IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'C : NEW DELHI

BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
AND
SHRI B.C. MEENA, ACCOUNTANT MEMBER

ITA No.4967/Del /2012
Assessment Year : 2005-06

Ishwar Chand Jindal G.F.H. No.8. Anand Vihar, Pitampura, New Delhi	Vs.	ACIT, Central Circle-16 New Delhi.

(PAN AAIPJ 2703 R)

ITA No.2002/Del /2013
Assessment Year : 2007-08

Ishwar Chand Jindal G.F.H. No.8. Anand Vihar, Pitampura, New Delhi	Vs.	ACIT, Central Circle-16 New Delhi.

(Appellant) (Respondent)

Date of hearing : 12.03.2015
Date of pronouncement : 29.05.2015

Appellant by : Shri Gautam Jain, CA.
Respondent by: Srri Sunil Bajpai, CIT. & Sri R.J.S Gill, CIT, DR.

ORDER

PER SHRI I.C. SUDHIR, JM:

These two appeals filed by the assessee relate to assessment years 2005-06 and 2007-08. Since the issue involved in both the appeals are inter-related therefore, they were heard together and are decided by this consolidated order.

2. In the appeal for assessment year 2005-06 in ITA No. 4967/D/2012, it is seen that the appellant has raised following Grounds of Appeal:

"1 On the facts and in the circumstances of the case ld. CIT(A) erred in holding that there was no infirmity in the action of the AO assuming jurisdiction and passing order u/s 153A/143(3) of the Income Tax Act despite the fact that there was no undisclosed income and no material found during the search showing undisclosed income;

2 The ld. CIT(A) erred in declining to justly and fairly adjudicate appellant's contention that since there was no separate search warrant in appellant's case the search appellant u/s 132 was illegal;

3 The ld. CIT(A) erred in holding that there was no violating of the principles of natural justice by the AO in completing the assessment without giving adequate opportunity and issuing show cause regarding the additions made;

4 The learned CIT(A) erred in confirming the addition of Rs. 51,92,469/ on account of deemed dividend u/s 2(22)(e) of the I.T. Act ignoring the material evidences to the effect that the outstanding amount was on account of trade transaction and not loan or advances;

5 The ld. CIT(A) erred in making improper and unjustified observation about the invoices which were of excisable goods and were of the relevant period prior to the assessment and not after and which established the fact that the outstanding amount was on account of trade transaction and not loan or advances;

6 The ld. CIT(A) erred in considering the material evidences in the form of invoices and excisable goods which proved that the amount was on account of trade transaction and not loan or advances. These invoices were part of accounts which were examined by AO while completing the assessment;

7 The ld. CIT(A) erred in confirming the interest charged by the AO u/s 234A and 234B of the Act;

8 Appellant craves leave to add, alter, amend and/or rescind any of the Grounds of Appeal.

3. Further, so far as appeal for assessment year 2007-08 in ITA No. 2002/D/2013 is concerned, the appellant has raised following grounds of appeal.

"1 The ld. CIT(A) erred on facts and in law to dismiss appellant's ground that the order passed by the Assessing Officer u/s 153A/143(3) of the Income Tax Act 1961 is bad both on facts and in law

2 The ld. CIT(A)erred on facts and in law to dismiss appellant's ground that the assessment order having been passed in violation of the principle of natural justice and without giving adequate time and opportunity to the appellant to represent its case and to file its replies and clarification, is bad in the eyes of law and liable to be quashed;

3 The ld. CIT(A) erred on facts and in law to confirm addition of Rs. 45,00,000/- on account of alleged unexplained cash credit in the bank account of the appellant u/s 68 of the I.T. Act

4 The ld. CIT(A) erred on facts and in law to confirm the addition of Rs. 78,85,954/- made by the Assessing Officer on account of alleged deemed dividend u/s 2(22)(e) of the Income Tax Act

5 The. ld. CIT(A) erred on facts and in law to make an enhancement of Rs. 9,59,87,046/- on account of alleged deemed dividend u/s 2(22)(e) of the I.T. Act

6 The ld. CIT(A) erred on facts and in law to dismiss appellant's grounds against the charging of interest u/s 234A and 234B of the Act.

7 That the appellant craves leave to add, alter, amend and/or rescind any of the ground of appeal."

4. The facts in brief as relevant to the both assessment years 2005-06 and 2007-08 are that a search and seizure action was conducted on 26.3.2010 under section 132 of the Act, 1961. Pursuant to the said action, notices under section 153A of the Act were issued on 20.4.2011 and in compliance to the notices, the assessee has filed its returns of income on 10.10.2011. It is noticed that the AO made orders dated 30.12.2011 u/s 153A/143(3) of the Act at an income of Rs. 53,47,670/- on account of addition made of Rs. 51,92,469/- under u/s 2(22)(e) of the Act in A.Y. 2005-06; whereas he determined the income for A.Y. 2007-08 at Rs. 1,28,04,200/- by making an additions of Rs. 78,85,954/- u/s 2(22)(e) of the Act and Rs. 45,00,000/- u/s 68 of the Act. These additions have been confirmed by CIT(A) except in A.Y. 2007-08 whereby addition of Rs. 78,85,954/- u/s 2(22)(e) of the Act has been enhanced by Rs. 9,59,87,046/- to Rs. 10,78,73,000/-. Hence these appeals by the appellant. Thus, the basic issue involved on merits as raised in Ground No. 4 to 5 of both appeals relates to additions of Rs. 51,92,470/- for A.Y. 2005-06 and Rs. 10,78,73,000/- for A.Y. 2007-08 under section 2(22)(e) of the Act. Apart from the above another issue involved in Ground No. 3 of A.Y. 2007-08 relates to addition of Rs. 45,00,000/- u/s 68 of the Act.

5. With this background we firstly take up Ground No. 4 and 5 in both the appeals relating to addition of Rs. 51,92,469/- and Rs. 10,78,73,000/- in A.Y. 2005-06 and A.Y. 2007-08 u/s 2(22)(e) of the Act.

