity be tested on the ground or principle of preponderance of human possibilities which form a valid ground or parameter for determining the genuineness."*

18. Assessee has raised following grounds of appeal in ITA No. 6401/Mum/2019:-

1. *On facts and circumstances of the case, the assessment order passed u/s. 143(3) r.w.s. 147 of the Act is void ab initio; invalid, bad in law and grossly in violation of principles of natural justice.*
2. *(a) The ld. CIT(A) erred in facts and law in confirming the addition of Rs. 4,37,00,000/- u/s. 68 of the Act in respect of share application received from certain companies as unexplained cash credit on her own surmises and conjectures.*

(b) The ld. CIT(A) erred in facts and law in not appreciating that assessee has fully discharged its onus casted u/s. 68 of the Act and nothing adverse was brought on record by the ld. Assessing Officer in making said additions

(c) The ld. CIT (A) also failed to appreciate that the statements of third parties relied upon ought to have been confronted to the assessee and backed by corroborative evidences before making the additions.

19. Brief facts of the case are that Assessee filed its ROI on 23/9/2009 declaring income of Rs 361329/-.

20. In the search on 9/10/2014, it was found that the assessee company had raised share application money to the tune of Rs. 9,24,06,000/- from various companies. These investors were alleged by the Ld. AO to have been engaged in providing accommodation entries. This conclusion was arrived at by the Ld. AO based on statements of Shri Pradeep Poddar, Shri Ankit Bagri, Shri Ankit Poddar and Shri Mona Jagatramka. The Ld. AO accordingly doubted the nature and source of the transaction and hence added a total sum of Rs. 9,24,06,000/- u/s. 68 of the Income Tax Act in respect of the share application money received. On the same day i.e. on 9/10/2014, office of the assessee was also subject to survey u/s 133A of the Act. Notice u/s 148 of the Act was issued on 28/3/2016. Assessee submitted a letter dated 21/4/2016 stating accept ROI filed originally as in response to reopening notice. Reasons were provided on 21/6/2016. Objections were dismissed by order dated19/8/2016.

21. Thereafter ld AO passed assessment u/s 143 (3) rws 147 of the Act determining total income of Rs 92767330/- making an addition u/s 68 of the act of Rs 9,24,06,000/-. Assessee aggrieved, preferred appeal before ld CIT (A) who passed the appellate order partly allowing appeal by deleting the addition to the tune of Rs. 4,87,06,000/- and confirming the addition to

the extent of Rs. 4,37,00,000/- u/s. 68 of the Act. Aggrieved by the decision of the ld. CIT (A), both the parties are in appeal before us.

22. At the outset, the ld. AR of the assessee submitted that the reassessment order passed by the Ld. AO is grossly void ab initio and needs to be struck down. Since ground no. 1 raised by the assessee goes to the root of the matter, it is taken up first.

23. The ld. AR submitted that:-

i. for the year under consideration i.e. A.Y. 2009-10, the Ld. AO had issued the notice u/s. 148 of the Act dated 28.03.2016 in the name of M/s. Bhawana Computers LLP (Formerly known as Bhawana Computers Pvt. Ltd.) for the reason that the erstwhile company had got converted into LLP on 22.03.2016 and was not in existence as on 28.03.2016.

ii. issue of the said notice for A.Y. 2009-10 stating that the same is in violation of the provisions of section 170(2) of the Act as no reassessment can be carried out in the hands of the successor beyond the year immediately preceding the year of succession which in the present case is A.Y. 2015-16 only and not prior to that.

iii. no proceedings under the law could have been initiated prior to A.Y. 2015-16 in view of sub-section (2) of section 170 of the Act which provides that when the predecessor cannot be found, only the year of succession or year immediately preceding the year of succession can be assessed in the hands of the successor.

iv. That once the company is converted into LLP, it is no more in existence and therefore it is a company, which cannot be found.

v. Attention was drawn to the provisions of section 58 of the LLP Act and the relevant provisions of Third Schedule therein wherein it is provided that once the company is converted into LLP, then, on and from the date of registration specified in the certificate of registration issued, the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

vi. In this regard, reliance was placed on the decisions of CIT v. Express News Paper Ltd. (Mad HC) 40 ITR 38,59 wherein it is held that when the predecessor company ceased to exist and is struck off the register of Registrar of companies, it is one which "cannot be found".

vii. Above decision is further affirmed by the Hon'ble Supreme Court in 53 ITR 250 (SC).

