IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No.4100/Del/2016
(Assessment Year : 2007-08)

Sh. Vikram Dhirani D-1039, New Friends Colony, New Delhi-110065 PAN : AHTPD6528L	Vs.	ACIT, Central Circle-7, (Old Central Circle-12) New Delhi

ITA No.4647 to 4652 /Del/2016

A.Y. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13

ACIT, Central Circle-7, (Old Central Circle-12) New Delhi	Vs.	Sh. Vikram Dhirani D-1039, New Friends Colony, New Delhi-110065 PAN : AHTPD6528L

ITA No.4475/Del/2016, A.Y. 2007-08
ITA No.1092/Del/2017, A.Y. 2007-08

Sh. Vikram Dhirani D-1039, New Friends Colony, New Delhi-110065 PAN : AHTPD6528L	Vs.	ACIT, Central Circle-7, (Old Central Circle-12) New Delhi

ITA No.1849/Del/2017, A.Y. 2007-08
ITA No.6031/Del/2016, A.Y. 2008-09
ITA No.6028/Del/2016, A.Y. 2009-10
ITA No.6029/Del/2016, A.Y. 2010-11
ITA No.6030/Del/2016, A.Y. 2011-12
ITA No.6032/Del/2016, A.Y. 2012-13

ACIT, Central Circle-7, (Old Central Circle-12) New Delhi	Vs.	Sh. Vikram Dhirani D-1039, New Friends Colony, New Delhi-110065 PAN : AHTPD6528L
Appellant		Respondent

Assessee by	Shri P.C.Yadav, Adv.
Revenue by	Sh. H.K.Choudhary, CIT(DR)

Date of hearing:	05.04.2023
Date of Pronouncement:	17.04.2023

ORDER

Per Anubhav Sharma, JM :

The revenue and assessee are in appeal for AY 2007-08 and 2008-09, against order dated 30.06.2016 by which appeal no. 150 & 151/15-16 were disposed off by Ld. CIT(A)-23, New Delhi the same arising out of assessment order u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') dated 05.03.2015 passed by ACIT, Central Circle-7 (hereinafter referred to as the 'Ld. AO')

The Revenue is also in appeal for A.Y. 2009-10 to 2012-13, against order dated 30.06.2016 of Ld. CIT(A)-23, New Delhi by which appeal no. 152 & 155/ 15-16 for A.Y. 2009-10 to 2012-13 against order dated 05.03.2015 u/s 153A r.w.s. 143(3) of the Act passed by Ld. ACIT, Central circle -7, New Delhi were disposed off.

2. The facts of the case are that the assessee is individual and main source of income comprising was from salary, house property and capital gains. A search took place on M/s. Dhirani group of cases on 28th July, 2011. A search was also conducted upon a warrant of authorization in the name of assessee at D-1039, New Friends Colony, New Delhi. Notice u/s 153A of the Act was issued on 21.05.2012 requiring assessee to file the return for the relevant assessment years. Assessee filed the returns. Thereafter notice u/s 142(1) along with questionnaires were issued and accordingly assessment was completed.

2.1 In regard to assessment year 2007-08, assessee has found to have not disclosed HSBC Bank account at Dubai. Thereafter based on statement of the assessee u/s 132(4) of the Act dated 28.07.2011 and 04.08.2011, the Ld. AO observed that the said account had balanced of 19,15,148 Euros in April, 2006 and applying a conversion rate of Rs. 62 it was treated as undisclosed income of the assessee for the F.Y. 2006-07 relevant to A.Y. 2007-08. Ld. AO also added to the income, interest income on the credit balance up to 31st March, 2007 @ Rs. 4% per annum at Rs. 43,53,770/-.

3. Thereafter as a consequence to addition made in assessment year 2007-08 as above, addition of interest income on the credit balance was made in the subsequent assessment years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

4. In appeal Ld. CIT(A) had sustained the substantial addition on account of balance with foreign bank account remaining unexplained however, directing that recomputation be done of the undisclosed income by adopting currency in the relevant bank account as Dollars, instead of Euro, however, the additions on account of interest income in the said account on notional basis was deleted.

5. In regard to assessment year 2009-10 additions were made by Ld. AO in the hands of assessee with regard to cash deposits appearing in the account of Aditya Dhirani (son of assessee) in the account of Bank of America. Ld. CIT(A) had deleted the same.

5.1 In regard to A.Y. 2009-10 an addition of Rs. 1,65,900/- was made in the hands of assessee on the basis of purchase of 2 split air conditioners for cash which was also deleted by Ld. CIT(A).

5.2 In regard to assessment year 2010-11, Ld. AO had made additions in the hands of assessee for un-explained cash deposits in the bank account of Aditya Dhirani, son of the assessee which were deleted by the ld. CIT(A).

5.3 In regard to A.Y. 2011-12, Ld. AO had made additions in the hands of

Assessee on account of cash deposits appearing on account of Ms. Natalia Dhirani, daughter of the assessee in bank account with Bank of America. Addition was also made on account of unexplained source of expenditure of reimbursement expenses which assessee had incurred on account of sale of a flat. These two additions were also deleted by the Ld. CIT(A). An addition was also made on account of cash deposits in the account of son, the same was also deleted by Ld. CIT(A).

5.4 In assessment year 2012-13, Ld. AO had made addition in hands of assessee's own account of cash deposits in the foreign bank accounts of son Aditya Dhirani and Daughter Netalia Dhirani. Further an addition of Rs. 10,80,000/- was made on account of unexplained transfer of 24,000 US dollars to the children Aditya Dhirani and Natalia Dhirani by one Ravinder Bahal, relative of the assessee with

help of a friend Mr. Raj Kapoor. These additions were also deleted by Ld. CIT(A).

5.5 The Revenue is in appeal for AY 2008-09 to 2012-13 challenging the various deletions by Ld. CIT(A) and the assessee is in appeal against order of ld. CIT(A) for quantum addition for the base year 2007-08.

6. The arguments were heard and records have been perused. The grounds raised in the respective appeals are being taken up for discussion and adjudication in the form of issues for determination as follows.