6. The facts in brief as emerging from the order of assessment for A.Y. 2005-06 are that during the year M/s. B.R. Associates Pvt. Ltd. in which, assessee held 64.84% shares, has given a loan of Rs. 51,92,469/- to M/s. Deluxe Alloys Pvt. Ltd. in which, the assessee held 40% shares. The Assessing Officer proposed to tax the said loan as deemed dividend in the hands of the assessee. The assessee during the course of assessment proceedings, filed a reply dated 7.12.2011 contending that such transactions are for purchasing and selling of goods in normal course of business and therefore, these amounts were business transactions and hence were not taxable as deemed dividend under section 2(22)(e) of the Act. The learned Assessing Officer however rejected the contention of the appellant and held that the contentions are baseless and only an afterthought as in the balance sheet of both M/s. Deluxe Alloys Pvt. Ltd. And M/s. B.R. Associates Pvt. Ltd., the amount has been classified as "loans" and, not trade advance given

during the normal course of business. He therefore, made addition. The CIT(A) also upheld the addition by observing as under:

> *"On consideration of the facts obtaining in this case, I have come to the conclusion that neither the Assessing Officer had refused to admit evidence in this case during assessment proceedings nor was the appellant prevented by any sufficient cause from production of the impugned evidence during the assessment proceedings. On these facts and following the guidance available in the above cited decision of the Hon'ble ITAT, Delhi Bench, the additional evidence in the form of copies of bills purported to be issued by M/s BR Associates (P) Ltd. is rejected as per the provisions to Rule 46A.*
>
> *5.3.2 In fact, such bills cannot be treated as an independent evidence as they involve two closely held companies within the control of the appellant, whereas the statutory audit reports and the tax audit reports have been prepared and issued by independent qualified auditors on the basis of thorugh examination of the books of accounts and supporting evidences as furnished by the two respective companies and therefore have a high evidentiary value. Considering the fact that the two companies have also filed their returns of income on the basis of the same audited balance sheet and tax audit reports which have classified the impugned debit balances as loan given by M/s BR Associates (P) Ltd. to M/s Deluxe Alloys (P) Ltd. and such returns of both the companies have been verified by their Directors as true the contention raised by the appellant in his own case that those balance sheets were not giving the correct picture is nothing but an afterthought. So long as the two companies have treated the impugned transaction as that of 'unsecured loan', the appellant cannot claim that it was not so particularly in the absence of any certificate from the respective auditors that there was actually such a mistake as contended by the appellant which was subsequently corrected.*
>
> *5.3.3 In view of the above factual position, it is held that the appellant has not been successful in controverting the findings of the AO on this issue with any independent contemporaneous evidence and, therefore, I see no reason to interfere with the action of the AO on this ground. The addition of Rs. 51,92,469/- u/s 2(22)(e) is therefore confirmed."*

7. Before us, the learned AR for the appellant contended that the addition is based on the fundamental misconception of facts and law. It was submitted that during the financial year 2004-05 relevant to assessment year 2005-06, there were business transactions between M/s. B.R. Associates Pvt. Ltd. and M/s. Deluxe Alloys Pvt. Ltd. It was contended on the basis of the above that no sum was advanced by M/s. Deluxe Alloys Pvt. Ltd. to M/s. B.R. Associates Pvt.

Ltd. and such transactions stand accepted in the orders of assessments framed under section 153A/143(3) of the Act both in the case of M/s. B.R. Associates and M/s. Deluxe Alloys Pvt. Ltd.. Copies of the orders of assessment for both the said companies were referred to and are placed in the Paper Book. It was thus submitted that such business transactions do not constitute deemed dividend under section 2(22)(e) of the Act. Reliance was placed on the following judgments:

i) CIT vs. Raj Kumar 318 ITR 462 (Del)
ii) CIT vs. Ambassador Travels (P) Ltd. 318 ITR 376 (Del)
iii) CIT vs. Creative Dyeing and Printing (P) Ltd. 318 ITR 476 (Del)
iv) Pradip Kumar Malhotra vs. CIT 38 ITR 538 (Cal)

8. It was also submitted that nomenclature cannot be a conclusive basis to disregard and overlook the true nature of transaction and for this principle, reliance was placed on the judgment of Delhi High Court in the case of CIT vs. Arvind Kumar Jain ITA No. 589/11 dated 30.9.2011. The appellant further submitted that invoices have been furnished before the learned CIT(A) only as supporting evidence and therefore, the learned CIT(A) was not justified to overlook such invoices which facts otherwise were borne out from the facts on record. The learned DR relied on the orders of the authorities below and contended that the addition made be upheld.

8.1 The Learned CIT(DR) on the other hand placed reliance on the orders of the authorities below and reiterated the contents of these orders.

9. We have gone through the submissions and perused the material on record. We find that the ledger account of M/s. B.R. Associates Pvt. Ltd. in the books of M/s. Deluxe Alloys Pvt. Ltd. has been placed in the Paper Book and is as under:

DELUXE ALLOYS PVT.LTD.(04-05)

B.R.ASSOCIATES P. LTD.

Ledger Account

1-Apr-2004 to 31-Mar-2005

Page 1

Date		Particulars	Vch Type	Vch No.	Debit	Credit
1-4-2004	By	Opening Balance				26,40,600.15
28-4-2004	To	STATE BANK OF INDIA,BANMORE *Ch. No. : 732742 (R.A.O.M.P.S.E.B.)*	Payment	108	10,01,000.00	
12-5-2004	By	JAIN CARBIDES & CHEM. UNIT-II *AMOUNT TRANSFERED*	Journal	135		8,18,100.00
15-5-2004	By	STORES & SPARES *INGOT MOULD BILL NO.056/15.05.04/14.090*	Journal	142		3,67,749.00
4-6-2004	By	STORES & SPARES *INGOT MOULD BILL NO.089/08.06.04/18.210*	Journal	242		4,23,081.00
13-7-2004	By	STORES & SPARES *INGOT MOULD BILL NO.130/13.07.04/17.170*	Journal	327		3,99,443.00
24-7-2004	By	STORES & SPARES *INGOT MOULD BILL NO.145/24.07.04/8.640*	Journal	379		2,01,001.00
9-9-2004	By	STORES & SPARES *INGOT MOULD BILL NO.197/06.09.04/15.480*	Journal	597		4,50,158.00
21-1-2005	By	STORES & SPARES *INGOT MOULD BILL NO.369/21.01.05/16.590*	Journal	1214		4,82,437.00
26-2-2005	By	STORES & SPARES *INGOT MOULD BILL NO. 423/14.130/26.02.05*	Journal	1365		4,10,900.00
					10,01,000.00	61,93,469.15
	To	Closing Balance			51,92,469.15	
					61,93,469.15	61,93,469.15

