Hon'ble Apex court decision in case of Dhannalal vs Kalawantibai & others 2002 6 SCC 16 (Justice R.C.Lahoti speaking for bench) which is apposite to expl 2 to sec 148 interpretation aspect:

"Both the learned senior counsel for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of judge then do stir to solve novel problems by neat innovations. ***When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforce***d. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. ***When the law procedural or substantive does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible."***

1. **Hon'ble apex court in case of PERNOD RICARD INDIA (P) LTD vs State of Madhya Pradesh 2024 SCCONLINE SC 566**

   Issue : The short question for our consideration is the applicability of the relevant rule for imposition of penalty; whether it is the rule that existed when the violation occurred during the license period of 2009-10 or the rule that was substituted in 2011 when proceedings for penalty were initiated. As the substituted rule reduced the quantum of penalty, the appellant insists on its application but the statutory authorities as well as the Division Bench of the High Court rejected his case and imposed higher penalty under the old rule. Held For the reasons to follow, we have accepted the contention of the appellant and, in allowing the appeal, determined that the purpose of the amendment is to achieve a proper balance between crime and punishment or the offence and penalty. In light of this, and recognizing that classifying offenders into before or after the amendment for imposing higher and lower penalties does not serve any public interest, we have directed that the substituted Rule alone will apply to pending proceedings.

   Notable Propositions

a) *There is no difficulty in accepting the argument of Mr. Pratap Venugopal on principle. In Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.11, this Court brought out the distinction between supersession of a rule and substitution of a rule, and held that the process of substitution consists of two steps – first, the old rule is repealed, and next, a new rule is brought into existence in its place… 12.1. In Zile Singh v. State of Haryana12, this Court referred to thelegislative practice of an amendment by substitution and held that substitution would have the effect of amending the operation of law during the period in which it was in force…13. The operation of repeal or substitution of a statutory provision is thus clear, a repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution. This principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, a substituted provision which operates prospectively, if it affects vested rights, subject to statutory prescriptions, can also operate retrospectively.*

b) *The principle governing subordinate legislation is slightly different in as much as the operation of a subordinate legislation is determined by the empowerment of the parent act. The legislative authorization enabling the executive to make rules prospectively or retrospectively is crucial. Without astatutory empowerment, subordinate legislation will always commence to operate only from the date of its issuance and at the same time, cease to exist from the date of its deletion or withdrawal. The reason for this distinction is in the supremacy of the Parliament and its control of executive action, being an*
important subject of administrative law.

c) *Interpretation statutes such as the General Clauses Act, 1897, are enactments intended to set standards in construction of statutes. The expression construction is of seminal importance as it is oriented towards enabling a seeker of the text of a statute to understand the true meaning of the words and their intendment. Apart from setting coherent and consistent methods of understanding enactments, the interpretation statutes also subserve the purpose of reducing prolixity of legislations. The standard principles formulated in the interpretation statutes must, therefore, be read into any and*
every enactment falling for consideration.

d) *In the ultimate analysis, interpretation statutes or definitions in interpretation clauses are only internal aids of construction of a statute. Who do they aid? Interpretation is the exclusive domain of the Court.25 A Constitutional Court is tasked with the sacred duty of interpreting the Constitution, Acts of Parliament or States, subordinate legislations, regulations, instructions and even to practices having force of law. Whichever or wherever the instrument, interpretation is the exclusive province of the Court.*

e) *Subordinate legislation, by its very nature, rests upon the executive's understanding of the primary legislation. When a Court is of the opinion that such an understanding is*

not in consonance with the statute, it sets it aside for being ultra-vires to the primary statute.

f) *While rejecting the reasoning of the single Judge as well as the Division Bench, we seek to underscore the importance of a simple and plain understanding of laws and its processes, keeping in mind the purpose and object for which they seek to govern and regulate us.*

2. hon'ble apex court in case of THE STATE OF BIHAR & ORS. APPELLANT(S) VERSUS M/S ZIQITZA HEALTH CARE LTD. & ANR. RESPONDENT(S) order dated 16.04.2024 in CIVIL APPEAL NO. 4975 OF 2024 on issue of interpretation of final a/c (balance sheet) held succinctly "7. There is no difficulty in holding that in tune with Section 134(7) of the Companies Act, notes of account do form part of the Balance Sheet. In other words, the Balance Sheets can only be understood by going into the factual narrations made in the explanatory notes of accounts. When one speaks about Balance Sheet, it takes along with it the explanatory note.

3. **Hon'ble apex court in case of Bharti Cellular Ltd vs ACIT 462 ITR 247**
notable observations made on scope & ambit & nature of tds provisions /,tds liability under 1961 act:
"The issue relates to the liability to deduct tax at source under Section 194-H of the Income Tax Act, 19611 on the amount which, as per the Revenue, is a commission payable to an agent by the assessees under the franchise/distributorship agreement between the assessees and the franchisees/distributors. As per the assessees, neither are theypaying a commission or brokerage to the franchisees/distributors, nor are the franchisees/distributors their agents. The High Courts of Delhi and Calcutta have held that the assessees were liable to deduct tax at source under Section 194-H of the Act, whereas the High Courts of Rajasthan, Karnataka and Bombay have held that Section 194-H of the Act is not attracted to the circumstances under consideration. Held "42. In view of the aforesaid discussion, we hold that the assessees would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors. Section 194-H of the Act is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the assessee – cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside. The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed. " Notable excerpt "35. Deduction of tax at source is a substantial source of the direct tax revenue. The ease of collection and recovery is obvious. Deduction and deposit of tax at source checks evasion and non-payment of tax. It expands the tax base. However, the assessee as a deductoris not paying tax on his/her income, and collects and pays tax otherwise payable by the third party. Liability of the third party to pay tax when not deducted remains unaffected. Failure to deduct tax at source has serious and quasi-penal consequences for an assessee. The deduction of tax provisions should be programmatically and realistically construed, and not as enmeshesor by adopting catch-as-catch-can approach. In case of a legal or factual doubt in a given case, the assessee can rely on the doctrine of presumption against doubtful penalisation.29Whether or not the said doctrine should be applied30, will depend on facts and circumstances of the case, including the past practice followed by the assessee and accepted by the department. When there is apparent divergence of opinion, to avoid litigation and pitfalls associated, it may be advisable for the Central Board of Direct Taxes to clarify doubts by issuing appropriate instruction/circular after ascertaining view of the assesses and stakeholders.31 In addition to enhancing revenue and ensuring tax compliance, an equally important aim/objective of the Revenue is to reduce litigation. The instructions/circular, if and when issued, should be clear, and when justified – require the obligation to be made prospective."

Other notable aspects how to decide /check principal - agent relationship ; person responsible for making payment status & importance in tax withholding exercise and revenue approach in tds matters

SC **B. RAMAMOORTHY APPELLANT(S) VERSUS THE ASSESSMENT OFFICER, WARD 3, VELLORE & ANR. RESPONDENT(S) CIVIL APPEAL NO(S).2678 OF 2024 19.02.2024**	Impugned high court orders reversed (single judge and DB) on issue of writ remedy against income tax assessee (where issue of limitation and natural justice violation raised)

4. ***On serious importance of Cross examination aspect refer Hon'ble SC CIT vs Jindal steel & power ltd (2024) 460 ITR 162 (also refer P&H high court in case of PCIT vs DSG Papers Pvt Ltd 461 ITR 4; Allahabad high court in case of PCIT vs PNC Infratech Ltd 461 ITR 92 AND hon'ble MADRAS HIGH COURT DETAILED DECISION IN CASE OF SARAVANA SELRATHNAM RETAILS PVT LTD VS CIT-A 463 ITR 523)***

5. **Hon'ble Apex court decision in Mangalam Publications CIT reported at 461 ITR 159** ***Relevant gist of SC recent decision in case of Mangalam Publications :***

"31. At this stage, we deem it necessary to expound on the meaning of disclosure. As per the P. Ramanatha Aiyar, Advanced Law Lexicon, Volume 2, Edition 6, 'to disclose' is to expose to view or knowledge, anything which before was secret, hidden or concealed. The word 'disclosure' means to disclose, reveal, unravel or bring to notice, vide CIT Vs. Bimal Kumar Damani, (2003) 261 ITR 87 (Cal). The word 'true' qualifies a fact or averment as correct, exact, actual, genuine or honest. The word 'full' means complete. True disclosure of concealed income must relate to the assessee concerned. Full disclosure, in the context of financial documents, means that all material or significant information should be disclosed. Therefore, the meaning of 'full and true disclosure' is the voluntary filing of a return of income that the assessee earnestly believes to be true. Production of books of accounts or other material evidence that could ordinarily be discovered by the assessing officer does not amount to a true and full disclosure.

41. It is true that Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The assessee is under further obligation to disclose all material facts necessary for his assessment for that year fully and truly. However, as has been held by the constitution bench of this Court in Calcutta Discount Company Limited (supra), while the duty of the assessee is to disclose fully and truly all primary and relevant facts necessary for assessment, it does not extend beyond this. Once the primary facts are disclosed by the assessee, the burden shifts onto the assessing officer. It is not the case of the revenue that the assessee had made a false declaration. On the basis of the "balance sheet" submitted by the assessee before the South Indian Bank for obtaining credit which was discarded by the CIT(A) in an earlier appellate proceeding of the assessee itself, the assessing officer upon a comparison of the same with a subsequent balance sheet of the assessee for the assessment year 1993-94 which was filed by the assessee and was on record, erroneously concluded that there was escapement of income and initiated reassessment proceedings. 42. We may also mention that while framing the initial assessment orders of the assessee for the three assessment years in question, the assessing officer had made an independent analysis of the incomings and outgoings of the assessee for the relevant previous years and thereafter had passed the assessment orders under Section 143(3) of the Act. We have already taken note of the fact that an assessment order under Section 143(3) is preceded by notice, enquiry and hearing under Section 142(1), (2) and (3) as well as under Section 143(2). If that be the position and when the assessee had not made any false declaration, it was nothing but a subsequent subjective analysis of the assessing officer that income of the assessee for the three assessment years was much higher than what was assessed and therefore, had escaped assessment. This is nothing but a mere change of opinion which cannot be a ground for reopening of assessment."

"It is categorically held by SC that balance sheet filed by assessee to south Indian bank for obtaining credit has no evidentiary value and dehors that no valid material is left to infer escapement of income u/s 147/148 in assessee's hands; Subsequent "subjective" analysis by revenue to infer "higher" income in hands of

assessee is change of opinion only and same is held to be no ground for reopening of assessment as in original/initial (143(3)) assessment , AO made independent analysis of assessee's incoming and outgoings; ***Assessment u/s 143(3) is preceded by notice ,inquiry and hearing u/s 142(1); (2);(3) and sec 143(2); <u>When there is no false declaration and primary disclosure is made, reopening can not be made;</u> To treat any return as defective u/s 139(9) , AO has discretion which has to be used as per law (burden is on the "AO") If AO do not exercise said discretion , return can not be treated as defective; (no accounts case, filing of details by assessee like statement of source/application of funds, cash flow statement ,P&L Account etc held as adequate compliance to law)"***

6. ALLEGED PENNY STOCK RELATED DEVELOPMENTS

6.1 Hon'ble apex court in cases of PCIT vs **KISHORE KUMAR MOHAPATRA**

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 10281/2024 (coram HON'BLE MR. JUSTICE ABHAY S. OKA &HON'BLE MR. JUSTICE UJJAL BHUYAN)

Date : 05-04-2024 "Heard the learned senior counsel appearing for the petitioner. Delay condoned. No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petition is, accordingly, dismissed:

Impugned order of hon'ble orissa high court (ITA 20/2022 order dated 09.02.2023) as given imprimatur by Hon'ble SC " 3. The impugned order of the ITAT has sufficiently dealt with the factual details concerning the Respondent-Assessee. The question was regarding the claim of long-term capital gains on shares in terms of Section 10(38) of the Act. the AO rejected the plea, the Assessee went before the CIT(A). The CIT(A) was satisfied that the purchase of liquid shares have been made through Account Payee Cheques and the shares themselves were held in Demat Account for more than 12 months and then sold through the recognized stock exchange after payment of security transaction tax. A reference was made to the CBDT circular which debarred the Revenue from obtaining admissions/ statements during the course of a survey. The ITAT also noted the settled position in law that if an Assessee has wrongly offered an item of income or omitted to make a claim of deduction in the return, he was entitled to correct such a mistake by making a request to the AO to that effect. 4. Another ground on which the ITAT found fault with the additions made by the AO was that reliance was placed on statement of 'so called entry operator' to justify the additions under Sections 68 and 69 of the IT Act. These statements were recorded on various dates in some other proceedings not connected with the Assessee. Further, the statements were recorded much before the date of the survey conducted on the Assessee. It was unable to be disputed by the Department that the Assessee did not have an opportunity to challenge such statements and further, no opportunity to crossexamine the so-called entry providers was given to the Assessee 5. Having heard learned Senior Standing Counsel for the Department (Appellant) and having perused the impugned orders of the AO, CIT(A) and the ITAT, the Court finds that both the grounds viz., the claim for benefit of Section 10(38) of the Act and denial of an opportunity to cross examine the entry providers, turned on facts. The ITAT

was justified in accepting the plea of the Assessee that the failure to adhere the principles of natural justice went to the root of the matter. Also, the CBDT circular that permitted to the Assessee to file revised returns if he omitted to make a claim was also not noticed by the AO. 6. In the considered view of the Court, the ITAT committed no error in concurring with the view of the CIT(A) and in dismissing the Revenue's appeal."

6.2 Also refer: Hon'ble apex court decision in case of PCIT vs ***Kuntala Mohapatra***

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 5269/2024 (04.03.2024) Coram HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA HON'BLE MR. JUSTICE ARAVIND KUMAR Held "Delay condoned. Heard the learned Additional Solicitor General. We are not inclined to interfere with the impugned judgment and order passed by the High Court. Hence, the Special Leave Petition is dismissed."

Underlying order of hon'ble orissa high court in ITA 23/2022 ORDER DATED 09.02.2023)

6.3 Hon'ble delhi high court in case of PCIT vs VIPIN JAIN (DETAILED ASS. FAV ALLEGED PENNY STOCK BOGUS LTCG CASE) (12.03.2024) ITA 95/2021: " 11. We have heard the learned counsel appearing for the parties and perused the record. 12. It is seen from the facts of the present case that it was the astronomical increase in the price of the shares purchased by the respondent-assessee which has, *inter alia* led to the additions in the income for the concerned AY under Section 68 of the Act. Admittedly, the purchase and sale of shares and the source of credit therein is not in doubt at all. In fact, the concerned amounts have been considered to be added by the AO on account of preponderance of probabilities and human behaviour. 13. A perusal of the impugned order of the ITAT would indicate that the additions in question have also been based on the statement of a person namely, Mr. Bikash Surekha. However, the ITAT has concluded that the said statement neither has any direct or indirect connection with the respondent-assessee nor does the same mentions that his entities have provided accommodation entries in the Company. In any case, it is also discernible from the said order that no opportunity of hearing was extended to the respondent-assessee at any relevant point of time to cross-examine the person in question if any claim adverse to the interests of the respondent-assessee was made. 14. The ITAT order further records that there was no material which could signify that either the Company was suspended, or its shares were barred from trading or the price of the scrip of company was manipulated for the purpose of providing accommodation entry. It has been held by the ITAT that purchases made in the earlier years regarding the shares also remained undisputed and the exhaustive list containing the concerned individuals or companies indulged in malpractices pertaining to LTCG, which has been heavily relied upon by the Revenue, does not mention the given transaction of the respondent-assessee. Notably, it is seen from the impugned order that the AO has failed to corroborate its conclusions on the basis of any cogent material available on record before forming an opinion that the sale transaction was sham and a pre-planned arrangement to claim exemption under the guise of LTCG. 15. An upshot of the above findings of the ITAT, coupled with the fact that no irregularity was highlighted by the Securities and Exchange Board of India pertaining to the

transaction of the scrips of the Company, would lead us to the conclusion that there is nothing adverse against the respondent-assessee which could establish a fictitious LTCG to claim exemption at the behest of the respondent-assessee. Rather, the arguments put forth by the Revenue are mere findings of fact. 16. In any case, the issues raised by the Revenue in the present appeals already stand covered by the decision of this Court in the case of **PCIT v. Krishna Devi** [2021 SCC OnLine Del 563], wherein, under similar facts and circumstances, it was held that the preponderance of probabilities cannot be a ground to reject the evidence put forth by the parties." Also refer **Hon'ble delhi high court in case of PCIT vs Vinod Kumar Mittal (ITA 81/2024) 31.01.2024; Hon'ble delhi high court in case of PCIT vs Dinesh Gupta ITA 245/2022 order dated 31.01.2024 also refer Hon'ble rajasthan high court in case of PCIT vs Arnav Goel D.B. Income Tax Appeal No. 14/2024 (19.02.2024):** *"3. The brief facts of the case are that the respondent for assessment year 2015-2016 filed an income tax return declaring income of Rs.5,48,200/-. The case was taken up in scrutiny and vide order dated 21.12.2017 an addition of Rs.31,70,080/- was made on account of bogus long term capital gain on sale of shares of M/s. Kappac Pharma Limited (for short 'company'). Further addition of Rs.63,402/- was made on account of undisclosed expenditure towards payment of commission for sale of the shares of company. The respondent was unsuccessful in appeal filed before the Commissioner Income Tax (Appeals). The Tribunal vide order dated 03.04.2023 allowed the appeal of the respondent and deleted the additions. Hence the present appeal. Learned counsel for the appellant submits that the Tribunal erred in allowing the appeal. The department had a material in shape of the statements recorded of Sh. Jai Kishan Poddar and Sh. Anil Kumar Khemka stating that accommodating entries in guise of long terms capital gains was being provided by the company. It is further argued that the steep rise in shares prices within a short period creates a doubt on the transaction which was not supported by any document. 5. The Tribunal while allowing the appeal took into consideration that 12500 shares of the company were purchased by the respondent in financial year 2012-2013 for an amount of Rs.1,87,500/-. After more than one year, on sale of the shares, respondent had a capital gain of Rs.29,75,725/-. The payment for purchase was through account payee cheque. The purchase and sale was through a Demat Account maintained by an independent agency. The shares were sold through registered share broker by an online transaction and as per the share prices prevalent on that day. The Assessing Officer failed to contradict the evidence adduced by the respondent to support the claim of long term capital gain. 6. It was considered that the statements recorded at the back of the respondent, without affording an opportunity of crossexamination was no evidence in eyes of law. Further the statements nowhere stated that the transactions of the respondent with regard to sale and purchase of the shares of the company was an accommodating entry. It would be appropriate to note that second addition on account of undisclosed expenditure of commission paid was consequent upon addition made of long term capital gain. 7. The Tribunal allowed the appeal on appreciation of evidence adduced by respondent and considering that no contrary material produced by the department. No case is made out for interference. Moreso, when there is no case pleaded of perversity. No questions of law much less the substantial questions of law arises."*

6.4 Hon'ble Gujarat high court decisions in cases of

a)THE PRINCIPAL COMMISSIONER OF INCOME TAX 1, AHMEDABAD Versus SHRI AMBALAL CHIMANLAL PATEL **R/TAX APPEAL NO. 260 of 2024 Date : 15/04/2024 Held "2.2** The respondent assessee purchased 200000 shares of M/s.Naisargik Agritech (India) Ltd. Of face value of Rs.10/- for Rs.20,00,000/- on 15th March, 2011 which were sold between 23rd June, 2014 and 11th July, 2014 on B.S.E. through broker Shri Pravin Ratilal Share & Stock Brokers Ltd. and claimed exemption under Section 10(38) of the Act on the capital gain on sale of such shares. **2.3** The Assessing Officer, however, did not allow the claim of Long Term Capital Gain on the ground that purchase and sale of shared of Naisargik Agritech (India) Ltd. was a carefully executed plan to generate bogus Long Term Capital Gain as the shares purchased by the assessee was when the trading of the said company was suspended at B.S.E. from 10th April, 2000 and has sold between 23rd June, 2014 and 11th July, 2014 when the trading of shares was resumed after twothree months. **2.4** The Assessing Officer, therefore, was of the opinion that shares of the said company were actually purchased and sold to accommodate the beneficiaries.