7.1 Ld. Counsel for the assessee has focused on the arguments that the source of information is not established and referring to the fact that it was pen drive which was received allegedly from the French Govt., in the absence of link evidence, the same is not admissible. It is submitted that print out from this Pen Drive is not a bank account statement and in similar circumstances the

Tribunal in the case of Parminder Singh Kalra, ITA No. 5330/Del/2016 dated 15.06.2021 has held that the so-called bank statements retrieved from the pen drive are not statement at all and that the same are not admissible for proving any fact. He specifically pointed out there is no stamp, letter head, signatures upon these so called statements and in the revenue documents they has been referred as base sheets.

7.2 He submitted that apart from this there was no recovery of any incriminating material during the search as reflected from panchnama made available at page no. 3 to 17 of the paper book. Relying judgment of Hon'ble Delhi High Court in **Kabul Chawla (2016) 380 ITR 573 (Del), Kurele Paper**

Mills P. Ltd. [2016] 380 ITR 571 (Del) & Sighad Education 397 ITR 344 (SC) it was submitted that as the return was filed for A.Y. 2007-08 on 30.07.2007 and time limit to issue notice u/s 143(2) expired on 30.07.2008 as per the provisions of Act applicable at the relevant time, the case of assessee is of the case of non-abated assessment and in the absence of any incriminating material being found in the search, no addition could have been made.

7.3 He submitted that Ld. Tax Authorities below have fallen in error in considering the statement recorded u/s 132(4) of the Act to be admissible in evidence. He cited certain circumstances like recording of evidence at odd hours to contend that there was pressure upon the assessee and the statement cannot be considered to be voluntary in nature. It was submitted that the statement recorded on 28.07.2011 and 04.08.2011 were retracted by the assessee by a letter citing reasons.

7.4 As with regard to the limitation period for framing the statement being time barred it was submitted that for the assessment year 2007-08 the assessment period expired on 31.03.2014 however, the assessment order was passed on 27.02.2015. It was submitted that without any basis and foundation provisions of Explanation-VII to section 153B were invoked by the Ld. AO for extending the time period for assessment by making a pretentious reference on 25.10.2012 to the French Authorities. Referring to the order of ld. CIT(A) he submitted that on repeated directions by way of remand report Ld. AO was unable to justify if any further information was received.

7.5 Arguing on the additional ground it was submitted that there was mechanical approval given in the case.

8. On the other hand, Ld. DR submitted that the information in the Form of bank statement reflected all the necessary inputs required to establish that the bank account was opened and operated by the assessee Vikram Dhirani. That the statement recorded at the time of search corroborate all the particulars of this document and the same cannot be considered to be a dumb document. He has further defended the orders of Ld. Authorities below submitting that there was no case of time barring assessment and in accordance with protocol information was sought from the foreign authorities. Ld. DR relied following judgment primarily to submit that the sworn statements cannot be left aside without there being anything exceptional to justify retraction. B Kishore Kumar Vs CIT [2015]

62 taxmann.com 215 (SC)/[2015] 234 Taxman 771 (SC), B Kishore Kumar Vs CIT [2014] 52 taxmann.com 449 (Madras)/[2015] 229 Taxman 614 (Madras)/[2015] 273 CTR 468 (Madras), Bhagirath Aggarwal Vs CIT [2013] 31 taxmann.com 274 (Delhi)/[2013] 215 Taxman 229 (Delhi)/[2013] 351 ITR 143 (Delhi), CIT Vs M.S.

Aggarwal [2018] 93 taxmann.com 247 (Delhi)/[2018] 406 ITR 609 (Delhi), Smt Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi), M/s Pebble Invesment and Finance Ltd. Vs ITO [2017-TIOL- 238-SC-IT], M/s Pebble Invesment and Finance Ltd. Vs ITO? [2017-TIOL- 188-HC-MUM-IT],Greenview Restaurant Vs ACIT [2003] 133 Taxman 432 (Gauhati)/[2003] 263 ITR 169 (Gauhati)/[2003] 185

CTR 651 (Gauhati), Raj Hans Towers (P.) Ltd Vs CIT [2015] 56 taxmann.com 67 (Delhi)/[2015] 230 Taxman 567 (Delhi)/[2015] 373 ITR 9 (Delhi), PCIT Vs Avinash Kumar Setia [2017] 81 taxmann.com 476 (Delhi)/[2017] 248 Taxman 106 (Delhi)/[2017] 395 ITR 235 (Delhi), Vinod Kumar Khatri Vs DCIT [2015-TIOL2669-HC-DEL-IT], Smt. Dayawanti Vs CIT [2016] 75 taxmann.com 308

(Delhi)/[2017] 245 Taxman 293 (Delhi)/[2017] 390 ITR 496 (Delhi)/[2016] 290 CTR 361 (Delhi), Bhagirath Aggarwal Vs CIT [2013] 31 taxmann.com 274 (Delhi)/[2013]

215 Taxman 229 (Delhi)/[2013] 351 ITR 143 (Delhi), CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi)/[2018] 406 ITR 609 (Delhi),ACIT Vs Hukum Chand Jain [2010] 191 Taxman 319 (Chhattisgarh)/[2011] 337 ITR 238(Chhattisgarh)/[2010] 236 CTR 92 (Chhattisgarh),Greenview Restaurant Vs ACIT [2003] 133 Taxman 432 (Gauhati)/[2003] 263 ITR 169 (Gauhati)/[2003] 185 CTR 651 (Gauhati), Raj Hans Towers P. Ltd. Vs CIT [2015] 56 taxmann.com 67 (Delhi)/[2015] 230 Taxman 567 (Delhi)/[2015] 373 ITR 9 (Delhi), PCIT Vs Avinash Kuar Setia [2017] 81 taxmann.com 476 (Delhi)/[2017] 248 Taxman 106 Delhi)/[2017] 395 ITR 235 (Delhi), Bannalal Jat Constructions Pvt. Ltd. Vs ACIT [2019] 106 taxmann.com 128(SC).