10 The perusal of the aforesaid would show that no money has been paid by M/s. Deluxe Alloys Pvt. Ltd. to M/s. B.R. Associates Pvt. Ltd. All the credits in the account of M/s. B.R. Associates Pvt. Ltd. are either on account of supplies made by M/s. B.R. Associates Pvt. Ltd. to M/s. Deluxe Alloys Pvt. Ltd. aggregating to Rs. 27,34,769.15/- or amount paid of Rs. 8,18,100/- by M/s. B.R. Associates Pvt. Ltd. to another concern namely M/s. Jain Carbides & Chemicals Ltd. in respect of payment of M/s. Deluxe Alloys Pvt. Ltd. and thus apparently, all such transactions are business transactions and these facts have already been accepted in the orders of

assessment framed in the case of M/s. B.R. Associates Pvt. Ltd. and M/s. Deluxe Alloys Pvt. Ltd. Copies of orders of assessment of M/s. B.R. Associates Pvt. Ltd. dated 30.12.2011 for assessment year 2005-06 is placed at pages 116-123 and copy of order of assessment in the case of M/s. Deluxe Alloys Pvt. Ltd. dated 28.12.2011 for assessment year 2005-06 is placed at pages 106 to 115 of Paper Book. It is relevant to add here that both orders are framed by the same officer who have framed the impugned order of assessment. Then apparently, the learned Assessing Officer having accepted the business transactions between M/s. Deluxe Alloys Pvt. Ltd. and M/s. B.R. Associates Pvt. Ltd. in their impugned orders of assessment could not have classified them as a loan or advance for invoking section 2(22)(e) of the Act. The AO has held this sum to be deemed dividend only on the ground that said sum has been classified as loan in the balance sheet of M/s. Deluxe Alloys Pvt. Ltd. In this regard, Hon'ble Delhi High Court in the case of CIT vs. Arvind Kumar Jain (supra) has held as under:

"6 Learned counsel for the appellant hammered the fact that the amount was shown by the assessee himself in his books of accounts as "unsecured loan" and, therefore, the order of the Assessing Officer was correct.
7 It is trite law that mere nomenclature of entry in the books of accounts is not determinative of the true nature of transaction. See Commissioner of Income Tax vs. India Discount Co. Ltd. 75 ITR 191 (SC), Commissioner of Income Tax vs. Provincial Farmers (P) Ltd. 108 ITR 219 (Cal) and KCP Ltd. vs. CIT 245 ITR 421. In the present case after going through the relevant evidence as well as current account maintained between the parties, it has been established that the payment made were the result of trading transaction between the parties and the amount was not given by way of loan or advance."

11. From the aforesaid, it is now trite law that nomenclature cannot be a basis to conclude that the business transactions between the two entities constitute deemed dividend under section 2(22)(e) of the Act. The Hon'ble Delhi High Court in the case of CIT vs. Rajkumar (supra) has held as under:

"A close examination of the judgment of the Bombay High Court in the case of Nagindas M. Kapadia (supra) would show that the Court excluded from the ambit of 'dividend', monies which the assessee had received towards purchases. In our view both the CIT(A) and the Tribunal have correctly appreciated this aspect of the matter in the said judgment of the Bombay High Court. The relevant portion of the judgment of the Bombay High Court which sets out this aspect of the matter is already extracted by us

in the narrative give by us hereinabove. We are also in agreement with the view of the Tribunal that the judgment of the Supreme Court in the case of Ms. P. Sarada (supra) and Smt. Tarulata (supra) has no applicability to the present case. Both the judgments establish the principle that once the payment made to a shareholder is deemed as dividend then the mere fact that it is repaid would not take it out of the ambit of the tax net. In the instant case, however, a discussion with respect to which has been made hereinabove, the issue is whether the payment received by the shareholder would at all fall within the four corners of provisions of Section 2(22)(e) of the Act. Having held otherwise, the said judgments of the Supreme Court, in our view, will have no applicability to the facts of the instant case.

12. In view of the above, the question of law as framed by us is answered in favour of the assessee and against the Revenue. We hold that trade advance does not fall within the ambit of the provisions of Section 2(22)(e) of the Act. Resultantly, the appeal is dismissed. There shall be, however, no order as to costs."

12. Also in the case of CIT vs. Creative Dyeing and Printing (P) Ltd. (supra) it was held as under:

"The counsel for the appellant has very strenuously urged that neither the Tribunal nor the judgment of this Court in Rajkumar's case(supra) deals with that part of the definition of deemed dividend under Section 2(22)(e) which states that deemed dividend does not include an advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company [Section 2(22)(e)(ii)] i.e. there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending. Dilating further the counsel for the appellant contended that since M/s. Pee Empro Exports Pvt. Ltd. is not into the business of lending of money, the payments made by it to the assessee company would therefore be covered by Section 2(22)(e)(ii) and consequently payments even for business transactions would be a deemed dividend. We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of Section 2(22)(e)(ii) is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of Section 2(22)(e) and once it is held that the business transactions does not fall within Section 2(22)(e), we need not to go further to Section 2(22)(e)(ii). The provision of Section 2(22)(e)(ii) gives an example only of one of the situations where the loan/advance will not be treated as a deemed dividend, but that's all. The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of Section 2(22)(e). We feel that this interpretation of ours is in accordance with the legislative intention of introducing Section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case(supra). This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill. Ultimately, this Court in the said judgment held as under:

"10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(6A) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind, it is clear that sub-clause (e) of section 2(22) of the Act, which is pari material with clause (e) of section 2(6A) of the 1922 Act, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taxes by having these companies pay or distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan.

10.5 If this purpose is kept in mind then, in our view, the word 'advance' has to be read in conjunction with the word 'loan'. Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term 'advance'. The rule of construction to our minds which answers this conundrum is noscitur a sociis. The said rule has been explained both by the Privy Council in the of Angus Robertson v. George Day (1879) 5 AC 63 by observing "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them" and our Supreme Court in the case of Rohit Pulp and Paper Magnum International Ltd.ls Ltd. v. Collector of Central Excise, AIR 1991 SC 754 and State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610."

12. Therefore, we hold that the Tribunal was correct in holding that the amounts advanced for business transaction between the parties, namely, the assessee company and M/s. Pee Empro Exports Pvt. Ltd. was not such to fall within the definition of deemed dividend under Section 2(22)(e). The present appeal is therefore dismissed."