HELD "**3.** Considering the above findings of theCIT (A) and Tribunal, it appears that both the appellate authorities have taken into consideration the notice of contract memo placed on record by the respondent assessee with regard to the purchase and sale of shares and it is also found by the appellant that the respondent was holding shares of other fifteen companies and it has continued to hold the shares over three years and therefore, sale of the shares cannot be said to be bogus merely on the basis of suspicion on account of the fact that the substantial quantum of capital gain and has been earned by the assessee on account of trading in respect of the said shares. Merely because trading in the shares of the said company was suspended on the Stock Exchange, in absence of any material brought on record to suggest that purchase and sales of said shares was bogus, the Assessing Officer was not justified in absence of any material to support his finding that there has been collusion or connivance between the broker and the assessee for the introduction of his own unaccounted money, resulting into a bogus transaction. **4.** In view of such concurrent finding of facts, we could not find any infirmity in the order passed by the Tribunal giving rise to any question of law much less any substantial question of law."

b) THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD Versus M/S. AFFLUENCE COMMODITIES PVT. LTD **R/TAX APPEAL NO. 264 of 2024 Date : 26/03/2024** "d. Whether in the facts and circumstances of the case in law, the learned ITAT has erred in deleting the addition of Rs. 73,12,905/- made by the AO on account of disallowance of losses booked in penny stocks namely "Kappac Pharma" and "Alang Industries Gases Ltd"?"

Held "8. We have considered the concurrent findings of fact arrived at by the CIT(A) and Tribunal and are in complete agreement with such findings to the

effect that the assesse has proved the genuineness of the transactions and established on online trading platforms that it had no control whatsowever on share prices and thus, incurred losses in shares of Alang Industries Gas Ltd. It was also found by both the authorities that the assessee sold only the part of the shares and remaining shares have been held by the assessee in the subsequent assessment year also. With regard to shares of Kappac Pharma Ltd., it was rightly held by the Tribunal that since the market rate was lower, the assessee had incurred business loss though the shares are not sold. 9. In view of the above concurrent findings of fact, no questions of law much less any substantial question of law would arise and accordingly, the appeal, being devoid of any merits, is dismissed."

6.5 **Hon'ble Bombay high court in case of PCIT vs Indravadan Jain, HUF INCOME TAX APPEAL NO. 454 OF 2018 12th JULY 2023** [2023] 156 taxmann.com 605 (Bombay)

" Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gain and claimed exemption under the Act. Respondent had claimed to have purchased this scrip at Rs.3.12/- per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/- per share. It was A.O.'s case that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co. (the said broker) through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. In view thereof, respondent's case was reopened under Section 148 of the Act. While allowing the appeal filed by respondent, the CIT[A] deleted the addition made under Section 68 of the Act. The CIT[A] has observed that the A.O. himself has stated that SEBI had conducted independent enquiry in the case of the said broker and in the scrip of RFL through whom respondent had made the said transaction and it was conclusively proved that it was the said broker who had inflated the price of the said scrip in RFL. The CIT[A] also did not find anything wrong in respondent doing only one transaction with the said broker in the scrip of RFL. The CIT[A] came to the conclusion that respondent brought 3000 shares of RFL, on the floor of Kolkata Stock Exchange through registered share broker. In pursuance of purchase of shares the said broker had raised invoice and purchase price was paid by cheque and respondent's bank account has been debited. The shares were also transferred into respondent's Demat account where it remained for more than one year. After a period of one year the shares were sold by the said broker on various dates in the Kolkata Stock Exchange. Pursuant to sale of shares the said broker had also issued contract notes cum bill for sale and these contract notes and bills were made available during the course of appellate proceedings. On the sale of shares respondent effected delivery of shares by way of Demat instructions slip and also received payment from Kolkata Stock Exchange. The cheque received was deposited in respondent's bank account. In view thereof, the CIT[A] found there was no reason to add the capital gains as unexplained cash credit under Section 68 of the Act. The tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were

purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. The ITAT therefore, in our view, rightly concluded that there was no merit in the appeal."

7. Hon'ble Delhi high court

7.1 Deeksha Holdings ltd vs ACIT W.P.(C) 1023/2024 Interim order dated 14.02.2024 (constitutional validity of expl 2 to sec 148 admitted) (also refer BHC in case of HGP Community Pvt ltd vs DCIT WRIT PETITION (L) NO. 10912 OF 2023 order dated 26.04.2023) to be studied in light of recent 5 judge bench electoral bonds case 360 degree view on arbitrariness aspect qua legislation challenge and doctrine of proportionality in case of **Association for Democratic Reforms & Anr. Vs UOI**
(2024) 243 Comp Cas 115 : 2024 SCC OnLine SC 150)

7.2 PCIT vs Rashmi Rajiv Mehta ITA 984/2019 order dated 04.03.2024 (evidentiary value of PHOTOCOPY document: held after detailed examination "17. Admittedly, the entire foundation is laid on the basis of the photocopy of the alleged agreement to sell dated 5 March 2010. The original copy of the said document has not seen the light of the day. Further, there is no other evidence to support the veracity of the recitals made in the aforesaid alleged agreement. Therefore, under the facts of the present case, the same cannot be construed to be a sustainable ground for making addition to the income of the assessee."

"The ITAT has rightly opined that under the facts of the present cases, sustaining an addition on the basis of photocopy of alleged agreement to sell would be completely unwarranted and unjustifiable."

Precedents noted:Hon'ble Supreme Court in the case of **S. Ganga Saran & Sons (P) Ltd. v. ITO**[(1981) 3 SCC 143] ; the Hon'ble Supreme Court in the case of **Dhakeswari Cotton Mills Ltd. v. CIT**[1954] 26 ITR 775], ; Hon'ble Supreme Court in the case of **Moosa S. Madha& Azam S. Madha v. CIT** [(1973) 4 SCC 128] **CIT v. Moorti Devi** [2010:DHC:4677-DB], **CIT v. Kulwant Rai**[2007 SCC OnLine Del 1777],

7.3 VALLEY IRON & STEEL CO.LTD VS PCIT **W.P.(C) 5081/2017 (01.04.2024) (sec 68 share capital addition: investor already assessed/sum added)** *"18. Insofar as the additions pertaining to the share capital investment made by M/s Amit Goods and Supplier Private Ltd. is concerned, we find that the petitioner-assessee had duly drawn the attention of the respondents to the fact that an addition of INR 37.60 crores had been made in the income of that entity in the course of assessments undertaken for AYs' 2007-08, 2008-09 and 2009-10. In those assessments, an amount of INR 37.60 crores was added in the hands of M/s Amit Goods and Suppliers Private Ltd. on the allegation that it had invested its own funds by re-routing the same as share capital. 19. According to the petitioner-assessee, the aforesaid assessments as made in the case of*

M/s Amit Goods and Supplier Private Ltd. have attained finality as well. It was in the aforesaid backdrop that Mr. Ganesh, learned senior counsel submitted that those orders would establish and confirm the availability of funds with M/s Amit Goods and Suppliers Private Ltd. in AY 2007-08 and thus proving that it had adequate funds to make investments in the share capital of the petitioner-assessee in the subsequent AYs', namely, 2008-09 and 2009-10. 20. Mr. Ganesh further submitted that notwithstanding the above, since the amount shown to be invested by M/s Amit Goods and Suppliers Private Ltd. in the petitioner-assessee already stood taxed in its hands by virtue of the additions made in the course of its assessment proceedings and under Section 68 of the Act, the same amount cannot possibly be added while assessing the petitioner. 21. This submission clearly holds merit in light of the undisputed position of the additions made in the course of assessment proceedings initiated in respect of M/s Amit Goods and Suppliers Private Ltd having been subjected to tax and the source of the funds having been duly identified by the respondents themselves. In our considered opinion, therefore, the ITSC clearly erred in making the addition of INR 11.26 crores while settling the income upon the application preferred by the petitioner-assessee"

On sec 80IC: " 17. Insofar as the aforesaid aspect is concerned, we find that the conclusions ultimately arrived at by the ITSC are unexceptionable and clearly merit no interference. This, principally in light of the certificate issued by the Director of Industries as well as the claim in this respect having been duly verified and accepted by the respondents themselves in the course of assessment for AYs' 2006-07 to 2008-09."

7.4 PCIT vs M/S BHISHANSAROOP RAM ITA 953/2019 (28.03.2024) "4. In Assessment Year [—**AY**‖] 2010-11, the respondent-assessee is stated to have entered into a sale transaction for sale of Basmati Rice with M/s Pearl Beach General Trading LLC and M/s Mohsen Line General Trading LLC, Dubai. The buyer however and in the said AY itself returned a certain quantity of the rice so exported on quality considerations. …7. It was the additional submission of Mr. Chandra that the aspect of a part of the consideration becoming irrecoverable was neither conceived of nor known on the date when the income from the export contracts came to accrue**.** In view of the above, it was his submission that the write-off, if at all, could have been claimed only in the subsequent AY. …8. The correctness of the aforesaid contention is assailed by the respondents, with it being contended on their behalf that the levy of tax is primarily concerned with real income and income which has the capability of being characterized as having aspects of certainty attached to it. Our attention in this regard was drawn to the following principles which were highlighted in a judgment rendered by this Court in **Housing and Urban Development Corporation Ltd. v. Additional CIT**[2020 SCC OnLine Del 1772….9. Of equal significance is the decision of the Supreme Court in **Commissioner of Income Tax v. Excel Industries Ltd. [**2013 SCC OnLine SC 929]. Laying emphasis on income tax being levied on real income as opposed to hypothetical income, the Supreme Court explained when income could be said to have accrued in the following terms:

..10. We note that undisputedly, the settlement agreement came to be executed after the drawing up of the balance sheet. It was the aforenoted agreement which had acknowledged the substance of the contract having disintegrated in part and as a consequence of which the assessee had lost the right to receive the full transaction value. AS-4 & AS-9 ICAI NOTED AT LENGTH " 13. Bearing the aforesaid in mind, we find that the ITAT has committed no manifest error in holding in favour of the assessee"

7.5 NATIONAL ASSOCIATION OF SOFTWARE AND SERVICES COMPANIES (NASSCOM) vs ACIT Stay of tax demand sec 220(6) W.P.(C) 9310/2022 (01.03.2024)"In our considered opinion, the respondents have proceeded on a wholly incorrect and untenable premise that the assessee was obliged to tender or place evidence of having deposited 20% of the disputed demand before its application for stay under Section 220(6) of the Act could have been considered. The interpretation which is sought to be accorded to the aforesaid OM is clearly misconceived for the following reasons.

12. It must at the outset be noted that the two OMs' noticed above neither prescribe nor mandate 15% or 20% of the outstanding demand as the case may be, being deposited as a pre-condition for grant of stay. The OM dated 29 February 2016 specifically spoke of a discretion vesting in the AO to grant stay subject to a deposit at a rate higher or lower than 15% dependent upon the facts of a particular case. The subsequent OM merely amended the rate to be 20%. In fact, while the subsequent OM chose to describe the 20% deposit to be the "*standard rate*", the same would clearly not sustain in light of the discussion which ensues.

19. Though some of the decisions noticed by us hereinabove pertained to pre-deposit prescriptions placed by a statute, the principles enunciated therein would clearly be of relevance while examining the extent of the power that stands placed in the hands of the AO in terms of Section 220(6) of the Act. In our considered opinion, the respondents have clearly erred in proceeding on the assumption that the application for consideration of outstanding demands being placed in abeyance could not have even been entertained without a 20% pre-deposit

20. Undisputedly, and on the date when the impugned adjustments came to be made, the application moved by the petitioner referable to Section 220(6) of the Act had neither been considered nor disposed of. The respondents have thus in our considered opinion clearly acted arbitrarily in proceeding to adjust the demand for AY 2018-19 against available refunds without attending to that application. This action of the respondents is wholly arbitrary and unfair. The intimation of adjustments being proposed would hardly be of any relevance or consequence once it is found that the application for stay remained pending and the said fact is not an issue of contestation."

Hon'ble apex court in case of State of kerala vs UOI

2024 INSC 253 "The globally acknowledged golden principles, collectively known as the Triple-Test, are followed by the Courts across the jurisdictions as the pre-requisites before a party can be mandatorily injuncted to do or to refrain from doing a particular thing. These three cardinal factors, that are deeply embedded in the Indian jurisprudence as well, are: (a) A '*Prima facie* case', which necessitates that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case; b) 'Balance of convenience', such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience that the defendant may face if the relief is so granted; and (c) 'Irreparable injury', which means that if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms. **13.** At this juncture, it is necessary to distinguish the standard of scrutiny in applying these parameters for 'prohibitory' and 'mandatory' injunctions. Prohibitory injunctions vary from mandatory injunctions in terms of the nature of relief that is sought. While the former seeks to restrain the defendant from doing something, the latter compels the defendant to take a positive step.1 For instance, hypothetically, in the context of a construction dispute, if a plaintiff seeks to prevent the defendant from demolishing a structure, it would be deemed a prohibitory injunction. Whereas, if a plaintiff wants to compel the defendant to demolish a structure, then this would amount to mandatory injunction."

7.6 ***SURIDHI COMMERCIAL INFRA PRIVATE LIMITED vs ITO W.P.(C) 5535/2022 (order dated 21.02.2024) 463 ITR 169 in context of reopening u/s 148/148A under 1961 Act"19. It is to be noted that the statutory authority which is entrusted with the wide powers is also casted with the responsibility that those powers should not be used unwarrantedly and that the due procedure infused with concomitants of principles of fairness should be adhered to before passing of the impugned notice under section 148A(b) of the Act."***

7.7 Anandita **SENGUPTA VS ACIT WP (C) 12542/2022 ORDER DATED 01.04.2024WHETHER ASHISH ASGGARWAL CAN APPLY TO CASES WHERE ASSESSEE HAVE NOT CHALLENGED BEFORE HIGH COURT IN FIRST ROUND THE VALIDITY OF IMUGNED NOTICE U/S 148: HELD NO:** *"26. Regard must also be had to the undisputed fact that the petitioner never questioned the validity of the original notices on grounds which were urged before the various High Courts and where assessees had questioned the invocation of the unamended provisions. The petitioner chose to contest the reassessment proceedings on merits. It is also admitted before us that the petitioner was also not a party to the Man Mohan Kohli batch of matters. There was therefore no justification for the respondent to have issued notices afresh seeking to reopen proceedings which had been rendered a closure prior to the judgment endered in Ashish Agarwal. At the cost of being repetitive we deem it appropriate to observe that the Ashish Agarwal judgment neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened and moreso where the assessee had raised no objection to the initiation of proceedings. 27. We are also of the firm opinion that even para 25.5 of Ashish Agarwal would not sustain the stand taken by the respondent since the same clearly confines itself to decisions or judgments rendered by a High Court invalidating a notice under Section 148 and the manifest intent of the Supreme Court being that its judgment would apply and govern irrespective of whether an appeal had been laid before it. 28. It is in the aforesaid context that we also bear in mind the pertinent observations rendered by the Constitution Bench in High Court Bar Association when it held that a direction under Article 142 of the Constitution should not impact the substantive rights of those litigants who are not even parties to the lis. The Constitution Bench while acknowledging the amplitude of the Article 142 power placed a significant caveat when it observed that benefits derived by a litigant based on a judicial order validly passed cannot be annulled especially when they*

may not even have been parties to the cause. This too convinces us to hold in favour of the petitioner and come to the inevitable conclusion that the writ petition must succeed.