viii. In support of his argument, he also referred to following decisions wherein it is held that on dissolution, merger, amalgamation; predecessor company ceases to exist and be treated as "cannot be found":

a) Birla Cotton Spg. &wvg. Mills Ltd. vs. CIT (123 ITR 354) (Del.);

b) Modi Sugar Mills Ltd. vs. Union of India (144 ITR 29) (All);

c) CIT vs. Nuthern P. Ltd. (284 ITR 396) (Guj.): Impsat (P) Ltd. vs. ITO (92 TTJ 552) (Del.);

d) Modi Corp. Ltd. vs. JCIT (105 TTJ 303) (Del.): Hewlett Packard India Pvt.Ltd. (TTA No.4016/ Del./05);

e) Slocum Investment (Pvt.) Ltd. vs. DCIT (106 ITD 1) (Del.); and

f) Better Investment Ltd. (since amalgamated with M Corp. Global) vs. DCIT in ITA No.301/ Del/2005

ix. No notice under the Act can be issued for initiating the proceedings on a non-existent company apart from the provisions of section 170(2) of the Act, as there is no other provision in the Act to assess a successor otherwise. In this regard, he relied on the decision of the co-ordinate Bench of Delhi Tribunal in the case of Slocum Investment (P) Ltd. v. DCIT [2006-TIOL-300-ITAT-DEL].

x. Thus, reassessment is not valid as it is based on invalid assumption of jurisdiction and is void ab initio.

24. Remand Report of ld AO for this year states as under :-

> *"The case records of A.Y. 2009-10 are presently not traceable. The facts of AY 2009-10 will be intimated as soon as the records are traced.*
>
> *However, on perusal of the Ld. CIT(A) order it is seen that vide Para no. 6.1 Ld. CIT(A) held that "...the assessee had filed submission on 21.04.2016 for treating the return of income filed /s.139(1) of the Act as return filed in compliance to notice received u/s148." It is clear from the Ld. CIT (A) appeals order that the assessee has received the notice u/s.148 for the A.Y. 2009-10 and submitted its reply accordingly. Hence, contention of the assessee regarding Notice u/s.148 was not received is not tenable.*
>
> *It is pertinent to mention there that in Ld. CIT(A) order for A.Y. 2009-10, the facts mentioned in Para no. 6.2 itself indicate that the assessee had also received reason for reopening and not able to locate the same. The relevant Para no. 6.2 of Ld. CIT (A) order is provided as under:-*

"6.2. During the course of appellate proceedings, the Learned Counsel for the appellant company made the following submissions:

2. "Presently, we are not able to locate the following documents as follows:-

d. Copy of reasons recorded for re-opening the case

e. Copy of the submission filed objecting the reasons recorded for re-opening the case

f. Copy of the Order Disposing the Objections Accordingly, we need some time to make our submission in consideration of above challenging the validity of re-opening of the case."

3. Further, regarding intimation of conversion of the assessee company to LLP and date of such intimation, it is submitted that as the case records of the assessee are presently not traceable. The Facts of same will be intimated as soon as the records are traced."

25. On the contrary, the ld. DR submitted that the Ld. AO has rightly issued the notice u/s. 148 of the Act in the name of the assessee LLP for the year under consideration i.e. A.Y. 2009-10. Further, from the LLP Act, 2008; it is clear that all the pending proceedings in any court of Tribunal against the company may be continued, completed and enforced by or against the LLP. Accordingly, the ld. DR pleaded that there is no infirmity in the proceedings being initiated u/s. 147 of the Act and hence, the same may be upheld.

26. In rejoinder the ld. AR

i. referred to clause (8) of Third Schedule of LLP Act, 2008 which is as follows:

> *"8. All proceedings by or against the company which are pending before any Court, Tribunal or other authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership."*

ii. the words *"pending before any Court, Tribunal or other authority on the date of registration"* to submit that only the proceedings pending as on the date of registration may be continued and no new proceedings can be initiated after the date of registration.

iii. In the present case, the date of registration is 22.03.2016 whereas the reopening proceedings for A.Y. 2009-10 are initiated on 28.03.2016, which is clearly after the date of registration.

iv. Hence, the case clearly falls under the ambit of section 170(2) of the Act and since there is no other provision under the Act to go prior to A.Y. 2015-16, the Ld. AO has wrongly acquired jurisdiction to reopen the case for A.Y. 2009-10.

v. He therefore requested to quash the whole reopening proceedings and the consequent impugned reassessment order passed by the Ld. AO.

27. We have carefully considered rival contention and perused the orders of the lower authorities. The moot point here is that on account of conversion from the erstwhile company, the assessee LLP came into existence from 22.03.2016 as per the date of registration in the certificate. Notice u/s. 148 of the Act is issued on 28.03.2016 in the name of the assessee LLP only. The questions therefore arises as to –

(i) Whether proceedings of Predecessor Company can be initiated in the hands of successor LLP?

(ii) Whether the company once converted into LLP can be treated to have ceased to exist?