13. Having regard to the above factual and judicial position the addition made and sustained of Rs. 51,92,469/- is deleted

14. So far as addition u/s 2(22)(e) of the Act in A.Y. 2007-08 is concerned, the facts in brief are that the AO had made addition of Rs. 78,85,954/- under section 2(22)(e) of the Act which has been enhanced by Rs. 9,59,87,046/- by the CIT(A) and thus, aggregate addition

sustained by him is of Rs. 10,78,73,000/-. The break up of the addition sustained by him and disputed in this appeal is as under:

Sr. No.	Particulars	Amount (Rs.)
i)	Advance made by M/s Magnum Steels Ltd. (hereinafter referred to as "MSL") to M/s Magnum International Ltd.	4,42,90,290/-
ii)	Advance made by M/s Magnum International Ltd. (hereinafter referred to as "MIL.") to M/s Magnum Steels Ltd.	5,71,53,710/-
	Total (A)	10,14,44,000/-
iii)	Advance made by M/s Courage Financial Services (P) Ltd. (hereinafter referred to as "Courage") to M/s Magnum International Ltd.	17,29,000/-
iv)	Advance made by M/s Courage Financial Services (P) Ltd. to M/s B.R. Associates (P) Ltd.	7,00,000/-
	Total (B)	24,29,000/-
	Grand Total: (A) + (B)	10,78,73,000/-

15. Taking up first, the addition of Rs. 10,14,44,000/- which represents addition made of Rs. 4,42,78,290/- representing advance made by M/s Magnum Steels Ltd. to M/s Magnum International Ltd. and Rs. 5,71,53,710/- representing advance made by M/s Magnum International Ltd. to M/s Magnum Steels Ltd. In this case, we notice that the Assessing Officer had made addition of Rs. 54,56,000/- by concluding that the loan given by M/s Magnum Steels Ltd. to M/s Magnum International Ltd. of Rs. 54,56,954/- is deemed dividend under section 2(22)(e) of the Act. On appeal, the learned CIT(A) issued an enhancement notice dated 27.7.2012 proposing that deemed dividend under section 2(22)(e) of the Act was to be adopted at Rs. 10,42,46,709/-. However after considering replies of the appellant, he enhanced the addition for the reasons stated in para 6.8 to 6.14 of the order to Rs. 10,14,44,000/- which are summarized as under:

a) That perusal of the copy of account would show that Rs. 9,59,87,046/- is advance by M/s Magnum Steels Ltd. to M/s Magnum International Ltd.. and Rs. 10,14,44,000/- is advance by M/s Magnum International Ltd. to M/s Magnum Steels Ltd.;

b) That out of the amount of Rs. 9,59,87,046/- sum of Rs. 4,27,16,756/- and Rs. 86,80,000/- aggregating to Rs. 5,13,96,756/- represents reversal entries which should be excluded from total advances and as such, he held that sum of Rs. 4,42,90,290/- (Rs. 9,59,87,046/- - Rs. 5,13,96,756/-) is the advance given by Magnum Steels Ltd.. to M/s Magnum International Ltd.;

c) Apart from the above he held that Magnum International Ltd. had advance sum of Rs. 10,14,44,000/- to Magnum Steels Ltd., out of which he excluded the advance by Magnum Steels Ltd. to Magnum International Ltd. of Rs. 4,42,90,290/-. Thus net advance by Magnum International Ltd. to Magnum Steels Ltd. was of Rs. 5,71,53,710/- (Rs. 10,14,44,000/- - Rs. 4,42,90,209)

16. Before us, the learned AR submitted that the addition made and disputed in these appeals, can be summarized as under:

Sr. No.	Particulars	Amount (Rs.)	Adjustments	Net Addition
i)	Amount advance by Magnum Steels Ltd. to Magnum International Ltd	9,59,47,046 (Total of the credit side of the ledger account of Magnum Steels Ltd. in the books of Magnum International Ltd.)	5,13,96,756 (Rs. 4,27,16,756 + Rs.86,80,000/-) on account of reversal entry)	4,42,90,290
ii)	Amount advance by Magnum International Ltd to Magnum Steels Ltd.	10,14,44,000 (total of the debit side in the ledger account of Magnum Steels Ltd.. in the books of Magnum International Ltd.)	4,42,90,290 (net advance by Magnum Steels Ltd.. to Magnum International Ltd.)	5,71,53,710
	Total	19,73,91,046	9,56,86,965	10,14,44,000

17. The Learned AR contended that the transactions between the two companies are current account transactions which are group companies and therefore, current account transactions between two group companies cannot be treated as deemed dividend. It was submitted that no part of running amount could be treated as part of that running account could be treated as loans or advances as the account is a continuously moving one and the balances reflected in that running account are momentary in nature and subject to frequent changes. It was further submitted that that the provisions contained in schedule to Limitation Act, 1963 explain the distinction provided by the statute between a mutual, open and current account and a loan account, for the purposes of limitation. As per Articles 1 and 19 of schedule to Limitation Act, 1963, the limitation period prescribed in case of mutual, open and current account is three years from the close of the year in which the last item is admitted or proved as entered in the account whereas n the case of a loan the limitation period is three years from the date on which the loan is made. Reliance was placed on the judgment of Hon'ble Bombay High Court in the case of Durga Prasad Mandelia vs. Registrar of Companies [1987] 61 Comp. Cas. 479 and Pennwalt India Ltd. vs. ROC reported in [1987] 62 Com. Cas. 112

18. Further reliance was also drawn on the following judicial pronouncements:

i) *Shri Pawan Bansal vs. ACIT ITA No. 2573/D/2010 A.Y. 2006-07 dated 14.2.2014 (pages 242-246 of JPB)*

ii) NH Securities Ltd. vs. DCIT 11 SOT 302 (Mum)

19. Apart from the above, it was submitted that payments made by M/s Magnum International Ltd. to M/s Magnum Steels Ltd. and M/s Magnum Steels Ltd. to M/s Magnum

International Ltd. are mutual reciprocally transactions entered in the ordinary course of business and, not advance or loan u/s 2(22)(e) of the Act as reference was made to the following judgments:

i) *CIT vs. Raj Kumar 318 ITR 462 (Del)*
ii) *CIT vs. Ambassador Travels (P) Ltd. 318 ITR 376 (Del)*
iii) *CIT vs. Creative Dyeing and Printing (P) Ltd. 318 ITR 476 (Del)*
iv) *Pradip Kumar Malhotra vs. CIT 38 ITR 538 (Cal)*
v) *CIT vs. International Land Development Pvt. Ltd. ITA NO. 1296, 1297/2011 (Del) dated 2.2.2012*

20. It was further submitted that learned Commissioner of Income Tax (Appeals) has incorrectly held at page 21 that assessee had not contended that both the companies were not engaged in the ordinary course of business of lending of money in terms of clause (ii) of proviso to section 2(22)(e) of the Act. In fact, specific contention was raised in para 9 at page 10 of the order, which is extract of submissions dated 15.1.2013. It was also submitted that Rs. 3 crores had been given as an advance for land is amplified from financial statement of Magnum International Ltd. as on 31.3.2007, which has been overlooked by the learned Commissioner of Income Tax (Appeals).