7.8 PCIT vs M/S ANJANEY STEELS PVT. LTD (ITA 112/2024 (13.02.2024) "2. As we view the order of assessment as framed by the Assessing Officer [**'AO'**], it is ex facie evident that it is bereft of even rudimentary reasoning. We note that the ITAT in this regard had observed: "6 . On going through the Assessment Order, we find that even the reasons for recording the satisfaction, or the details of satisfaction recorded viz., name, amount, bank details, details of the accommodation entity have not even been mentioned. 7 . The Assessing Officer has not travelled even an inch beyond the allegations to prove the facts. Allegations, however strong cannot be a reason to make addition without brining any basic tangible material on record. 8. Hence, the action of the revenue is to be discharged on merits and on account of failure to serve a valid statutory notice u/s 148." 3. In view of the aforesaid, we find no ground to interfere with the order impugned. The appeal raises no substantial question of law. Consequently, it fails and shall stand dismissed."

8. Hon'ble Bombay high court

8.1 CIT (Central) vs Kanakia Spaces Pvt Ltd **2024:BHC-OS:6187-DB** WRIT PETITION NO. 65 OF 2015 4th APRIL 2024 Sec 292C scope held it operates both sides : *"21. As noted earlier assessee was subjected to search and seizure action under Section 132 of the Act on 29th March 2011. In the course of search, the investigation team of the Revenue came across a diary which was seized by them and it showed that assessee had entered into certain transactions of purchases which were alleged to be bogus. The Director of assessee in his statement recorded under Section 132(4) of the Act accepted the total of such bogus purchases at Rs.11,95,41,448/-. The seized diary showed that part of the cash generated by the company from bogus purchases was utilized for the purposes of incurring capital expenditure at its office premises on the 10th Floor in Atrium. Such expenses incurred on civil work, furniture and air conditioning system aggregated to Rs.8,33,53,000/-. Further enquiry or investigation on the utilization of the amount need not be entertained because Revenue has, relying upon the same documents, accepted the fact of generation of cash by way of bogus purchases. Therefore, the manner of utilization of the cash as noted in the seized diary also has to be accepted as correct. This is the position prevailing as per Section 132 (4A) and 292C of the Act which mandates that the contents of seized documents are true.*

A presumption, as held by the Hon'ble Apex Court in P. R. Metrani (supra) followed by Delhi High Court in Indeo Airways (P) Ltd. (supra), is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular inference from a particular fact. "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case. The ITSC had discretion to presume explanation of certain facts based on the seized documents and it exercised its discretion.

23. Since the bogus purchases were offered for tax by making deduction from the work in progress, the corresponding utilization of the cash towards incurring of capital expenditure was treated as an addition to fixed assets eligible for claim of depreciation. Once the contents of the seized diary are accepted to be correct and it is not disputed that assessee is the owner of the office premises on the 10th Floor at Atrium which have been used by it for the purposes

of business, then, no further enquiry as suggested in the grounds was required to be carried out. As against that in the case at hand the documents are accepted as true. The Revenue cannot say that it will accept one part of the document but will not accept the other part.
26. In our view, the ITSC was entitled to exercise discretion and has rightly exercised its discretion. We find nothing wrong in the judicial decision making process of the Commission. When the department relies on the seized records for estimating the undisclosed income, we see no reason why the expenditure stated therein should be disbelieved. Moreover there was no justification for doubting the entries found in seized records pertaining to expenditure while accepting the income found recorded therein."

8.2 **Vivek Jaisingh Asher VS ITO 2024:BHC-OS:6508-DB 16th APRIL 2024** *"8. Admittedly, no notice has been issued to assessee/petitioner calling upon assessee to show cause whether the entire stamp duty value be treated as unexplained investment under Section 69 of the Act. In the affidavit in reply, the answer given to this allegation of petitioner that no notice was given to show cause under Section 69 of the Act is that the assessment was getting barred by limitation on 30th September 2022 and there was no time for further show cause notice and hence the Faceless Assessing Officer (FAO) has passed the assessment order after considering all the submissions and possible aspect of the case and agreement value of the new purchased property at Rs.11,68,99,000/- is treated as unexplained investment under Section 69 of the Act and added to the total income of assessee. In the assessment order though there is reference to Section 56(2) (x) of the Act and the reply/objections filed by petitioner in response to the show cause notice, in the operative part there is no reference to Section 56(2)(x) of the Act. 9. The courts have time and again held that issuance of show cause notice is not an empty formality. Its purpose is to give reasonable opportunity to the affected persons to effectively deal with the allegations in the show cause notice. In our view, even the show cause notice dated 23rd August 2022 is defective in as much as even though it had reference to Section 56(2)(x) of the Act, it did not mention whether the Assessing Officer proposed to treat the stamp duty value as deemed income of assessee under clause (a) or clause (b) of Section 56(2)(x) of the Act. This is because both are separate provisions and under either of these two clauses the stamp duty value could be treated as deemed income. By not specifying whether Section 56(2)(x)(a) or Section 56(2)(x)(b) of the Act was applicable, the A.O. first of all has not given reasonable opportunity of showing cause to the assessee. Assessee would be totally unaware of the grounds which had prompted the A.O. to arrive at a prima facie conclusion and issue show cause notice. The power that the A.O. had was required to be executed properly. Moreover in the assessment order dated 29th September 2022 that is impugned in the petition, the A.O. has chosen to give Section 56(2)(x), a go by and treat the stamp duty value of the flat at Rs.11,68,99,000/- as from unexplained source under Section 69 of the Act. There is no reference to Section 56(2)(x) of the Act in the operative part of the order dated 29th September 2022. 10. In the circumstances, the impugned order dated 29th September 2022 cannot be sustained. The allegations in the affidavit in reply that assessee has claimed tenancy rights as colourable device in order to get an exemption under the provisions of the Act and evade the tax liability also cannot be accepted because if the A.O. had evidence to that effect the same should have been stated in the show cause notice dated 23rd August 2022." (READ WITH HON'BLE JHARKHAND HIGH COURT IN CASE OF PASARI CASTING CASE REPORTED AT **463 ITR 469**)*

8.3 Pankaj Kailash Agarwal vs ACIT WRIT PETITION (L) NO. 7783 OF 2024 (08.04.2024)

"We would agree with Mr. Sarda that no assessee would stand to benefit by lodging its claim late. Moreso, in case of the nature at hand, where assessee would get tax advantage/benefit by way of deductions under Section 80IC of the Act. Of course, there cannot be a straight jacket formula to determine what is 'genuine hardship'. In our view, certainly the fact that an assessee feels that he would be paying more tax if he does not get the advantage of deduction under Section 80IC of the Act, that will be certainly a 'genuine hardship'. It would be apposite to reproduce paragraph 4 of judgment in K. S. Bilawala & Ors. Vs. PCIT & Ors.4, which reads as Under (2024) 158 taxmann.com 658 (Bombay)) The Court has held that the phrase 'genuine hardship' used in Section 119(2)(b) of the Act should be considered liberally. CBDT should keep in mind, while considering an application of this nature, that the power to condone the delay has been conferred is to enable the authorities to do substantial justice to the parties by disposing the matters on merits and while considering these aspects, the authorities are expected to bear in mind that no applicant would stand to benefit by lodging delayed returns. The court also held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Similar issue came to be considered in R. K. Madhani Prakash Engineers (Supra), where paragraph 8 reads as under (2023(458) ITR 48 (Bom)) This court in R.K. Madhani Prakash Engineers (Supra) had quashed and set aside the impugned order on the ground that the impugned order is not passed by the CBDT but only with the approval of the Member (IT & R),

CBDT. 13 In our view, legislature has conferred power on respondent no.3 to condone the delay to enable the authorities to do substantive justice to the parties by disposing the matter on merits. Routinely passing the order without appreciating the reasons why the provisions for condonation of delay has been provided in the act, defeats the cause of justice. 15 As regards the application filed by petitioner before respondent no.1 on 14th April 2018 for rectification of the intimation dated 29th March 2018, we have to note our disappointment with the conduct of respondent no.1 in not even replying to petitioner. Mr. Rattesar relies on the affidavit in reply filed through on Shyam Lal Meena, ACIT, affirmed on 8th April 2024 to submit that rectification order under Section 154 of the Act was not passed as there was no mistake apparent from record for which rectification soughtto be done was to be passed. Respondent no.1 was duty bound to pass orders on the application which has been pending for almost 6 years, instead of making such baseless statements in the affidavit in reply. Perhaps, respondent no.1 thinks that he or she is not accountable to any citizen of this country. Copy of this order shall be placed before the PCCIT to take disciplinary action against respondent no.1 for dereliction of duty."

Also refer

Hon'ble Orissa High court in case of Oneness Educational and Charitable Trust, Bhubaneswar vs CIT (Exemption) **W.P(C) NO. 2440 OF 2024**

Date of judgment : 09.04.2024 *The petitioner, by means of this writ petition, seeks to quash the order dated 22.01.2024 under Annexure-1, by which opposite party no.1 has the Income Tax Act, 1961 for condonation of delay in filing the revised return of income claiming refund for the assessment year 2021-22, and to issue direction to the opposite party authority to allow all consequential reliefs, allowances, deductions and exemptions as permissible under the Act. The reason assigned in the counter affidavit is contrary to the impugned order dated*

22.01.2024 and, therefore, the same cannot be sustained in the eye of law 9. On scrutiny of the impugned order dated 22.01.2024 vis-à-vis the counter affidavit filed by the opposite parties, the petitioner emphatically submitted that the illegality and sustainability of the allegation made by the opposite parties cannot be substantiated by way of counter affidavit by giving/supplanting fresh reasons. 12. In view of law laid down by the apex Court, the reasons which have been assigned in the counter affidavit cannot be sustained in the eye of law and

accordingly the same are not accepted. 13. On perusal of the provisions contained in Section 119(2)(b) of the Income Tax Act read with circular no.09/2015 dated 09.06.2015 issued by CBDT, it appears that "genuine hardship" which the petitioner is required to establish is the hardship that would be caused to the petitioner if the delay is not condoned or the time limit is not extended. In other words, at the time of considering the application under Section 119(2)(b) of the I.T. Act, the statutory authority is to ensure that the income/loss declared and/or refund claimed by the assessee is correct and genuine and the same will cause genuine hardship to the assessee unless the time limit is extended. 14. The petitioner has clearly stated in its application filed under Section 119(2)(b) of the I.T. Act under Annexure-11 that at the time of filing of its return of income for assessment year 2021-22, it has inadvertently erred in claiming the past years' deficit of Rs.5,41,52,906.70 against the current year's income under Section 11(1) of the I.T. Act of Rs.6,37,56,104.56 as application of income and instead offered the total income of Rs.6,37,56,104.56 as income chargeable totax. Had the past deficit of Rs.5,41,52,906.70 been claimed as application of income, the petitioner would have entitled to a refund of Rs.21,350/-. But for such inadvertent mistake of the petitioner, it has been saddled with a demand of Rs.3,29,08,840.00. The petitioner has also demonstrated that past deficit of Rs.5,41,52,906.70 mentioned in the balance sheet filed by it and, as such, set off of past deficit is permissible in law. A bare reading of the application under Section 119(2)(b) of the Act filed by the petitioner demonstrates that its claim is genuine and unless the time limit is extended for filing revised return making such claim, the petitioner would be liable to pay a sum of Rs.3,29,08,840.00 instead of getting refund of Rs.21,350/-, which will cause genuine hardship to the Petitioner 16. If considered from other angle, opposite party no.1 has neither in the impugned order dated22.01.2024 nor in the counter affidavit filed on their behalf denied the entitlement of the petitioner to claim such set off of past years' deficit. Rather, the Commissioner of Income Tax (Appeals) in its order dated 27.12.2023 has acknowledged the entitlement of the petitioner to such claim. Thereby, the petitioner has established the requirement of "genuine hardship", as enumerated under Section 119(2)(b) of the I.T. Act. As such, the finding of opposite party no.1, that the petitioner has failed to demonstrate "genuine hardship", is thoroughly misconceived, and the observation made to that effect cannot be sustained in the eye of law. 22. Taking into consideration the fact and law, as discussed above, this Court is of the considered viewthat the order dated 22.01.2024 passed by opposite party no.1 in rejecting the application filed by the petitioner under Section 119(2)(b) of the I.T. Act for condonation of delay in filing the revised return under Annexure-1 for the assessment year 2021-22 cannot be sustained in the eye of law. Therefore, the said order dated 22.01.2024 is liable to be quashed and is hereby quashed. Accordingly, this Court directs the authority concerned to take follow up action in accordance with law."

"

ALSO REFER Hon'ble Rajasthan high court in case of Royal Crystal Dealers Private Limited VS ITO D.B. Civil Writ Petition No. 9560/2022 05/01/2024 SECTION 154 RECTIFICATION APPLICATION AND REVENUE DUTY TO RECALL THE ORDER PASSED IN NON CONSIDERATION OF REPLY ETC "12. In view of the above fact situation, when it is

apparent that the order dated 25.03.2022 (Annexure-7) was passed by the Authority on the assumption that no response was filed, whereas, the response filed by the petitioner form part of the record of the Authority, the same clearly reflects a mechanical exercise and non-application of mind to the record available before the Authority. ***13. In so far as the maintainability of the application and/or the said aspect not falling within the parameters of the Section 154 of the Act is concerned, the stand taken by the Officer as well as the respondents cannot be sustained. Once it is found as a fact that factually incorrect statement pertaining to filing of the response, which is fundamental to the decision to be made by the Authority has been wrongly indicated in the order, the Authority in all humility should have accepted the mistake committed by him and once an application under Section 154 of the Act was filed, he should have immediately recalled the order passed by him and should have proceeded in accordance with law thereafter."***

8.4 Ayyappa Seva Samgham VS DCIT **2024:BHC-OS:2943-DB** WRIT PETITION (L) NO. 35754 OF 2023 DATED: 20th February 2024 Paragraph 6 of the order of ITAT reads as under : "6. In the light of above discussion on judicial pronouncements and factual matrix of the case, we are of the considered view that section 69A has no applicability in the present case, hence section 115BBE of the Act. Accordingly, Ground Nos. 1 & 2 raised by the assessee is allowed." ***13. While coming to this conclusion, the ITAT has also correctly recorded that Section 69A of the Act was not applicable to the facts and circumstances of this case.*** So also, the provisions of Section 115BBC of the Act because Sub-section (1) of Section 115BBC will not apply to donations like that has been received by Petitioner in donation boxes from numerous devotees, who have offered the offerings on account of respect, esteem, regard, reverence and their prayer for their deity/siddha peeth. Paragraphs 8, 9 and 10 of the order of ITAT read as under : "8. The assessee is running a temple of Lord Ayyappa and a community hall and there was no change in the aims and objects of the assessee in comparison to the earlier year. The Assessing Officer while framing the original assessment categorically stated that the activities of the assessee are charitable within the meaning of section 2(15) and there was no change in the aims and objects of the assessee as compared to the earlier years. The provisions of section 115BBC(1) are applicable for the anonymous donations received by any university or other educational institution or any hospital or any trust or institution referred to in sub-clauses (iiiad) or (vi) or (iiiae) or (via) or (iv) or (v) of clause (23C) of section 10. However, sub-section (2) of section 115BBC provides that the said provisions are not applicable to any anonymous donation received by any trust or institution created or established wholly for religious purposes. 9. In the instant case, the assessee is established for religious and charitable purposes and the anonymous donation was not received with specific direction that such donation is for any university or other educational institution, or any hospital or other medical institution run by the assessee-trust. Therefore, the Assessing Officer will not be justified in making the addition even by invoking the provisions of section 115BBC(1). To Strengthen our view, we relied on Hon'ble Delhi High Court in the matter of [2015] 62 taxmann.com 358 (Del.) CIT (E) v. Bhagwan Shree Laxmi Naraindham Trust, [2022] 143 taxmann.com 281 (Mum. - Trib.) DCIT v. Jayananad Religious Trust. 10. A careful reading of the entire section of section 115BBC reveals that the provisions have been meant to check the inflow of black money/unaccounted money into the system/institutions such as universities, educational institutions, medical institutions, etc. and it has been provided that the record of the donor along with name and address etc. should be maintained. Sub-section (2) specifically excludesanonymous donations received by an institution which are other than any anonymous donations made with a direction that such donation is for university, medical institution etc. When we read clause (a) and clause (b) of sub-section (2) in harmony and in conscience with each other then it becomes clear that the provisions of sub-section (1) will not apply to thedonations like that has been received by the assessee in donation boxes from numerous devotees who have offered the offerings on account of respect, esteem, regard, reference and their prayer for the deity/siddha peeth. Such type of offerings are made/put into the donation box by numerous visitors and its generally not possible for any such type of institutions to make and keep record of each of the donor with his name address etc. Even

sometimes the donors out of their esteem, respect and regard and selflessness they do not want that their name be registered as a donor before the deity for whom they make the prayer in the belief that the deity is the ultimate giver of all the worth and virtues of their life. Now reverting to the definition of anonymous donations under sub-section (3) of section 115BBC, it is found that it has been mentioned that anonymous donations means voluntary contributions where the person receiving such contributions does not maintain a record of the identity indicating the name and address of the person making such contribution and charitable trust as in the case of the assessee. It is generally not only difficult but also not possible to maintain such type of record. A perusal of the entire section 115BBC shows that the provisions of said section are not applicable to the institutions like that of assessee-trust as the same are meant to check the inflow of unaccounted/black money into the system with a modus operandi to make out as a part of the accounts of the institutions like university, medical institutions where the problem relating to the receipt of capitation fees, etc. is generally highlighted. Under such circumstances, there is no justification on the part of the Commissioner (Appeals) in taxing the offerings received in the hundis/donation boxes as income of the assessee under section 115BBC."