9. **The first issue for determination** is the admissibility of information received from the French authorities. In this regard the relevant observations and conclusion drawn by Ld. CIT(A) with regard to nature, genuineness and substance of information relied as 'Bank Account Statement', are reproduced below :-

> *"7.7.2 Based on the search notice u/s 153A of the Act was issued on 25.05.2012 asking the appellant to file return of income for the AYs 2006-07 to 2011-12 in response to which the assessee filed the returns declaring same income as was originally declared. Thereafter, the AO issued notices u/s 142(1) of the Act on 11.07.2013 asking the assessee to sign a consent form for bank account with* ***HSBC, Dubai*** *and to provide complete details of the foreign bank account, bank statement, account opening form, etc., but the appellant, vide his letter dated 18.07.2013, reiterated his stand and replied that "he did not have any bank account with* ***HSBC, Switzerland"*** *and that "he has never opened any bank account with HSBC Bank". The AO thereafter issued summons u/s 131 of the Act on 07.03.2014 and on 11.03.2014 the AO recorded statement of the assessee wherein the appellant, in answer to Q. No. 6, stated that "though my name does appear in the statement shown by you but I am not aware about in what capacity my name has been mentioned" and denied that the bank account statement of HSBC Dubai being shown belong to him, and that he was not aware of Mapleton Continental SA, and that the bank statement being shown is in US Dollar whereas in the statement recorded during the search the amount stated was in Euro. In reply dated*

18.11.2014 to subsequent notice u/s 142(1) of the Act dated 10.11.2014 the assessee once again denied having any foreign bank account. The AO issued another notice u/s 142(1) on 12.12.2014 asking him to produce copy of bank account maintained by the assessee with HSBC Dubai which was denied again by the assessee vide his letter dated 22.12.2014. Thereafter, the AO observing, at Para 5 page 2 of the assessment order, that "as per information available with the Investigation Wing of the

Department the assessee was having an account with HSBC Bank,

Dubai bearing No. BUP_SIFIC_PER_JD 5090187879, PER_JD 148209, PER_No. 187879 opened on 13.04.2006. In this information vital details of Shri Vikram Dhirani, viz., his D.O.B. [21.06.1956] his address of New Delhi [D-1039, New Friends Colony, New Delhi-65], marital status etc were duly mentioned. The above information was received from the Competent Authority under Exchange of Information framework of DTAC/DTAA between India & France" and that "as per the said information .... credit balance in this account was 19,15,148 as on April, 2006 and 18,12,642 as on ending December, 2007; Peak balance in the month of April, 2006 was 19,15,148", and applying Euro rate of Rs. 62 per Euro the AO made addition of Rs. 11,87,39,176/-.

7.7.3 The background related to the information of the foreign bank account of the appellant have been discussed in detail at paras-4 to 6 herein above. The appellant's AR has, in his WS, raised various contention reproduced herein above under "ground 9 to 11". The primary contentions/objections raised, inter alia, are that,

(i) the information was received from the competent authority under exchange of information but nowhere it has been stated how this information came and how the name of the assessee is being considered on the basis of this information;

(ii) it is not clear that whether the allegation is in respect of HSBC Bank, Dubai or Switzerland and with which Branch this account was being maintained, that if it is a bank statement of an account in Dubai how the language in the so called bank statement apparently appears to be French which is not a language of UAE and also not a universal English language, and even then reference was made by the AO and FT&TR Division of CBDT to Swiss authorities, and therefore the contention is that this document is neither photocopy nor original but some noting done by somebody and it cannot be relied upon unless

the identity of such person is disclosed and such person is subjected to cross examination about the source from which the document is copied;

(iii) the AO, on page 9 of the assessment order, has referred to some particulars of the assessee allegedly contained in the information received under exchange of information, and that since the authenticity of the said information has not been tested and verified by the AO these particulars nowhere can lead to any inference that the assessee was having any foreign bank account;

(iv) in the assessment order it has not been stated as to in which currency this account was being maintained, whether it is US Dollar, Euro or UAE Dirham, but while drawing conclusion on page 10 of the assessment order the AO has considered the balance to be in Euro but on what basis this account has been considered in Euro is also not clear, and that when the allegation is being made that this bank account is in HSBC Bank, Dubai, then how come the currency being alleged is Euro and not UAE Dirham;

(v) reference to the name of Mapleton Continental SA in the bank statement suggest that this document which has been shown to the assessee was in the name of Mapleton Continental SA, but how this document of Mapleton Continental SA is related to the assessee has not been investigated nor verified;

(vi) the AO has not been able to bring any material or evidence which can substantiate its allegation that the assessee is having a foreign bank account;

(vii) the AO repeatedly through notices u/s 142(1) of the Act has been asking the assessee to give a copy of the bank statement and in case the AO was having copy of the bank statement there was no reason and justification for the AO to ask for the same document from the assessee and also suggests that the information with AO was in itself not sufficient enough to hold that assessee is having a foreign bank account; and that,

(viii) the AO on the other hand is asking the assessee to prove that he does not have a foreign bank account against the settled principle of law that negative onus cannot be put upon the assessee.

7.7.4 *In consideration of the above contentions raised by the appellant the relevant facts emanating from the documents now provided by the*

AO, and in turn provided to the appellant, as mentioned at para-4 to 6 herein above are discussed and considered hereunder:

(i) the information relating to the foreign bank account of the appellant with HSBC Dubai was received, at Paris, under the framework of the exchange of information in terms of the DTAA with France (supra) transmitted to the competent authority of India under the said DTAA, the Joint Secretary (FT&TR) CBDT by the Director in charge of taxation (Le Directeur, charge de la fiscalite) of the 'Direction Generate Des Finances Publiques of the French Republic vide their letter dated 28th June 2011 through which they handed over a USB pen-drive containing bank account statements of various Indians including the appellant in accordance with Article 28 of the Indo-French fiscal convention (treaty) of 29th September, 1992 to be utilized for fiscal (taxation) purposes. The said information was received in response to reference from the JS (FT&TR-I) vide his letter No.501/16/1980FTD-1 dated 14.06.2011;

(ii) the competent authority of India thereafter took printout of this information, being the bank statement and the account holder's details, in a password-protected office computer and copy thereof were forwarded to the Commissioner of Income Tax(lnv), CBDT on 01.06.2015 which was further handed over to the Director General of Income Tax (Investigation) New Delhi vide letter No.289/1/2011-Comm(lnv)(Part-ll) dated 10.10.2011 on 14.07.2011 which were later transmitted to the AO concerned;

(iii) the Under Secretary, FT&TR, CBDT has also issued certificate u/s 65B of the Indian Evidence Act 1872 vide his letter F.NO.500/86/2015-FT&TR-III dated 14.08.2015 authenticating the source and veracity of the information related to the said bank account;

(iv) as mentioned above the DTAA with France was notified vide GSR-681 (E) dated 07.09.1994 in terms of the provisions of s.90 of the Act, and exchange of information is in accordance with Article 28 of the said convention, and this exchange of information framework is based on Article 26 of the OECD Model Tax Convention which are as under.