(iii) Whether erstwhile company can be said to as "cannot be found"?

(iv) What is the scope of section 170(2) to assess income in the hands of successor?

28. Since the issue on hand is about the conversion of private limited company into LLP, it is worth noting the relevant provisions of the Limited Liability Partnership Act, 2008 (for short, "LLP Act").

> Section 56 of LLP Act: Conversion from private company into limited liability partnership.
>
> *A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule.*
>
> Section 58 of LLP Act: Registration and effect of conversion
>
> *(1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act: Provided that the limited liability partnership shall, within fifteen days of*

the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) or the Companies Act, 1956 (1 of 1956), as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

(2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

(3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,-

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Third Schedule (See Section 56) : Conversion from private company into Limited Liability Partnership

Clause 4: Registration of Conversion

On receiving the documents referred to in paragraph 3, the Registrar shall, subject to the provisions of this Act and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 2013 about the conversion and of the particulars of the

limited liability partnership in such form and manner as the Central Government may prescribe.

Clause 6: Effect of registration

On and from the date of registration specified in the certificate of registration issued under paragraph 4—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

Clause 8: Pending proceedings

All proceedings by or against the company which are pending before any Court, Tribunal or other authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

29. On careful analysis of above relevant provisions of the LLP Act, 2008, it is noted that

i. on conversion of private company into LLP, all tangible and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relation to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the LLP and that the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies .

ii. In other words, LLP shall be clothed with all the assets and liabilities of the erstwhile company that is automatically dissolved and struck from the records of the ROC.

iii. As regards, the pending proceedings, clause (8) of Third Schedule provides that all proceedings by or against the company which are pending before the Court, Tribunal or other authority on the date of registration may be continued, completed and enforced by or against the LLP.

iv. This indicates that at the time when the company was dissolved, whatever pending proceedings of court or tribunal were pending, the same shall be continued in the hands of LLP.

v. In the present case, the facts are such that the company was converted into LLP on 22.03.2016 and therefore whatever proceedings were pending as on 22.03.2016, it shall be continued in the hands of LLP.

vi. However, unlike reassessment proceedings for A.Y. 2008-09 which were pending on 22.03.2016, reopening for A.Y. 2009-10 was sought to be initiated on 28.03.2016

which is after 22.03.2016 and therefore for A.Y. 2009-10, it is a case where proceedings are initiated after the date of registration which is 22.03.2016.

vii. Therefore, if the proceedings are initiated on the erstwhile company after the date of registration, the assessee LLP cannot be assessed for the erstwhile company as per the LLP Act, 2008.

30. Now, we proceed to examine whether the company deemed to be dissolved and removed from the records of the ROC can be said to have "ceased to exist" and "cannot be found". On conversion into LLP, erstwhile company is deemed to be dissolved and removed from the records of the ROC.

31. In this regard, the decision of Hon'ble Madras High Court in the case of CIT v. Express Newspapers Ltd. [1960] 40 ITR 38 (Mad.) [further affirmed by Hon'ble Apex Court in [1964] 53 ITR 250 (SC)] wherein it held that :-

> *"…A company which is struck off from the register is one which could not be found. The company, unlike a partnership, has a legal existence independent of its shareholder. In the case of a partnership, a dissolution of the firm cannot mean that the assessee could not be found notwithstanding the fact that its members exist. On the date of the notice under section 22(2), the Free Press Company was in existence, though in liquidation. When, however, it was struck off the register, it had ceased to exist, and the only person on whom the assessment could be made, or should be made under section 26(2), was the Express Company.*

32. Further, definition of "assessee" u/s. 2(7) which is as under: -

> **"**assessee" *means a person by whom any tax or any other sum of money is payable under this Act, and includes -….*

33. Definition of person u/s. 2(31) reads as under: -

> "person" *includes* –

(i) an individual,
(ii) a Hindu undivided family,
(iii) a company,
(iv) a firm,
(v) an association of persons or a body of individuals, whether incorporated or not,
(vi) a local authority, and
(vii) Every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation. – For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

34. On the issue of applicability of provisions of section 170 (2) of the act, we find that the commentary in Chaturvedi & Pithisaria's Income Tax Law (seventh edition) volume 7) page number 10097, comments that :-

"The provisions of section 170 (2) override those of section 170 (1) of happening of the prescribed condition Viz that after the succession having been effected, the predecessor cannot be found. In such case (2) provides that the assessment of the previous year in which the succession to place up to the date of succession and assessment of the previous year immediately preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor. The provisions of section 170 (2) cannot be applied where the person succeeded is alive and his whereabouts are known or can be asserted. Where firm was dissolved and one of the erstwhile partners took over its business, the provisions of section 170 (2) could not be applied if the partners were alive and the addresses were known or could be ascertained. (CIT versus National Cycle Importing

Company 9 ITR 502, Pt. Deo Sharma versus ITO 84 ITR 633). Thus, if the predecessors could be assessed and was available for assessment, no proceedings could be taken against the successor under section 170 (2). This is so because section 170 (2) can only be invoked in case of succession of business when the predecessor cannot be found. (CIT versus Teclaemit (I) Ltd 64 taxmann 149).But a company which is seized to exist and is struck off the registrar of companies is one which cannot be found (CIT versus express newspapers Ltd 40 ITR 38, on appeal in 53 ITR 250 (SC)."