21. The learned DR supported the addition made by the authorities below and contended that the addition made be upheld.

22. Before dealing with the contentions raised by both the sides, we consider it appropriate to extract the account as relied upon by the learned CIT(A) to make the addition in question under section 2(22)(e) of the Act.

Annexure 'A'

Magnum International Ltd. (2006-07)
Magnum Steels Ltd.
Ledger Account
1-Apr-2006 to 31-Mar-2007

Date	Particulars	Vch Type	Debit	Credit
1/4/2006	HDFC Bank	Receipt		86,80,000/-
14/8/2006	HDFC Bank	Receipt		9,78,000/-
30/8/2006	HDFC Bank	Payment	50,000/-	
16/9/2006	HDFC Bank	Receipt		19,85,000/-
4/10/2006	HDFC Bank	Receipt		70,000/-
5/10/2006	SBI	Receipt		35,00,000/-
6/10/2006	SBI	Payment	35,00,000/-	
6/10/2006	SBI	Receipt		8,00,000/-
6/10/2006	HDFC Bank	Receipt		3,50,000/-
10/10/2006	HDFC Bank	Receipt		10,00,000/-
10/10/2006	SBI	Receipt		4,27,16,756/-
13/10/2006	HDFC Bank	Receipt		8,80,000/-
14/10/2006	HDFC Bank	Receipt		10,00,000/-
17/10/2006	HDFC Bank	Receipt		1,90,000/-
20/10/2006	HDFC Bank	Receipt		5,17,000/-
26/10/2006	HDFC Bank	Receipt		10,00,000/-
28/10/2006	HDFC Bank	Receipt		3,00,000/-
9/11/2006	HDFC Bank	Payment	10,00,000/-	
16/11/2006	HDFC Bank	Payment	30,00,000/-	
23/11/2006	HDFC Bank	Payment	4,00,000/-	
27/11/2006	HDFC Bank	Payment	10,00,000/-	
27/11/2006	SBI	Receipt		81,000/-
23/12/2006	HDFC Bank	Payment	26,50,000/-	
26/12/2006	HDFC Bank	Payment	25,00,000/-	
6/1/2007	HDFC Bank	Receipt		4,17,000/-
8/1/2007	HDFC Bank	Payment	1,00,000/-	
12/1/2007	HDFC Bank	Payment	4,25,34,000/-	
12/1/2007	Advance paid Agst Land Agra	Journal		3,00,00,000/-
18/1/2007	Electricity Expenses	Journal		7,290/-
1/2/2007	HDFC Bank	Payment	44,00,000/-	
20/2/2007	HDFC Bank	Receipt		4,90,000/-
3/3/2007	HDFC Bank	Payment	56,00,000/-	
9/3/2007	HDFC Bank	Payment	18,50,000/-	
10/3/2007	HDFC Bank	Receipt		5,20,000/-
15/3/2007	HDFC Bank	Receipt		5,25,000/-
22/3/2007	HDFC Bank	Payment	41,50,000/-	
26/3/2007	HDFC Bank	Payment	2,30,000/-	
30/3/2007	HDFC Bank	Payment	13,80,000/-	
Total			10,14,44,000/-	9,59,87,046/-

आयकर आयुक्त (अपील)-XXXII, नई दिल्ली-55

J Didi

आयकर आयुक्त (अपील)-XXXII
3ए, पहली मंजिल,
ई-2, ए, आर ए, सैन्टर,
झण्डेवालान एक्सटैंशन, नई दिल्ली-110055

23. On the basis of the aforesaid account, the learned CIT(A) has concluded that Rs. 9,59,87,056/- is advance given by Magnum Steels Ltd. to Magnum International Ltd. and Rs. 10,14,44,000/- is advance given by Magnum International Ltd. to Magnum Steels Ltd. He further held that out of the amount of Rs. 9,59,87,046/-, sum of Rs. 4,27,16,756/- and Rs. 86,80,000/- represents reversal entries which should be executed and as such, he held that sum of Rs. 4,42,90,290/- is the advance given by Magnum Steels Ltd. to Magnum International Ltd He further held that out of the total sum of Rs. 10,14,44,000/- which represents advance given by Magnum International Ltd to Magnum Steels Ltd., sum of Rs. 4,42,90,290/- should be executed and therefore, any advance by Magnum International Ltd. to Magnum Steels Ltd was of Rs. 5,71,53,710/-. He thus sustained addition of Rs. 4,42,90,290/- representing advance given by Magnum Steels Ltd. to Magnum International Ltd and Rs. 5,71,53,710/- being advance given by Magnum International Ltd. to Magnum Steels Ltd under section 2(22)(e) of the Act. The main contention raised by the appellant before us is that these are current account transactions between group companies and therefore, do not constitute deemed dividend under section 2(22)(e) of the Act. We find that identical issue had been considered by the ITAT in the case of Pawan Kumar Bansal in ITA No. 2573/D/04 for assessment year 2006-07 dated 14.2.2014 whereby following decisions of the Hon'ble High Court in the case of CIT vs. Ambassador Travels (P) Ltd., it has been held as under:

> *"4. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the first issue is squarely covered in favour of assessee as in the case of Mr. Anil Bansal in I.T.A. No.2574 under similar facts and circumstances, the Hon'ble Tribunal has considered similar transactions as Current Account transactions and has not as deemed dividend. The relevant findings are contained in para 6 & 7 of this order which are reproduced for the sake of convenience.*
> *"6. We have carefully considered the arguments of both the sides and perused the material placed before us. The copy of the assessee's account in the books of M/s Daisy Motors Pvt. Ltd. is placed at pages 19 & 20 of the assessee's paper book. For ready reference, the same is annexed herewith as Annexure 1. From a perusal of the above account, it is seen that there was opening credit balance, then debit balance occurred*

due to certain payments made by M/s Daisy Motors Pvt. Ltd. to the assessee in the month of April and July. Thereafter, from July 2005 to 22nd March, 2006, there was a credit balance and again on 30th March, 2006, there was a debit balance. If we further analyze the accounts, we find that the maximum debit balance of the account of the assessee was only `2,08,212/- while the maximum credit balance was more than `2 crores. That the debit balance of `2 lakhs was only for a period of ten days i.e. from 23rd July to 8th August, 2006 while the credit balance of more than a crore remains for more than two months and credit balance of more than `20 lakhs remains for more than six months. From the copy of account, it is evident that the assessee also made purchase of ten vehicles. Thus, the account is clearly in the nature of a running current account and merely because for a few days there was a debit balance of `2,08,212/-, it cannot be said that such debit balance was either loan or advance by M/s Daisy Motors Pvt. Ltd. to the assessee. On these facts, the decision of Hon'ble Jurisdictional High Court in the case of Ambassador Travels P.Ltd. (supra), wherein their Lordships held as under, would be squarely applicable:-