7.7.4.3 Under these stipulated provisions of the exchange of information framework it cannot be said that the due process has not

been followed in the present case. Therefore, even if the information is related to bank account of the appellant with HSBC Bank Dubai, even though the Government of France did not have domestic interest in the HSBC account held by the appellant in Dubai, the information being relevant to India for taxation purposes was legally shared with India in terms of the provisions of the DTAA between the two countries and in terms of the provisions of Art.26 of the OECD Model Convention for Exchange of Information. This view is also consistent with s. 90(1)(c) of the Act, which provides that the exchange of information may be "for prevention of evasion or avoidance' of income-tax chargeable ***under this Act or*** *under the corresponding law in force in that country, ... or investigation of cases of such evasion or avoidance", and therefore I find no infirmity in the utilization of the information related to the bank account of the appellant with HSBC Dubai, being in possession of the French Republic and which was shared with the Indian authorities, in the assessment of income of the appellant.*

7.7.4.4 All the above information and documents, as mentioned above at para- 4 to 6, have been provided to the appellant during the appellate proceedings alongwith letter F.No.4l4/88/2011IT(inv.)(Pt.)/08 dt. 01.06.2015 of the Dy. Secretary (InvestigationI), CBDT addressed to the DsGIT(lnv), which details all the above documents, copy of which, forwarded by the AO with his remand report dt. 12.05.2016, was also provided to the appellant vide order sheet dt. 19.05.2016 to which he has through his AR submitted his rejoinder/counter comments on 01.06.2016, and though undisputedly the AO did not provide these documents to the assessee during the assessment proceedings giving rise to the issue of provision of adequate opportunity and therefore violation of principle of natural justice, no such grievance now remains, as has been held at para- 7.3 herein above.

7.7.4.5 Even the objection/contention of the appellant noted at sub-para-(i) to (iii) and (vii) of para- 7.7.3 above basically seeks to deny the authenticity of the impugned foreign bank statement.
However, mere denial of an existing apparent fact cannot negate or nullify the documentary evidence available and confronted to the appellant. Further, it is also settled law that the assessing officer can rely upon any "material" available with him for the purpose of making an order of assessment and the powers of the assessing

officers in respect of the relevancy as also in respect of the proof of material is far wider than the evidence which is strictly relevant and admissible under the Evidence Act and he may act on material which may not be accepted as evidence in a court of law as held in ***Homi Jhangir Gheesta vs*** *CIT* ***(1961) 41*** *ITR* ***135, 142 (SC), Addl.*** *CIT* ***vs Jay Engineering Works Ltd. (1978) 113 ITR 389, 391 (Del), Vimal Chandra Golecha vs ITO (1982) 134 ITR 119, 130 (Raj).*** *In this view of the matter, the impugned foreign bank statement though obtained from France under exchange of information framework but maintained by the HSBC Private Bank, Dubai headquartered in Geneva, Switzerland is held to bevalid material evidence for the purpose of assessment of the correct taxable income of the appellant.*

7.7.4.6 In view of the facts brought out at sub-paras-(i) to (v) above there remains no doubt as regards the chain of custody and integrity of the information received from the time it has been handed over to the competent authority of India, till it has reached the AO, and therefore as regards the authenticity of the source of information, or of the information per se, related to the impugned bank account of the appellant with HSBC Dubai. I hold accordingly."

"7.7.5.2 On close scrutiny of the impugned bank account statement received from the French authorities it is observed that under ***"Other persons linked to the client's profiles (AUTRES PERSONNTS LIEES AUX PROFILS CLIENTS)"*** *the Name : BUP Code is* ***"HSBC Financial Services [ME] Ltd. (5090279917)"*** *with the address* ***"HSBC Financial Services (ME) Ltd., P.B. Box No.4604, Dubai, United Arab Emirates".*** *The appellant has contended that it is not the case of the AO that the assessee was having a bank account in France and the Government of France has given a copy of the bank account being maintained by the assessee in France but in fact the allegation of the AO is that assessee was having a bank account with HSBC Dubai, that the AO himself is not clear from which competent authority it has sought information, whether it is France, Switzerland or UAE, that all these documents pertain to exchange of information between Indian and France, that as per the proforma enclosed by the AO with the letter dated 27th September, 2013 addressed to the Commissioner of Income Tax (Central) the information being sought is that of HSBC Bank Dubai, and that if that be the case this letter would have been written*

under exchange of information to UAE. In view of the fact that in the remand reports received the AO has not commented upon as'to how and why reference was sent by the JS, FT&TR-I, CBDT to Swiss Authorities when the impugned bank account was with HSBC Dubai, and the fact that the FT&TR Division of CBDT did not reply to specific letters written by the AO to the US, FT&TR-III(2), CBDT vide his letter F.Nos. ACIT/CC-07/2015-16/841 dt. 15.02.2016 and 11.05.2016 written under reference to my letters seeking copies of the documents/letters with enclosures related to the references for exchange of information made by them [(ref para-4(iv) herein above.