UNDERLYING MUMBAI BENCH ITAT ORDER IN CASE OF

Ayyappa Seva Samgham Bombay-Trust VS CIT-A53
ITA No. 135/Mum/2023 (A.Y. 2017-18)

NOTABLE OBSERVATIONS ON SEC 69A APPROVED BY BHC

"5. Section 69A can be applied only in those cases where the assessee is **found to be the owner of any money,** bullion, jewellery or other valuable article and such money, bullion, jewellery, or valuable article **is not recorded in the books of account,** if any, maintained by him for any source of income. In this case whatever may be the amount received by the assessee as donation in various forms, were duly entered in the books of accounts and tallied with bank statement also. Assessee's books were subject to audit and duly audited accounts were produced before the authorities for verification. **Rather, amount tried to be covered u/s. 69A was pointed out by the department from assessee's own books of accounts and bank statements.** Since otherwise also assessee was not found with any money, bullion, jewellery, or other valuable article conditions prescribed in section 69A can't be applied. We further relied on following judicial pronouncements of coordinate benches and various Hon'ble High Courts and Apex Court as under:

1). [2022] 142 taxmann.com 122 (Chennai - Trib.) DCIT *v.* M.C. Hospital *"It is also noted that the opening cash balance of Rs. 57.11 lakhs are an accepted amount which has been subject to assessment under section 143(3) for assessment year 2016-17 and thus, there is no occasion to doubt on this opening balance of cash in hand. There is force in the submission of the assessee so also the finding given by the Commissioner (Appeals) in respect of addition made under section 69A* ***whereon it is a settled principle of law that entries recorded in the books of account cannot be brought to tax under section 69A.*** *It is also important to note that SBNs were allowed to be accepted at pharmacy by the government during the demonetization period. Assessee has deposited cash out of its balance cash in hand, duly recorded in its books of account which were the results of pharmacy sales and hospital receipts. [Para 9.4]"* 2). [2022] 142 taxmann.com 508 (Nagpur - Trib.)DCIT *v.* Smt. Anju Saraf *During search proceedings at office premises of RBSS, certain loose papers were seized which had some details related to payments made to ED Architects in respect to interior work done at two houses of assessee - Assessee was unable to explain this entry and it was presumed by Assessing Officer that contents of document seized were true and therefore an amount of Rs. 15 lakhs were added to total income of assessee as undisclosed income - On appeal, Commissioner (Appeals) deleted addition - It was observed that, this issue was not explained by assessee during assessment proceedings before Assessing Officer, however, before Commissioner (Appeals) assessee had pointed out from ledger account that Rs. 15 lakhs had been paid by cheque to W and impugned entry of Rs. 15 lakhs were same and duly accounted in books of account - Whether therefore, addition made by Assessing Officer had*

rightly been deleted - Held, yes [Para 33] 3). [2014] 42 taxmann.com 361 (All.) CIT *v.* Uttaranchal Welfare Society *"Shri Nikhil Agarwal, appearing for the respondent-assessee has relied on DIT (Exemption) v. Keshav Social & Charitable Foundation [2005] 278 ITR 152/146 Taxman 569 (Delhi) in which following S. RM. M. CT. M. Tiruppani Trust v. CIT [1998] 230 ITR 636/96 Taxman 635 (SC) it was held that under Section 11 (1) every charitable or religious trust is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. This is, of course, subject to accumulation up to a specified maximum which was 25 per cent. In that case it was found, as in the present case that the assessee had applied more than 75% of the donations for charitable purposes as per its objects. The Delhi High Court further held that Section 68 of the Act has no application in such case where the assessee had disclosed donations as its income. It was also not disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. If there is full disclosure of the donation for whatever purpose and that the registration under Section 12-A is continuing and valid, exemptions cannot be denied."* 4). [2005] 146 TAXMAN 569 (DEL.) DIT (Exem.)v. Keshav Social & Charitable Foundation *"To obtain the benefit of the exemption under section 11, an assessee is required to show that the donations were voluntary. In the instant case, the assessee had not only disclosed its donations, but had also submitted a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, did not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. That was more particularly so in the facts of the case where admittedly, more than 75 per cent of the donations were applied for charitable purposes. [Para 10] Further section 68 had no application to the facts of the instant case because the assessee had in fact disclosed the donations as its income and it could not be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure of income by the assessee and application of the donations for charitable purposes. It was not in dispute that the objects and activities of the assessee were charitable in nature since it was duly registered under the provisions of section 12A. [Para 11] For the aforesaid reasons, there was no merit in the appeal and no substantial question of law arose from order of the Tribunal. Therefore, the appeal was to be dismissed. [Para 12]"* 5). [2022] 143 taxmann.com 281 (Mum.- Trib.) DCIT *v.* Jayananad Religious Trust
"Ground no. 3 of the appeal is with respect to the same addition of Rs. 22,925,500/- under section 68 of the Act. The learned Assessing Officer in grounds of appeal has referred to the decisions of the Hon'ble Supreme Court, however, on careful consideration of both these decisions of the Hon'ble Supreme Court, we find that those are not applicable to the facts of this case because, the decisions of the Hon'ble Supreme Court are respect to the assessee individuals whereas it is a case of a trust before asked which has already offered the above sum as income as voluntary contribution and respective receipts were also impounded by the learned Assessing Officer during the course of survey. Assessee has explained the nature of the receipt as voluntary contribution and the source of such voluntary contributions are already mentioned in the receipts impounded. Accordingly, ground number 3 is dismissed. [Para 9]" 6. In the light of above discussion on judicial pronouncements and factual matrix of the case, we are of the considered view that section 69A has no applicability in the present case, hence section 115BBE of the Act. **Accordingly, Ground Nos. 1 & 2 raised by the assessee is allowed."**

8.5 Sarda Paper Ltd vs PCIT **2024:BHC-OS:5457-DB (SEC 263/143(1) CPC INTIMATION) "**5. Mr. Ginde submitted, and rightly so, that under Section 143(1) (A) of the Act, the Board has formulated a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or a refund due to, assessee as required under Sub Section (1) of the Act. The Central Board of Direct Taxes (CBDT) had also notified a scheme on 4th January 2012 in exercise of the powers conferred by Sub Section 1(A) of Section 143 of the

Act. 6. We agree with Mr. Ginde that the CPC only acts as a facilitator to the Jurisdictional Assessing Officer (JAO) who holds jurisdiction over assessee under Section 120 of the Act. Merely because the return is processed by CPC, the regular jurisdiction of the JAO is not curtailed and he continues to hold the same jurisdiction. This is evident from the fact that a demand resulting from the processing of a return under Section 143(1) of the Act by CPC is also enforced by the JAO. It is JAO who issues a notice under Section 143 (2) of the Act if the return is to be selected for scrutiny and frames the assessment. We would also add that even under the faceless regime, once the assessment has been framed by the Faceless Assessing Officer (FAO), all records are transferred to the JAO for recovery of demand and other incidental matters. In fact in many matters before us PCIT have exercised jurisdiction in identical situation. 7. Therefore, for Respondent No.1 to say that he will have no jurisdiction to entertain petitioner's application under Section 264 of the Act because the DCIT, CPC is not reporting to him is not correct."

8.6 hon'ble Bombay high court in landmark decision in case of m/s M/s. S V Jadhav vs ITO 2024:BHC-AS:19809-DB 22ND APRIL, 2024 held quashing impugned reopening action under new law u/s 148A for AY 2019-2020 vide impugned notice/order u/s 148/148A(d) dated 21.04.2023 notable propositions a) "The stand taken in effect is that the AO is a mere post office, who finds materials and then forwards it to the Faceless Assessing Officer ("FAO") and the FAO will go into the details to decide whether there is any escapement of income. We do not agree with the stand taken in the affidavit in reply" b) "Admittedly, in the notice issued under Section 148A(b) of the Act, certain allegations have been made to which reply has been filed and the AO has accepted that the information is accounted for by the assessee. In paragraph 6.1, however, the AO proceeds on the basis that on a search conducted under Section 132 of the Act on one Prathamesh Constructions, it was found that Prathamesh Constructions was subcontracting its jobs to various subcontractors and Petitioner was one of such subcontractors. The AO, therefore, wanted to verify the genuineness of the contract work done by Petitioner or whether any accommodation entry was provided to Prathamesh Constructions. It is necessary to note that, first of all, in re-assessment proceedings, the law is clear. An Assessing Officer cannot indulge in a fishing enquiry. In Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited 1, the Apex Court has held that at the stage of issuance of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief of escapement of income. In the notice issued under Section 148A(b) of the Act, there is not even a reference of what is stated in paragraph 6.1 of the impugned order. As held by this Court in Neetu M. Chandaliya v. Income Tax Officer-14(2)(3)2, the reasons as mentioned in paragraph 6.1 of the impugned order, at the highest, can only be termed as "a suspicion subject to a case of fishing enquiry"." c) "10. Moreover, in the impugned notice dated 23rd March 2023 under Section 148A(b) of the Act, there is reference to Prathamesh Constructions to whom an amount of Rs.39,80,357/- has been paid. In the reply that was filed to the notice issued under Section 148A(b) of the Act, Petitioner has, in the reconciliation of the annexure, mentioned that gross amount paid to Prathamesh Constructions was Rs.44,58,000/- of which basic amount was Rs.39,80,357/- and 12% GST was Rs.4,77,643/-. This has been accepted by the AO in paragraph 6 of the impugned order, which is quoted above. The AO states "…….....It is verified that the information report by the INSIGHT portal is accounted by the assessee in its books and income arising out of those transactions is duly offered for taxation."

11. Mr. Suresh Kumar submits that in paragraph 7 of the impugned order, the AO is referring to the explanation to Section 147 of the Act, which reads as under:

...We do not find that to be the case of the AO in the impugned order nor is it so stated in the affidavit in reply filed. In any case, the Division Bench of this Court in Commissioner of Income Tax v. Jet Airways3 held that the effect of Section 147 is that the AO has to assess or reassess such income that has escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under Section 148 of the Act, the AO accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had

escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income." d) "In this case, the AO has accepted the contention of the assessee and held that the information report by the Insight portal is accounted for by the assessee in his books and income arising out of those transactions is duly offered for taxation. Therefore, the impugned order dated 21st April 2023 under Section 148A(d) of the Act cannot be sustained. At the same time if the AO wishes to, he could issue a fresh notice under Section 148A(b) of the Act if, that is permitted in law. We are expressing no opinion." e) " 12. In the circumstances, the AO having accepted the explanation of Petitioner, he could not have gone ahead and recommended that it was a fit case where income chargeable to tax has escaped assessment. We would add that the approval granted by the PCIT is also without application of mind only the PCIT had read the impugned order and the notice issued under Section 148A(b) of the Act, he would have refused to grant the approval. The PCIT seems to have done nothing and it is clear that he has mechanically signed the approval."

READ WITH Hon'ble Patna high court decision in case of Narayan Kumar vs PCCIT Civil Writ Jurisdiction Case No.9206 of 2023 (16.04.2024) SUBJECT MATTER OF CHALLENGE: "The petitioner, an assessee under the Income Tax Act, 1961 (for brevity, the Act) is aggrieved with an assessment order passed after a notice issued under Section 148 of the Act." AY : 2017-2018; Later in the year 2021, the petitioner received a notice under Section 148 of the Act; later, on 19.05.2022 the petitioner was issued with Annexure-6 notice based on the judgment of the Hon'ble Supreme Court in Union of India & Ors. v. Ashish Agarwal; (2023) 1 SCC 617. "7. The above decision of the Hon'ble Supreme Court prompted the department to issue Annexure-6 notice. Again in Annexure-6 notice, there was a mere statement that information pertaining to one M/s Aryan Trading Company was received by the department from "Special Commissioner of Revenue, Bureau of Investigation, South Bengal and Nodal Officer, Enforcement". It was based on this information indicated, that the transactions of M/s Aryan Trading Company for the assessment years 2017-18 were found to be bogus. There was also a list of beneficiaries attached, which included the petitioner and, hence for the assessment year 2017-18, an amount of Rs. 50,40,218/- was sought to be included in the total income. Again, we have to notice that there was no information supplied to the petitioner as would be required as per the decision of the Hon'ble Supreme Court, cited above, which required providing of the information and material relied upon by the revenue to the respective assessees." "8 8. The petitioner was then issued with a notice under Section 148-A(d) as is seen from Annexure-7, and then a notice under Section 148 at Annexure-8, which was followed up with Annexure-10 notice issued under Section 142(1) leading to the assessment order produced as Annexure-14. The objections filed by the petitioner were not considered is the contention of the petitioner nor was there any supply of the relevant information and material." Revenue counter affidavit status " 9. The counter affidavit of the respondents also does not indicate any information or materials supplied other than informing the petitioner that the tax authorities in West Bengal found a registered entity in that State to be a bogus one with bogus transactions and that the said bogus entity had transactions with the petitioner amounting to sales of more than Rs. 50 lakhs. There is nothing stated as to what was the goods purchased, the dates on which such purchases were made, the invoices

relating to the same and any documentary evidence of whatever materials were recovered in the State of West Bengal, which establish that the entity in West Bengal, a bogus one, had transaction with the petitioner."

NOTABLE POINT: "10. More importantly, the petitioner was also not confronted with any evidence establishing his transactions with that bogus entity but for the mere statement that the Special Commissioner of Revenue, Bureau of Investigation, South Bengal had passed on some information. Even the information passed on has not been relayed or communicated to the petitioner. We are clear in our minds that there is no supply ofinformation and material as is required in Ashish Agarwal (supra)."

HON'BLE COURT IMPORTANT OBSERVATIONS

" 11. We specifically queried the learned Senior Standing Counsel as to the grounds on which the assessment is made. The learned Senior Standing Counsel would only say that the reason which prompted the proceedings, is the bogus transactions of one M/s Aryan Trading Company, and information supplied to the department from West Bengal. The learned Senior Counsel would also take us to one paragraph of the order produced as Annexure-19, which is extracted hereunder:- The assessee was issued show cause notice dated 27.05.2023. The assessee vide reply dated 28.05.2023 submitted details of partywise purchases. However, these details do not contain the PAN of the parties. Therefore, it was not possible to establish their genuineness. The assessee was provided with an opportunity to present its explanation vide video conferencing on 29.05.2023. The assessee attended the VC and after VC submitted its reply dated 29.05.2023, the purchase register,freight charges ledger and carriage & transport ledger. However, the purchase register only contains the name of the parties and not the PAN. Therefore, it is not possible to establish the genuineness of these transactions. Although, this list does not contain the name of M/s. Aryan Trading Company but due to non availability of the PANs of the parties mentioned in the list it cannot be confirmed whether these

transactions have taken place or not. There is no co-relation between the transactions alleged against M/s Aryan Trading Company and that found in the petitioner's books of accounts. The mere statement that the petitioner has not stated

the PAN No. does not take the department anywhere, since the PAN No. of M/s AryanTrading Company was also not supplied to the petitioner by the department. For that definitely, the transactions of M/s Aryan Trading Company on the various dates, with the value of the invoices, should be available and co-related with the books of accounts of the petitioner. This exercise has not been carried out by the department. 14. There is absolutely no reliable material, which the department has obtained for the purpose of initiating proceedings under Section 148 of the Act. No such material has been supplied to the assessee to get his response on the same. As we noticed above, the report of the Special Commissioner was also not given to the assessee and it is not produced in the present writ proceedings by the department. The petitioner's contention all through has been that he has no business transactions with M/s Aryan Trading Company and he cannot be asked to prove the negative. 15. We find the proceeding under Section 148-A of the Act to be a clear abuse of process of law and not coming within the scope and ambit of Section 148. The assessment order, hence, is set aside and the writ petition stands allowed."

8.7 Vodafone India Ltd. VS DCIT (mechanical sanctions u/s 151: strictures WRIT PETITION NO.2108 OF 2023(19.03.2024)

"4. In the approval, the Principal Chief Commissioner of Income Tax ("PCCIT") states, "……Based on the material available on record and careful consideration of the same, I am satisfied that it is a fit case to issue notice under Section 148 of the IT Act. Hence, draft order submitted by the Assessing Officer under Section 148A(d) of the Act is hereby approved". In our view, this is an incorrect statement made by the PCCIT that the record has been carefully considered before granting of approval. We say this because the record would certainly have contained the notice issued under Section 148A(d) of the Act and the information annexed to that notice states escapement of income in the sum of Rs.42858,47,29,661/-, whereas the amount mentioned in the order passed under Section 148A(d) of the Act totals to Rs.12431,99,24,486/-. In the said order, there is not even an explanation as to how the amount has changed or has gone down"

"With great regret, we have to mention that these approvals are being granted mechanically and without application of mind and this is not the only matter. Innumerable orders passed under Section 148A(d) of the Act are being set aside in view of the approval being granted without application of mind. Officer should realize that this is also delaying assessment/ reassessment proceedings and is also affecting the revenue of the nation. We find that the approval has been granted in a most casual manner. The power vested in the Authorities under Section 151 to grant or not to grant approval to the AO to reopen the assessment is coupled with a duty. The Authorities were duty bound to apply their mind to the proposal put

up for approval in the light of material relied upon by the AO. That power cannot be exercised casually on a routine
perfunctory manner. The important safeguards provided in Section 147 and 151 were treated lightly by the officers. While recommending and granting approval it was obligatory on the part of
the officers to verify whether there was any genuine material to suggest escapement of income. It was obligatory on all the Authorities and PCCIT in particular to consider whether or not power to reopen is being invoked properly. We are of the opinion that if only the Authorities had read the record carefully, they would never have come to the conclusion that this is a fit case for issuance of
notice under Section 148 of the Act. They would have either told the AO to correct the figures in Column 7 or would have sent the papers back for reconsideration. These officers have substituted the form for substance."

Also refer hon'ble delhi high court in case of The Pr. Commissioner of Income Tax-7 vs. Pioneer Town Planners Pvt. Ltd. [Delhi High Court order dated 20 February 2024 in ITA 91/2019)

"21. The salient aspect which emerges out of the foregoing discussion is that the satisfaction arrived at by the prescribed authority under Section 151 of the Act must be clearly discernible from the expression used at the time of affixing its signature while according approval for reassessment under Section 148 of the Act. The said approval cannot be granted in a mechanical manner as it acts as a linkage between the facts considered and conclusion reached. In the instant case, merely appending the phrase "Yes" does not appropriately align with the mandate of Section 151 of the Act as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose…. 23. Therefore, it is seen that the PCIT has failed to satisfactorily record its concurrence. By no prudent stretch of imagination, the expression "Yes" could be considered to be a valid approval. In fact, the approval in the instant case is apparently akin to the rubber stamping of "Yes" in the case of Central India Electric Supply.""