"5. We are of the view that the order passed by the Tribunal does not suffer from any error of law. It is quite clear that the assessee was a travel agency and the above two concerns that it had dealings with, that is, M/s Holiday Resort (P) Ltd. and M/s Ambassador Tours (I) (P) Ltd. were also in the tourism business. The assessee was involved in the booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The financial transactions cannot in any circumstances be treated as loans or advances received by the assessee from these two concerns." 7. Similar view was also taken by their Lordships in the case of Creative Dyeing and Printing P. Ltd. (supra). Respectfully following the above decisions of Hon'ble Jurisdictional High Court and applying the ratio of the above decisions to the facts of the assessee's case, we hold that the debit balance of `2,08,212/- cannot be treated to be deemed dividend under Section 2(22)(e) of the Act. Accordingly, the addition made by the Assessing Officer is deleted and ground No.2 of the assessee's appeal is allowed."

24. It is seen that here too, the learned CIT(A) has not disputed that as per the aforesaid account, Rs. 4,27,16,756/-, Rs. 86,80,000/- credited on 10.10.2006 and 1.4.2006 are reversal entries and thus, if such entries are executed, there was an opening balance of Rs. 5,13,96,756/- payable by MIL to MSL. Thereafter, there were further payments made from 14.8.2006 of Rs. 1,25,50,000/- to 28.10.2006 whereby balance increased from Rs. 5,13,96,756/- to Rs. 6,03,96,756/-. Subsequently, there were repayments made by MIL to MSL other than the figure of Rs. 54,98,908/- being advance given from 3.9.2007 to 30.3.2007. It is thus evident that there are mutual transactions between two group companies and the account being the two companies is current account transaction. It is thus held that once the transactions between two companies are current account transactions which are entered in the ordinary course of business, the same cannot be classified as advance or loan under section 2(22)(e) of the Act.

25. The Mumbai Bench of the Tribunal in the case of NH Securities Ltd. vs. DCIT 11 SOT 302 has held as under.

> ***"37.*** *In the light of the discussion made in paragraphs above, it is to be seen that payments made by a company through a running account in discharge of its existing debts or against purchases or for availing services, such payments made in the ordinary course of business carried on by both the parties could not be treated as deemed dividend for the purpose of section 2(22)(e). The deeming provisions of law contained in section 2(22)(e) apply in such cases where the company pays to a related person an amount as advance or a loan as such and not in any other context. The law does not prohibit business transactions between related concerns, and, therefore, payments made in the ordinary course of business cannot be treated as loans and advances. Therefore, in the facts and circumstances of the case and in the light of the judicial pronouncements considered above, especially in the light of decision of the Bombay High Court in the case of Nagindas M. Kapadia (supra), we hold that payments made by a company in the course of carrying on of its regular business through a mutual, open and current account to a related party do not come under the purview of section 2(22)(e) of the Act."*

26. In light of the aforesaid judgment, it is held that these are simple current account transactions between the two group companies which are business commercial transactions which cannot be regarded as deemed dividend under section 2(22)(e) of the Act and hence addition made is deleted.

27. Apart from the above, addition have also been made of Rs. 17,29,000/- and Rs. 7,00,000/- representing advance given by Courage Financial Services to M/s. Magnum International Ltd. and M/s. B.R. International. The Assessing Officer has held that perusal of the balance sheet of M/s. Magnum International shows that amount of Rs. 1729 lacs was not received as unsecured loan during the year from Courage Financial Ltd. and therefore, this sum represents deemed dividend under section 2(22)(e) of the Act. He has observed that in the audited balance sheet of M/s. B.R. Associates Pvt. Ltd., amount of Rs. 7,00,000/- was received from M/s. Courage Financial Services and the same is shown as unsecured loan instead of Sundry creditors. He thus held that the said sum represents deemed dividend under section 2(22)(e) of the Act. Here too, the appellant has contended that these are current account transactions and therefore, the said sum does not represent deemed dividend. The learned CIT(A) upheld the addition by observing as under:

> *"6.11 In view of the above said factual position, it is held that the appellant has not been successful in controverting the findings of the AO on this issue with any independent, contemporaneous evidence and therefore I see no reason to interfere with*

the action of the AO on this ground in treating the amounts advances by the group companies to certain other group companies as deemed dividend in the hands of the appellant. Accordingly, the addition of Rs. 24,29,000/- (Rs. 17,29,000 + Rs. 7,00,000/-) u/s 2(22)(e) being amounts advanced by M/s Courage Finance Services Pvt. Ltd. to M/s Magnum International Ltd. and M/s BR Associates Pvt. Ltd. is confirmed."

28. We have considered the facts of the case and submissions made by the parties. We have already held above that the transactions between group companies are in the nature of current account transactions and cannot be regarded as deemed dividend. In this case, the admitted position is that there was opening balance of Rs. 4,33,000/- in the books of M/s. Magnum International of M/s. Courage Financial Services Pvt. Ltd. This opening balance of Rs. 4,33,000/- increased to Rs. 21,62,000/- on account of fresh amount of Rs. 17,29,000/- received during the instant year. Likewise in the audited balance sheet of M/s. B.R. Associates, there was opening balance of Rs. 36,52,000/- of M/s. Courage Financial Services Pvt. Ltd. which balance increased to Rs. 43,25,000/- at the close of the year on account of Rs. 7,00,000/- received during the year. Thus, apparently, these are transactions between group companies which are on year to year basis and therefore, the current account transactions and business transactions.

29. We have already held above following the judgment of Hon'ble Jurisdictional Delhi High Court that business transactions did not constitute deemed dividend under section 2(22)(e) of the Act Following the above findings, additions made of Rs. 17,29,000/- are also deleted. Thus ground Nos. 4, 5 and 6 of the appeal for the assessment year 2005-06 and ground Nos. 4 & 5 of the appeal for assessment year 2007-08 are allowed.

30. Ground No. 3 relates to addition of Rs. 45,00,000/- for A.Y. 2007-08 on account of unexplained cash credit under section 68 of the Act. The Assessing Officer has noted that during the year under consideration, the assessee had received Rs. 20,00,000/- on 25.10.2006 from M/s Chotti Leasing (P) Ltd. as advance for land. Likewise, he has noted that another sum of Rs. 25,00,000/- was received on 31.10.2006 (20,00,000) and 2.11.2006 (5,00,000) as advance for land from Asheem Gupta. However, since the assessee did not furnish any proof in respect of said advance and M/s Chotti Leasing (P) Ltd. was one of the concerns controlled by Shri Asheem Kumar Gupta who had admitted to arrange the accommodation entries in the

form of capital gain, therefore, the aforesaid sum of Rs. 45,00,000/- were added as income under section 68 of the Act.