7.7.5.3. The AO has considered the maximum deposit/credit balance of 1,915,148 as on 04/2006 as peak balance which has been considered as undisclosed deposits of money in the above foreign bank account and taking the currency as Euro he has made an addition of INR 11,87,39,176/- by taking the conversion rate of Rs.62/- per Euro. However, from the impugned bank statement it is observed that against the amount mentioned in the monthly balances currency has not been indicated. In this context, the objection raised by the assessee during the appellant proceedings, mentioned above at sub-para (iv) of para-7.7.3, that in the assessment order it has not been stated as to in which currency this account was being maintained, whether it is US Dollar, Euro or UAE Dirham and that when the allegation is being made that this bank account is in HSBC Bank, Dubai, then how come the currency being alleged is Euro and not UAE Dirham becomes relevant. As mentioned herein above, and as also mentioned in the English translation provided by the FT&TR division of CBDT to the AO and submitted by the AO with his remand report discussed above, in the first page of the personal details of the client profile it is mentioned as "assets recorded in December, 2005 (in $)" and "assets maximum recorded during the period (in $)". We have also noted herein above that HSBC Private Bank is head quartered in Geneva, Switzerland, and it is well known that universally accepted currency is primarily Dollars. Since the credit balances related to liquid assets and investments in the name, and beneficiary name, of the appellant noted in the impugned bank statement is Dollars, and since the AO has not stated any reasons for adopting Euro as the currency, it would be appropriate to adopt Dollars as the currency for computing the value in INR. In view of the fact that I have herein above upheld the authenticity of the information received related to the foreign bank account, and

considering that the name, personal details and address of the account holder mentioned in the impugned bank account is specifically that of the appellant and his client ID is mentioned against his name, and his name also appears as the "beneficial owner" against the client name Mapleton Continental SA, it is held that the impugned foreign bank account belongs to the appellant and he is the beneficiary of the assets/investments and deposits reflected in that account, whether in liquid assets/deposits or deposits in form of "shares, stocks or structured products" in Mapleton Continental SA, or in any other company in any other company for that matter, which has not been disclosed hither to before in his income tax returns."

10. Taking into consideration the aforesaid observations of the Ld. CIT(A), the Bench is of firm view that Ld. CIT(A) has fallen in error in considering the "information" itself to be "evidence". The information even if from a valid source and correct is still required to be converted into evidence upon which an inference can be drawn to say that the fact stands proved.What was received from French authorities was merely information in a pen drive. No provision under the Act attaches any presumption of truth to the contents of such information received from the Competent Authority under Exchange of Information framework of DTAC/DTAA between India & France. The onus was on Ld. AO to establish that the material retrieved or printed from the Pen Drive, has contents of the 'Bank Account' as exists with the said Bank. Then only it could be said to be carrying any evidentiary significance with categorical value. There is nothing on record to show that any communication was made with the concerned Bank to verify the details made available in the information or as to what was the nature of account, who was its operator, how it was operated. It appears that Ld. CIT(A) has done this all exercise on the basis of his own interpretation and inferences from the information available in the paper, by refereeing it to a 'Bank Account Statement'. The Bench is of considered view that when any quasi judicial authority is referring to a document of the nature like Bank Account Statement, then mere inferences

from the contents of a documents it cannot be assumed that same is extract of a Bank Account statement kept in regular course of Banking Business. Even in case of a Banks incorporated in India it is only by virtue of the Bankers' Books Evidence Act, 1891, the 'Bankers books' have been made admissible. When the information about an account in foreign bank was not coming from the Bank itself but some other source, there had to be some foundation to rely the same and reach a conclusion. However, that seems to be not the case here.

11. A Coordinate Bench in **Parminder Singh Kalra, (supra)** has taken into consideration similar set of facts and discredited this information with following observations;

> *"132. The ld. CIT(A) having referred to the remand report submitted by the AO on this issue held that that in view of the chain of custody and integrity of information received from the time it has been handed over to the Competent Authority of India, till has reached the AO, there remains no doubt. There is no quarrel with the proposition that the French Competent Authority has handed over the pen drive to the Indian Competent Authority and the 6 page document is a print out of the said pen drive. But the ld. CIT(A) failed to address the argument of the assessee that the information contained in pen drive, the source thereof and author thereof and the authenticity of the information contained in the pen drive has not been established with any credible evidence or linkage with any of the document. The pen drive so received was just like an anonymous letter forwarded by French Competent Authority to the Indian Competent Authority. The issue which the ld. CIT(A) has failed to appreciate is the origin of the source of information only and certainly not the passing of the information from French Competent Authority to Indian Competent Authority, till such time the origin of source of information is authenticated. 133. Further, we hold that similar issue of authenticity of the documents has been examined and adjudicated in the case of AnuragDalmiaVs DCIT, Central Circle-26 in ITA Nos. 5395 & 5396/Del/2017 for the assessment years 2006-07 and 2007-08 dated 15.02.2018. In that case, the Tribunal held at para 22 that "before parting, we are making it very clear that we have not given any finding on merits and also to*

veracity of the information received by the department from the foreign authorities, as to whether assessee has any link with the foreign bank accounts or not."

12. **Second issue** to be determined is if apart from the aforesaid information in the hands of Revenue there was any other material of inculpatory nature found during search itself on the basis of which assessment under Section 153A of the Act can be done. At outset it is pertinent to mention that admittedly no document or any material was found in the search. The only evidence relied by Ld. Tax Authorities below is the statement recorded u/s 132(4) of the Act. The Ld. CIT(A) has dealt with this aspect with following findings;

"7.7.7 As regards the contention of the appellant's AR relating to the reliance placed in, the assessment upon the statement recorded u/s 132(4) of the Act during the search, on perusal of the panchnamas it is observed that documents as per Annx-A and cash as per Annx-C were found during the search at the residence, of the appellant at D- 1039, New Friends Colony, New Delhi on 28.07.2011 and beside Annx-A comprising documents A-1 to 6, Rs.5.05 crore was seized, and beside documents-as per Annx-A1 to 12 and Annx-A1 to 6 seized from the business premises of M/s Karam Chand Rubber Industries Pvt. Ltd. and M/s Karam Chand Chains Ltd. at C-230 & C-229, Industrial Area, Ghaziabad respectively Rs.2.90 lakh was also seized from the latter premises. The statement of the appellant was therefore recorded u/s 132(4) of the Act on 28.07.2011 at the premise C-229, Industrial Area, Ghaziabad where he was present during the search. As per provisions of s. 132(4) of the Act during the course of search or seizure statement of any person "who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing" may be recorded, and as per Explanation below s. 132(4) of the Act the statement may be recorded "in respect of all matters relevant for the purposes of any investigation connected with any proceedings under the Act", i.e. in respect of any other relevant matter or information available with the department. It is to be noted that a total of Rs.5,11,16,540/- Cash was found from the above three premises out of which Rs.5,07,90,000/- was seized. As such, the statement of the appellant recorded u/s 132(4) of the Act during the

search cannot be considered to be legally invalid and the facts of the case relied upon are distinguished on this account. Therefore, it was but natural that queries regarding information related to the impugned foreign bank account which was in the possession of the Department was put to the appellant at the time of recording of statement u/s 132(4) of the Act and after persistent questioning the appellant finally admitted, in answer to Q. No. 29 to 35 that he has bank account with HSBC Dubai opened on 13.04.2006. The impugned statement u/s 132(4) of the Act has been reproduced at page no. 3 to 5 of the assessment order at para-5. In Q. No.29 the appellant was shown the copy of the impugned foreign bank statement whereafter in his reply the appellant admitted that he has a bank account with HSBC Dubai which was - opened on