8.8 WIDELY IMPACTING DECISION IN CASE OF Mrs. Neetu M. Chandaliya v. ITO (Bom) 462 itr . 50

"17. While the Court cannot investigate into the adequacy or sufficiency of the reasons, which have weighed with the ITO in coming to the belief, the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which the AO is required to entertain the belief before he can issue notice under Section 148 of the Act. If there is no rational or intelligible nexus between the reasons and the belief, the exercise undertaken by the ITO can be interfered with. 18. The reason recorded only indicates that the officer was only wanting to examine the case of assessees with regard to the deposits of Rs. 7,00,000/-. That also on the basis of report which he received from another Investigating Officer. Obviously, in such a case, there is
no question of the AO having any basis to reasonably entertain the belief that any part of income of the assessee had escaped assessment. Thus, if more details are sought or some verification or
examination is proposed, that cannot be a substitute for the reasons and which led the AO to believe that income chargeable to tax has escaped assessment. 19. In the present case, Respondents do not state that income chargeable to tax has escaped assessment. All that the Revenue desires is to examine certain details pertaining to information that it received

from another AO. That is also not founded on the belief that any income, which is chargeable to tax, has escaped assessment and hence, such verification is necessary. That belief is not recorded
which alone would enable the AO to proceed. The reasons must be founded on the satisfaction of AO that income chargeable to tax has escaped assessment. Once that is not to be found, then the impugned notice cannot be sustained.
20. The reasons as recorded at the highest, can only be termed as "a suspicion subject to a case of fishing inquiry". Even though the Revenue has a greater latitude in re-opening an assessment where the return of income has been processed under Section 143(1) of the Act, even in such cases the re-opening of an assessment can only be done if there is reason to believe that income chargeable to tax has escaped assessment. The reason recorded in support of the re-opening notice must disclose the basis of the reasons to believe that income chargeable to tax has escaped assessment. The AO has not applied his mind to the information received by him from the DDIT (Investigation). The AO has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Investigation) which is clearly in breach of the settled position in
law that re-opening notice has to be issued by AO on his own satisfaction and not on borrowed satisfaction. Perhaps, it is for this reason that the recorded reason even does not indicate the amount
which, according to the AO, has escaped assessment. This is an evidence of a fishing inquiry and not a reasonable belief that income chargeable to tax has escaped assessment.
21. The reasons which have been recorded, could never lead a prudent person to form an opinion that income had escaped assessment within the meaning of Section 147 of the Act."

also refer: Karnataka high court in case of ***SMT VASANTHI RAMDAS PAI VS ITO & DR RAMDAS MADHAVA PAI VS ITO (WP 8797/2022 & WP 8815/2022) JUDGMENT DATED 12 FEB 2024 470 ITR 536*** *Important take away: a)* new regime envisages satisfaction of AO on income escaping assessment which is higher to old regime b) *argument of revenue that result of omission of reasons to believe has led to no need for any reason seems incorrect c) information referred has to have "suggestive" ingredient and has to be "objective" in nature; arguable subjectivity in old regime is given a GO BYE d) factum of escapement of income has to be established by revenue with CONCRETE INFORMATION e) to say on part of ASG/revenue that reopening u/s 147 can be invoked without ANY REASON, is contrary to RULE OF LAW under 1961 Act and also FALL FOUL OF ARTICLE 14 OF CONSTITUTION OF INDIA f) requirement to act REASONABLY is inbuit into new regime and xiii) exercise to reopen under new regime can not be FANCIFIL /ROVING as per CANONICAL dictum of hon'ble apex court in LAKHMANI MEWAL DASS (SUPRA) g) AO functioning under the statute can not employ of JUGGLERY OF WORDS in notices of the kind and let the assessee keep guessing WHY is his assessment being REOPENED h) that term information in explanation 1 to sec 148 can not include ITR/ROI of assessee -if AO so felt regular assessment could be made u/s 143 based on information divulged in ITR/ROI ; to permit the AO to state income has escaped asst and reopen on ITR basis would enable to BY PASS REGULAR ASST PROCEDURES and that would render sec 147 to make SECOND ASSESSMENT where AO has missed the BUS u/s 143; xix) it can not be PERMITTED being against the very spirit of sections and time limits u/s 153 i) object of reducing POTENTIAL LITIGATION AND to ensure scrupulous assesses are put to avoidable AGONY is highlighted and PRE NOTICE SATISFACTION IS OF SERIOUS IMPORTANCE; law mandates a REASONED ORDER U/S 148A j) adverse civil consequence from reopening noted with reference to SC canonical dictum in cases of Mohinder singh gill vs chief election commissioner and SAHARA INDIA FIRM VS CIT 30 ITR 403 k) finding in impugned order u/s 148A(d) going beyond SCN is impermissible and has to be exorcised and gross violation of principle of natural justice highlighted in transgressing of proposal notice vis a vis order u/s 148A(d); held proposal notice u/s 148A(b) is FOUNDATION of reopening and same can not be transcended l) revenue can not improvise and develop their beyond what is stated in impugned order u/s 148A(d) etc (reference made to SC decision in case of commissioner of police vs GORDHANDAS BHANJI AIR 1952 SC 16 m) revenue prayer for remand is*

rejected holding that instant reopening is found to be lacking jurisdictional facts so lis should attain finality and otherwise also remand would prove FUTILE"

Also refer Hon'ble Jharkhand high court in case of M/s. Pasari Casting and Rolling Mills Private Ltd., through its Director Shri Shambhu Kumar Pasari ...Petitioner Versus Income-tax Department through its National Faceless Assessment Centre, having its office at NFAC Delhi, P.O., P.S. and District-Delhi.

W.P. (T) No. 1850 of 2022 (25.01.2024) **463 ITR 469** "Furthermore, the recorded reason is also silent under which provision of the Act the additions are sought to be made i.e. whether Section 68, Section 69A, Section 69B, Section 69C or any other provisions of the Act. It is not the case of the Revenue that the Petitioner has paid any cash to the so-called accommodation entry provider to obtain the accommodation entry to plough back own funds, hence, there is no ground/material to form reasonable belief of any accommodation entry" "By bare perusal of the recorded reasons and aforesaid part of the impugned order it could be noticed that the recorded reasons have been supplemented by using the word "for bill purchase" which means amount has flown-out of books, not a case receipt of accommodation entry. Further, the said finding says that the Petitioner is provider of accommodation entry, which is opposite of the recorded reasons. Further the recorded reasons reveals that the proceeding is initiated on the basis of information gathered from "Insight Module" while in the Order dated 16-03-2022 disposing objection it is held that the assessment is reopened on the basis of information received from Director of Income Tax (I & CI), Ahmedabad. 14. It further transpires that from the recorded reasons and the impugned assessment Order, it is not clear whether the Petitioner is recipient of any accommodation entry/bogus financial transaction. The recorded reasons and findings in the impugned Order are also silent about the provisions under which addition are sought to be made as the assessing officer himself is not sure whether financial transactions sought to be added are debit entries or credit entries in the books of the Petitioner." "18. As stated herein above that the recorded reason/impugned Assessment Order is silent under which provision of the Act the additions are sought to be made. It is well settled that the reasons cannot be supplemented by assessment Order or Affidavit. The recorded reason is totally silent whether the amount sought to be taxed is 'income' of the Petitioner and whether the addition is sought to be made on account of Cash Credit (Section 68), Unexplained Investments (Section 69), Unexplained Money (Section 69A), Amount of Investment, etc. not fully disclosed in books of account (Section 69B), Unexplained Expenditure, etc. (Section 69C). The requirement of each of the aforesaid sections are different and the rules of evidence and burden of proof are also different, hence unless the Petitioner to put the notice as to the exact contravention or provisions of law under which assessment or additions are sought to be made, the Petitioner cannot defend his case."

8.9 **of hon'ble Bombay high court decision is in case of** Sumathi Janardhana Kurup Petitioner Versus Income Tax Officer, Ward-28(3)(1), Mumbai …Respondent **2024:BHC-AS:7412-DB. "Relevant extract from hon'ble Bombay high court decision is: *"The entire basis is the letter received from Lucina. In our view, that alone is not enough, particularly when assessee has denied having paid any cash to Lucina. The onus is on the Revenue to show evidence that assessee has in fact paid cash and purchased immovable property of Rs. 64,94,200/-. Simply relying on a letter allegedly from Lucina is not enough. In our view, there is no tangible matter to issue notice under Section 148A or Section 148 of the Act"***

8.10 On net vs GROSS AMOUNT (U/S 148) **Ram Nebhnani HUF Through its Karta Tina Ram Nebhnani ….Petitioner V/s. Income Tax Officer, Ward 19(1)(1), Mumbai and Ors. …Respondents**

WRIT PETITION (L) NO. 18428 OF 2023 Order dated 07.11.2023 Held in background "The case related information details from the Insight Portal referred to four transactions – two buy and two sell transactions carried out on National Spot Exchange Ltd. (NSEL) which were flagged/mentioned as

Fictitious Profits in Commodity Trading in the column Information Type. Petitioner was not able to file its reply within the limited time of two weeks provided in the impugned letter. Respondent No.1 thereafter passed the impugned order dated 23rd July 2022 holding that there was escapement of income to the tune of Rs.98,04,340/- being shares/commodity transaction under Client Code Modification (CCM) through NSEL which falls within the definition of the term "Asset" as per Section 149 of the Act as on 1st April 2021 and the present case was a fit case for issue of notice under Section 148 of the Act. Thereafter the impugned notice dated 23rd July 2022 under Section 148 of the Act was issued" HELD "8. Mr. Chandrashekhar states that sufficient opportunity was given but none of these factors were brought out in any reply filed and petitioner did not file any reply. 9. At the outset we would say that even if there was no reply filed by petitioner the onus is on department to justify the reopening. If one considers the material relied upon by respondents to reopen, there are two buy and two sell. What has been brought has been sold or what has been sold only has been brought. It is well settled that only the net income from the buy and sell transactions can be brought to tax in petitioner's hand and not the entire sum as done in this case. There is no attempt to even apply their mind as to how, when there are contra entries of buy and sell, both amounts could be added to say escapement of income. Therefore, in this case, considering the figures as given in the reasons for reopening, net income from the buy and sell transactions amounts to only Rs.77,280/- which can be brought to tax in petitioner's hand and not the entire amount of Rs.98,04,340/-. 10. In the petition, petitioner has stated that this net income also is less than the maximum amount which is not chargeable to income tax for the assessment year in question and accordingly no income chargeable to tax has escaped assessment in petitioner's hand. There is no denial in the affidavit in reply. 11. In the circumstances, we are inclined to allow the petition"

Also Refer hon'ble Madhya pradesh high court decisions in case of NITIN NEMA order dated 16.08.2023 in WP. 8311 of 2023 review petition also dismissed vide order dated 14.09.2023 and hon'ble Karnataka high court decision in case of SANATH MURALI VS ITO in WP 7647/2023 order dated 24.05.2023 and Jharkhand high court in case of M/s Chotanagpur Diocesson Trust Asson vs The Union of India, W.P.(T) No. 2042 of 2023 order dated 12.09.2023

9. Hon'ble Rajasthan high court (territorial jurisdiction aspect) Rajasthan high court in case of LMJ Services ltd vs PCIT order dated 08.01.2024" Reopening sec 148/148A quashed for lack of valid "territorial" jurisdiction
10. Hon'ble Rajasthan high court in case of PCIT VS RAJESH KUMAR KHANDELWAL D. B. Income Tax Appeal No. 56/2023 27.03.2024 ALLEGATION OF FICTIOUS COMMODITY MARKET PROFIT/LOSS REVENUE ONUS "2. Learned counsel appearing for the appellant-revenue would argue that the Assessing Officer as well as the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the CIT(Appeals)'] both relied upon clinching material based on data analysis that the respondent-assessee brought fictitious profit by misuse of National Multi-Commodity Exchange (hereinafter referred to as 'NMCE'), as detailed out in the assessment order passed by the Assessing Officer. It was clearly recorded in the assessment order by the Assessing Officer that most of the trading was done through members/brokers who were penalised/suspended because they were found to be involved in artificial trading by misuse of NMCE platform. It was also recorded that those members/brokers, in their statements, accepted that the losses so booked were bogus losses to facilitate the accommodation of bogus losses/profits to the beneficiaries. By such bogus profits, the respondent-assessee introduced unaccounted money in his books of accounts by paying low/normal taxes. The respondent-assessee, by such accommodation entries, introduced unaccounted income in his books of accounts and failed to disclose all material facts necessary for assessment. Therefore, it is argued, Income Tax Appellate Tribunal, Jaipur Benches, "A", Jaipur (hereinafter referred to as 'the Tribunal') was neither justified in deleting addition of Rs. 54,29,800/- and addition of Rs. 1,63,189/- on account of commission paid while acquiring

such accommodation entries." HELD "The Tribunal recorded a categoric finding that the respondent-assessee was deprived of the opportunity to counter the reply and there was nothing on record to show that respondent-assessee was afforded an opportunity to crossexamine those dummy parties/brokers who were said to have made statements. The Tribunal noted that all the transactions of sale and purchase of shares were made through stock exchange and only STT was charged on sale of shares. Except the STT, the respondent-assessee had neither paid any commission for the sale and purchase of shares, nor any claim was made in the return of income for commission payment to the respondent-assessee. Finally, the Tribunal arrived at the conclusion that when all the transactions were made through recognised stock exchange then there was no iota of evidence that the respondent-assesee had made payment of any commission/brokerage. 7. In view of above considerations made by the Tribunal, it cannot be said that the Tribunal either acted with patent illegality or perversity in reversing the findings recorded by the Assessing Officer and CIT(Appeals) in the matter of addition of the amount. Learned counsel for the revenue only seeks another round of reappreciation of evidence on record. Reversal of the findings of the Assessing Officer and CIT(Appeals) by the Tribunal is based on reappreciation of evidence on record and the findings are purely findings of facts and the issue as to whether transactions were bogus/fictitious or genuine is essentially a finding of fact. ***In the absence of there being any perversity or patent illegality or violation of any statutory provision of law committed by the Tribunal, we are of the considered opinion that the present appeal does not involve any substantial question of law."***

11. ***Hon'ble Rajasthan high court in case of***
SHYAM SUNDER KHANDELWAL VS ACIT (LEAD MATTER) ***D.B. Civil Writ Petition No. 18363/2019 (BATCH MATTERS) CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN HON'BLE MR. JUSTICE BHUWAN GOYAL DATE OF JUDGMENT : 19.03.2024*** INTERPLAY OF SEC 148 VS SEC 153C: *(ISSUE:- The question involved is of applicability of Sections 153C and 148 of the Act in case of seizure of material in search or requisition of books-documents relating to assessee other than on whom the search was conducted or requisitioned made. CONCLUSION: 23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group. 24. In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the*

satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfilment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148. HELD 40. In view of above discussion the notices issued under Section 148 and the impugned orders are quashed. However, the respondents shall be at liberty to proceed against the petitioners in accordance with law. 41. The first ground of challenge to initiation of proceedings under Section 148 is being accepted and there is no need to dilate upon other grounds raised for challenging the notice issued under Section 148 of the Act.")