31 Before the learned CIT(Appeals), the appellant had submitted as under:

"5.1 It is submitted that the aforesaid addition was unjustified and wrong because the amounts represented advances received for sale of land. The amount received Rs. 45 lacs was wrongly entered in unrelated account containing debit balance of Rs. 50 lacs coming from earlier years. The mistake was detected subsequently and the said amount was credited in separate proper account styled as "advance received for sale of land". The amounts were received by cheques and they were supported by sufficient evidences. The additions were made by the AO on the basis of suspicion and not on any material evidence on record. The parties from whom the advances were received were genuine and regularly assessed to tax. They had shown these amounts in their accounts. The AO was not justified in treating these genuine and proved advances from genuine parties as unexplained cash credit u/s 68 o the Act on the basis of a general statement of seem Kumar Gupta. Shri Aseem Kumar Gupta had not specifically stated that these advances were accommodation entries. Since the advances had been proved the identities of the parties had been established and the parties had also confirmed the advances the addition of the amount was unjustified and illegal.

5.2 The statement of I.C. Jindal recorded during the search operation on 27.3.2010 was not valid in law because it was given under pressure, threat and coercion, I.C. Jindal was also not in proper state of mind at that time. The surrender of amount of Rs. 51 crores was obtained by pressure, threat and coercion and as such it was not valid in the search. No incriminating materal was found during the search which could indicate so much undisclosed income. Such surrender is not valid in law as held by the Hon'ble Supreme Court in Pullangade Rubber Produce Co. Ltd. 91 ITR 18. Nagubai Anand vs. Sharma Rao (AIR) 1956 SC 100.

5.3 Similarly, the statement of Aseem Gupta is not valid in law as the same was also obtained under pressure, threat and coercion. Infact Aseem Gupta stated that he has never received any cash from I.C. Jindal he mentioned only that he had received approximately Rs. 20 crores from the employees for giving cheque to I.C. Jindal group of companies. During the period 2004-2010, cheque of Rs. 20 crores were nowhere received from Aseem Gupta or his companies by the Magnum Group. Moreover, on cross questioning by I.C. Jindal, Aseem Gupta categorically denied the introduction of P.K. Aggarwal or Santosh Shah registered share brokers through whom Magnum Steel Ltd. had done transaction for sale and purchase of listed shares. Hence, the statement of Aseem Gupta was not based on facts and was incorrect. As such, the AO was not justified and was wrong in making additions on the basis of such statement."

32 The learned CIT(A) however upheld the addition by observing as under:

"7.3 I have considered the findings recorded by the ld. AO as per the impugned assessment orders, the submissions made by the appellant and the facts of the case on record in respect of the aforesaid two issues. As per the assessment order, the ld. AO has recorded various discrepancies in respect of the credits appearing in the books of accounts of the appellant. The learned AO has recorded a finding that the alleged

advances against the land were received from companies controlled by one Shri Aseem Kumar Gupta, who had admitted in his statement recorded at the time of the search as well as during his own assessment to have given accommodation entries through various concerns controlled by him to the appellant and entities belonging to the group controlled by him. Shri I.C. Jindal himself had admitted having received accommodation entries in the form of share capital as per his statement recorded at the time of search. So much so that during the course of the search, Sh. I. C. Jindal was confronted to Shri Aseem Kumar Gupta and after the cross examination, the former surrendered an amount of Rs. 2.80 crores as accommodation entries.

7.3.1 Further, the learned AO has mentioned as per the assessment order that Shri Aseem Kumar Gupta had admitted during his statement recorded u/s 132(4) to have arranged accommodation entries of bogus cash credits for the appellant. As mentioned earlier, Shri I.C. Jindal was confronted with Shri Aseem Kumat Gupta and he did not deny the facts stated by the latter. Furthermore, none of the alleged 'advances for land' appeared in the balance sheet for the year under consideration. The appellant's argument that the mistake was detected subsequently and the said amount was credited in a separate account appears to be nothing but an afterthought in view of the categorical admission of accommodation entries both by the appellant as well as by Sh. Aseem Kumar Gupta

7.3.2 From the aforesaid facts it can be concluded that the appellant has failed to discharge his onus to prove the genuineness of the transactions. The whole apparatus was nothing but a conduit to plough back the money of the appellant in the group of advances for land. Mere payment of money by account payee cheques is not sacrosanct nor can it make a non genuine transaction genuine.

7.3.3 The contention of the appellant that the statements of Shri I. C. Jindal and that of Shri Aseem Kumar Gupta were not valid in law as the same were recorded under pressure, threat and coercion is not borne out of the records. There is no sign of application of any such tactics as alleged by the appellant nor the latter has brought any material on record to support his allegation.

7.4 The argument of the appellant that the ratio of the judgment in the case of Nova Promoters is not applicable in his has not been found to be convincing. The plea of the appellant that unlike Nova's case, the AO did not link the amount with any accommodation entry with share applicant companies nor he proved that the amounts emanated from the appellant's sources is not correct as such exercise has actually been elaborately done by the learned AO, who found out tht the alleged advances for he land were not shown in the balance sheet as liability and there were categorical admissioins both by the appellant himself as well as the entry provider i.e. Sh. Aseem Kumar Gupta of having taken/given accommodation entries. In view of the detailed findings recorded by the learned AO, the appellant's contention that he has proved the genuineness of the cash credits with evidences which were not controverted and not proved false is a wrong assertion."

33. Having considered the submissions made by the parties and perused the material on record we find that addition of Rs. 45,00,000/- represents sums of Rs. 20,00,000/- received from M/s Chotti Leasing (P) Ltd. and Rs. 25,00,000/- from Asheem Gupta. According to the

appellant the said sum represents advance for land. However the AO made the additions on the following counts:

i) That the liability of Rs. 45,00,000/- is not appearing in the balance sheet of the assessee though the sum is credited to the bank account of the assesse

ii) No evidence has been furnished in support of the advance for land

iii) That Asheem Gupta has admitted to give accommodation entries to the appellant in the form of capital gain and share capital. He has also observed that Asheem Gupta is a director of M/s Chotti Leasing (P) Ltd.