13. *04.2006, and in answer to subsequent questions he replied that he opened the account from India itself through some person to whom he had given authorization, and that "he had undertaken one transaction" and subsequent "transactions were made by the bank on their own as investment options under his instruction", and that M/s Mapleton Continental SA might be part of consequent investments.*

7.7.8 In the backdrop of the above facts and findings the challenge to the veracity of the statement recorded u/s 132(4) of the Act, the contention of lack of incriminating material found during search and reliance of appellant's AR on Kabul Chawla (supra) is considered now. The appellant's AR contention in his WS that the AO has ignored the reply of the assessee to questions 01 to 28 in the statement recorded during the course of the search on 28.07.2011 where the assessee categorically stated that he does not have any foreign bank account and only relied on his answers to questions 29 to 35, which were leading questions, recorded at about 3.00 am in the night and the assessee was forced to sign the statement, and that in case reliance is being placed on questions 29 to 35 an equal reliance has to be placed on the earlier answer given to the questions starting from 1 to 28. In fact, the appellant retracted from his admission of owning the impugned foreign bank account made in his above statement and in the statement recorded by the Investigation Wing on 04.08.2011 vide his letter dt. 29.08.2011 addressed to the Director of Income Tax (Inv.) New Delhi stating that he had never visited Dubai and did not open any account there with HSBC Bank relying upon the fact that no document related to the said foreign account was found during the search at his various premises which could lead to the conclusion that he ever had a foreign

bank account. The Courts have upheld retraction of the admission of the undisclosed income made in the statement u/s 132(4) of the Act where the assessee could, and had, adduced evidence contrary to the admission made in the statement and where there was corroborative evidence in favour of the assessee. In this case the appellant retracted from his statement u/s 132(4) of the Act. Recorded during search without effectively contradicting the evidence related to the foreign bank account as available with the department and the transactions recorded therein. Neither did the appellant produce the information and documents related to the foreign bank account in spite of repeated queries by the AO during the assessment proceedings nor did he submit any material so as to contradict the inference drawn by the AO that the impugned foreign bank account statement belonged and related to him and were deposits/investments made by, or on behalf of, him. As discussed above, there is no doubt with regard to the authenticity of the information related to the impugned foreign bank account received from France under the exchange ofinformation and I have held that the impugned account belongs to the appellant and the deposits and investments reflected therein constitute his disclosed income. Besides, there is no indication in the statement that there was any coercion or pressure on him to make such admission in his statement u/s 132(4) of the Act, and at no point of time, has he indicated that the admission was under protest. Therefore, considering the existence of the evidence of the impugned account available with the department such retraction of admission without the appellant leading any evidence to support his retraction cannot be considered as bonafide in the face of material evidence of unaccounted deposits/investments in/through the said foreign bank account. The authenticity of the retraction is, therefore, suspect and cannot be accepted. The statement recorded during search was not under any coercion and pressure and therefore was voluntary, hence the burden is on the appellant to lead evidence to show that either the statement was involuntary or unlawfully obtained or any other plausible explanation to establish the genuineness of the retraction as held by the Hon'ble Delhi High Court in Vinod Kumar Khatir v. DCIT ITA 132/2008. In Sh. Kantilal C Shah v. ACIT ITSSA No. 21/AHD/2009 dated 24.06.2011 the Hon'ble ITAT Ahmedabad has been held that

"the question of the evidentiary value of the statement recorded u/s 132(4) is no more res integra. When an assessee makes a statement and admits undisclosed income on a set of ***specific transactions denoted in***

a document, *it is a statement pertaining to certain facts which are in the exclusive knowledge of the appellant. If he wanted to withdraw the statement, it was open to him to show evidence to retract those facts."*

But no such evidence was furnished in the present case and therefore the retraction is a bland retraction. The Hon'ble Supreme Court, referring to the ***Full Bench of the Madras High Court in***

Roshan Beevi vs. Joint Secretary to the Govt, of Tamil Nadu, Public Deptt. etc. *(1983)* ***LW (Crl.)*** *289 : (1984) 15* ***ELT*** *289 has succinctly ' summed up the law on retraction on* ***K.T.M.S. Mohammad vs. VOI (1992) 65 Taxman 130 (SC)*** *as follows:*

"31. the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the custom authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise, etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat, etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing."

(emphasis supplied)

Further, retraction without adducing or leading evidence in support of retraction from admission and without establishing that the statement was obtained under pressure or coercion have been held to be not valid in Narayan Bhagwant Rao Gosavi Balajiwale vs Gopal Vinayak Gosavi AIR (1960) SC 100, 105; Ramji Dayawala &

Sons P. Ltd. vs Invest Import AIR (1981) SC 2085, 2093; Pullangode Rubber Produce Co. Ltd. vs State of Kerala (1973) 91 ITR 18 (SC), Y. Ramachandra Reddy v. Additional Commissioner of Income-tax

(Assessment) [2015] 57 taxmann.com 43 (AP & Tel), Commissioner of Income-tax v. Lekh Raj Dhunna [2012] 20 taxmann.com 554 (Punj. & Har.) Commissioner of Income-tax, Kozhikode, v. O. Abdul Razak[2012] 20 taxmann.com 48 (Ker.) wherein it has been held that "a statement made under oath deemed and permitted to be used in evidence, by express statutory provision, has to be taken as true unless there is contra evidence to dispel such assumption ...on retraction being filed by assessee there was a burden cast on assessee to prove detraction or rather disprove admissions made .... since assessee failed to prove any threat or coercion and had voluntarily disclosed his income by making statement under section 132(4), it could be said that retraction made by assessee was a selfserving after thought and no reliance could be placed on same to disbelieve clear admissions made in statement recorded under section 132(4) ... therefore, additions made on account of admissions made under section 132(4) and statement corroborated by documents .... and attendant circumstances was to be sustained", and it has also been held that what is admitted by a party to be true must be presume to be true unless the contrary is shown [Nathu Lai vs Durga Prasad, AIR (1954) SC 355, 358. In Union of India vs Moksh Builders and Financiers Ltd. AIR (1997) SC 409, 415;