12. Hon'ble Madras high court

12.1 Sri Nrisimha Priya Charitable Trust vs CBDT

2024:MHC:1613 "**E. The Point for Consideration:** 5. We have considered the rival submissions made on either side and perused the material records of the case. Upon consideration of the submissions made, the following two questions arise for consideration in these cases:- Whether or not the classification made by the respondents in the matter of grant of extension of time between the existing and new trusts and to apply for approval in respect of clause (i) of the first proviso to subsection (5) of section 80G of the Act is reasonable? **F. The Discussion and Findings :** 6. At the outset, we agree with the learned Additional Solicitor General of India that the petitioner trusts do not have any vested right to claim an extension of time. When the statute prescribes a time limit, the petitioner trusts are expected to apply within the said date to avail the benefits. The first respondent Board issues circulars enlarging the time limit even beyond the prescribed limit to mitigate the rigours of the statute and the hardship faced by the assessees. The same is in exercise of its powers under Section 119(2)(b) of the *Act*. 6.1. No discrimination or differentiation was made between the existing trusts and the new trusts at the first instance when Circular No.8 of 2022 was issued. When the impugned Circular No.6 of 2023 was issued, the reason stated by the first respondent was to mitigate genuine hardship. Paragraph No.5 was already extracted above. It is also essential to extract paragraph No.4 of the impugned Circular which reads as follows:- **4.** Representations have been received stating that several trusts have not been able to

apply for registration/ approval within the required time due to genuine hardship. This has also led to rejection of applications simply on the ground that these were delayed. As mentioned in para 1(a) above, the last date for filing an application by the existing trusts seeking registration/ approval was extended to 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Further, as stated in 1(c) above, the due date for furnishing application for registration/approval by the provisionally registered/approved trusts was extended till 30.09.2022. These trusts shall be subject to tax under section 115TD of the Act in accordance with the provisions of the said section, as amended by the Finance Act, 2023 if the application is not made by 25.11.2022 or 30.09.2022, as the case may be." (emphasis supplied)

6.2. Thus, on a combined reading of the earlier Circular No.8 of 2022 and the impugned Circular No.6 of 2023, it can be clear that the only reason which is shown for the exercise of the powers is that these trusts faced hardship since they could not apply on time. No reason whatsoever is mentioned to omit "*the clause (i) of the first proviso to sub-section (5) of Section 80G of the Act*" in respect of the new trusts applying under Form No.10AB alone. 6.4. As a matter of fact, we entertained a doubt as to whether it was a conscious decision at all taken in the first place or an inadvertent omission of a sentence while drafting the impugned Circular No.6 of 2023. Though the respondents filed an additional counter-affidavit, no particulars as to the decision being taken between any date after the issue of the earlier Circular No.8 of 2022 and before or at the time the impugned Circular No.6 of 2023 is mentioned or placed on record. The impugned circular by itself also does not contain any reason whatsoever for making the classification. 6.5. The counter-affidavit filed also actually does not contain any reason whatsoever. Except for reiterating that the petitioner trusts do not have any vested right, there is no other ground that is put forth by the first respondent. Even though the new trusts as well as the existing trusts have no right to demand for extension of time as a matter of right, when the respondents have thought it fit to extend the time, considering the hardship, there is no material which is placed before this Court nor any reasoning is contained in the impugned order that the new trusts did not face the hardship in respect of filing of the application under Section 80G5 of the *Act* alone. Therefore, leaving out the clause in respect of Section 80G5 of the *Act* alone that too only in respect of the new trusts does not in any manner relate to the object sought to be achieved by the impugned circular nor does it provide any basis for the discrimination/classification. Useful reference as to the restatement of the law in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in ***State of Tamilnadu & Anr. Vs. National South Indian River Interlinking Agriculturist Association***[2], more particularly to paragraph Nos.15 – 15.2

6.6. In the instant case, the differential treatment is not based on any substantial distinction that is real and pertinent to the object of the circular. The discrimination is artificial. The respondents are evasive and could not provide any rationale for such a classification. Accordingly, we hold that the impugned clause (ii) of the Circular, dated 24.05.2023 is arbitrary and violative of Article 14 of the Constitution of India and accordingly, would be *ultra vires* the Constitution"

12.2 On issue of scope of limited scrutiny : Madras Craft Foundation Society,

DATED : 23.02.2024 W.P. No.10673 of 2021"5. If one bears in mind that right to exemption is a substantive right, it appears that the impugned order of assessment travels beyond the scope of "limited scrutiny", which was confined to examine the correctness of the claim of depreciation insofar as it proceeds to examine the claim of exemption under Section 11(2) of the Act. Admittedly, the claim of depreciation which was the limited scrutiny issue and that of exemption under Section 11(2) of the Act are distinct and independent. It is not in dispute that the approval of the Pr.CIT / CIT was not obtained while expanding the scope of limited scrutiny as provided under Instructions No.20 of 2015 and No.5 of 2016. The above instruction makes it clear that under limited scrutiny, the scope of enquiry shall be confined to limited scrutiny issue which in the present case is whether the depreciation has been correctly claimed in the return of income. Thus, the order of assessment insofar as it proceeds to examine the claim of exemption under Section 11(2) of the Act travels beyond the limited scrutiny issue and thus contrary to Instruction No.20 of 2015 dated 29.12.2015 and Instruction No. 5 of 2016 dated 14.07.2016 thereby vitiating the order of assessment which was lost sight of by the 1st Respondent while rejecting the petitioner's application under Section 264 of the Act. 5.1. It may be relevant to refer to Section 119(1) of the Act, which reads as under: *"119. Instructions to subordinate authorities.—(1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board: Provided that no such orders, instructions or directions shall be issued— (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the *** [Commissioner (Appeals)] in the exercise of his appellate functions."*

5.2. A reading of the above provision would show that the authorities under the Act shall observe and follow the instructions and the directions of the Board made in exercise of the power under Section 119 of the Act which are binding. It may be relevant to refer to the following judgments of the Hon'ble Supreme Court in this regard..As found supra, the assessment order under Section 143(3) of the Act is made in disregard and contrary to the binding instructions viz., Instruction No.5 of 2016 and Instruction No.20 of 2015, insofar as the impugned order travels beyond the scope of limited scrutiny admittedly without obtaining the approval of the Pr.CIT / CIT, an aspect overlooked by the 1st Respondent. The order of assessment dated 09.11.2018 insofar as it travels beyond the scope of "limited scrutiny" without obtaining the approval of Pr.CIT / CIT, is contrary to the binding Circular / Instructions an infirmity which is fatal to the very validity of the order of assessment which is lost sight of by the 1st Respondent insofar as it confirms the order of assessment dated 09.11.2018. The impugned order passed by the 1st Respondent is thus liable to be set aside."

12.3 *W.P.Nos.15804, 15809, 15813 & 15818 of 2023* DATED: 27.02.2024 FIVES India Engineering & Projects Private Limitedvs ITO (reopening on wrong factual foundation DHC /SC applied)

"12. The satisfaction of the assessing officer that there are reasons to believe that income has escaped assessment for the purpose of reassessment is required to be reached upon objective satisfaction of the officer on the basis of tangible materials. As contended by learned counsel for the petitioner, if re-assessment proceedings are initiated mechanically or on the wrong factual foundation, such orders may warrant interference. In this connection, the principles laid down in the judgment of the Delhi High Court in *Rajiv Agarwal* are clearly applicable to this case. The Delhi High Court concluded therein that the assessing officer had ignored the objections of the assessee and failed to apply his mind to the material presented by the assessee. Likewise, in *Chhugamal Rajpal,* the Supreme Court concluded that approval under Section 148 should be provided after examining the material on record and not in mechanical fashion. Both on account of the reasons for reopening being based on a grossly erroneous factual foundation and by also taking into account that the petitioner actually withheld and remitted taxes in respect of transactions with Fives France that formed the subject of the application before the AAR, the impugned order under Section 148A(d) of the I-T Act and the notice under Section 148 thereof are vitiated. All that remains is to briefly consider the other ground of challenge."

12.4 USE OF DIGITAL EVIDENCE IN TAX ASSESSMENT : EVIDENTIARY VALUE landmark order

M/s.Saravana Selvarathnam Retails Private Limited W.P.Nos.9753, 9757, 9761 & 11176 of 2023 (12.02.2024) **463 ITR 523**

Proposition 1 (on scope of search warrant vis a entity not mentioned in warrant)"39. If any search warrant was issued with regard to the particular entity without mentioning the floor number where many number of entities were situated, the Authorities concerned are generally expected to make search in the entities against whom the search warrant was issued. In the present case, the Authorities had presumed that the entity, where the search was conducted, belongs to the entities of the petitioner mentioned in the search warrant. On the other hand, the said entity, Saravana Selvarathnam Furnitures, was not mentioned in the search warrant."

On presence of independent witness as per income tax rules"Further, in terms of the provisions of Rule 112(7) of the IT Rules, at the time of search, two independent witnesses are supposed to be present throughout the period of search.

41. The above Section provides that the witnesses must be inhabitants of the same locality, which means those who are all residing in and around the premises, where the search was conducted and beyond that no other meaning can be provided for the word "inhabitant of the same locality".

42. In the present case, the search was conducted on 27.01.2022 and one Praveenkumar Yadhav, who was added as an independent witness, is not an inhabitant of the same locality but an officer of the GST Department, who has conducted the inspection with regard to the GST violation subsequent to the data search made by the respondents. For the said violation, the respondents had submitted that it is a practice of the Department to make one of the officials of other Department as witnesses, since the same would be convenient for the Department to call the witness at the time of trial. 43. However, with regard to the above aspect, the intention of the legislation was different i.e., the witness must be independent and from the same locality. Hence, at the moment, when the respondents made the officials of other departments as witnesses since it is convenient for them to call them at the time of trial, the said witness would loss the character of independent witness and that is not the witness, which was referred under Rule 112(6) of the IT Rules. Therefore, this Court has no other aspect but to conclude that the search was conducted on 27.01.2022 without one of the independent witnesses, out of two"

On CBDT MANUAL on digital evidence usage :Held binding/s 119 "44. Thereafter, the petitioner had heavily relied upon the binding nature of Digital Evidence Investigation Manual issued by CBDT and its not compliance. In this regard, to find out the reliance and the nature of Manual issued by CBDT, it would apposite to extract the provisions of Section 119 of the Act hereunder

45. A reading of the above provision would show that the CBDT may issue such orders, instructions, directions from time to time to other income tax authorities for proper administration of this Act and such authority and other persons shall observe and follow such orders, instructions and directions of the Board. Therefore, if the CBDT issued any orders, instructions, directions etc., for the Authorities, the same must be observed or followed by the Authorities concerned. 46. In the present case, the manual issued by the CBDT would be in the nature of orders, instructions and directions as prescribed under Section 119(1) of the Act and in such case, it is mandatory for the Department to follow it. As far as the reference made to Chapter 1.5 of the Manual by the learned Senior counsel appearing for the respondents is concerned, in the said portion of the Manual, some of the examples were given on various software and hardware that the same has to be used for illustration and in no way recommendatory or mandatory to the users. It only talks about the examples given in the software and hardware and it is not about the Rules prescribed in the Manual. 47. It was also mentioned with regard to the non-availability of the hardware, software and technical support in several stations, for which, the Department is advised to take initiative and create awareness. The Manual was issued in the year 2015 and we are living in digital India, where the entire Department have been computerised and even the ledgers have been maintained in the electronic form. It would applicable for throughout India since even a layman in the corner of the country is required to follow the terms of the Income Tax Act with regard to the efiling, etc. The Department have also been making the assessment in faceless manner. When such being the case, the search was conducted in a Metropolitan city, where the respondents-Department had all the facility, they cannot claim any excuse of

non-availability of hardware or software. Thus, the respondents have to follow the instructions as stated in the Manual, particularly, for today's scenario, the Manual has to be followed in letter and spirit since the same was issued under Section 119 of the Act. In a similar aspect, the Hon'ble Supreme Court rendered judgement in ***State of Kerala and others vs. M/s.Kurian Abraham Private Ltd.,*** (referred supra), which reads as follows..

48. A reading of the above makes it clear that the orders, instructions and directions issued by CBDT is pertaining to the proper administration of the Act and it is relatable to the source of power under Section 119 of the Act irrespective of its nomenclature. In such view, it is clear that the Manual issued by CBDT was in terms of the powers available under Section 119 of the Act and it will have Statutory force. When such being the case, now the Department cannot take a stand that the said Manual is only optional and there is no need to follow the same.

Hence, when the Department issued such Manual for its Authorities, they cannot come and say before this Court that it is only optional for them to follow the same. Thus, if these guidelines were not followed, the same would amount to nullifying of evidences and thereby, the Department has to incur the huge revenue losses.

50. With regard to the above aspect, after examining the case of ***Commissioner of Customs vs. Indian Oil Corporation Limited*** (referred supra), the Hon'ble Supreme Court had culled out the following principles: (1) Although a circular is not binding on a Court or an assessee, It is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute. (2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. (3) A sho w cause notice and demand contrary to existing circulars of the Board are ab initio bad. (4) It is not open to the revenue to advance an argument or filed an appeal contrary to the circulars. 51. By applying above ratio in the present case, this Court can conveniently come to the conclusion that if the Manual is not followed, the entire search proceedings would be against the law"

On fatal impact of non compliance to above manual: important infirmitie "Further, in the present case, how the Department had not followed the Digital Evidence Investigation Manual and other non-compliance at the time of seizure of evidences, has been tabulated hereunder: " 57. With the above discrepancies, the respondents had conducted the search and collected the digital data. Further, when they make assessment based on the collected data, the same has to be supported by corroborative evidences and the respondents are supposed to provide opportunities for the petitioner to respond. However, the same was not

done in the present case. 58. Further, in terms of the provision of last paragraph of the Chapter 2.6 of the Digital Evidence Investigation Manual, it has been stated as follows: "*Accordingly, merely gathering electronic evidence is not sufficient. Efforts have to be made to corroborate the contents therein vis-a-vis other evidence such as material and*

oral. ***Preliminary and detailed statements of the persons in control of computers/electronic devices are always very important."*** "59. In general, if any statement is made against the Assessee, he is entitled to file a counter and even he is entitled to cross-examine the person, whose statement was relied upon by the Department. In this regard, the law has been settled by this Court and the Hon'ble Apex Court in number of cases, including ***Chhabil Dass*** case (referred supra). In support of the same, the Department has also brought the Digital Evidence Investigation Manual with regard to all the digital data, wherein it has been stated that the gathering of electronic evidences alone is not sufficient to prove and make the assessment, but, efforts have to be made to corroborate the contents therein with other evidences,
such as material or oral evidences." "68. As discussed above, the electronic data have been collected without following the various procedures laid down in the Digital Evidence Investigation Manual. Further, this Court had already held that following the said Manual is mandatory and the respondents cannot claim any exemptions as held by the Hon'ble Apex Court in ***State of Kerala vs. M/s.Kurian Abraham Pvt. Ltd., and another*** and ***The Commissioner of Customs vs. Indian Oil Corporation*** (referred supra)."

ON RIGHT TO CROSS EXAMINATION "60. Further, the law has been well settled by this Court as well as Apex Court in umpteen number of cases that the right of crossexamination is part of one of the most essential rights and whenever a request is made for cross-examination of the witnesses to test the
veracity of their statements, the authority have to necessarily grant the said request. However, in the present case, neither the documents nor the sworn statements are produced to ask for the opportunity of cross-examination by the Assessee. However, in the present case, the necessary documents have not been produced and the assessment orders were passed hurriedly within a short span of 10 days and 30 days from the date of issuance of show cause notices in three matters and one matter respectively. Thus,the impugned order passed by the 2nd respondent is in a serious flaw, which make the orders nullity inasmuch as it amounted to violation ofprinciples of natural justice because of which the Assessee was adversely
affected. 65. Further, it was mandated that the preliminary and detailed statements of the persons in control of computers/electronic devices are always very important. However, in the present case, it is very clear that it is not known whether the statement of the persons, who are maintaining the computer data have been recorded and in which case, before passing the assessment, certainly the respondents are entitled to cross-examine those persons with regard to the veracity of the statements made against the Assessee, however, the said procedure was not followed by the respondents and the same would be fatal to the entire
assessment proceedings.

*ON SC DECISION IN CASE OF DHAKESJWARI COTTON MILLS 26 ITR 775:"*the Constitutional Bench of the Hon'ble Supreme Court had accepted the contention of the learner Solicitor General of India, who appeared for the Department and held as follows: "*The Income Tax Officer is not fettered by technical rules of evidences and pleadings, and that he is entitled to act on the materials, which may not be accepted as evidence before the Court of law, but there the agreement ends."* 52. By applying the above, one could say that the non-compliance of the Rules by the Department may not ultimately nullify the material evidence culled out by them, which may not be accepted in the Court of
law. However in the present case, merely, there is no doubt that the entire materials collected cannot be nullified, but in the same judgment when the above said statement was accepted by the Constitution Bench, wherein the next sentence is as follows: "*because it is equally clear that in making the assessment under sub-section (3) of section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3)."* 53. A reading of the above paragraph makes it clear that the evidences cannot be nullified based on the technical clutches because the Income Tax Officers is not entitled make assessment without reference to any evidence or materials at all. There must be something more than the suspicion to support the assessment under the Act"

*"*In the present case, the respondents have not followed the procedure laid down in the Digital Evidence Investigation Manual and collected 61948 documents totally and out of the same, only 8993 documents were complete and readable, whereas the others were corrupted. Out of the said 8993 readable files, the respondents had chosen sale of one particular day i.e.,25.12.2020 as sale value and considered the same as if the entire sale of that day would be the sale of each and every days of the year, including the days on which the shop was closed mandatorily due to Covid pandemic, which means, as held by the Constitution Bench of the Hon'ble Apex Court, the assessment is not supposed to be made by virtue of pure guess and it should be made with evidences, which is beyond suspicions, but, in the present case, the collection of materials and preservation of the same at the place of the respondents is entirely suspicious and assessments were made by virtue of guess work and without any valid evidence in the eye of law." "56. In view of the above, it appears that the assessment has been made without corroboration of material evidence and hence, the same is not done in the manner held by the Constitution Bench of the Hon'ble Apex Court. Hence, the same is challenged before this Court. Further, in the present case, how the Department had not followed the Digital Evidence Investigation Manual and other non-compliance at the time of seizure of evidences, has been tabulated hereunder:…" "Under these circumstances, before passing the assessment order, the data, which were relied upon by the respondents, have to be corroborated by any additional evidences since the same is mandatory requirement as per the Digital Evidence Investigation Manual and as per the

law laid down by the Hon'ble Apex Court as stated above. However, the same was not done." "69. Further, as held by the Constitution Bench of the Hon'ble Supreme Court in ***Dhakeswari Cotton Mills Ltd.,*** case (referred supra), "*because it is equally clear that in making the assessment under subsection (3) of section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3).*" Therefore, if any electronic data is relied upon by the Department, the same has to be corroborated with the evidences. The said aspect is also covered at Chapter 2.7 of the Digital Evidence Investigation Manual, which reads as follows: *"**2.7 The sanctity and relevance of Digital Evidence.** As in the case of written or oral evidence, digital evidence can also be classified into three main categories: i. **Material evidence**: Material evidence is any evidence that speaks for itself without relying on anything else. In digital terms, this could be a log produced by an audit function in a computer system, the books of account maintained a day-to-day basis on the computer, or any inventory management accom maintained on the computer etc, if it can be shown to be free from contamination ii. **Testimonial evidence**: Testimonial evidence is evidence supplied by a witness. This type of evidence is subject to the perceived reliability of the witness, But if the witness is considered reliable, testimonial evidence can be almost as powerful as material evidence. For example, word processor documents written by a witness could be considered testimonial as long as the author is willing to depose that he wrote the same. ii. **Hearsay**: Hearsay is any evidence presented by a person who is not a direct witness. Word processor documents written by someone without direct knowledge of the incident or documents whose authors cannot be traced fall in this category? Except in special circumstances, such evidence is not admissible in court of law. But even such evidence may constitute material and may be very relevant in Income-tax proceedings, which are not bound by technical rules of evidences. Otherwise also, they can provide important leads for further investigation. **Accordingly, merely gathering electronic evidence is not sufficient. Efforts have to be made to corroborate the contents therein vis-à-vis other evidence such as material and oral. Preliminary and detailed statements of the persons in control of computers/ electronic devices are always very important.**" Held " 70. Under these circumstances, this Court is of the considered view that since the respondents had not followed the Digital Evidence Investigation Manual while collecting and preserving the evidences, as per the law laid down by the Hon'ble Apex Court, if there is no corroborative evidence and proved in the manner known to law, the digital data collected by the Department in the course of search and seizure and thus, the said search and seizure is against the law and *ab initio* bad"

ON MOULDING THE RELIEF " 72. Eventhough the scope of the reliefs sought by the petitioner is very limited, this Court can mould the relief by rather dismissing the petition. 73. As held in the above judgement, this Court can mould the reliefs sought for in these writ petitions rather than dismissing the same

on the account of a formal defect in couching the prayer."