35. On reading the commentary of Kanga & Palkhiwala's The Law and Practice Of Income Tax 11th Edition (volume II) page number 2810 and 2811 it also identically comments that though it would be incorrect to state that a firm which has been dissolved cannot be found when its partners are alive and their whereabouts unknown. However, company, which seized to exist and is struck off the Registrar Of Companies, is one, which cannot be found. In the case of amalgamation, section 170 (2) makes it clear that the assessment must be on the successor (i.e. the amalgamated company). Section 176 would not apply to amalgamation and section 159, which applies to natural person, would also not apply to companies. It further states that the same principle applies to notice under section 148 issued in the name of amalgamating company as also to notice issued under section 153C. The principal can thus be seen to be of general application.

36. There is no dispute that on conversion into LLP on 22.03.2016, the company is deemed to be dissolved and gets struck off from the records of ROC on and from the date of registration itself and therefore applying the ratio of CIT v. Newspapers Ltd. (supra), we hold that the company had ceased to exist and

could not be found when the impugned notice u/s. 148 of the Act was issued on 28.03.2016.

37. Impugned notice u/s. 148 of the Act dated 28.03.2016 was issued in the name of assessee LLP and therefore, the ld. DR submitted that although the company ceased to exist, the Ld. AO had rightly issued the notice to the successor LLP only. In this regard, we find that the LLP Act, 2008 does not allow the Ld. AO to initiate new proceedings in the name of the successor LLP after the date of conversion / registration. It only speaks about continuing the pending proceedings as on the date of registration. However, section 170 of the Income Tax Act, 1961 gives power to the Ld. AO to assess the income of the predecessor in the hands of the successor. On going through the said provisions of section 170 of the Act, it is noted that in sub-section (1) therein, when any business or profession is succeeded, then predecessor shall be assessed in respect of the income of the previous year in which succession took place upto the date of succession and the successor shall be assessed in respect of the income of the previous year after the date of succession. However, in sub-section (2), it refers to the assessment of predecessor who 'cannot be found' which is relevant in the case at hand as the erstwhile company is a predecessor which cannot be found when the reassessment proceeding was initiated on 28.03.2016. The sub-section (2) provides that when the predecessor cannot be found, the assessment of the income of the predecessor can be made in the hands of the successor for the following period:

(i) Previous year in which succession took place upto the date of succession and;
(ii) Previous year preceding that year

38. Applying the said provision to the instant case, the situation that arises is that the successor LLP can be assessed for the income of the predecessor company for A.Y. 2016-17 (upto 22.03.2016 being date of succession) and a year preceding to the year of succession which is A.Y. 2015-16 in the case at hand. It was stated that that there is no other year, which can be assessed in the hands of successor for the income of the predecessor, and there is no other section which was brought over notice in the Act too, which permits any other year for assessing income of the predecessor. On carefully considering the provisions of section 170(2), years which can be assessed for the income of the predecessor can be the year of succession (upto the date of succession) and the immediately preceding previous year and no other years can be assessed in the hands of the successor.

39. Therefore, in the present case at hand, we are of the view that the Ld. AO could not have acquired jurisdiction to assess the income of the predecessor company for the years prior to A.Y. 2015-16.

40. In view of the above, we hold that the Ld. AO lacks jurisdiction in reopening and assessing the case of the predecessor company for A.Y. 2009-10 in the hands of assessee LLP.

41. Accordingly, we quash the reassessment order passed by the Ld. AO for A.Y. 2009-10 and therefore, ground no. 1 of the appeal of the assessee is allowed.

42. Since the ground on validity of assessment is allowed in favour of the assessee, other grounds raised in the appeal of the assessee as well as the learned assessing officer are not requiring any adjudication and therefore dismissed.

43. In the result, the appeal of the assessee for A.Y. 2009-10 in ITA no. 6401/Mum/2019 stands partly allowed and that of the department in ITA no. 6127/Mum/2019 stands dismissed.

Order pronounced in the open court on 14.09. 2023.

Sd/-	Sd/-
(RAHUL CHAUDHARY)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated:14.09. 2023

Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar

Income Tax Appellate Tribunal, Mumbai