Biswanath Prasad vs Dawrka Prasad AIR (1974) SC 117,119; and Bharat Singh vs Mst. Bhagirathi AIR (1966) SC 405 it has been held that an admission by a party is substantive evidence of the fact admitted and admissions duly proved are admissible evidence and in Thiru John vs Returning Officer AIR (1977) SC 1724, 1726 - 27 it has been held that an admission is the best evidence against the party making it and though not conclusive shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established".

7.7.8.2 In this view of the matter I find that the statement has been made on basis of good and cogent material and considering the specific information contained in the corroborative bank statements, I hold that the statement u/s 132(4) of the Act recorded on 28.07.2011 do constitute incriminating material within the meaning of S.153A of the |Act. It is also settled law that the statement u/s 132(4) is deemed to be evidence under the Act. Since the statement u/s 132(4) has been corroborated by other relevant and sufficient corroborative evidence, the foreign bank account documents received under exchange of

information, it may be validly utilised as 'incriminating material. Therefore, considering that the assessment has been made not merely on basis of the statement but based on the information and contents of the impugned foreign bank statement/documents, I hold that the assessment made u/s 153A of the Act is not in conflict with the judgments of the Hon'ble Delhi High Court relied upon by the appellant including that of Kabul Chawla (supra). As such, ground nos. 3 and 6(i) & (ii) against the legal validity of the assessment order u/s 153A of the Act do not survive and are dismissed.

13. It is apparent from aforesaid findings that Ld. CIT(A) has merely relied the case law without any rational of his own. What Ld. CIT(A) has failed to take cognizance of is the fact that in none of the cases only on the basis of statement the additions were made u/s 153A of the Act.

14. No doubt the admission is best piece of evidence and any retracted admission continues to be relevant and admissible for drawing inferences. However, the same need corroboration in material particulars. Which is completely absent in the present case. Any search material of inculpatory nature found in search can be corroborated by a retracted statement by way of establishing material facts arising from the search material matching with the retracted oral statements but where the retracted statement is the solitary evidence to be relied, the Revenue cannot consider same to be a *'incriminating material'* to make addition under Section 153A of the Act.

15. Again a Coordinate Bench in ITA No. **Parminder Singh Kalra (supra)** has taken into consideration similar set of facts and has held that statement recorded during Search does not constitute an incriminating material in itself with following observations;

"135. With regard to the issue of abatement of assessment, we hold that the assessment years under consideration i.e. AY 2006-07 and AY 2007-08

were completed assessments and not abated assessments and hence, no addition can be made in absence of incriminating material found during the course of search in view of the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (2016) 380 ITR 573 and other such judgments on the issue. The ld. AR all through argued that there is no incriminating material seized during the search and the addition made during the year is not based on any seized material. It was argued that in the absence of any seized material, no addition can be made in the nonabated assessments. He has produced the copy of the panchnama at page no. 4 to 28 of the paper book pertaining to the seizure of documents. It was argued that the Income Tax Department had the documents in their possession even before the date of search, the statement recorded and the addition made is not based on the material found and seized during the search. We have specifically asked the revenue as to the factum of the issue. The revenue fairly replied that the 6 page document is not part of the seized material. We are unable to agree with the contention of the ld. DR that the statement do constitutes seized material. In view of the judgment of Hon'ble Delhi High Court in the case of PCIT VsAnand Kumar Jain (HUF) in ITA No. 23/2021 dated 12.02.2021 wherein it was held that the statement recorded u/s 132(4) does not constitute incriminating material and no addition can be made on the basis of statement alone without any reference to material gathered during the course of search operations, we hold that no addition can be made in the instant years."

16. **Third issue** arises from the admitted fact that the present is case of a Completed assessment so connected to aforesaid is the issue, if the Revenue had any incriminating material antecedent to the search, that is, it was not found during the course of search or as a result of search, then in that case Revenue had various other courses of action left under the provisions of Income Tax Act, but certainly not within the ambit and scope of Section 153A read with 2nd proviso thereto. The Hon'ble Delhi High Court in the case of **CIT Vs Kabul Chawla (supra)** held as under:

"vii. Completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered

in the course of search which were not produced or not already disclosed or made known in the course of original assessment"

17. Keeping in view the discussion made above, we hold that the additions as finally made to the total income of the assessee on account of transactions reflected in the alleged Bank account of the assessee with HSBC Bank account at Dubai and income relating thereto for relevant AY under consideration are beyond the scope of section 153A as the assessments for the said years had become final prior to the date of search and there was no incriminating material found during the course of search to support and substantiate the said addition. The disputed addition therefore, deserves to be deleted allowing the relevant grounds of the assessee's appeals.

18. **Fourth issue** arises with regard to grounds raised by revenue relating to deletion of additions made on account of deposits found in the Bank accounts of the children, Aditya and Natalia, the impugned order of Ld. CIT(A) in Para 4.4 has no error in findings or conclusion. The matter of fact is that no incriminating material was found during the course of search so as to suggest that any part of undisclosed money or investment in Banks were transferred to the accounts of children. More so once the explanation of source of such money was explained by the children in their assessment and same was accepted, then Ld. AO had no reason to make additions in the hands of assessee and Ld. CIT(A) has rightly deleted the same.

19. **Fifth issue** is in context to the additions of the alleged payment made by Sh. Rajkapur to the Children of assessee, the Bench is of considered opinion that Ld. AO has erred in making additions based on conclusion that money was not transferred by legitimate manner while Ld. CIT(A) has examined the evidence which establish that it was a loan arrangement from Sh. Raj

Kapur at the instance of Sh. Behl who is related to the wife of assessee. Ld. CIT(A) is also justified to observe that as the two children are non-resident Indians so without there being any connection of this disputed loan amount with any income earned by them in India, the same cannot not be added in the hands of Assessee.