INTERPLAY OF CIT-A AND WRIT REMEDY "74. In such view of the matter, this Court is not inclined to allow the petitioner to go before the Appellate Authority, since the Appellate Authority will not have complete power in entirety to remit the matter back for re-consideration, which would be ultimately against the interest of the revenue. 75. A reading of the above provision makes it clear that there is no power has been provided to the Appellate Authority to set aside and
remit the matter back in entirety to the Officer concerned.. Taking all these aspects into consideration and to avoid the multiplicity of proceedings, it would be appropriate to set aside all the assessment orders, which are under challenge in the present writ petitions and thereafter, remit the matter back for re-consideration to the Authority concerned and to pass appropriate orders in accordance with law"

(ON BINDING EFFECT OF CBDT MANUAL REFER ORISSA HC SEERAJUDDIN 454 ITR 312 "**24.** The above manual is meant as a guideline to the AOs. Since it was issued by the CBDT, the powers for issuing such guidelines can be traced to Section 119 of the Act. It has been held in a series of judgments that the instructions under Section 119 of the Act are certainly binding on the Department. In *Commissioner of Customs* v. *Indian Oil Corporation Ltd.* (2004) 165 ELT 257 (S.C.) the Supreme Court observed as under: "Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in *Central Board of Central Excise, Vadodara* v. *Dhiren Chemicals Industries* : (2002) 143 ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in *Simplex Castings Ltd.* v. *Commissioner of*
Customs, Vishakhapatnam (2003) 5 SCC 528."

Also refer Sec 65B evidentiary value Vizg bench landmark decision in case of M/s. Polisetty Somasundaram I.T.A. No.172 to 180/Viz/2023 (18.08.2023) "46. After considering the decisions of the Hon'ble Supreme Court in the case of Anvar P.V vs. P.K. Basheer and Others (supra); Arjun Pandit Rao Khotkar vs. Kailash Kushan Rao Gorantyal and Ors (supra) and the judgment of the Hon'ble Madras High Court in the case of Vetrivel Mineral vs. ACIT (supra) as well as on perusal of the facts and circumstances of the case, we are of the considered we that the four conditions stipulated in section 65B(2) ie., (a) to (d) along with section 65B(4) were not followed while obtaining the Certificate U/s. 65B of the Indian Evidence Act 1872 in the case of the assessee which are to be followed mandatorily. Therefore, we have no hesitation to hold that this Certificate is not a valid Certificate as prescribed under the Indian Evidence Act 1872 and hence cannot be enforced. Therefore, the Certificate obtained in the case of the assessee cannot be regarded as a legally valid certificate U/s. 65B of the Indian Evidence Act and the same has no recognition in the eyes of law. The information contained in the seized pendrive is could not be considered as admissible evidence as per the provisions of section 65B of Indian Evidence Act. Therefore, we are of the considered view that such inadmissible seized material is not sustainable in the eyes of law. Thus, the assessment order passed in the case of the assessee on 31/3/2022 is not a valid assessment order in the eyes of law and it deserves to be set aside. 47. So far as **Grounds**

No. 2 and 3 (AY 2012-13) are concerned, since we have set-aside the assessment order by allowing the Grounds No. 4 & 5 raised by the assessee," *Also refer Mumbai BENCH ITAT decision in case of* **ITA NOs. 3820, 3821, 3822 & 3823/MUM/2019** *ANAND KUMAR JAIN (22.04.2022) (USE OF CIRCUMSTANTIAL EVIDENCE) "* **22.** In our view, the AO has not conducted any independent enquiry or made any efforts to corroborate the seized pages or link it to assessee. The entire assessment has been made without bringing on record any evidence but merely relying on statements made by persons from Dalmia Group and AO's perceptions/presumptions. **23.** Further, as regards the argument of the Ld. DR that the cheque transactions with two companies are corroboration of seized material it is observed that the cheque transactions are not of the assessee. Transactions other than cheque transactions do not get established automatically. Ld DR argued by relying on the Hon'ble Jurisdictional High Court decision in the case of Smt. Vasantibai N Shah (supra) that there was nothing improper on the part of the AO in relying on circumstantial evidence in such a case for the purpose of arriving at the above finding in as much as no direct evidence in a transaction like the one in question was even possible. Circumstantial evidence in such cases was not impermissible because in such cases it was only the circumstantial evidence which would be available and no direct evidence could be expected. In the case under consideration, however, we observe that there is no mention of the assessee name anywhere in the seized documents and none of the searched parties agreed that they have undertaken any cash transaction with the assessee. We observe that the AO has not brought any corroborative evidence to support his findings and he only presumes that the assessee made investments on behalf of Dalmia Group and he was compensated @12%, any dividend received or capital gain realized are adjusted against the above compensations. Overall, the assessee was promised net 12% return from the investment made by him on behalf of Dalmia Group, without there being any corroborative evidence substantiating the above presumptions. The department has found materials in the premises of Dalmia Group and based on circumstantial evidence, the AO can proceed to make addition in the hands of Dalmia Group but not in the hands of third party who is not mentioned anywhere in the seized documents, in case circumstantial evidence are critical and pointing towards the inevitable circumstances. This is main point/issue which distinguishes the facts in the Vasantibhai N Shah case (supra) relied by Ld DR. It is the duty of the AO to make enquiry and bring on record corroborative evidence particularly when he is making addition in the hands of the third party by relying on the statement of the searched (third) parties."

13. Honn'ble Madhya Pradesh high court in case of PCIT vs **SHRI KRISHNA KUMAR VERMA (19.03.2024) INCOME TAX APPEAL No. 130 of 2023 approved impugned ITAT order in ITA No.185/Ind/2020 (10.03.2023) Held "** In the present case we are in agreement with the contention of the learned AR that the orders of the authorities below clearly reveal that the amount of excess stock & excess cash found during the course of survey was business income of the assessee as the assessee is in the business of trading in jewellery, metal of bullion and the excess stock found during the search & survey was accumulated from transaction of metal of bullion carried out in the forward community trading and mediation and the same was surrendered as excess stock and offered to taxation as business of the assessee. The Ld. CIT(DR) could not dislodge the contention and observations of the Ld. CIT(A) that the surrendered amount was pertaining to excess stock & excess cash which was business income of the assessee and such additional income offered by the assessee for taxation was nothing but business income of the assessee. Therefore it was offered for taxation under the head income from business and profession. In the present case since the assessee in his statement recordedduring the course of search & survey explained that the source of excess stock was the income earned during the relevant financial period from the trading of bullion, jewellery etc. and income from Adat/dalali and regarding excess cash found in his business premises the assessee also explained that though it was not recorded in the books of accounts but it was accrued to him on account of sale of jewellery in cash and the same pertains to his business activity of trading in business of jewellery. Therefore in the present case the assessee has successfully explained the source of excess stock and excess cash found during the course of search & survey operation and surrendered during the said operation. The Ld. CIT(DR) has not disputed or controverted very factual position that the assessee filed return of income including the surrendered amount and which was acceptedby the Assessing Officer without any dispute and without making any further addition in the hands of assessee u/s. 69A or any other section of the Act. In view of above as the assessee has successfully explained and established the source of excess stock and excess cash as his business activity and of trading in jewellery and gems and activity of Adat/dalali.. Identical facts and circumstances as noted above have been found to be existing in the present case then the Ld. CIT(A) was correct and justified in dismissing the contention of the AO and holding that the AO was not right in observing that the assessee is liable to be taxed as per provision of section 115BBE. Therefore, we too have no hesitation in concluding that the facts of present case do notbring the impugned income in the clutches of section 69/69A/69B and therefore do not warrant application of section 115BBE at all."
14. ***ON ISSUE OF RENATAL CLASSIFICATION: Hon'ble MP high court in case of PCIT vs M/S. M.P. ENTERTAINMENT AND DEVELOPERS PVT. LTD., INCOME TAX APPEAL No.180 of 2023 (16.04.2024) "14. We have perused the records and considered the above submissions.15. The A.O. determined*** *Rs.50,21,35,712/- (rupees fifty crore twenty one lakhs thirty five thousand seven hundred twelve only) as "house property income" for the Assessment Year 2013-14 and determined "business / professional income" at Rs.6,63,59,504/- (rupees six crore sixty three lakhs fifty nine thousand five hundred four only) for the same Assessment Year. The CIT (A) has held that rental income derived by the respondent – assessee from leasing out the properties*

in the mall falls under the head of "income from business" and not under the head of the "income from the house properties". It has been held so because all the properties including the right of leasing were owned by the appellant. The same were put to use for the purpose of business or ready to put to use, as the main business of the assessee. Thereafter, in revenue appeals filed by the Department learned ITAT has discussed this issue in detail after considering the documents filed by the respondent – assessee. The learned ITAT found that the main object of the assessee is the business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theater, shop, shopping mall etc. as per Memorandum of Article and Association, which is liable to be categorized as income derived from the shopping mall under the head of "income from business" under Section 28 of the Income Tax Act. The assessee owned a building in the name of Mall and getting it furnished and thereafter let out to various persons with all furniture, fixtures, light or air conditioner for being used as table space by executing a rent agreement.

***16.** In the case of **Sultan Brothers Private Limited** v. **CIT** reported in **(1964) 5 SCR 807**, the Apex Court held that each case has to be looked at from the businessman's point of view to find out whether the letting was the doing of business or exploitation of the property by the owner, it it not possible to say that particular activity is a business because it is concerned with an asset with which the trade is commonly carried on. In case of **Chennai Properties and Investments Limited** (supra), the Apex Court found that the entire income of the appellant was through letting out of the two properties it owned and there was no other income of the assessee except the income from letting out the said properties, which was the business of the assessee.*

***17.** The same situation was in the case of **Rayala Corporation Private Limited** (supra). The Apex Court while holding that the income shall be treated as "income from the house property", rested its decision in the context of main object of the company and took noted the fact that letting out the property was not the object of the company at all. Hence, the character of the income which was from the house property had not been altered, because it was received by the Company form the object of the developing and setting up of the properties. The aforesaid two judgments were distinguished in the case of **Raj Dadarkar and Associates** (supra), because the assessee therein did not produce sufficient material on record to show its entire income or substantial income was from letting out the properties which was the principal business activities of the appellant i.e. Raj Dadarkar and Associates.*

***18.** In the present case, the A.O. did not find any material against the respondent – assessee to come to the conclusion that sub-leasing of the premises was only a part of its predominant object of the assessee. The respondent's right from the construction of mall till the matter was taken into scrutiny had been offering income from the business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theater, shop, shopping mall etc., sub-licence by it under the head "profit and gain of business or profession" of the Income Tax Act. Therefore, the*

CIT (A) as well as ITAT have rightly set aside the order of A.O.
19. *The Apex Court in case of* ***Raj Dadarkar and Associates*** *(supra) has held that ITAT being a last forum insofar as factual determination is concerned, these findings have attained finality. No material has been produced even before us to show how the aforesaid findings are perverse. The order passed by learned A.O. nowhere shows that the entire income or substantial income of the assessee was from letting out of the properties, which is admittedly not the principal business activity of the assessee. Therefore, we do not find any perversity in the findings recorded by the ITAT as well as the CIT (A) and also do not find any substantial question of law involve in these appeals."*

15. Hon'ble MP High court in case of
PCIT vs **PRAKHAR DEVELOPERS PRIVATE LIMITED Income Tax Appeal No.179 of 2023 (01.04.2024) "** 4.5. Being aggrieved by the aforesaid order, the respondent / assessee preferred an appeal before the ITAT, Bench Indore. In the said appeal, the respondent / assessee challenged the authority of PCIT (Central), Bhopal under Section 263 of the Act on the ground that the assessment order was passed under Section 143(3) r/w section 153A of the Act upon taking prior approval from the Assistant Commissioner, Income Tax (Central) – 1, Indore under Section 153D of the Act. "4.6. Learned ITAT by placing reliance on a judgment passed by the Co-ordinate Bench of Pune in the case of ***Shri Ramamoorthy Vasudevan v/s PCIT (ITA Nos.967 & 968/Pun/2016)*** has held that the order passed by the PCIT is unsustainable due to lack of jurisdiction in invoking Section 263 of the Act and accordingly, set aside the order. Hence, this appeal is before this Court under Section 260A of the Act. 07. Learned counsel for the appellant failed to answer the query made by this Court whether order passed by the Pune Bench in the case of *Ramamoorthy Vasudevan (supra)* was challenged before the High Court or Supreme Court on the issue of jurisdiction under Section 263 of the Act. Learned counsel submits that she could not lay her hands any order / judgment passed by the High Court as well as by the Supreme Court on this issue. In the case of *Ramamoorthy Vasudevan (supra)*, in a similar facts and circumstances, reliance has been placed on judgments delivered by the Pune Bench of Tribunal in the case of ***Dhariwal Industries Limited v/s CIT (ITA No.1108 to 1113/PUN/2014)***, Lucknow Bench ***in the case of Mehtab Alam v/s ACIT (ITA Nos.288 to 294/Lkw/2014)***, Hyderabad Bench of the Tribunal in the case of ***CH. Krishna Murthy v/s ACIT (ITA No.766/Hyd/2012)*** and one of the judgment passed by the High Court of Judicature at Allahabad in the case of ***CIT v/s Dr. Ashok Kumar (ITA No.192 of 2000)*** and Hyderabad Bench of Tribunal in the case of ***M/s Trinity Infra Ventures Limited v/s DCIT (ITA No.584/H/2015)*** and consistently held that once the order under Section 143(3) r/w section 153A of the Act has been passed after taking prior approval of the ACIT under Section 153D of the Act, then t he jurisdiction under Section 263 of the Act cannot be invoked. Therefore, the view taken by the Co-ordinate Bench of the Appellate Tribunal had attained finality. Hence, the ITAT, Indore has not committed any error of law by following the same view"

16. ***ON MONEY ALLEGATION: Hon'ble Gujarat high court in case of THE PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL AHMEDABAD Versus KAUSHIK NANUBHAI MAJITHIA TAX APPEAL NO. 20 of 2024 06.03.2024 Relevant extract of hon'ble Gujarat high court decision (supra) is*** "3. We find inherent fallacy in this submission, inasmuch as, there is no basis for conducting proceedings against the assessee merely for the fact that the developer had paid tax on the amount shown in the excel-sheet. *There is no adjudication with regard to the payment, which was shown in the excel-sheet to the effect that the same was actually paid by the assessee to the developer. Even otherwise, the concurrent findings returned by the CITA and ITAT are that the document found from the premises of the third party namely excel-sheet, which is the basis of the proceedings was without any signature and there is no corroborative material to substantiate the said document. The nature of the document has not been explained by the Assessing Officer while proceeding against the assessee. The statements of the persons recorded during search with reference to the alleged, seized material, wasnot provided to the assessee and hence, the entire proceedings under Section 153C of the IT Act of 1961 stood vitiated."*

17. ***ON EXPEDITIOUS APPEAL DISPOSAL BY CITA: Hon'ble P&H high court in case of Naveen timbers p Ltd vs CBDT order dated 19 apr 2024 In cwp 8695/2024*** *Held*
1) appellate authority (first appeal) should endeavour to decide appeals within "directory" time limit(one year) specified u/s 250(6A) of 1961 act
2) where assessee appeal pending from more than 4 years and though all pleadings completed from assessee side still the act of tax recovery officer rohtak to proceed to initiate recovery proceedings is "serious" situation
3) very purpose of appellate provision would be frustrated if such delay occurs in appeal disposal
4) need to fix accountability on part of concerned /,errant officials highlighted
5) specific directions issued to PCCIT to take note of the situation for delay in appeal disposals and to issue specific/further directions in light of sec 250(6A) and fixation of accountability of errant officials
Note :
This situation though continues across country but there is with due respect no serious hearken from apex revenue policy making body.