34. The appellant contended that the amount received were incorrectly entered in an unrelated account containing debit balance of Rs. 50 lacs coming from earlier years and thereafter mistake was detected and subsequently the amount was credited in a separate account styled as "advance received for sale of land". The learned CIT(A) has not recorded any finding on the aforesaid contention of the appellant which to our mind was the root cause for making the addition. The learned CIT(A) has upheld the addition on the basis of the statement of Shri Asheem Gupta whereby he has admitted to have provided accommodation entries to the appellant and also the statement of the appellant being surrendered income in the form of share capital as per his statement recorded at the time of search.

35. Before us the revenue was directed to place on record the statement of Shri I.C. Jindal whereby he had surrendered sum of Rs. 51 crores. A perusal of the said statement in Q.No. 20 would show that he has stated as under:

"Q.20 On examination of documents/loose papers, it is seen that you have made huge investments in property transaction and you have made cash sales in your group of companies. Further you have received share capital and capital gain also. Please explain whether you are offering any tax for above mentioned transactions/investments?
Ans. Yes I agree that I have these transactions and I am surrendering Rs.51 (Rs. Fifty One Crores) crores as additional undisclosed income for buying piece of mind and offering this amount in the following heads in addition to regular income.

1) Magnum Steels Ltd. Rs.2.80 crores as introduction in share capital.
2) Other flagship concerns. Rs.48.20 crores as income from operations of group of companies i.e.
i) M/s. Magnum Steel Ltd.
ii) M/s. Magnum International Ltd.
iii) M/s. Courage Financial Services P. Ltd.
iv) M/s. N.R. Sponge Pvt. Ltd.

The details of above mentioned surrender company-wise will be submitted later on. For this purpose, I am presenting the following cheques for payments of taxes on surrendered additional undisclosed income of Rs.51 crores. These cheques were issued from personal A/c for the time being and will be replaced."

36. The ld. counsel in his arguments submitted that such surrender was never acted upon and no sum was offered for tax or assessed to tax on the basis of such said surrender given by Shri I. C. Jindal. A chart tabulating the various additions made in all the four companies has also been placed on record. It was contended that no addition has been made on the basis of surrender but on independent examination of the claim. He alternatively contended that such surrender in any case has no bearing on the advance received by the appellant. We find that there are no factual findings vis-à-vis the above submission of the appellant. We therefore direct that the issue regarding addition of Rs. 45,00,000/- be decided de-novo by the Assessing Officer after granting adequate opportunity of being heard to the appellant. The grounds raised in thus allowed for statistical purposes.

37 Ground No. 2 for A.Y. 2005-06 was not pressed and is therefore, dismissed.

38. Ground No. 3 for A.Y. 2005-06 and Ground No. 2 for A.Y. 2007-08 are general ground and, are therefore no specifically adjudicated

39. Ground No. 7 and 6 for A.Y. 2005-06 and A.Y. 2007-08 relate to levy of interest which is consequential in nature.

40. The only issue remains is Ground No. 1 in both the appeals for assessment year 2005-06 and 2007-08. It was contended by the appellant that additions made by the learned Assessing Officer are not based on any material detected as a result of search on the appellant. It was submitted that for the assessment year 2005-06 original return of income had been filed on 12.12.2005, which had been accepted u/s 143(3) of the Act (page 6 of Paper Book); whereas for the assessment year 2007-08, original return of income had been filed on 1.2.2008 which had been accepted u/s 143(1) of the Act. In otherwords, both the assessments were consolidated prior to search and, had not abated under second proviso to section 153A of the Act. It was thus submitted that the additions made are beyond the scope of assessments framed u/s 153A/143(3) of the Act. It was further submitted that in none of the orders any addition

was made on the basis of material detected as a result of search on the assessee. Reliance was placed on the following judgments:

- *Sanjay Aggarwal vs. DCIT 47 taxmann.com 210 (Del) wherein Hon'ble Tribunal after referring to para 20 of the judgment of the Hon'ble High Court of Delhi in the case of CIT v. Anil Kumar Bhatia 352 ITR 493 (Del)*
- *Rajat Trade Com (India) Ltd. 120 ITD 48*
- *CIT vs. Murli Agro Products Ltd. ITA No. 36/2009 dated 29.10.2009*
- *Kusum gupta vs. DCIT ITA No. 3647/D/2010 wherein the Hon'ble Tribunal following the decision of Special Bench in the case of M/s All Cargo Global Logistics Ltd. vs. DCIT reported in 137 ITD 287 (SB) (Mum)*
- *Marigold Merchandise (P) Ltd. vs. DCIT ITA Nos 2666 and 2667/D/2013 Assessment Years 2008-09 and 2007-08 dated 27.12.2013*
- *ACIT vs. Shri Manoj Narain Aggarwal ITA No(s) 5518 to 5524/D/2012 Assessment Years 2003-04 to 2009-10 dated 30.1.2014*
- *Divine Infraction (P) Ltd. vs. DCIT ITA No. 2393/Del/2014 A.Y. 2008-09 dated 12.6.2014*
- *CIT vs. Lachman Dass Bhatia Dass 254 CTR 383 (Del)*
-- *ACIT vs. PACL India Ltd. ITA No. 2637/D/201 dated 20.6.2013*
- *Gurinder Singh Bawa vs. DCIT 28 taxmann.com 328 (Mum)*
- *ACIT vs. Pratibha Industries Ltd. 23 ITR 766 (Trib) (Mum)*
- *Jai Steel India vs ACIT 259 CTR 281 (Raj)*
- *CIT vs. Smt. Shaila Agarwal 346 ITR 130 (All)*

41. The learned CIT(DR) on the other hand submitted that conducting of search alone is sufficient to justify the validity of the proceedings initiated under sec. 153A of the Act and framing of the assessment in furtherance thereto. He also cited following decisions:

i) Filatex India Ltd. vs. CIT – ITA No. 269/2014 (Delhi High Court);

ii) Canara Housing Development CO. vs. DCIT – ITA No.38/2014 (Kar.H.C).

42. However as we have already dealt the issue on merits, therefore this legal issue is not being adjudicated separately

43. In result, appeal for the assessment year 2005-06 is allowed and that for the assessment year 2007-08 is partly allowed.

The order is pronounced in the open court on 29 /05/2015.

Sd/-	**Sd/-**
(B.C. MEENA)	**(I.C. SUDHIR)**
Accountant Member	**Judicial Member**

Dated: 29/05/2015.
Mohan Lal

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

		Date	
1.	Draft dictated on Computer	12.03.2015 & on 12.05.2015	PS
2.	Draft placed before author	12.05.2015	PS
3.	Draft proposed & placed before the second member	15.05.2015 at Indore	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	29.05.2015	PS/PS
6.	Kept for pronouncement on	29.05.2015	PS
7.	File sent to the Bench Clerk	29.05.2015	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		