20. **Sixth issue** is with regard to deletion by Ld.CIT(A) of the addition of Rs. 1,65,900/- in AY 2009-10 on account of air conditioner allegedly purchased by the assessee it can be observed that Ld. CIT(A) has taken in due consideration the fact that the name of the assessee no where figures in the retail cash invoices and the evidence that during the relevant period of time, the premises was in occupation of a tenant who was leased out the said premises being 2nd Floor, D-107, Defence Colony, New Delhi-110024 to M/s Fuji Photo Film Co. Ltd. vide lease deed dt. 24.07.2006 from 20.07.2006 to 19.07.2008 and tenant may have installed these air conditioners for his own use, as such the expenses have not been incurred by the assessee.

21. **Seventh Issue** is the ground specific to AY 2011-12 relating to the addition of Rs.4,24,040/- on account of payment made to Sh. Jindal towards excess money received on account of JMD flats sold during the year. The AO has observed that the assessee sold JMD flats for Rs. 1,23,85,440/- which were purchased on 24.03.2007 for Rs. 1,20,48,000/- and that the assessee paid Rs.4,24,040/- to one Mr. Jindal for reimbursement of excess amount received against JMD flat sales, and observing that the assess could not justify the payment made nor did he file any confirmation or reconciliation he added the amount to the income of the appellant. Ld. CIT(A) has taken into account the evidence before it and observed;

"The appellant's AR has submitted that the assessee sold the flats for Rs. 1,23,85,440/- to two persons, Mr. Saurav Jindal and Mr. Gaurav Jindal (flat no. 301-902 and 301-903 for Rs.40,15,385/- each, total Rs.80,30,770/- against which Rs.55,44,020/- was received) the details of which filed have been at page-70 of the paper book from which it is seen that the payment received against the sale of flats sold to Sh. Saurav Jindal was Rs.68,41,420/- (flat No.301-904 and 301-905 for Rs.34,20,710/- each, total Rs.68,41,420/-) while he paid the assessee an amount of Rs. 72,65,460/- as against this. Thus, an excess amount of Rs.4,24,040/- was received from Sh. Saurav Jindal. A copy of receipt for this transaction has been filed at page-69 of PB from which it is seen that the amount paid by Saurav Jindal was Rs.42,00,000/- and Rs.30,65,460/- vide cheque nos. 226993 and 013041 dt. 27.11.2010 and 15.01.2011 drawn on HDFC Bank and the appellant and his wife who have signed on the receipt refunded the amount of Rs.4,24,040/- vide RTGS UTR No. CNRDH 11019638122 which is shown as receipted by Sh. Saurav Jindal. The assessee's request to his banker, Canara Bank, to transfer the said amount to the account of Sh. Saurrav Jindal through RTGS as is seen from page-68 of PB which also indicates the receipted copy of the pay-in-slip of Canara Bank dt. 18.01.2011 and the confirmation from Sh. Saurav Jindal has also been submitted at page-67 of PB copy whereby he has acknowledged having received the said amount. From the notices u/s 142(1) of the Act dt. 11.07.2013, 18.07.2013, 01.10.2013, 28.10.2014, 10.11.2014, 12.12.2014 and 13.01.2015 it is observed that except for calling for details related to foreign bank account and other routine issues no question was ever raised by the AO during the assessment proceedings and addition has been made without giving the assessee any opportunity to clarify or rebut the allegation. On consideration of the facts it is apparent that all the transactions are through banking channels and there is no case for unaccounted payment. The addition is therefore deleted".

Since the findings are based on facts which remain uncontroverted here before Tribunal, there is no error in findings.

22. **Eighth Issue** is on the basis of the grounds raised by Revenue in appeals with regard to deletion of alleged undisclosed interest income on deposit made in foreign bank account. The first and foremost thing is that as the Bench has concluded that addition on account of any undisclosed balance

in a foreign Bank account is itself not established so any addition made on account of notional interest earned in that Bank account is not sustainable. Then the Revenue cannot dispute the fact that so called bank statement of foreign bank account does not show any interest has been credited in the said. There is no evidence brought on record by the Ld. AO that interest was also paid on the deposits/balance in the account peak balance of which has already been added in AYs 2007-08 and 2008-09. Particularly in the subsequent years after the years relevant to AYs 2007-08 and 2008-09 for which there is no statement of the said bank account or any information, as part of the information received under exchange of information or otherwise, in respect of these subsequent years. There is also no error in Ld. CIT(A) holding that it is settled law that notional interest cannot be taxed as income.

23. Concluding on the basis of aforesaid determination of issues, the grounds raised by the assessee in appeal ITA no. 4100/Del/2016 deserve to be allowed **so the appeal of assessee is allowed** and grounds raised by Revenue in Appeals ITA no.4647 to 4652 /Del/2016 are not sustained and the appeals of **Revenue are dismissed.**

ITA No.4475/Del/2016 & ITA No.1092/Del/2017 ***(Penalty appeals of Assessee)***

ITA No.1849/Del/2017; ITA No.6031/Del/2016; ITA No.6028/Del/2016; ITA No.6029/Del/2016, ; ITA No.6030/Del/2016, ;ITA No.6032/Del/2016, A.Y. 2012-13 ***(Penalty appeals of Revenue)***

24. Further, the Ld. AO had also initiated penalty proceedings. Ld. CIT(A) had sustained the levy of penalty against the assessee u/s 271(1)(b) and 271(1)(c) of

the Act for AY2007-08 for which assessee is in appeal and had deleted penalty u/s 271(1)(c) of the Act for AY 2008-09 to 2012-13, for which the Revenue is in appeal.

24.1 As the Bench has reached a conclusion deleting the additions in income made by Ld. Tax Authorities in regard to A.Y. 2007-08 and allowing the assessee's appeal, substratum of the penalty, appeals falls down. Consequently, the **penalty appeals filed by the assessee stand allowed** and **those filed by the revenue are dismissed.**

Order pronounced in the open court on 17th April, 2023.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 17th .04.2023

Binita, SR.P.S Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

Vikram Dhirani 29