18. ***ON REVENUE DUTY WHILE ACTING UNDER FACELESS/E PROCEEDINGS: Hon'ble Punjab and Haryana high court in cases of refer hon'ble P&H high court in case of MUNJAL BCU CENTRE OF INNOVATION AND ENTREPRENEURSHIP, LUDHIANA THROUGH ITS AUTHORIZED SIGNATORY SH. BHARAT GOEL. VS CIT (E) CHANDIGARH {2024:PHHC:030865-DB} 463 ITR 560*** **"8.** *In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated hereinabove.The provisions do not mention of communication to be "presumed" by placing notice on the e-portal. A pragmatic view has*

to be adopted always in these circumstances. An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc..The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed. ***9.*** *Having noticed as above, this Court is of the firm view that the petitioner has not been given sufficient opportunity to put up his pleas with regard to the proceedings under Section 12A(1)(ac)(iii) of the Act of 1961 and as he was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter*

19. ***Hon'ble Allahabad high court in cases of: landmark order having wider implications on system of faceless income tax asst and requirement of oral/personal hearing in case of Case :- WRIT TAX No. - 627 of 2024Petitioner :- Satish Kumar Bansal Huf Respondent :- National Faceless Assessment Centre Nfac Neutral Citation No. - 2024:AHC:73541-DB Order dated 26 apr 2024 Held***

"Wherever the assessee makes a specific request in terms of Section 144B(vii),that would be enforced on the Assessing Authority through National Faceless Assessment Centre in accordance with Section 144B(6)(viii). However, the provision cannot be read to mean that opportunity of personal hearing may be granted only where the assessee specifically requests for the same.6. There is no warrant to interpret that the processual law prescribes that opportunity of personal hearing may not be granted by the Assessing Authority unless specifically requested for by the petitioner, in writing. To do that would be to give meaning to the word "request" used under Section 144B(6)(vii)and (viii), larger and much wider than intended by the legislature. Under the general Scheme of the Act, assessment orders are to be passed after giving opportunity to the assessee to present his case. To that extent, the revenue does not dispute the contention of the assessee and it does not claim a right to frame ex parte assessment orders. It contends, the opportunity for personal hearing is not inherent in the right to participate in the assessment proceedings. The assessee may participate in the assessment proceedings by furnishing his written reply. If however he seeks to avail opportunity of personal hearing, he may necessarily make a specific request, in that regard. 7. That may never be accepted. Assessment proceedings by very nature, often involve disputed question of facts and law. By merely submitting written explanations, facts and law may not become clear, on their own. Both with respect to computation of taxable receipts as also with respect to expenditure incurred and allowances and exemptions claimed, facts and explanations thereto are not only required to be pleaded and noted but are necessary to be discussed. It is not uncommon that in the course of a judicial or quasi judicial proceeding the written document may be read in more than one way. That is also true of all explanations and replies. Also, language and writing are a mode of communication. They vary from person to person. Often same or similar thoughts are expressed differently by different persons depending upon their own skill and

preferred use of expressions and method of writing. Therefore, what may be intended to be communicated by an assessee by submitting his written reply, may be received differently by the Assessing Officer on a simple ex parte reading of the same. 8. Therefore, for the purpose of an effective discussion to arise and a reasoned conclusion to be drawn thereafter by the Assessing Officer, oral hearing remains an important and nearabout mandatory requirement to be fulfilled to ensure both, the requirement to pass a just and proper judicial or quasi judicial order and also to preserve the faith in the adjudicatoryauthorities.9. Seen from another perspective, if the assessee is to be taxed at a rate or at income higher than he has returned, he deserves to know the reasons for the same. The reasons may not be drawn ex parte i.e. on the strength of an ex parte opinion of the Assessing Officer. Rather, there must be recorded reasons to deal with the explanation that the assessee may have furnished to the tentative opinion of the Assessing Officer. Only after such reasons are drawn and recorded in the assessment order, the assessee may have opportunity to know the mind of the Assessing Officer. He may then make an informed decision to either accept the reasoning and pay up the tax or approach the appeal forum. 10. Here, we may also take note of an earlier amendment made to Section 251 of the Act whereby the power of the first appeal authority to "set aside" a defective assessment order and to remit the matter to the Assessing Officer, has been done away. At present, the first appeal authorities may either "confirm" or "reduce" or "enhance" or "annul" an assessment order. In absence of power to remit the matter to the assessing authority to make a fresh assessment, in the case of an ex parte order wrongly drawn on ex parte basis, the appeal power would remain seriously restricted. The appeal authority would be forced to entertain the appeal on all merit issues and exercise the powers of the Assessing Officer. While it is not in doubt that the appeal authority has all powers of Assessing Officer, at the same time, it is not the Scheme of the Act to require the job of the Assessing Authority to be routinely performed by the First Appeal Authority. If the opportunity of personal hearing is to be declined by the Assessing Officer by way of a normal practice, we foresee such situations are bound to arise in the normal course of things. In any case, the assessee would have lost one opportunity and tier of appeal, for no fault on its part. 11. Therefore, the word "request" used under Section 144B(6)(vii) and (viii) only imply, where an assessee may furnish his written reply to the show-cause notice but not opt to avail opportunity of personal hearing, it may not be mandatory for the Assessing Officer to grant such opportunity of personal hearing if he intends to accept the explanation furnished. He may pass appropriate ex parte order accepting the explanation furnished by the assessee. If however, on reading the explanation furnished, the Assessing Officer maintains his tentative opinion to pass the assessment order as proposed, that may be adverse to the assessee, he would necessarily fix a date for personal hearing and communicate the same to the assessee, through electronic mode (as provided under the Act).Thereafter, it would be for the assessee to avail that opportunity. If the assessee fails to avail that opportunity, the Assessing Officer may proceed in accordance with law."

20. **Hon'ble Allahabad high court in case of Case :- WRIT TAX No. - 11 of 2023Petitioner :- Smt. Meera Pandey Thru. Her Attorney Respondent :- Union Of India, Ministry Of Finance Deptt. Of Revenue (Cbdt) , New Delhi And Others**

"By the present writ petition, primarily the petitioner has challenged the show cause notice dated 05.01.2023 issued under 24(1) of The Prohibition of Benami Property Transactions Act, 1988 (hereafter referred to as 'Benami Transactions Act 1988') and provisional attachment order dated 05.01.2023 issued under Section 24(3) of the Benami Transactions Act,1988. Petitioner has sought for further reliefs, but, at the very initial stage, learned counsel for the petitioner states that the main challenge is to the aforesaid show cause notice dated 05.01.2023 and the provisional attachment order dated 05.01.2023. In case the relief is granted to the said extent rest of the consequential orders and further actions would by themselves stand non-est and void
HELD 14.Section 24 (1) of the Benami Transactions Act states that "where the Initiating Officer, on the basis of material in his possession, has reason to believe". Thus, there are two pre-conditions to the issuance of the notice under Section 24(1) of the Benami Transactions Act; (i) The Initiating Officer should have material in his possession and; (ii) the material should be sufficient to cause a reason to believe. It goes without saying that while interpreting a taxing statute, the principle of strict interpretation is to be applied. 15.As per record, in the present case a mere statement of the contractor without any substantial supportive evidence is made the basis of the entire proceedings. Such a mere statement without any supportive evidence cannot under law be held to be a sufficient material in possession of an Initiating Officer to arrive at a reason to believe that constructions are benami. There has to be sufficient material in possession of the Initiating Officer on the basis of which he can come to a logical conclusion that can be called a reason to believe for initiating proceedings. 17.In the present case except for an oral statement of a contractor, who has not given any reason for making such a statement, and from whom the department has also not even asked as to on what basis he is making the said statement, the entire proceedings are initiated. There is not even an iota of material placed by the department before this Court, referred to in the show cause notice, on the basis of which the Court could believe the said bare statement and conclude that a reason to believe can be arrived at. 18.Admittedly, the petitioner has already submitted her Income Tax Returns for the relevant period and the said proceedings are not yet completed. As such, in the absence of the same the department also cannot claim that her earnings for the relevant year are beyond her known sources of income. 19.The department-respondents while making its submissions tried to rely upon the statement made by an Architect Sri Sanjay Mathur dated 16.01.2023; a jeweler namely Sri Vishal Gupta, proprietor of the firm M/s. Shiv Nath Traders recorded dated 24.01.2023 and the statement of Khazan Chandra dated 25.1.2023. The department has also placed reliance upon certain material collected from the mobile data of Sri Krishan Kumar Dubey. All the said statements and data collected are not referred to in the show cause notice and are of later date to the show cause notice dated 5.1.2023. The said statements and data cannot be referred to or relied upon by the department while defending the impugned notice dated 5.1.2023, as all the said evidences are collected by the department after the notice is issued and cannot be included in the material in possession of the Initiating Officer for forming the reason to

believe for issuance of the impugned notice. It is also not disputed by the department that an amount of Rs.95.00 lakhs is transferred from the Bank account of the petitioner to the account of the construction firm while the construction is underway and thus nearly the entire amount is already spent by the petitioner on constructions from her own account. 21.So far as the issue of maintainability of the petition, raised by the respondents is concerned, the Constitutional Courts have repeatedly held that the basis of a notice cannot be a mere pretence but must be supported by sufficient reasons and material. It is open for the Courts to examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of belief and are not extraneous or irrelevant. 23.Thus, in the aforesaid facts & circumstances, this Court has no hesitation in holding that there was no material in possession of the Initiating Officer which could be held to be sufficient for holding a reason to believe that the petitioner is a Benamidar of respondent no.5, her son-in-law, with regard to the constructions in question for initiating proceedings under Section 24(1) of the Benami Transactions Act. 24.As regards, the order of provisional attachment under Section 24(3) of the Benami Transactions Act is concerned, Section 24(3) requires that Initiating Officer is of the opinion that the person in possession of the property held Benami may alienate the property during the period specified in the notice. Without such a satisfaction the property can not be attached by the Initiating Officer. 25.In the present case, no such material has been referred to by the Initiating Officer in the impugned attachment order or placed before this Court which could demonstrate that the property is likely to be sold and thus require him to resort to Section 24(3) for provisional attachment. Thus, the order of provisional attachment is also without any basis.
CONCLUSION "27.Thus, the impugned show cause notice dated 05.01.2023 issued under 24(1) of the Benami Transactions Act and also the provisional attachment order dated 05.01.2023 issued under Section 24(3) of the Act, are hereby set aside. All the consequential orders and proceedings on the basis of aforesaid show cause notice dated 5.1.2023 and the provisional attachment order dated 5.1.2023, stand non-est and void."

21. **Hon'ble Allahabad high court in case of Case :- INCOME TAX APPEAL No. - 32 of 2024 Appellant :- Principal Commissioner Of Income Tax And Another Respondent :- M/S Anshika Consultants Pvt. Ltd Neutral Citation No. - 2024:AHC:72705-DB** "6. Thus, the suspicion voiced by the Assessing Officer as to the source of deposit received by the assessee was gone into. On the strength of material and evidence that was brought onrecord, the Tribunal reached a finding that the loans obtained by the assessee were interest bearing. Interest was actually paid. Second, the Tribunal found that the Assessing Officer had not been able to doubt the identity and existence of the creditors. As to the source of money deposited by the creditors, adequate enquiry had not been conducted by the Assessing Officer to doubt the claim made by the assessee. 7. Once the deposits were credited in the bank account of the assessee through banking channel, *prima facie* evidence existed of genuine transactions. In any case, the Assessing Officer was not successful in establishing that the money deposited by the creditors was not theirs but that it had been routed through the creditors by the assessee. In that regard, the Tribunal has categorically observed that there was no proof to establish that such money had been received by the creditors through cash deposits made by the assessee. Merely because the Directors of the two companies were common may have given rise to suspicion that the deposits received by the assessee company from

the other, was bogus. Yet, the Tribunal has found, there is no material or evidence on record to establish that the creditors were shell companies. The observation made by the Assessing Officer in that regard is described as unfounded. 8. Besides the above, the Tribunal has taken note of the loan confirmation, Certificate of Incorporation, PAN registration, copy of the ITR, balance sheet, profit & loss account, bank statement of the creditors, to reach a conclusion that the transactions of deposit received by the assessee company were genuine. In face of such findings recorded by the Tribunal based on material and evidence on record, no question of law arises, as proposed."

22. ***Hon'ble Telanganna high court in case of WP/21054/2022 WP/21786/2022 Zareen Sahar Syed vs Assistant commissioner of Income tax and 2 other*** *(11.03.2024)" These are two writ petitions where the petitioners/assessees are daughter and father respectively challenging the assessment orders dated 20.12.2019 and 26.12.2019 passed by respondent No.1 under Section 143 (3) of the Income Tax Act, 1961 (briefly referred to hereinafter as 'the Act') for the assessment year 2017-2018. 6. The whole contention of the learned counsel for the petitioner was that once when the respondent authorities in the course of passing of an order relies upon certain documents which in the instant cases were the Sub-Registrar's valuation report, it was incumbent upon the Assessing Officer to have made available the Sub-Registrar's report to the petitioners enabling them to file their response to the said reports. In the absence of which the assessment order remains to be an assessment order which has been passed taking into consideration certain extraneous documents and the contents of which were either not made available to the petitioners nor was it formed part of the show cause notices itself. Thus, the entire action stands vitiated on this ground alone. 7. Learned counsel for the petitioner heavily relied upon the decision of the Hon'ble Supreme Court in the case of T.Takano vs. Securities and Exchange Board of India and Another[1] wherein the Hon'ble Supreme Court had ordered for quashment of an order which was passed relying upon certain documents which were ı (either not formed part of the show cause notice nor was the same made available to the petitioners. 8. On the previous date of hearing, we had requested the learned Senior Standing Counsel for Income Tax Department to seek instructions particularly on the aspect whether the report of the Sub-Registrar was made available to the petitioners along with the show cause notices or the contents of Sub-Registrar's report being reflected in the show cause notice itself. 9. Today when the matter is taken up for hearing, the learned Senior Standing Counsel for Income Tax Department upon instructions submits that from the materials made available to him by the Department, it is not reflected that the Sub-Registrar's report was made part of the show cause notice or the contents of which were reflected in the show cause notice. 10. It was contended by the learned Senior Standing Counsel for Income Tax Department that the petitioners in fact had not raised this ground all along and therefore they are estoppeled from raising this ground at this belated stage. It was further contended that upon plain reading of the two show cause notices by itself would reveal that the basis for issuance of the said impugned orders was the Sub-Registrar's report; however, the petitioners did not seek for the said report or its contents. Nor did they raise their objections on the same at any point of time. 11. Thus from the admitted factual matrix, it stands established that the Sub-Registrar's report was not attached to the show cause notices nor was the contents of the same made available to the petitioners. Another striking feature which is reflected is the fact that the impugned orders have been passed strictly based upon valuation report submitted by the Sub-Registrar. 12. Under the given factual matrix of the case, if we now look into the contents of the judgment of the Hon'ble Supreme Court in the case of T.Takano (supra), the Hon'ble Supreme Court has dealt with that issue*

elaborately where referring to past precedents in paragraph No.37 has held as under: 14. From the aforesaid facts and circumstances, admittedly the Sub-Registrar's report was not made available to the petitioners along with the show cause notices or at a subsequent stage at all. If we look into the principles laid down in the aforesaid judgment by the Hon'ble Supreme Court and the facts of the instant writ petitions, admittedly two show cause notices were issued to the petitioners but in either of the two, a copy of the Sub-Registrar's report was not enclosed. … Thus, from the ratio laid down by the Hon'ble Supreme Court in the case of T.Takano (supra), we do not have any hesitation in reaching to the conclusion that the impugned orders smacks arbitrariness on the part of the respondent authorities in passing the same.
15. Another striking feature what is reflected from the proceedings is the fact that the show cause notices issued and the final assessment orders passed at a very short period of time gap. This also compels this Bench to draw an interference against the respondent authorities in showing undue haste in passing of the assessment orders." Also refer hon'ble madras high court in case of Madurai Srinivasagam Sunther v. Deputy Commissioner/Asst. CIT (Mad) 461 ITR 275

23. Hon'ble Calcutta high court in case of KHR HOSPITALITY INDIA LIMITED VERSUS COMMISSIONER OF INCOME TAX-III, KOLKATA
ITA/102/2012
Date : 10th April, 2024 " 13. The expression "assess" used in Section 147 of the Act, 1961 refers to a situation where assessment of income of an assessee for a particular year is, for the first time made by resorting to the provisions of Section 147 because the assessment had not been made in a regular manner under the Act. The expression "reassess" refers to a situation where an assessment has already been made but the Income Tax Officer has, on the basis of information in his possession, reason to believe that there has been under assessment on account of existence of any of the grounds contemplated by the provisions of Section 147(b). Reference may be had in this regard to the provisions of Section 147 itself as well as the law laid down by Hon'ble Supreme Court in the case of Sun Engineering Works P. Ltd. (supra) vide paragraph 39 (SCC) in which Hon'ble Supreme Court held as under – 14. In the case of Sun Engineering Works P. Ltd. (supra) Hon'ble Supreme Court had dealt with a reassessment proceeding and in that context held that the Income Tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject matter of proceedings under Section 147. In the reassessment proceedings it would be open to an assessee to put forward claims for deduction of any explanation in respect of that income or the non-taxability of the items at all relating to escaped income. The object and purpose of the proceedings under Section 147 of the Act is for the benefit of the revenue and not an assessee and the assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to escaped income and reagitate to conclude matters. In the present set of facts since there was no original assessment proceeding and no assessment order, therefore, the question of reassessment does not arise. The orders passed by the assessing officer were the assessment orders passed on original and revised return and claims made by the assessee during the assessment proceedings and, as such, the interest paid to financial institutions/banks being an allowable expenditure under
Section 43B of the Act, 1961 was bound to be allowed. 17. The judgment of the Hon'ble Supreme Court in Sun Engineering Works P. Ltd. (supra) has been explained by the High Court of Karnataka in Karnataka State Co-Operative Apex Bank Ltd. Vs. Deputy Commissioner of Income-tax, Circle 3(1) Bangalore (2021) 283 Taxmann98 (Karnataka) and it was held as under :… .. 18. Thus, we are of the considered view that there being no original assessment order in the case of the assessee, there was no question of reassessment by the assessing officer. The order passed by the assessing officer was assessment order.

The assessee claimed interest as deductible expenditure under Section 43B of the Act 1961 and its admissibility was not disputed by the assessing officer. The proceedings before the assessing officer not being reassessment proceedings, the assessee lawfully claimed interest as a deductible expenditure which the assessing officer was bound to allow. The charge of income tax is on the income and not on gross receipts. It is the profits and gains of business or profession which has to be computed after deducting losses and expenditures incurred for business. Since the interest claimed by the assessee is not within the prohibition, it must have been allowed by the assessing officer in the facts of the present case. The tribunal has committed a manifest error of law and passed the impugned order without application of mind on the presumption that the proceeding before the assessing officer was reassessment proceeding whereas proceeding before the assessing officer was the assessment proceeding and the order passed by him was assessment order. Therefore, the ratio of decision in the case of Sun Engineering Works P. Ltd. (supra) was not applicable on facts of the present case. The substantial question of law (i) deserves to be answered in favour of the assessee and against the revenue."

24. **Mumbai bench ITAT in case of Reuters Asia Pacific Ltd ITA 587/MUM/2021 (26.12.2023) ON FATAL IMPACT OF UNSIGNED ORDER AFTER CONSIDERING SEC 282A (360 DEGREE : ASSESSEE FAV LANDMARK ORDER)**

CLOSING WORDS FROM *hon'ble Apex court by Justice YK Sabharwal in case of Onkarlal Bajaj vs UOI 2003 3 SCC 673* "The roll model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions.